(3) Whether the population of mountain whitefish in the Big Lost River is a separate species or subspecies.

(4) Whether the population of mountain whitefish in the Big Lost River is discrete, as defined in the DPS policy, including, but not limited to, information indicating that the mountain whitefish population in the Big Lost River is markedly separated from other populations of mountain whitefish due to physical, physiological, ecological, or behavioral factors.

(5) Whether the population of mountain whitefish in the Big Lost River is significant to the remainder of the taxon to which it belongs (i.e., to the remainder of the species of mountain whitefish throughout its range), as defined in the DPS Policy, including, but not limited to:

(a) Information indicating the ecological setting, including such factors as temperature, moisture, weather patterns, etc., in which the Big Lost River population of mountain whitefish persists, is unusual or unique for the taxon;

(b) Information indicating that the loss of the population of mountain whitefish in the Big Lost River would or would not result in a significant gap in the range of the taxon; or

(c) Information indicating that the Big Lost River population of mountain whitefish differs markedly in its genetic characteristics from other populations of mountain whitefish in the United States.

(6) If the population of mountain whitefish in the Big Lost River is not a species or subspecies, whether that population constitutes a significant portion of the range of the species or subspecies to which it belongs.

(7) The effects of potential threat factors that are the basis for making a listing determination under section 4(a) of the Act, which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

If we determine that listing the population of mountain whitefish in the Big Lost River is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by the species, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if mountain whitefish in the Big Lost River are proposed for listing, and why such habitat meets the requirements of the Act.

Please note that submissions merely stating support or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.'' At the conclusion of the status review, we will determine whether listing is warranted, not warranted, or warranted but precluded by other pending proposals.

You may submit your information by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Information and materials we receive, as well as supporting documentation used, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

## Authors

The primary authors of this notice are the staff members of the Idaho Fish and Wildlife Office.

## Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 24, 2009

**James J. Slack,**

*Acting Deputy Director, Fish and Wildlife Service.*

[FR Doc. E9–18802 Filed 8–5–09; 8:45 am]

BILLING CODE 4310-55-S

---

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 300

**[Docket No. 0812191631–91125–02]**

**RIN 0648–AX53**

## Pacific Halibut Fisheries; Subsistence Fishing

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to revise the criteria for rural residents to participate in the subsistence fishery for Pacific halibut in waters in and off Alaska. Currently, certain rural residents who reside in locations outside the legal boundaries of specified communities are prohibited by regulations from participating in the subsistence halibut fishery. This action is necessary to allow subsistence halibut fishing opportunities for these rural residents. This action is intended to allow inadvertently excluded rural residents to participate in the subsistence halibut fishery and to support the conservation and management provisions of the Northern Pacific Halibut Act of 1982.

**DATES:** Comments must be received no later than September 8, 2009.

**ADDRESSES:** Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–AX53'' by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the

Federal eRulemaking Portal website at *http://www.regulations.gov*.

- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: 907–586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, Alaska.

All comments received are a part of the public record and generally will be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of the Regulatory Impact Review (RIR) prepared for this action, and the environmental assessment (EA) prepared for the original subsistence halibut action (68 FR 18145; April 15, 2003) may be obtained from *http://www.regulations.gov* or from the Alaska Region website at *http://www.alaskafisheries.noaa.gov*.

Written comments regarding the burden hour estimates or other aspects of the collection of information requirements contained in this proposed rule may be submitted to NMFS at the above address and by e mail to *David__Rostker@omb.eop.gov*, or fax to 202 395 7285.

**FOR FURTHER INFORMATION CONTACT:** Becky Carls, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

## Background

Management of the Pacific halibut (*Hippoglossus stenolepis*) (hereafter halibut) fishery in and off Alaska is based on an international agreement between Canada and the United States. This agreement, entitled the AConvention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea@ (Convention), was signed at Ottawa, Canada, on March 2, 1953, and amended by the AProtocol Amending the Convention,@ signed at Washington, D.C., March 29, 1979. The Convention, administered by the International Pacific Halibut Commission (IPHC), is given effect in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act).

The IPHC promulgates regulations pursuant to the Convention. The IPHC=s regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After approval by the Secretary of State and the Secretary, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. NMFS published the IPHC=s current annual management measures on March 19, 2009 (74 FR 11681).

The Halibut Act also authorizes the North Pacific Fishery Management Council (Council) to develop halibut fishery regulations, including limited access regulations, in its geographic area of concern that would apply to nationals or vessels of the United States (Halibut Act, section 773(c)). Such an action by the Council is limited to only those regulations that are in addition to, and not in conflict with, IPHC regulations. Council-developed regulations must be approved and implemented by the Secretary. Any allocation of halibut fishing privileges must be fair and equitable and consistent with other applicable Federal law. The Council used its authority under the Halibut Act to recommend a subsistence halibut program in October 2000 to recognize and manage the subsistence fishery for halibut. Like the original subsistence halibut program and subsequent amendments to it, this action was developed by the Council under the authority of the Halibut Act.

The Halibut Act at sections 773c (a) and (b) provides the Secretary with the general responsibility to carry out the Convention with the authority to, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating (currently the Secretary of Homeland Security), adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary has delegated authority to NMFS to implement the Halibut Act.

## Need for Action

The subsistence halibut regulations authorize eligible persons to conduct subsistence halibut fishing in waters in and off Alaska. Currently, a person is eligible to harvest subsistence halibut if he or she is a rural resident of a community with customary and traditional uses of halibut that is listed in the tables at § 300.65(g)(1) (hereafter ''listed community''), or a member of an Alaska Native tribe with customary and traditional uses of halibut that is listed in the tables at § 300.65(g)(2). Persons eligible to fish must possess a subsistence halibut registration certificate (SHARC) to exercise the privilege.

The definition of the term ''rural resident'' is the primary issue in this proposed action. For purposes of the subsistence halibut program, a rural resident currently is defined as a person domiciled in a listed community, who has maintained a domicile in a listed rural community for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another state, territory, or country. A minimum threshold of 25 residents was used when the list of eligible rural places originally was developed by the Council and approved by the Secretary. The list of rural communities was developed by the Council based on customary and traditional findings for halibut and bottomfish made by the State of Alaska Board of Fisheries (Board). Therefore, the process for including additional communities in the subsistence halibut program has been for an interested party to first send a written request to the Board that then may recommend inclusion of additional communities in the subsistence halibut program.

The current regulations have inadvertent, adverse impacts on some rural residents; individuals who reside outside the boundaries of designated communities do not qualify for a SHARC. The boundaries of many rural Alaska communities are not adjacent to the boundaries of other communities due to Alaska's large size and relatively sparse population. Areas between incorporated communities are unincorporated areas. Individuals who reside in these extremely remote locations between listed communities likely have the same if not greater customary and traditional use of halibut as currently eligible participants, and otherwise may be deemed eligible to participate in the subsistence halibut program except for the location of their residence outside the boundaries of a listed community. Initially, SHARCs were issued to individuals who resided close to listed communities. Beginning in 2007, SHARCs have been denied to individuals who previously received them because these individuals reside outside the legal boundaries of listed communities. SHARCs were either returned voluntarily or were not renewed by NMFS.

## Description of the Proposed Action

The Council used a community-based approach to determine rural eligibility in its original subsistence halibut action as cited in the proposed rule published August 26, 2002 (67 FR 54767). In June

2008, the Council revised its policy based on information that numerous individuals and their families have been disadvantaged under the current regulations. The Council recommended a wider geographic scope for rural resident eligibility to include individuals who reside in remote homesteads outside the boundaries of listed communities. The Council determined that those individuals or families in remote locations within the subsistence halibut use areas of Alaska practice the same patterns of use as residents of nearby listed communities that have customary and traditional uses, and, therefore, should be eligible to participate in subsistence fishing for halibut.

The Council's original intent for the subsistence halibut program was to allow persons who had customarily and traditionally used halibut for food in the past to continue in that practice. This action would amend the regulations to conform the subsistence halibut program regulations to the Council=s original intent for the program. If the proposed action is implemented, additional rural residents of Alaska south of Cape Espenberg who reside within a designated ten-statute-mile boundary adjacent to the waters of the Bering Sea and Pacific Ocean or in other designated places, and who do not reside in specified non-rural areas, would be eligible to subsistence fish for halibut. This action would include in the subsistence halibut program certain individuals who live a subsistence lifestyle and who rely on halibut as a customary and traditional source of food for themselves and their families, but who do not reside in a listed community. This action would provide them with the subsistence halibut fishing opportunities contemplated in the original subsistence halibut program.

The proposed change in the criteria for rural eligibility does not include residents living in non-rural areas and does not apply to Alaska Native tribal members. To include non-rural residents would expand subsistence eligibility beyond the Council's original intent. Members of Alaska Native tribes listed at § 300.65(g)(2) are eligible for SHARCs regardless of the location of their residences. Therefore, the discussion of rural versus non-rural eligibility in the preamble of this proposed action does not apply to Alaska Native tribal members. Members of Alaska Native tribes would not be directly affected by this action.

When the Council considered the areas to include as rural areas for purposes of the subsistence halibut program, it consulted with State of Alaska Department of Fish and Game Subsistence Division experts regarding customary and traditional use of the halibut resource. Cape Espenberg was chosen as the northern limit of the rural area because it is the most prominent point of land north of the northern most listed community of Shishmaref, Alaska. The ten-statute-mile limit was selected to define a band of land that included listed communities so that people living between listed communities would become eligible under this action. The land areas adjacent to the current non-subsistence marine waters areas are proposed to be included as non-subsistence areas.

Approximately 600 additional rural residents could be expected to receive SHARCs according to estimates in the RIR prepared for this action (see **ADDRESSES**). Most of these rural residents reside in the Kodiak Island Borough. Some of these rural residents previously had received a SHARC but were later found to be ineligible based on a closer examination of the regulatory language. These rural residents may have fed their families with halibut harvested under sport fishing regulations or by purchasing other protein sources from commercial entities. Up to 9,400 residents may benefit from this action through the customary and traditional practices of sharing food. Currently, the affected rural residents may harvest halibut with a sport fishing license, but the sport daily bag limits are smaller than are allowed under subsistence halibut regulations. This action would reduce the cost of acquiring halibut for subsistence purposes, reduce associated fishing time and effort, and provide comparable opportunity to harvest this subsistence resource for the affected rural residents to that enjoyed by residents of listed communities.

The amount of halibut that is projected to be harvested under this action is small compared to the harvest in the commercial and sport fisheries. The subsistence halibut harvest was estimated to be 1.4 percent, or 1,032,293 lb, of the total halibut removals of 74,389,000 lb in 2007, the most recent year for which subsistence harvest information is available. This action is expected to increase the subsistence halibut harvest by 105,000 lb, or about 10 percent of the current subsistence halibut harvest. However, without this action, some of this expected increase in the subsistence halibut harvest would be harvested as part of the sport fishery for halibut.

Under the proposed regulations, rural residents would be considered eligible to participate in the subsistence halibut program if they met the criteria for rural residency under one of two options. First, a person would continue to be considered a rural resident if he or she were domiciled in a community specified at § 300.65(g)(1). Second, under the new definition for a rural area, a person would be considered a rural resident if he or she were domiciled in one of the following rural areas of Alaska that would be listed at § 300.65(g)(3):

- Southeast Alaska east of 141° W. long., except for the land areas of the Ketchikan Gateway Borough as these areas are described below, the land areas of the City and Borough of Juneau, and the Ketchikan and Juneau non-subsistence marine waters areas (see Figures 2 and 3);
- The Alaska Peninsula, Aleutian Islands, Kodiak Island Archipelago, and the area south of the northern boundary of the Bristol Bay Borough and south of 58° 39.2′ N. lat. (see Figures 5, 6, and 7);
- Nelson, Nunivak, and Saint Lawrence Islands (see Figure 6); and
- All other areas of Alaska within ten statute miles of mean high water on the Bering Sea and Pacific Ocean coasts, south of Cape Espenberg, including along the Kuskokwim River to Bethel, and that are not specified as non-rural areas and that are not specified as the Anchorage-Matsu-Kenai or Valdez non-subsistence marine waters areas (see Figures 4, 5, 6, and 7).

The area along the Kuskokwim River to Bethel was not specified in the Council's action, but was specifically included on the maps delineating rural areas in the RIR (see **ADDRESSES**) used by the Council when it took action. This rural area along the Kuskokwim River is beyond ten statute miles from the marine coastline of the Bering Sea and would leave a gap between the rural community of Bethel and Kuskokwim Bay. The State of Alaska has determined that the rural residents of this area historically participated in the customary and traditional harvest of subsistence halibut. Therefore NMFS is proposing this modification to the Council's preferred alternative. Additionally, the Council adopted language specifying the area ''south of the Bristol Bay Borough'' but this is vague. The maps used by the Council to describe the boundaries in this area clearly show that the entire Bristol Bay Borough is to be included, so the proposed regulations clarify that the area south of the northern boundary of the Bristol Bay Borough is included as a rural area.

An applicant for a rural SHARC would be required to maintain a domicile in a rural area of Alaska for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and not claim residency in another state, territory, or country. The definitions for ''rural'' and ''rural resident'' listed at § 300.61 would be revised to include the residents of these newly described rural areas.

Other alternatives for expanding the areas defined as rural were considered but rejected. The addition of small communities to the list of eligible places would have continued to exclude individuals who reside outside the boundaries of listed communities and likely would have resulted in continued petitions to add to the list of places with customary and traditional use of halibut. Another alternative that was considered, and on which the Council's preferred alternative was based, was less specific in its descriptions of included areas.

The proposed action would require specification of non-rural areas. A resident of a non-rural area does not qualify for a SHARC. Currently, rural residents must reside within communities specified in regulations at § 300.65(g)(1) to be considered eligible for SHARCs. As a result, specifying the boundaries of non-rural areas has been unnecessary. However, expansion of the rural resident definition as proposed would require definitive specification of non-rural areas as exceptions to the proposed rural areas. In general, the non-rural areas would be those land areas adjacent to the current non-subsistence marine waters areas and would include the non-subsistence marine waters areas. The Council recommended that the boundaries for the non-rural areas match the boundaries for ''non-subsistence use areas'' established by the State of Alaska Joint Board of Fisheries and Game. This recommendation was made because these boundaries were determined by the State of Alaska based on the role of subsistence uses in the economy and not on population size. Also, the marine boundaries of these areas were used to set the boundaries of the current non-subsistence marine waters areas. The descriptions of the boundaries that are used by the State of Alaska (5AAC 99.015) were analyzed to determine the geographic coordinates that precisely define those boundaries. For the Juneau non-rural area alone, this resulted initially in a table of 3,000 geographic coordinates. By ignoring some minor turns of the boundary, this could be simplified to hundreds of geographic coordinates for one non-rural area. NMFS determined that a long, multi-page table for each non-rural area would not be practical for public use or for NMFS staff who must determine whether an applicant for a SHARC is domiciled in a specified rural area.

Therefore, NMFS proposes in this action to use the legal boundaries for cities and boroughs adjacent to the non-subsistence marine waters areas, excluding the southern tip of the Kenai Peninsula (see Figure 5), to describe the non-rural land areas. The current non-subsistence marine waters areas would be retained because they do not always match the marine boundaries of the non-rural cities and boroughs and they purposely were chosen to match the ''non-subsistence use area'' boundaries used by the State of Alaska. The land areas of the following cities and boroughs would be non-rural areas for the purposes of the subsistence halibut fishery: the Ketchikan Gateway Borough as those boundaries existed on May 18, 2008; the City and Borough of Juneau; the Greater Anchorage Area Borough; the Matanuska-Susitna Borough; the Kenai Peninsula Borough, excluding the southern tip of the Kenai Peninsula that includes the Seldovia Census Designated Place; and the City of Valdez. For comparison, the maps that show the areas the Council designated as non-subsistence areas are included in the RIR for this action (see **ADDRESSES**).

The land area in the Ketchikan Gateway Borough that would be designated as non-rural would fall within the boundaries of the borough prior to its annexation of 4,510 square miles (11,681 square kilometers) on May 19, 2008. These older boundaries would be described at § 300.65(g)(4)(i) and closely match the boundaries adopted in the Council action on June 4, 2008. Also, these boundaries closely match the Ketchikan Nonsubsistence Area established by the State of Alaska. The current boundaries of the Ketchikan Gateway Borough encompass a much larger area than that recommended by the Council as the Ketchikan non-rural area and, therefore, were rejected by NMFS as the boundaries to describe the Ketchikan non-rural area. The status of the municipality of Saxman would be unaffected by this action; Saxman would remain a listed community under this proposed rule.

The land area in the Kenai Peninsula Borough that would be designated as rural would include the Seldovia Census Designated Place, the area south and west of that place, and the area south and west of a line that runs from 59° 27.5′ N lat., 151° 31.7′ W. long. to 59° 12.5′ N lat., 151° 18.5′ W. long., as shown in Figure 5. This area of the Kenai Peninsula Borough was specified as a rural area in the Council's recommendation and closely matches the boundary established by the State of Alaska for the ''Anchorage-Matsu-Kenai Nonsubsistence Area.''

The land area enclosed by these city and borough boundaries are close to the Council's recommendation; however, more land area would be classified as rural under this proposal than was recommended by the Council. The proposed non-rural boundaries would not include any land area that was classified as rural under the Council's action. In fact, the proposed boundaries would classify as rural some land areas outside city or borough boundaries that would have been classified as non-rural under the Council's recommendation. The proposed non-rural area boundaries would be consistent with the current regulations that limit eligible rural residents to those who reside within the boundaries of specified rural communities. Finally, the proposed descriptions of non-rural areas would greatly simplify the regulations for public and agency use rather than tables of hundreds and potentially thousands of geographic coordinates for complex non-rural areas. NMFS anticipates that applicants might know, or could readily determine, whether their domiciles are located inside or outside of non-rural city or borough boundaries based on the tax status of the properties. The non-subsistence marine waters areas' boundaries would remain unchanged, except for correcting an error to the southern boundary for Valdez that is discussed below.

The current figures that display the ''non-subsistence marine waters areas'' described at § 300.65(h)(3) in which subsistence fishing for halibut is prohibited would be revised to include the adjacent non-rural land areas. These revised figures would show the rural and non-rural areas of Southern Southeast Alaska, including Ketchikan; Northern Southeast Alaska, including Juneau; Prince William Sound, including Valdez; and Anchorage-Matsu-Kenai. Two new figures would be added to show the rural and non-rural areas of the Alaska Peninsula and Aleutian Islands and of Western and Central Alaska. Because revised and new figures are included with this action, the references to figure numbers would be revised under § 300.65 at paragraphs (j)(3)(i)(B), (k)(3)(i)(A), and (k)(3)(i)(B).

The southern boundary for the Valdez non-subsistence marine waters area would be corrected in the regulations at § 300.65(h)(3)(iv). The coordinates for the boundaries used in the original

subsistence halibut regulations (68 FR 18145; April 15, 2003) were believed to match the boundary of the City of Valdez. However, an error in converting the legal description of the boundaries of the City of Valdez into geographic coordinates was discovered in preparing the analysis for this action. Therefore, this regulatory amendment would revise the southern boundary from waters north of 61° 02.24′ N. lat., to waters north of 61° 01.38′ N. lat. This would move the boundary farther south by 5,300 ft (1,620 m). The maps provided to the Council and to the public for the June 2008 meeting reflected this revision.

The SHARC application would be revised to incorporate the changes that would be necessitated by this action. Currently, one combined application is used by rural residents and by Alaska Native tribal members. To simplify the application process for the public, separate applications would be used by rural residents and by Alaska Native tribal members. Additionally, the regulations at § 300.65(i)(2) would be revised to simplify the application requirements that are listed in the regulations. The SHARC application requirements for a rural resident would include indicating the basis upon which the applicant is eligible to harvest subsistence halibut as a rural resident. Additional requirements would include listing a post office box number, describing the physical location of the domicile if there is no street address, and adding Aor area@ to the requirement to list the community that qualifies the fisherman as eligible to fish for subsistence halibut. The SHARC application for an Alaska Native tribal member would clearly state what is needed for address or location information and include listing the community or area of residence, and would no longer require the dates of residence in a community because that information is not necessary for an Alaska Native tribal member.

The specific location of any SHARC holder's domicile would be provided on the SHARC application due to regulations related to cash reimbursement for subsistence halibut fishing expenses. Cash reimbursement for subsistence halibut is restricted to actual trip expenses for ice, bait, food, and fuel directly related to the harvest of subsistence halibut because it is illegal for subsistence halibut to enter the commercial market. Regulations at § 300.66(j)(1) and § 300.66(j)(2) limit the reimbursement of a fisherman's actual expenses to residents of the same community for people who are not members of an Alaska Native tribe. Therefore, regulations at § 300.66(j)(1) and § 300.66(j)(2) would be revised to include: (A) references to the proposed new qualification for a rural resident that would be described at § 300.65(g)(3), and (B) a limit for qualified persons who reside outside listed rural communities, that the fisherman's actual expenses could be reimbursed only by those rural residents who reside within ten statute miles of the rural location listed on the fisherman§ s SHARC application. The ten-statute-mile limit was selected by NMFS to match the boundary that would be described at § 300.65(g)(3)(iv) and to maintain the intent of the Council to limit the scope of reimbursement to residents of a localized area. NMFS is seeking public comment regarding the size of this ten-statute-mile limit.

Additionally, the text at § 300.66(j)(2) would be revised to specify that Alaska Native tribal members may be reimbursed for only actual expenses for ice, bait, food and fuel. The words ''actual expenses'' were inadvertently omitted from the regulatory text. This revision would parallel the construction that is used at § 300.66(j)(1) regarding reimbursement of rural residents.

The SHARC application for a rural resident would include the requirement to provide the name, complete mailing address, and phone number of an adult age 18 years or older who can verify that the residence listed by the applicant is the applicant's domicile and that it was the applicant§ s domicile for 12 months prior to the date of the application. The verifying person may not be the applicant's wife, husband, parent, or child and may not be living at the rural residence listed by the applicant. This requirement for a verifier would enhance the ability of NMFS to discern whether a SHARC applicant is truly qualified as a rural resident eligible to fish for subsistence halibut.

## Other Regulatory Changes

Several other minor changes to the regulations are proposed. First, a definition for SHARC, which is the documentation, issued by NMFS, of the registration required to participate in subsistence fishing, would be added to the regulations at § 300.61 because that term is used in the current and proposed regulations but is not defined. Second, the regulations at § 300.65(g) would be revised to include a reference to the new qualification for a rural resident described at § 300.65(g)(3). Third, a misspelling of Sheldon Point (Nunam Iqua) would be corrected in the regulations at § 300.65(g)(2) in the table for the IPHC halibut regulatory area 4E. Fourth, the regulations at § 300.65(h)(3) would no longer specify ''non-rural areas'' but ''non-subsistence marine waters areas'' instead, therefore, regulations at § 300.65(h)(4) and § 300.66(g) would be revised to reflect that change. Finally, the meaning of the ''area of tribal membership'' that is defined at § 300.65(h)(4)(iii) would be revised to specify that this means the IPHC regulatory area under which an organized tribal entity is listed at § 300.65(g)(2), or the area of the Bering Sea that is closed to commercial halibut fishing and adjacent to the rural area in which the Alaska Native tribal headquarters is located.

## Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the Council, and the Secretary. Section 5 of the Halibut Act (16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The proposed action is consistent with the Council's authority and the Secretary's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule also complies with the Secretary's authority under the Halibut Act to implement management measures for the halibut fishery.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

## Basis and Purpose of Rule

The United States and Canada participate in the International Pacific Halibut Commission (IPHC) and promulgate regulations governing the Pacific halibut (hereafter halibut) fishery under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The North Pacific Fishery Management Council (Council) may develop regulations governing the allocation and catch of halibut in its area of concern that would apply to nationals or vessels of the United States and that are in agreement with IPHC regulations. The Secretary of Commerce must approve regulations recommended

by the Council before implementation by the National Marine Fisheries Service (NMFS). The Council prepared an environmental assessment/regulatory impact review (EA/RIR) for subsistence halibut fisheries in January 2003, and NMFS published the final rule to implement subsistence halibut regulations in April 2003 (68 FR 18145). These regulations include criteria, based on community of residence, for rural residents to qualify as participants in the subsistence halibut fishery.

The criteria for rural residency that were approved in 2003 would be revised under the proposed rule in order for more Alaskans with customary and traditional use of halibut to participate in the subsistence halibut fishery in waters in and off Alaska. Beginning in 2007, based on a closer examination of the regulatory language, subsistence halibut registration certificates that permit fishermen to subsistence fish for halibut have been denied to individuals who previously received them. These rural residents were determined to be ineligible because they reside outside the legal boundaries of communities specified in the regulations. Individuals who reside in these extremely remote locations likely have the same if not greater customary and traditional use of halibut as currently eligible participants, and otherwise may be deemed eligible to participate in the subsistence halibut program except for the location of their residence outside the boundaries of a specified community.

This action is necessary to allow subsistence halibut fishing opportunities for these affected rural residents. Currently, the affected rural residents may harvest halibut with a sport fishing license, but the sport daily bag limits may be smaller than would be allowed under the subsistence halibut fishery. The intended effect of this action is to reduce the cost of acquiring subsistence halibut, reduce associated fishing time and effort, and provide comparable opportunity to harvest this subsistence resource for the affected rural residents.

**Factual Basis for Certification**

*Description and Estimate of the Number of Small Entities to Which the Rule Applies*

No small entities would be directly regulated by the proposed rule. Small entities are defined as small businesses, small organizations, and small governmental jurisdictions in Section 601(3)-(5) of the Regulatory Flexibility Act (RFA) of 1980. This action would apply uniquely to individual natural persons who are not considered small entities within the meaning of the RFA.

All of the persons that would be directly regulated by the action are natural persons. The proposed subsistence halibut regulation at 50 CFR 300.65(g)(3) would specify that ''A person is eligible to harvest subsistence halibut if he or she is a resident in one of the rural areas of Alaska described [in this paragraph].'' The regulations further specify at § 300.61 that halibut caught for subsistence purposes is defined as halibut caught by a rural resident or a member of an Alaska Native tribe for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade. Additionally, the definition for rural resident only specifies that an individual, clearly indicating a natural person, may qualify to be a rural resident.

*Description and Estimate of Economic Impacts on Small Entities by Entity Size and Industry*

No small entities are directly regulated by the proposed rule. Therefore, there are no economic impacts on directly regulated small entities.

*Criteria Used to Evaluate Whether the Rule Would Impose Impacts on ''A Substantial Number'' of Small Entities*

The Small Business Administration criteria for what constitutes a small entity, described in Section 601(6) of the RFA, and the definition of a business concern that appears at 13 CFR 121.105 were used to determine that there are no impacts on any small entities. Only individual natural persons would be directly regulated by this proposed rule and such persons are not considered small entities under Small Business Administration guidelines.

*Criteria Used to Evaluate Whether the Rule Would Impose ''Significant Economic Impacts''*

Because no small entities are directly regulated by the proposed rule, no criteria were applied.

*Description of, and an Explanation of the Basis for, Assumptions Used*

The finding that no small entities would be directly regulated by this action is based on the definition of small entities in the RFA and implementing regulations, and a determination that only individual natural persons, and not small entities, would be directly regulated by the proposed action.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648 0460. Public reporting burden for the SHARC applications for a rural resident or an Alaska Native tribal member are each estimated to average ten minutes per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e mail to *David_Rostker@omb.eop.gov*, or fax to 202 395 7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Executive Order 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of the National Marine Fisheries Service in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat 452), as amended by section 518 of Public Law 108–447 (118 Stat 3267), extends the consultation requirements of Executive Order 13175 to Alaska Native corporations. Consultations occurred with the Alaska Native Subsistence Halibut Working Group in December 2008, pursuant to the requirements of Executive Order 13175.

**List of Subjects in 50 CFR Part 300**

Alaska, Alaska Natives, Fisheries, Pacific halibut fisheries, Recordkeeping and reporting requirements.

Dated: July 31, 2009.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 300, subpart E is proposed to be amended as follows:

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

### Subpart E—Pacific Halibut Fisheries

1. The authority citation for 50 CFR part 300, subpart E continues to read as follows:

**Authority:** 16 U.S.C. 773–773k.

2. In § 300.61 revise the definitions for ''Rural'' and ''Rural resident'' and add a new definition for ''Subsistence halibut registration certificate (SHARC)'' in alphabetical order to read as follows:

**§ 300.61 Definitions.**

* * * * *

*Rural* means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a community of Alaska listed at § 300.65(g)(1) or an area of Alaska described at § 300.65(g)(3) in which the non-commercial, customary, and traditional use of fish and game for personal or family consumption is a principal characteristic of the economy or area and in which there is a long-term, customary, and traditional use of halibut.

*Rural resident* means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska:(1) An individual domiciled in a rural community listed in the table at § 300.65(g)(1) and who has maintained a domicile in rural communities listed in the table at § 300.65(g)(1), or in rural areas described at § 300.65(g)(3), for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another state, territory, or country; or

(2) An individual domiciled in a rural area described at § 300.65(g)(3) and who has maintained a domicile in rural areas described at § 300.65(g)(3), or in rural communities listed in the table at § 300.65(g)(1), for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another state, territory, or country.

* * * * *

*Subsistence halibut registration certificate (SHARC)* means documentation, issued by NMFS, of the registration required at § 300.65(i).

* * * * *

3. In § 300.65:

A. Revise paragraphs (g) introductory text, (h)(3) introductory text, (h)(3)(iii) introductory text, (h)(3)(iv), (h)(4) introductory text, (h)(4)(iii), (i)(2), (j)(3)(i)(B), (k)(3)(i)(A) introductory text, and (k)(3)(i)(B).

B. In paragraph (g)(2), in the table entitled ''Halibut Regulatory Area 4E'', revise the entry for ''Sheldon Point (Nuna Iqua)''.

C. Add new paragraphs (g)(3) and (g)(4).

The additions and revisions read as follows:

**§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.**

* * * * *

(g) *Subsistence fishing in and off Alaska.* No person shall engage in subsistence fishing for halibut unless that person meets the requirements in paragraphs (g)(1), (g)(2), or (g)(3) of this section.

* * * * *

(2) * * *

HALIBUT REGULATORY AREA 4E

| Place with Tribal Headquarters | Organized Tribal Entity |
|---|---|
| * * * * * | |
| Sheldon Point (Nunam Iqua) | Native Village of Sheldon's Point |
| * * * * * | |

(3) A person is eligible to harvest subsistence halibut if he or she is a rural resident in one of the rural areas of Alaska described as follows:

(i) Southeast Alaska east of 141 W. long., except for the land areas of the Ketchikan Gateway Borough as described at (g)(4)(i) of this section, the land areas of the City and Borough of Juneau, and the Ketchikan and Juneau non-subsistence marine waters areas as defined in paragraphs (h)(3)(i) and (h)(3)(ii) of this section (see figures 2 and 3 to this subpart E).

(ii) The Alaska Peninsula, Aleutian Islands, Kodiak Island Archipelago, and the area south of the northern boundary of the Bristol Bay Borough and south of 58° 39.2′ N. lat. (see figures 5, 6, and 7 to this subpart E).

(iii) Nelson, Nunivak, and Saint Lawrence Islands (see figure 6 to this subpart E).

(iv) All other areas of Alaska within ten statute miles of mean high water on the Bering Sea and Pacific Ocean coasts, south of Cape Espenberg, including along the Kuskokwim River to Bethel, and that are not specified as non-rural land or water areas as defined in paragraph (g)(4) of this section (see figures 4, 5, 6, and 7 to this subpart E).

(4) Non-rural areas consist of the non-subsistence marine waters areas defined in paragraph (h)(3) of this section and the land areas of the following cities and boroughs for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska:

(i) The Ketchikan Gateway Borough on May 18, 2008. This area encompasses all those islands bounded on the east, north, and west by Behm Canal, Behm Narrow, and Clarence Strait to its junction with Nichols Passage, and on the south by Nichols and Revillagigedo Channel to its junction with Behm Canal. The designated boundaries extend to the center line of Behm Canal, Behm Narrows, Clarence Strait, Nichols Passage, and Revillagigedo Channel, and include all the area of Revillagigedo, Gravina, Pennock, Betton, Grant and other Clover Passage and Naha Bay Islands, Hassler, Gedney, Black, Smeaton, Manzanita, Rudyerd, and Bold Islands, and all other offshore and adjacent islands and inlets thereto (see figure 2 to this subpart E).

(ii) The City and Borough of Juneau (see figure 3 to this subpart E).

(iii) The Greater Anchorage Area Borough (see figures 4 and 5 to this subpart E).

(iv) The Matanuska-Susitna Borough (see figure 5 to this subpart E).

(v) The Kenai Peninsula Borough excluding the area of the Seldovia Census Designated Place, the area south and west of that place, and the area south and west of a line that runs from 59 27.5′ N. lat., 151° 31.7′ W. long. to 59° 12.5′ N. lat., 151° 18.5′ W. long (see figure 5 to this subpart E).

(vi) The City of Valdez (see figures 4 and 5 to this subpart E).

(h) * * *

(3) Subsistence fishing may be conducted in any waters in and off Alaska except in the four non-subsistence marine waters areas defined as follows:

* * * * *

(iii) The Anchorage-Matsu-Kenai non-subsistence marine waters area in Commission Regulatory Area 3A (see figures 4, 5, 6, and 7 to this subpart E) is defined as:

* * * * *

(iv) Valdez non subsistence marine waters area in Commission regulatory area 3A (see figures 4 and 5 to this subpart E) is defined as the waters of Port Valdez and Valdez Arm located north of 61° 01.38′ N. lat., and east of 146° 43.80′ W. long.

(4) Waters in and off Alaska that are not specifically identified as non-subsistence marine waters areas in paragraph (h)(3) of this section are rural for purposes of subsistence fishing for halibut. Subsistence fishing may be conducted in any rural area by any

person with a valid subsistence halibut registration certificate in his or her name issued by NMFS under paragraph (i) of this section, except that:

* * * * *

(iii) For purposes of this paragraph (h)(4), Aarea of tribal membership@ means rural areas of the Commission regulatory area under which the Organized Tribal Entity is listed in the tables set out in paragraph (g)(2) of this section, or the Bering Sea closed area adjacent to the rural area in which the Alaska Native tribal headquarters is located.

(i) * * *

(2) Registration. To register as a subsistence halibut fisherman, a person may request a cooperating Alaska Native tribal government or other entity designated by NMFS to submit an application on his or her behalf to the Alaska Region, NMFS. Alternatively, a person may apply by submitting a completed application to the Alaska Region, NMFS. Application forms are available on the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*, or by contacting NMFS at 800–304–4846, Option 2. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668. NMFS will process a SHARC Application for an Alaska Native Tribal Member or a SHARC Application for a Rural Resident provided that a paper application is completed, with all applicable fields accurately filled-in, and all required additional documentation is attached. The applicant must sign and date the application certifying that all information is true, correct, and complete.

* * * * *

(j) * * *

(3) * * *

(i) * * *

(B) Within the Ketchikan, Juneau, Anchorage-Matsu-Kenai, and Valdez non-subsistence marine waters areas as defined in paragraph (h)(3) of this section (see figures 2, 3, 4, 5, 6, and 7 to this subpart E).

* * * * *

(k) * * *

(3) * * *

(i) * * *

(A) In the Anchorage-Matsu-Kenai non-subsistence marine waters area defined in paragraph (h)(3) of this section (see figures 4, 5, 6, and 7 to this subpart E), only the following tribes may use a Ceremonial or Educational permit:

* * * * *

(B) In the Valdez non-subsistence marine waters area defined in paragraph (h)(3) of this section (see figures 4 and 5 to this subpart E), only the Native Village of Tatitlek may use a Ceremonial or Educational permit.

* * * * *

4. In § 300.66, revise paragraphs (g), (j)(1), and (j)(2) to read as follows:

**§ 300.66 Prohibitions.**

* * * * *

(g) Fish for subsistence halibut in and off Alaska in a non-subsistence marine waters area specified at 300.65(h)(3).

* * * * *

(j) * * *

(1) Persons who qualify as rural residents under § 300.65(g)(1) or (g)(3) and hold a SHARC in the person's name under § 300.65(i) may be reimbursed for actual expenses for ice, bait, food, and fuel directly related to subsistence fishing for halibut, by residents of the same rural community or by rural residents residing within ten statute miles of the rural location listed on the person's SHARC application; or

(2) Persons who qualify as Alaska Native tribal members under § 300.65(g)(2) and hold a SHARC in the person's name under § 300.65(i) may be reimbursed for actual expenses for ice, bait, food, and fuel directly related to subsistence fishing for halibut, by any Alaska Native tribe, or its members, or residents of the same rural community or by rural residents residing within ten statute miles of the rural location listed on the person's SHARC application.

* * * * *

5. Revise figures 2, 3, 4, and 5 to subpart E of part 300 and add figures 6 and 7 to subpart E of part 300 to read as follows:

BILLING CODE 3510–22–S

Figure 2 to Subpart E of Part 300--Southern Southeast Alaska Rural and Non-Rural Areas

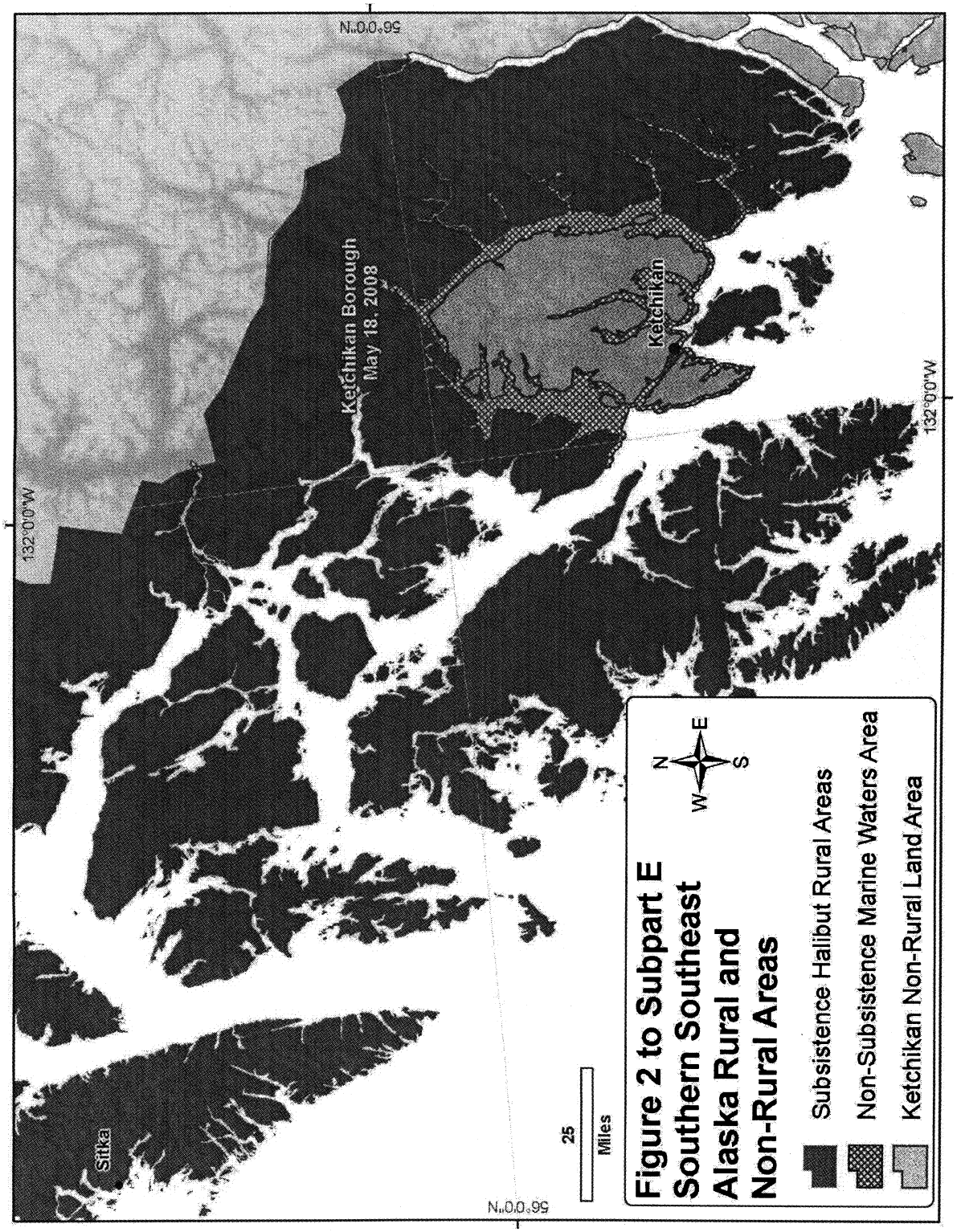


Figure 3 to Subpart E of Part 300--Northern Southeast Alaska Rural and Non-Rural Areas

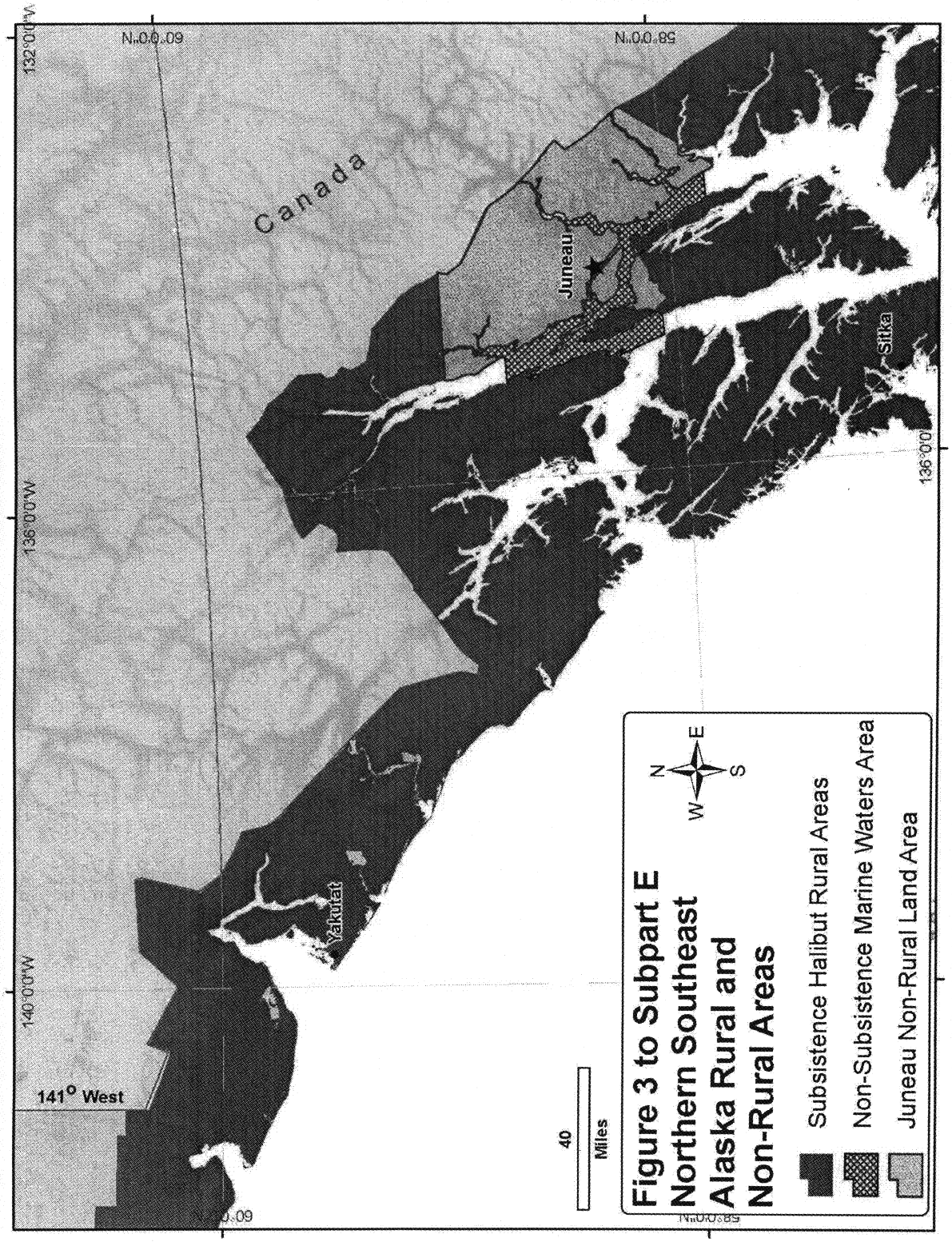


Figure 4 to Subpart E of Part 300--Prince William Sound Rural and Non-Rural Areas

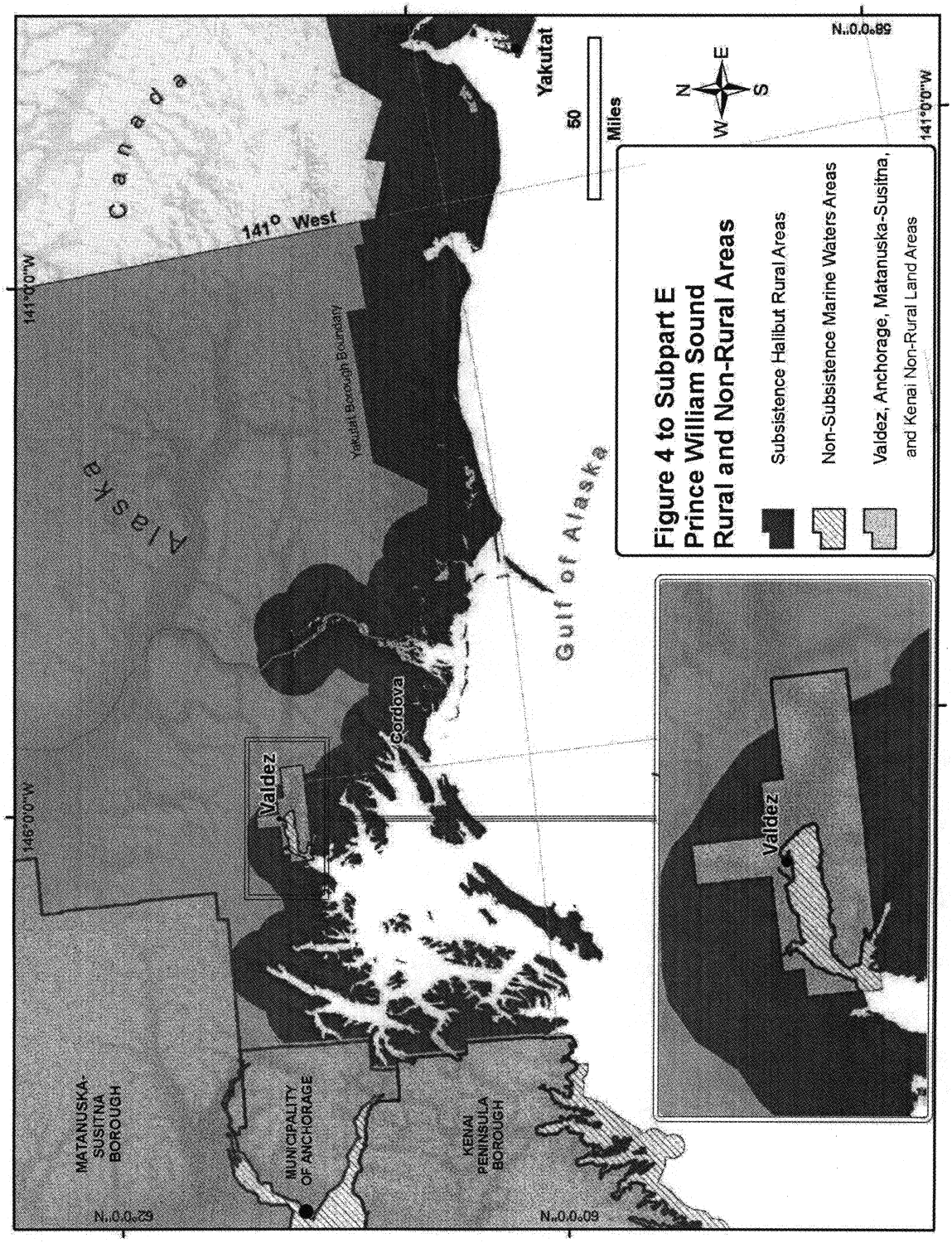


**Figure 5 to Subpart E of Part 300—Anchorage, Matanuska-Susitna, and Kenai Rural and Non-Rural Areas**

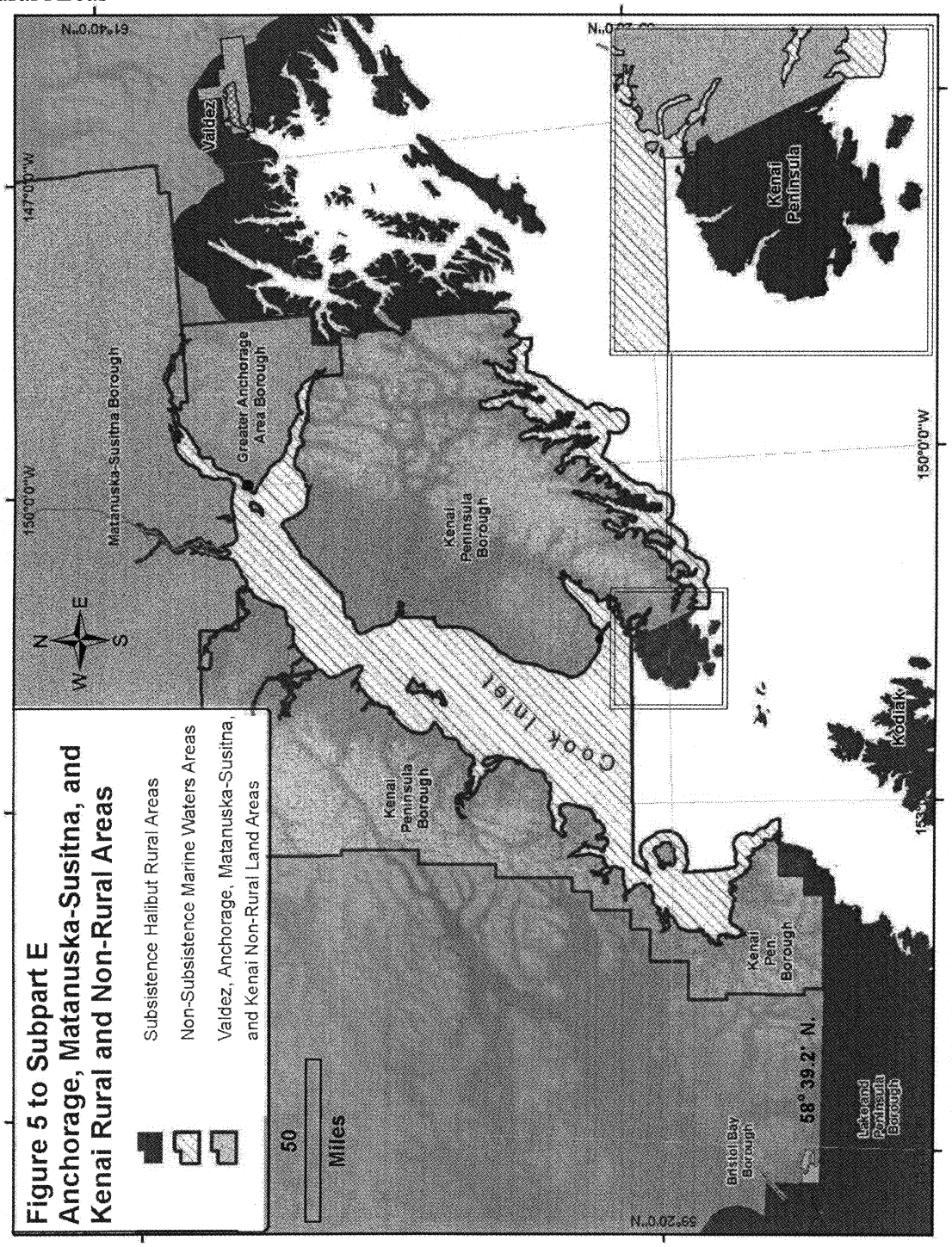


Figure 6 to Subpart E of Part 300--Alaska Peninsula and Aleutian Islands Rural and Non-Rural Areas

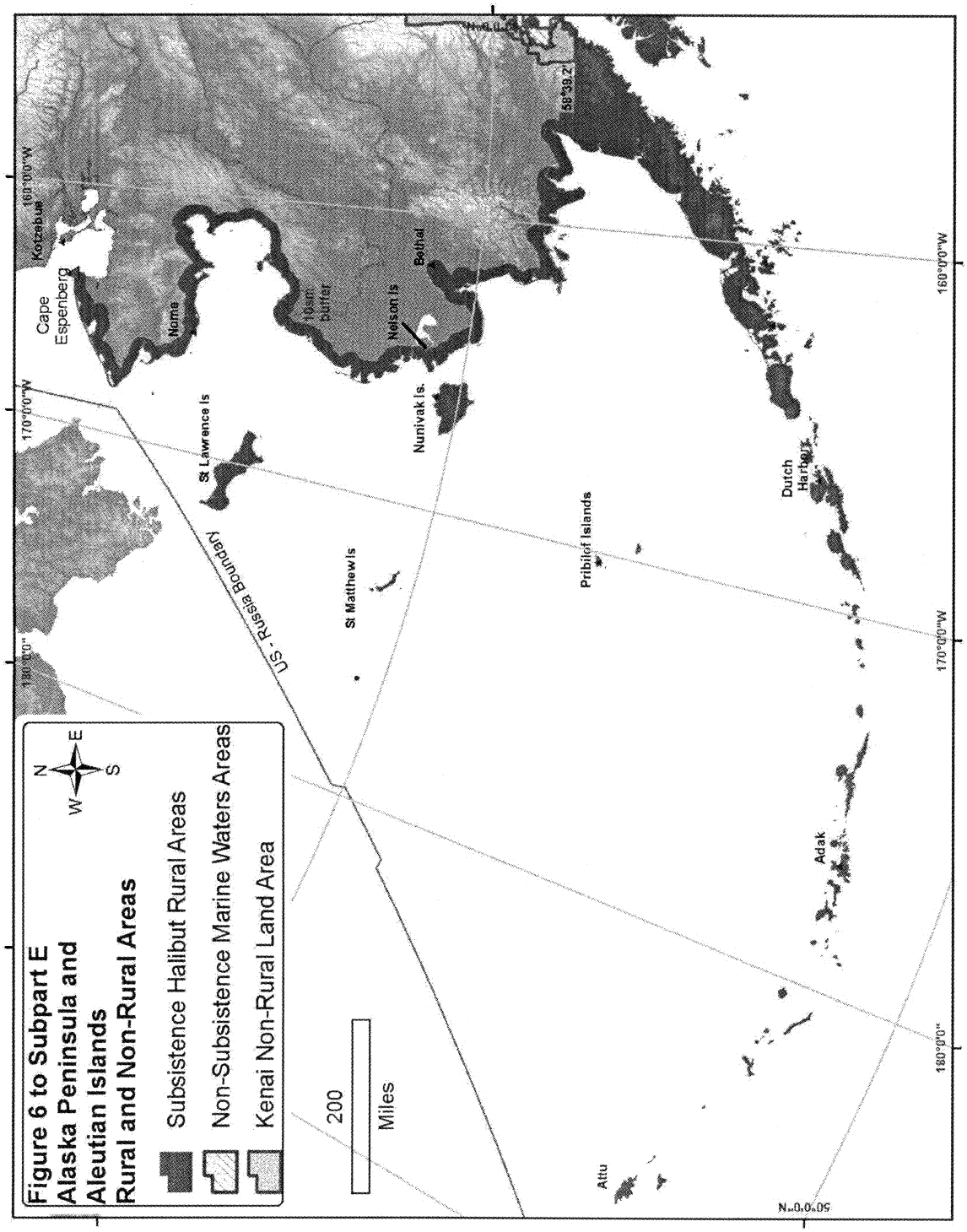
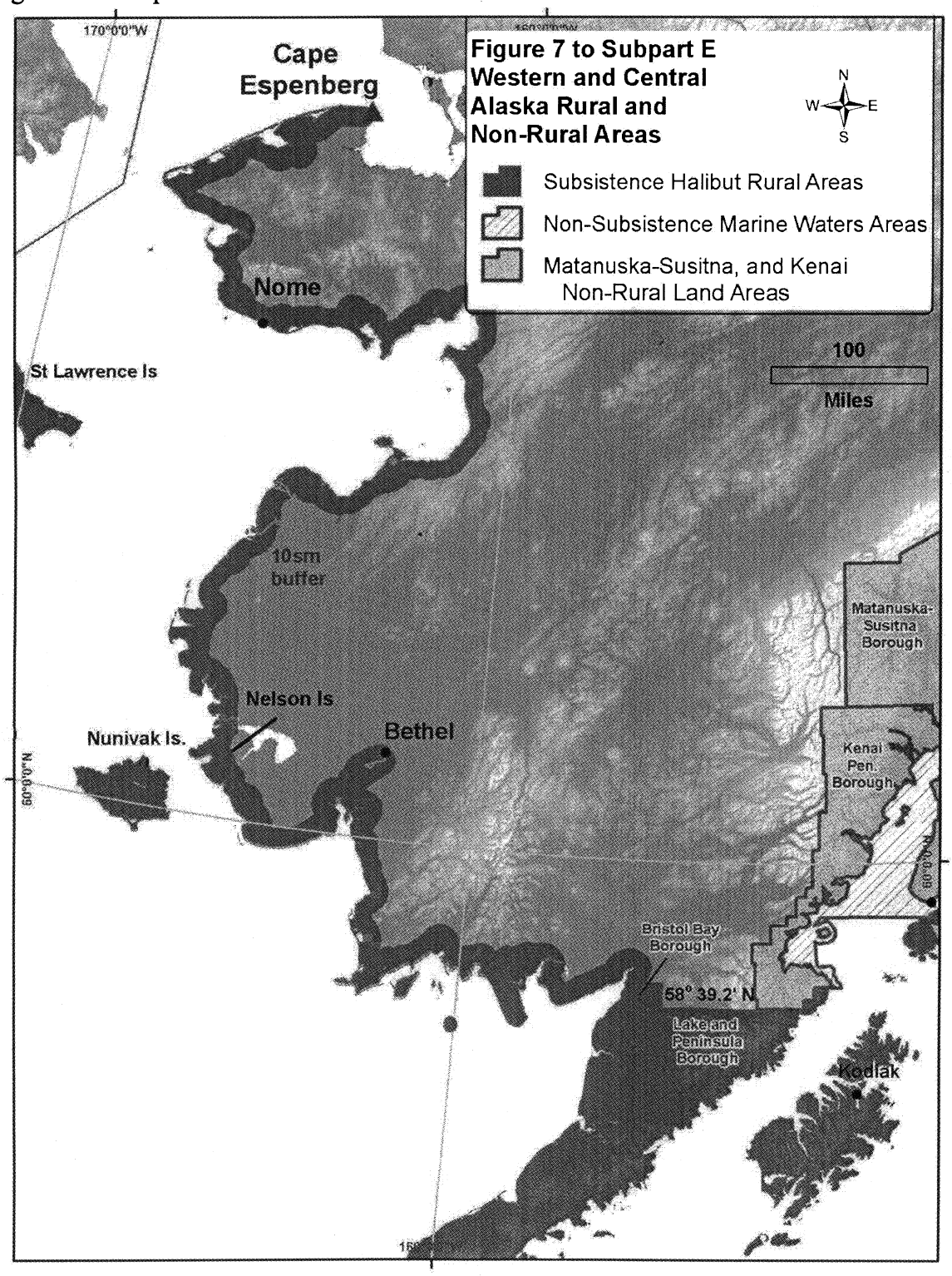


Figure 7 to Subpart E of Part 30--Western and Central Alaska Rural and Non-Rural Areas




[FR Doc. E9–18841 Filed 8–5–09; 8:45 am]

BILLING CODE 3510–22–C