allocation or apportionment of a target species specified under paragraph (c) of this section has been or will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group.

* * * * *

(iii) * * *

(B) *Retention of incidental species.* Except as described in § 679.20(e)(3)(iii), if directed fishing for a target species or species group is prohibited, a vessel may not retain that incidental species in an amount that exceeds the maximum retainable amount, as calculated under paragraphs (e) and (f) of this section, at any time during a fishing trip.

* * * * *

(2) *Groundfish as prohibited species closure.* When the Regional Administrator determines that the TAC of any target species specified under paragraph (c) of this section, or the share of any TAC assigned to any type of gear, has been or will be achieved prior to the end of a year, NMFS will publish notification in the **Federal Register** requiring that target species be treated in the same manner as a prohibited species, as described under § 679.21(b), for the remainder of the year.

* * * * *

■ 4. In § 679.25, revise paragraph (a)(2)(iii)(D) to read as follows:

§ 679.25 Inseason adjustments.

(a) * * *

(2) * * *

(iii) * * *

(D) Reopening of a management area or season to achieve the TAC or gear share of a TAC for any of the target species.

* * * * *

■ 5. Revise Table 2a to part 679 to read as follows:

TABLE 2A TO PART 679—SPECIES CODES: FMP GROUNDFISH

Species description	Code
Atka mackerel (*greenling*)	193
Flatfish, miscellaneous (flatfish species without separate codes)	120
Flounder:	
Alaska plaice	133
Arrowtooth and/or Kamchatka	121
Starry	129
Octopus, North Pacific	870
Pacific cod	110
Pollock	270
Rockfish:	
Aurora (*Sebastes aurora*)	185
Black (BSAI) (*S. melanops*)	142
Blackgill (*S. melanostomus*)	177
Blue (BSAI) (*S. mystinus*)	167
Bocaccio (*S. paucispinis*)	137
Canary (*S. pinniger*)	146
Chilipepper (*S. goodei*)	178
China (*S. nebulosus*)	149
Copper (*S. caurinus*)	138
Darkblotched (*S. crameri*)	159
Dusky (*S. variabilis*)	172
Greenstriped (*S. elongatus*)	135
Harlequin (*S. variegatus*)	176
Northern (*S. polyspinis*)	136
Pacific Ocean Perch (*S. alutus*)	141
Pygmy (*S. wilsoni*)	179
Quillback (*S. maliger*)	147
Redbanded (*S. babcocki*)	153
Redstripe (*S. proriger*)	158
Rosethorn (*S. helvomaculatus*)	150
Rougheye (*S. aleutianus*)	151
Sharpchin (*S. zacentrus*)	166
Shortbelly (*S. jordani*)	181
Shortraker (*S. borealis*)	152
Silvergray (*S. brevispinis*)	157
Splitnose (*S. diploproa*)	182
Stripetail (*S. saxicola*)	183
Thornyhead (all *Sebastolobus* species)	143
Tiger (*S. nigrocinctus*)	148
Vermilion (*S. miniatus*)	184
Widow (*S. entomelas*)	156
Yelloweye (*S. ruberrimus*)	145
Yellowmouth (*S. reedi*)	175
Yellowtail (*S. flavidus*)	155
Sablefish (*blackcod*)	710
Sculpins	160
Sharks:	
Other (if salmon, spiny dogfish or Pacific sleeper shark—use specific species code)	689
Pacific sleeper	692
Salmon	690
Spiny dogfish	691
Skates:	
Whiteblotched (*Bathyraja maculata*)	705
Aleutian (*B. aleutica*)	704
Alaska (*B. parmifera*)	703
Big (*Raja binoculata*)	702
Longnose (*R. rhina*)	701
Other (if Whiteblotched, Aleutian, Alaska, Big, or Longnose—use specific species code listed above)	700
Sole:	
Butter	126
Dover	124
English	128
Flathead	122
Petrale	131
Rex	125
Rock	123
Sand	132
Yellowfin	127
Squid, majestic	875
Turbot, Greenland	134

[FR Doc. 2010–25202 Filed 10–5–10; 8:45 am]

BILLING CODE 3310–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0911031392–0457–02]

RIN 0648–AY34

Fisheries of the Exclusive Economic Zone Off Alaska; Modified Nonpelagic Trawl Gear and Habitat Conservation in the Bering Sea Subarea

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

ACTION: Final rule.

SUMMARY: NMFS hereby issues a final rule that implements Amendment 94 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 94 requires participants using nonpelagic trawl gear in the directed fishery for flatfish in the Bering Sea subarea to modify the trawl gear to raise portions of the gear off the ocean bottom. Amendment 94 also changes the boundaries of the Northern Bering Sea Research Area to establish the Modified Gear Trawl Zone (MGTZ) and to expand the Saint Matthew Island Habitat Conservation Area. Nonpelagic trawl gear also is required to be modified to raise portions of the gear off the ocean bottom if used in any directed fishery for groundfish in the MGTZ. This action is necessary to reduce potential adverse effects of nonpelagic trawl gear on bottom habitat, to protect additional blue king crab habitat near St. Matthew Island, and to allow for efficient flatfish harvest as the distribution of flatfish in the Bering Sea changes. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective January 20, 2011.

ADDRESSES: Electronic copies of Amendment 94, maps of the action area, the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Bering Sea groundfish fisheries are managed under the FMP. In 1981, the North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council submitted Amendment 94 for review by the Secretary of Commerce, and a notice of availability of Amendment 94 was published in the **Federal Register** on June 29, 2010, (75 FR 37371). The proposed rule was published in the **Federal Register** on July 15, 2010 (75 FR 41123). Comments on the amendment and the proposed rule were invited through August 30, 2010. The amendment to the FMP was approved by the Secretary of Commerce on September 17, 2010.

Background

Amendment 94 requires participants in the directed fishery for flatfish in the Bering Sea subarea to use modified nonpelagic trawl gear. It also changes the boundaries of the Northern Bering Sea Research Area (NBSRA) to establish the MGTZ, and expands the Saint Matthew Island Habitat Conservation Area (SMIHCA). Four minor changes to the FMP also are made, three of which do not require regulatory changes. (Details on these minor changes are in the EA/RIR/FRFA for this action (*see* **ADDRESSES**), and in the notice of availability for Amendment 94 published in the **Federal Register** on June 29, 2010 (75 FR 37371)). One minor technical amendment for the NBSRA requires a regulatory amendment. The background on the regulatory amendments, including details on the development of the modified nonpelagic trawl gear and performance standards, is further explained in the proposed rule for this action (75 FR 41123, July 15, 2010).

Regulatory Amendments

1. Section 679.2 is revised to add a definition for the MGTZ, and to add text to several definitions to support the requirement to use modified nonpelagic trawl gear to meet the gear standards at § 679.24. The definition for "directed fishing" is revised by adding a subparagraph specific to directed fishing for flatfish in the Bering Sea subarea. This revision requires the use of modified nonpelagic trawl gear for the directed flatfish fishery in the Bering Sea subarea and lists the species that are flatfish for purposes of the modified nonpelagic trawl gear requirement. The definition for "federally permitted vessel" is revised to include the fishery restrictions that are established for the MGTZ, and for modified nonpelagic trawl gear fishing in the Bering Sea subarea. This revision identifies vessels that need to comply with the modified nonpelagic trawl gear requirements. The definition for "fishing trip" is revised to apply to vessels that are directed fishing for flatfish based on a fishing trip and the species composition of the catch, as described in the definition for directed fishing for flatfish. The fishing trip definition also applies to recordkeeping and reporting requirements in § 679.5. The heading for the first definition of a fishing trip is revised to add "recordkeeping and reporting requirements under § 679.5" to reflect the full scope of this definition in 50 CFR part 679. A definition for the "Modified Gear Trawl Zone" is added to define this fishery management area consistent with other fishery management area definitions and for use under the revised definition for "federally permitted vessels."

2. Subparagraph (5) is added to § 679.7(c) to prohibit directed fishing for Bering Sea flatfish without modified nonpelagic trawl gear that meets the standards specified at § 679.24(f). This revision is needed to require the use of modified nonpelagic trawl gear for directed fishing for flatfish in the Bering Sea subarea, for directed fishing for groundfish with nonpelagic trawl gear within the MGTZ, and to ensure the modified nonpelagic trawl gear meets the standards specified at § 679.24(f). Subparagraphs (3) and (4) are added and reserved to allow for future rulemaking recommended by the Council for Pacific cod fishing in the BSAI parallel fisheries.

3. Figure 17 to part 679 and Table 43 to part 679 is revised to show the boundaries of the NBSRA. Figure 17 to part 679 is revised to remove the area that becomes the MGTZ, and to remove the area that becomes part of the eastern portion of the SMIHCA. The northern portion of Figure 17 to part 679 also is revised to include the area of the Bering Sea subarea near the Bering Strait that was open to nonpelagic trawling (Figure 2) but that will now be closed. The coordinates in Table 43 to part 679 are revised to delineate the new boundaries of the NBSRA. These revisions are necessary to implement the Council's recommended changes in the boundaries of the NBSRA and the SMIHCA, and to remove the portion of the NBSRA that is the MGTZ.

4. Table 46 to part 679 is revised to delineate the new boundaries of the SMIHCA. The coordinates in Table 46 to part 679 are changed to reflect the extension of the eastern boundary to the 12-nm Territorial Sea. This revision is necessary to establish the new boundaries of the SMIHCA.

5. Table 51 to part 679 is added to delineate the coordinates of the MGTZ. Because the MGTZ area is a simple shape and easily identified, no figure is added to the regulations. This revision is necessary to identify the boundaries of the MGTZ.

6. Section 679.22 lists the closure areas for the Alaska groundfish fisheries. Because the MGTZ is closed to nonpelagic trawling, except for directed fishing with modified nonpelagic trawl gear, this section is revised to add the MGTZ. This revision is necessary to identify the area and the gear type that is required in this area.

7. Paragraph (f) is added to § 679.24 to establish enforceable standards for modified nonpelagic trawl gear. The standards include a minimum clearance for the sweeps and a minimum and maximum distance between elevating devices. The standards also describe the measuring locations to determine compliance with the clearance requirement and cross section limitations for the line between elevating devices. This revision is necessary to ensure that standards are described in the regulations to facilitate construction, maintenance, and inspection of modified nonpelagic trawl gear that meet the intent of the Council to reduce potential adverse impacts on bottom habitat from nonpelagic trawl gear.

8. Figures 25, 26, and 27 to part 679 are added to describe the measuring locations for determining compliance with the clearance standards, and to describe the location of the elevating devices that is required under § 679.24(f). Section 679.24(f) refers to these figures to better describe how the modified nonpelagic trawl gear is to be configured and how to comply with the clearance standard for the gear. This revision is necessary to facilitate compliance with the gear standards for those who may be constructing, maintaining, or inspecting the modified nonpelagic trawl gear.

Changes From the Proposed Rule

A change was made in § 679.24(f)(3)(iii)(B) to clarify the spacing to which the elevating device minimum clearance applied. The proposed rule stated that paragraph (B) would apply to "elevating devices spaced 66 feet (19.8 m) to 95 feet (29 m) * * *." The final rule was changed to apply paragraph (B) to elevating devices

spaced greater than 65 feet (19.8 m) to 95 feet (29 m). This change to paragraph (B) in the final rule ensures that elevating devices spaced more than 65 feet (19.8 m) but less than 66 feet (20.12 m) are required to meet the minimum clearance described in paragraph (B).

Other minor changes with no substantive effects were made in the final rule from the proposed rule. These changes clarified the notes to Tables 43, 46, and 51.

Comments and Responses

NMFS received 4 letters of comments on the notice of availability for Amendment 94 (75 FR 37371, June 29, 2010) and on the proposed rule (75 FR 41123, July 15, 2010). Comments were received from an organization that provides services to Bering Sea tribes, a private individual, and the fishing industry. No changes were made in the final rule from the proposed rule in response to public comment. The following summarizes and responds to the 10 unique comments received on this action.

Comment 1: Ban all nonpelagic trawling, establish habitat conservation zones, and go back to individual fishing.

Response: Nonpelagic trawling is the most effective method for harvesting certain groundfish species in the Bering Sea. These species include flatfish and other species which occur on or near the ocean bottom. Banning nonpelagic trawling would not meet NMFS's responsibility to sustainably manage fisheries, given the best scientific information available regarding impacts on the marine environment and impacts on the fish stocks. Selective restrictions on the use of nonpelagic trawl gear where impacts are most likely to be a concern are more appropriate. This action prohibits nonpelagic trawling in the expanded SMIHCA, as described in the preamble.

The Council and NMFS implemented Amendment 89, which established several habitat conservation areas in the Bering Sea to protect bottom habitat from the potential effects of bottom trawling (73 FR 43362, July 25, 2008). Prohibiting all bottom trawling and limiting fishing to individuals is not consistent with the national standards 1 and 5 of the Magnuson-Stevens Act, which require the prevention of overfishing while achieving optimum yield from each fishery and consideration of efficiency in the use of fish resources.

Comment 2: We support requiring modified nonpelagic trawl sweeps for all vessels fishing for flatfish in the Bering Sea subarea, and reopening the MGTZ to nonpelagic trawling with modified gear. Even though the modified gear will have an economic impact on the flatfish vessel fleet, the industry's participation in the modified gear development process shows the industry's commitment to responsible fishing practices. The research indicated that modified nonpelagic trawl gear had reduced effects on bottom habitat compared to conventional nonpelagic trawl gear.

The MGTZ is an historically important fishing area for Bering flounder, flathead sole, and rock sole harvest because of the high concentration of these species and low concentration of Pacific halibut that may be incidentally taken during the flatfish fisheries. Establishing the MGTZ meets the Council's goals and the Magnuson-Stevens Act national standards 1 and 9 to achieve optimum yield and to reduce bycatch.

The western boundary of the MGTZ addresses potential blue king crab bycatch in the flatfish fishery by protecting blue king crab habitat within the SMIHCA. Tribal subsistence concerns are also addressed by the eastern boundary of the MGTZ by providing a buffer between the MGTZ and the Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area. This action by the Council was based solely on public testimony, and no analysis of this change was available for the Council to consider in this decision.

The research indicates that nonpelagic trawling in sand and mud substrate of the Bering Sea produces an indiscernible effect to essential fish habitat. The modified nonpelagic trawl gear required to be used in the MGTZ would have insignificant effects on the bottom habitat. The habitat substrate in the MGTZ is similar to bottom habitat to the south of this area that is currently open to nonpelagic trawling. The modified nonpelagic gear requirement will ensure less impact on the bottom habitat than nonpelagic trawl impacts that have occurred in the past.

Response: Support noted. Regarding the eastern boundary of the MGTZ, the Council had sufficient information in the EA/RIR/IRFA (*see* **ADDRESSES**) to understand the potential effects of recommending the location of this boundary based on public testimony. The EA/RIR/IRFA was further revised based on the Council's recommended action to provide the public and the Secretary of Commerce an analysis of the likely impacts of the preferred alternative.

Comment 3: We support the eastern expansion of the SMIHCA and the northern expansion of the NBSRA to include Little Diomede. These changes to the boundaries of these areas would protect subsistence resources from the potential impacts of nonpelagic trawling.

Response: Your support of this action is noted.

Comment 4: We are opposed to the MGTZ and are concerned that the Council offered commercial bottom trawling in the NBSRA as an incentive for the development of the modified nonpelagic trawl gear. Many Alaska Natives in the Bering Strait region have voiced their opposition to any nonpelagic trawling in the northern Bering Sea, including research trawling that may support future commercial nonpelagic trawling. NMFS has failed to adequately respond to multiple tribal consultation requests regarding nonpelagic trawling in the Bering Sea.

Response: NMFS acknowledges the commentor's concerns regarding any nonpelagic trawling in the northern Bering Sea and the process used for developing the MGTZ. The process used to develop this action is described Section 2 and Appendices C and D in the EA/RIR/FRFA for this action (*see* **ADDRESSES**).

The tribal consultations regarding Amendment 94 are described in the Classifications section of this rule. NMFS discussed Amendment 94 during a tribal consultation with tribal representatives from Bering Sea communities in Unalakleet on February 16, 2010. NMFS also received requests for tribal consultation on research that was conducted in the summer of 2010 in the northern Bering Sea with vessels using nonpelagic trawl gear that meet research standards. Each tribal consultation request received by NMFS was responded to in writing with an offer of further discussion. Commercial and research nonpelagic trawling in the northern Bering Sea was discussed during meetings with NMFS and tribal representatives in Anchorage in February 2010. NMFS also held a teleconference on July 7, 2010, open to all tribes who had requested consultation on the research trawling and to other parties interested in the issue. NMFS followed up the research teleconference with daily reports to all meeting participants while the research activities were conducted. Additional information on NMFS tribal outreach activities are on the NMFS Alaska Region Web site at *http://www.alaskafisheries.noaa.gov/tc/.*

Comment 5: The purpose of the NBSRA is to provide a location where studies of the effects of nonpelagic trawling could be conducted. The NMFS summer trawl survey in the

NBSRA did not collect data that could be used for studies on the effects of nonpelagic trawling. None of the research and testing for the development of the modified nonpelagic trawl gear was conducted in the NBSRA. The Council is only interested in expanding commercial bottom trawl fisheries.

Response: The purpose of the NMFS summer trawl survey in the northern Bering Sea was to provide information for the Loss of Sea Ice study to understand the potential effects of climate change on the Bering Sea ecosystem. Information collected can be used in the development of the NBSRA research plan including that portion of the research plan that will define the design of studies on the impacts of nonpelagic trawl gear on bottom habitat. The Council and NMFS sponsored a subsistence and community workshop in February 2010, to discuss the development of the NBSRA research plan. The results of this workshop are available at the NMFS Alaska Region Web site at *http://www.alaskafisheries.noaa.gov/tc/bs/2010_workshop_minutes.pdf.*

Comment 6: No action should be taken by NMFS before careful and complete analysis of the impacts on subsistence users has been undertaken, in collaboration with subsistence users.

Response: NMFS uses the best available scientific information to inform fishery management decisions. The EA/RIR/IRFA describes the potential impacts of the action on environmental components of the northern Bering Sea, including marine mammals and bottom habitat that support subsistence marine resources. Even though adverse effects may occur in the MGTZ from modified nonpelagic trawling compared to prohibiting nonpelagic trawling, these impacts are not expected to cause substantial impacts on subsistence resources. NMFS's outreach activity with subsistence users in relation to this action are further described in the section on tribal consultation in the Classification section and in response to Comment 4.

Comment 7: The EA/RIR socio-economic analysis ignores the impacts on fishing communities immediately adjacent to the NBSRA, but examines communities that are dependent on the commercial fisheries that may be conducted in the northern Bering Sea. Fishing communities are defined by the Magnuson-Stevens Act as "a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs * * *" Communities in the northern Bering Sea are dependent on marine resources for subsistence, traditional Alaska Native culture, and commercial uses. NMFS has ignored the importance of the northern Bering Sea fishery resources for Bering Sea communities. The failure of NMFS to include any of the subsistence-based communities in the Bering Strait region in the analysis for this proposed action while focusing almost exclusively on commercial fisheries is in direct conflict with national standards 6 and 8 of the Magnuson-Stevens Act. NMFS must consider the impacts to all types of activities potentially affected by this action in their analysis, including subsistence activities. NMFS must also include all subsistence activities in the socio-economic analysis, and not exclude the value of subsistence and related cultural activities.

Response: National standard 6 requires that conservation and management take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. Among other things, national standard 8 requires conservation and management measures to take into account the importance of fishery resources to fishing communities, to provide sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts. The EA/RIR includes an analysis of impacts on subsistence resources. No substantial impacts on subsistence resources for each of the environmental components were found, and therefore, no further discussion of effects on communities dependent on subsistence resources was developed. If potential impacts to subsistence resources had been identified, additional analysis on subsistence-based communities would have been included in the EA/RIR/IRFA. If substantial impacts on subsistence resources had been identified that would have affected subsistence practices, these would have been addressed in the socio-economic section of the document.

Comment 8: Any development of commercial nonpelagic trawl fisheries in the northern Bering Sea is irresponsible because of the lack of understanding and research about the natural and human activity changes and potential impacts in the northern Bering Sea and on the marine resources.

Response: Enough information is available regarding the northern Bering Sea environment to analyze the potential impacts of this action and to make a decision on commercial fisheries management in this area. NMFS agrees that more research would improve the understanding of natural and human activity impacts on the marine environment in the northern Bering Sea.

Comment 9: NMFS does not have enough supportive data to allow commercial nonpelagic trawling in the MGTZ. Half of the MGTZ is not part of the NMFS bottom trawl survey. The EA/RIR shows the lack of research and poorly understood ecosystem processes in the northern Bering Sea, but then arbitrarily states that impacts are likely to be insignificant based on almost no data. The amount of data that NMFS is using to justify this action is inappropriate to the scope and implications of the action.

Response: Sufficient data is available to provide for the sustainable management of the Bering Sea flatfish fishery, including allowing fishing inside the MGTZ. The EA/RIR/IRFA describes the bottom habitat inside the MGTZ, historical catch, NMFS trawl surveys, and fishing activities inside and outside the MGTZ. This information can be used to manage fishing activities within and outside the MGTZ. NMFS agrees that additional information regarding the northern Bering Sea ecosystem would be desirable but this additional information is not required to implement this action.

Comment 10: The EA/RIR states that continuing fishing activity and continued subsistence harvest are potentially the most important sources of additional annual adverse impacts on marine mammals. Expanding commercial bottom trawling northward into the northern Bering Sea may result in unknown effects on marine mammals. Harvest activities analyzed are not determined to be a threat to marine mammal populations. The value of subsistence harvests outweighs the short term gain from commercial fish harvest. The EA/RIR fails to put a value on the potential loss of subsistence or culture as a result of expansion of nonpelagic trawling into the northern Bering Sea and its impacts. The EA/RIR also does not recognize climate changes and other developmental impacts as additional annual adverse impacts on marine mammals.

Response: In section 5.4 of the EA/RIR/IRFA, the analysis of marine mammals examines three types of potential impacts of the fisheries: incidental takes, prey availability, and disturbance. The impacts of incidental takes are examined in the context of other types of human caused mortality on marine mammals. For marine mammals harvested for subsistence, the amount of subsistence harvests is much greater than the amount of incidental

takes in the fisheries, but these combined amounts are a small enough percentage of the population not to pose a biological threat to the stock. For these marine mammals, the continued subsistence harvest and fisheries incidental takes compose the majority of the human caused injury and mortality and are therefore the most important factors to consider when analyzing incidental takes of marine mammals. NMFS agrees that the continued subsistence harvest of marine mammals at the current levels does not pose a threat to the marine mammal populations.

Enough information is available to determine the potential effects of opening the MGTZ to nonpelagic trawling with modified gear. Information on the sediment types, fish stocks, impacts of the gear on bottom habitat, and the potential dependence of marine mammals on the location provide enough information in the EA/RIR/IRFA to determine the potential effects of the action.

The EA/RIR/IRFA did not find that this action would cause a loss in the potential use of subsistence resources due to the opening of the MGTZ. The MGTZ eastern boundary was adjusted to accommodate a buffer between this zone and the Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area where subsistence activities occur. No information was available that indicates that activity in the MGTZ directly or indirectly impacts important subsistence resources.

Section 5.7 of the EA/RIR/IRFA contains a cumulative effects discussion including the impacts of climate change and other developmental impacts on all of the environmental components analyzed, including marine mammals. This section describes the potential effects of climate change on the Bering Sea environment, including marine mammals and diving seabirds. The cumulative effects were considered with the direct and indirect effects on each environmental component to determine the significance of effects of the action.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 94 is necessary for the conservation and management of the groundfish fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared for this rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. Descriptions of the action, the reasons it is under consideration, and its objectives and legal basis are included earlier in the preamble and in the **SUMMARY** section of the preamble. A copy of the FRFA is available from NMFS (*see* **ADDRESSES**).

A summary of the IRFA was provided in the classification section to the proposed rule (75 FR 41123, July 15, 2010), and the public was notified of how to obtain a copy of the IRFA. The public comment period ended on August 30, 2010. No comments were received on the IRFA. A summary of the FRFA follows.

In 2007, all of the catcher/processors (CPs) targeting flatfish in the Bering Sea subarea (46 vessels) exceeded the $4.0 million threshold that the Small Business Administration (SBA) uses to define small fishing entities. Due to their combined groundfish revenues, the CPs would be considered large entities for purposes of the Regulatory Flexibility Act (RFA). However, based on their combined groundfish revenues, none of the four catcher vessels that participated in 2007 exceeded the SBA's small entity threshold, and these vessels are considered small entities for purposes of the RFA. It is likely that some of these vessels also are linked by company affiliation, which may then categorize them as large entities, but there is no available information regarding the ownership status of these vessels at an entity level. Therefore, the FRFA may overestimate the number of small entities directly regulated by this action.

This regulation does not impose new recordkeeping and reporting requirements on the regulated small entities.

The Council considered three alternatives, an option, and a set of minor changes for this action. Alternative 1 is the status quo, which does not meet the Council's recommendations to further protect Bering Sea bottom habitat. Both Alternatives 2 and 3 would require modified nonpelagic trawl gear for vessels directly fishing for flatfish in the Bering Sea subarea. Additionally, under Alternative 3, which is the preferred alternative, an area that is currently closed to nonpelagic trawling would be opened to vessels using modified nonpelagic trawl gear. Alternative 2 does not provide fishing opportunity within the MGTZ, and therefore does not minimize the potential economic impact on small entities in the same manner as provided by Alternative 3. The SMIHCA option has no economic effect on small entities as this area is currently closed to nonpelagic trawling as part of the NBSRA. The minor changes ensure the FMP is easier to read and understand, and that the FMP accurately reflects the Council's intent and the provisions of the Magnuson-Stevens Act.

The modified nonpelagic trawl gear component of Alternatives 2 and 3 contains explicit provisions regarding mitigating potential adverse economic effects on directly regulated entities, the vast majority of which are large entities. Performance standards (rather than design standards) would be required for the modified nonpelagic trawl gear. Use of performance standards simplifies compliance requirements for directly regulated entities, including small entities, while still maintaining the ability of NMFS to enforce the regulation.

Additionally, the Council has recommended that NMFS implement the amendment on a timeline that takes into account the resources available to directly regulated entities. NMFS has determined that implementation will not occur sooner than the beginning of the 2011 fishing year. Such a timetable is important to allow sufficient time for any vessels that require re-engineering to accommodate the modified nonpelagic trawl gear to schedule shipyard time without having to forego participation in the fishery. The preferred alternative (Alternative 3) and option reflect the least burdensome of available management structures in terms of directly regulated small entities, while fully achieving the conservation and management purposes articulated by the Council and consistency with applicable statutes.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS Alaska Region has developed a Web site that provides easy access to details of this final rule, including links to the final rule, maps of closure areas, and frequently asked questions

regarding essential fish habitat. The relevant information available on the Web site is the Small Entity Compliance Guide. The Web site address is *http://www.alaskafisheries.noaa.gov/habitat/efh.htm.* Copies of this final rule are available upon request from the NMFS, Alaska Regional Office (*see* **ADDRESSES**).

Tribal Summary Impact Statement (E.O. 13175)

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 NMFS in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 109–447 (118 Stat. 3267), extends the consultation requirements of Executive Order 13175 to Alaska Native corporations.

Executive Order 13175 requires Federal agencies to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications.

Section 5(b)(2)(B) of Executive Order 13175 requires NMFS to prepare a tribal summary impact statement as part of the final rule. This statement must contain: (1) A description of the extent of the agency's prior consultation with tribal officials; (2) a summary of the nature of their concerns; (3) a statement of the extent to which the concerns of tribal officials have been met; and (4) the agency's position supporting the need to issue the regulation.

A Description of the Extent of the Agency's Prior Consultation With Tribal Officials

On October 13, 2009, NMFS received a request from the Native Village of Unalakleet for tribal consultation on a number of fishery management issues regarding the Bering Sea. On February 16, 2010, NMFS met with tribal representatives from the Native Village of Unalakleet, Koyuk, Stebbins, Elim, Gambell, Savoonga, Saint Michael, Shaktoolik, and King Island in Unalakleet, AK. Among other issues, proposed Amendment 94 was discussed. On July 15, 2010, NMFS provided opportunity for further discussion on this action by contacting all tribal governments and Alaska Native corporations that may be affected by the action and providing them with a copy of the proposed rule. No additional response from tribal governments or Alaska Native corporations was received regarding this action.

Among the recommendations provided to NMFS from the Unalakleet tribal consultation and in March 2010 letters from Shishmaref, King Island, Saint Michael, Solomon, Koyuk, Wales, Brevig Mission, and Savoonga, the tribal representatives requested that nonpelagic trawling not be allowed to expand northward into the northern Bering Sea. This limit on expansion would include not establishing the MGTZ. NMFS responded to the recommendations from the Unalakleet tribal consultation in writing to all participants, and this report is available from the NMFS Alaska Region Web site at *http://www.alaskafisheries.noaa.gov/tc/unalakleet/report0210.pdf.*

A Statement of the Extent To Which the Concerns of Tribal Officials Have Been Met

Except for the area used to establish the MGTZ, the NBSRA remains closed to commercial nonpelagic trawl fishing. The final rule allows for modified nonpelagic trawl gear to be used in the MGTZ. Tribal officials have stated that they want no nonpelagic trawling in the NBSRA. Allowing any commercial nonpelagic trawling in the NBSRA does not meet the concerns of tribal officials. This action reduces the size of the NBSRA approximately 5 percent by establishing the MGTZ. NMFS understands that the concern of the tribal representatives is primarily on the potential adverse impact that nonpelagic trawling may have on bottom habitat, and particularly bottom habitat that supports subsistence resources. Because the regulations require the use of modified nonpelagic trawl gear in the MGTZ, the potential effects on bottom habitat in the MGTZ from nonpelagic trawling is reduced. The rest of the NBSRA remains closed to commercial nonpelagic trawling.

NMFS' Position Supporting the Need To Issue the Regulation

This final rule is needed to implement Amendment 94, a precautionary management measure to reduce the potential impacts of nonpelagic trawling on benthic habitat. NMFS recognizes the tribes' concerns regarding the expansion of bottom trawling into the NBSRA with the establishment of the MGTZ. NMFS is balancing the recommendation by the Council to open this area to ensure efficient flatfish harvest with the requirement that nonpelagic trawl gear be modified. The potential impacts on the bottom habitat from trawling in this area are mitigated by requiring modified nonpelagic trawl gear in the MGTZ.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 1, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

■ 2. In § 679.2, revise the definition for "Federally permitted vessel" and the introductory text of paragraph (1) of the definition of "Fishing trip," and add, in alphabetical order, paragraph (5) to "Directed fishing," and the definition for "Modified Gear Trawl Zone" to read as follows:

§ 679.2 Definitions.

* * * * *

Directed fishing * * *

* * * * *

(5) *With respect to the harvest of flatfish in the Bering Sea subarea,* for purposes of nonpelagic trawl restrictions under § 679.22(a) and modified nonpelagic trawl gear requirements under §§ 679.7(c)(5) and 679.24(f), fishing with nonpelagic trawl gear during any fishing trip that results in a retained aggregate amount of yellowfin sole, rock sole, Greenland turbot, arrowtooth flounder, flathead sole, Alaska plaice, and other flatfish that is greater than the retained amount of any other fishery category defined under § 679.21(e)(3)(iv) or of sablefish.

* * * * *

Federally permitted vessel means a vessel that is named on either a Federal fisheries permit issued pursuant to § 679.4(b) or on a Federal crab vessel permit issued pursuant to § 680.4(k) of this chapter. Federally permitted vessels must conform to regulatory requirements for purposes of fishing restrictions in habitat conservation areas, habitat conservation zones, habitat protection areas, and the Modified Gear Trawl Zone; for purposes of anchoring prohibitions in habitat protection areas; for purposes of requirements for the BS nonpelagic trawl fishery pursuant to § 679.7(c)(5)

and § 679.24(f); and for purposes of VMS requirements.

* * * * *

Fishing trip * * *

(1) With respect to retention requirements (MRA, IR/IU, and pollock roe stripping), recordkeeping and reporting requirements under § 679.5, and determination of directed fishing for flatfish.

* * * * *

Modified Gear Trawl Zone means an area of the Bering Sea subarea specified at Table 51 to this part that is closed to directed fishing for groundfish with nonpelagic trawl gear, except by vessels using modified nonpelagic trawl gear meeting the standards at § 679.24(f).

* * * * *

■ 3. In § 679.7, add and reserve paragraphs (c)(3) and (c)(4), and add paragraph (c)(5) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(c) * * *

(3) [Reserved]

(4) [Reserved]

(5) Conduct directed fishing for flatfish as defined in § 679.2 with a vessel required to be federally permitted in any reporting area of the Bering Sea subarea as described in Figure 1 to this part without meeting the requirements for modified nonpelagic trawl gear specified in § 679.24(f).

* * * * *

■ 4. In § 679.22, add paragraph (a)(21) to read as follows:

§ 679.22 Closures.

(a) * * *

(21) *Modified Gear Trawl Zone.* No vessel required to be federally permitted may fish with nonpelagic trawl gear in the Modified Gear Trawl Zone specified at Table 51 to this part, except for federally permitted vessels that are directed fishing for groundfish using modified nonpelagic trawl gear that meets the standards at § 679.24(f).

* * * * *

■ 5. In § 679.24, add paragraph (f) to read as follows:

§ 679.24 Gear limitations.

* * * * *

(f) *Modified nonpelagic trawl gear.* Nonpelagic trawl gear modified as shown in Figure 26 to this part must be used by any vessel required to be federally permitted and that is used to directed fish for flatfish, as defined in § 679.2, in any reporting areas of the BS or directed fish for groundfish with nonpelagic trawl gear in the Modified Gear Trawl Zone specified in Table 51 to this part. Nonpelagic trawl gear used by these vessels must meet the following standards.

(1) *Elevated section minimum clearance.* Except as provided for in paragraph (f)(3)(iii) of this section, elevating devices must be installed on the elevated section shown in Figure 26 to this part to raise the elevated section at least 2.5 inches (6.4 cm), as measured adjacent to the elevating device contacting a hard, flat surface that is parallel to the elevated section, regardless of the elevating device orientation, and measured between the surface and the widest part of the line material. Elevating devices must be installed on each end of the elevated section, as shown in Figure 26 to this part. Measuring locations to determine compliance with this standard are shown in Figure 25 to this part.

(2) *Elevating device spacing.* Elevating devices must be secured along the entire length of the elevated section shown in Figure 26 to this part and spaced no less than 30 feet (9.1 m) apart; and either

(i) If the elevating devices raise the elevated section shown in Figure 26 to this part 3.5 inches (8.9 cm) or less, the space between elevating devices must be no more than 65 feet (19.8 m); or

(ii) If the elevating devices raise the elevated section shown Figure 26 to this part more than 3.5 inches (8.9 cm), the space between elevating devices must be no more than 95 feet (29 m).

(3) *Clearance measurements and line cross sections.* (i) The largest cross section of the line of the elevated section shown in Figure 26 to this part between elevating devices shall not be greater than the cross section of the material at the nearest measurement location, as selected based on the examples shown in Figure 25 to this part. The material at the measurement location must be—

(A) The same material as the line between elevating devices, as shown in Figures 25a and 25d to this part;

(B) Different material than the line between elevating devices and used to support the elevating device at a connection between line sections (e.g., on a metal spindle, on a chain), as shown in Figure 25b to this part; or

(C) Disks of a smaller cross section than the elevating device, which are strung continuously on a line between elevating devices, as shown in Figure 25c to this part.

(ii) Portions of the line between elevating devices that are braided or doubled for section terminations or used for line joining devices are not required to be a smaller cross section than the measuring location.

(iii) *Required minimum clearance for supporting material of a larger cross section than the cross section of the line material.* When the material supporting the elevating device has a larger cross section than the largest cross section of the line between elevating devices, except as provided for in paragraph (f)(3)(ii) of this section, based on measurements taken in locations shown in Figure 27 to this part, the required minimum clearance shall be as follows:

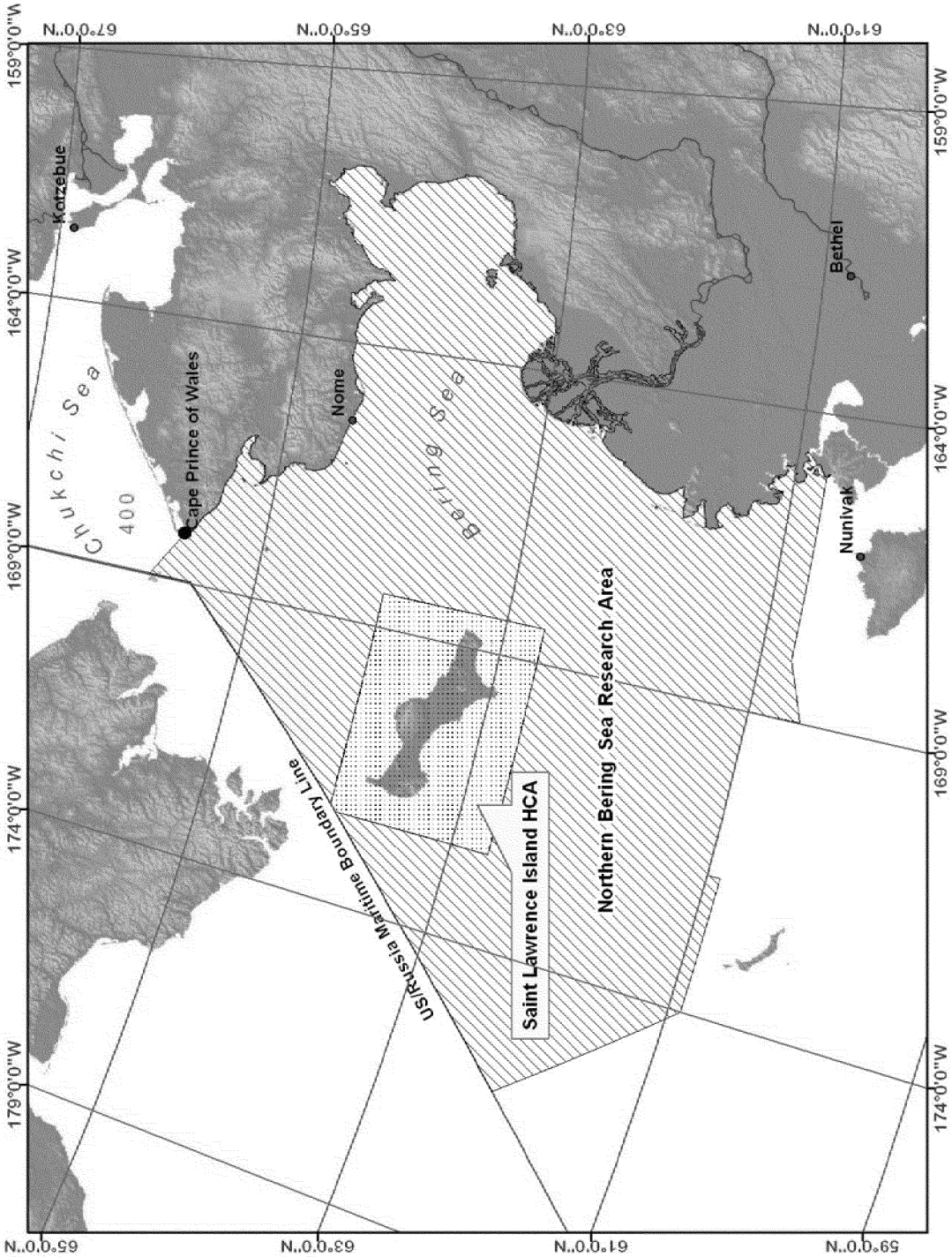
(A) For elevating devices spaced 30 feet (9.1 m) to 65 feet (19.8 m), the required minimum clearance is ≥ [2.5 inches − ((support material cross section − line material cross section)/2)], or

(B) For elevating devices spaced greater than 65 feet (19.8 m) to 95 feet (29 m), the required minimum clearance is ≥ [3.5 inches − ((support material cross section − line material cross section)/2)].

■ 6. Figure 17 to part 679 is revised to read as follows:

BILLING CODE 3510–22–P

Figure 17 to Part 679 – Northern Bering Sea Research Area and Saint Lawrence Island Habitat Conservation Area (HCA)



■ 7. Figure 25 to part 679 is added to read as follows:

Figure 25 to Part 679 – Elevating Device Clearance Measurement Locations for Modified Nonpelagic Trawl Gear

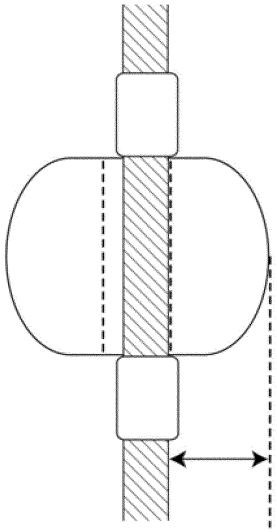


Figure 25a Line Clamps Flush to Elevating Device

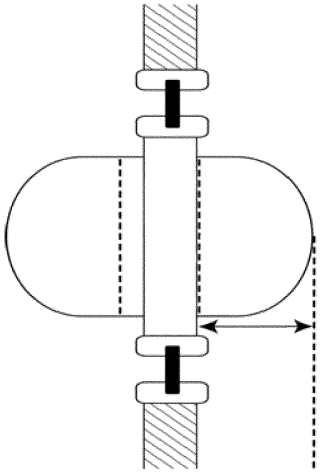


Figure 25b Elevating Device Supported by Material Different from Line Material

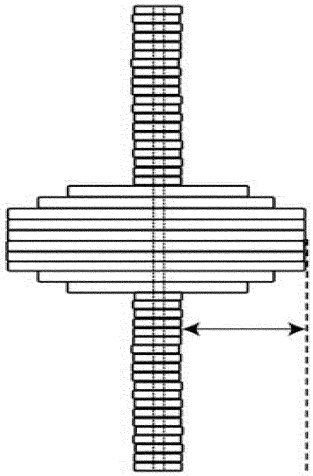


Figure 25c Cookie Gear

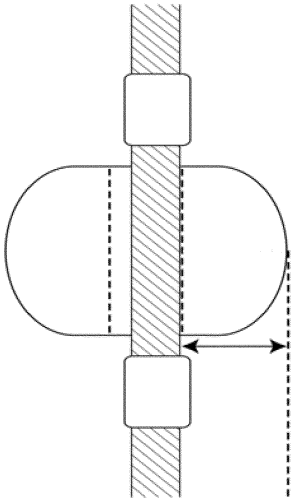


Figure 25d Line Clamps Not Flush to Elevating Device

Measuring points are shown for a variety of elevating devices located on the elevated section shown in Figure 26 to part 679. The measuring location is indicated on each figure by the arrow. The measurement is made from where the line contacts the inside surface of the device.

■ 8. Figure 26 to part 679 is added to read as follows:

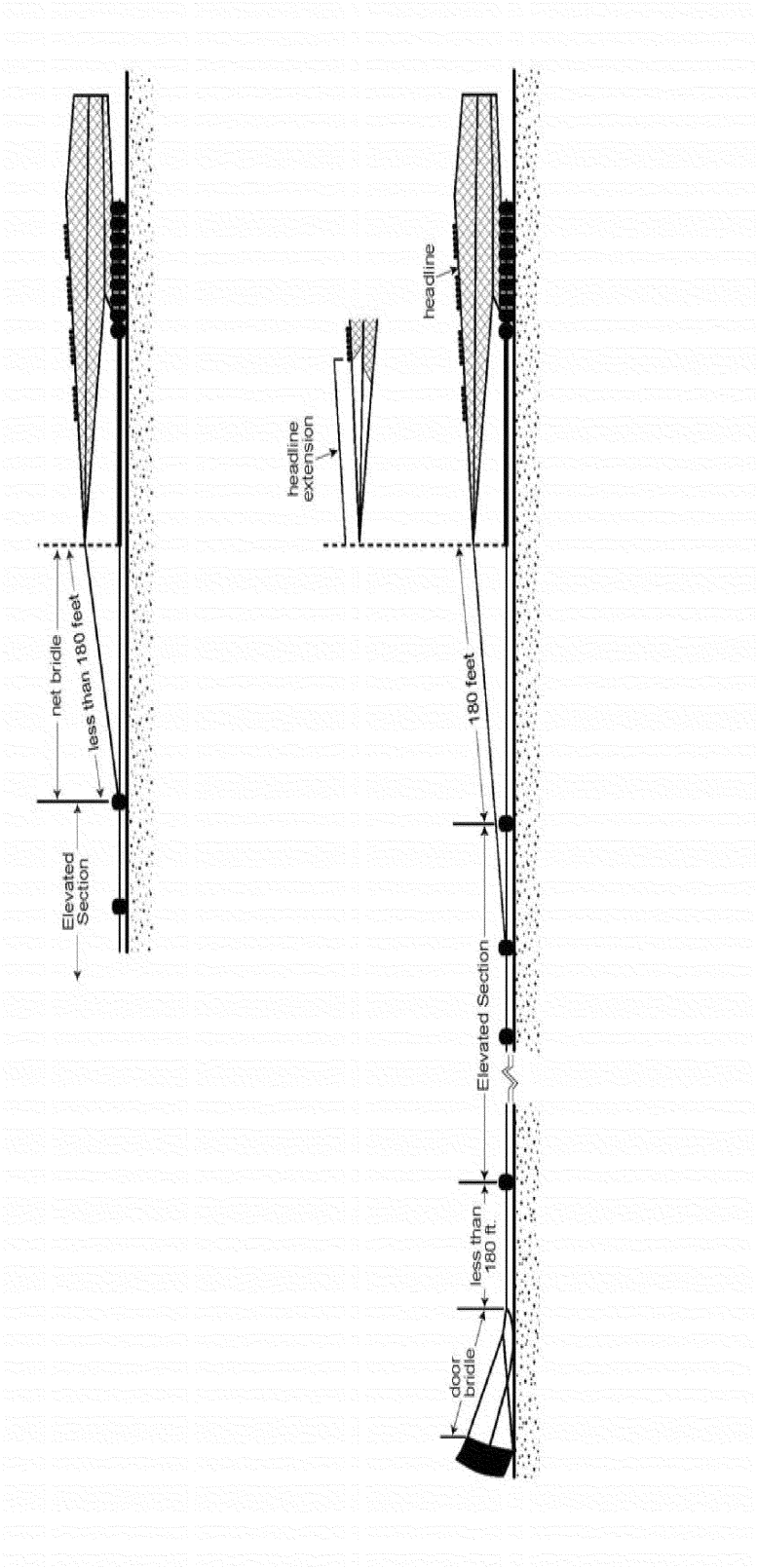
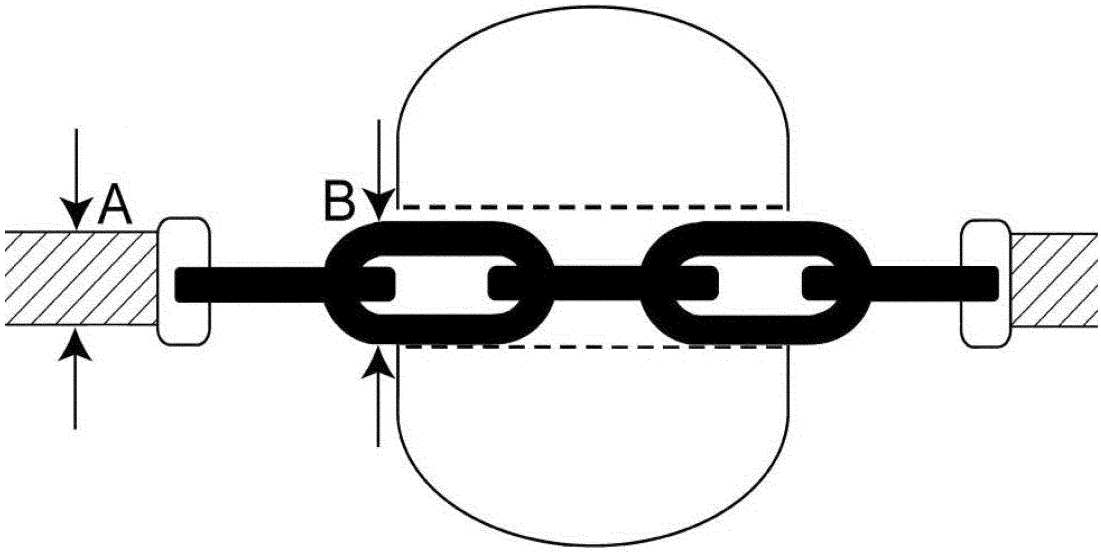


Figure 26 to Part 679 – Modified Nonpelagic Trawl Gear

This figure shows the location of elevating devices in the elevated section of modified nonpelagic trawl gear, as specified under § 679.24(f). The top image shows the location of the end elevating devices in the elevated section for gear with net bridles less than 180 feet. The bottom image shows the locations of the beginning elevating devices near the doors and the end elevating devices near the net for gear with net bridles greater than 180 feet. [END PHOTO]

■ 9. Figure 27 to part 679 is added to read as follows:

Figure 27 to Part 679 Locations for Measuring Maximum Cross Sections of Line Material (shown as A) and Supporting Material (shown as B) for Modified Nonpelagic Trawl Gear.



BILLING CODE 3510–22–C

Note: The location for measurement of maximum line material cross section does not include any devices or braided or doubled material used for section termination.

■ 10. Table 43 to part 679 is revised to read as follows:

TABLE 43 TO PART 679—NORTHERN BERING SEA RESEARCH AREA

Longitude		Latitude	
168	7.41 W	65	*37.91 N
165	1.54 W	60	45.54 N
167	59.98 W	60	45.55 N
169	00.00 W	60	35.50 N
169	00.00 W	61	00.00 N
171	45.00 W	61	00.00 N
171	45.00 W	60	54.00 N
174	1.24 W	60	54.00 N
176	13.51 W	62	6.56 N
172	24.00 W	63	57.03 N
172	24.00 W	62	42.00 N
168	24.00 W	62	42.00 N
168	24.00 W	64	0.00 N
172	17.42 W	64	0.01 N
168	58.62 W	65	30.00 N
168	58.62 W	65	**49.81 N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines except as noted by * below. The last set of coordinates for the area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

* This boundary extends in a clockwise direction from this set of geographic coordinates along the shoreline at mean lower-low tide line to the next set of coordinates.

** Intersection of the 1990 United States/Russia maritime boundary line and a line from Cape Prince of Wales to Cape Dezhneva (Russia) that defines the boundary between the Chukchi and Bering Seas, Area 400 and Area 514, respectively.

■ 11. Table 46 to part 679 is revised to read as follows:

TABLE 46 TO PART 679—ST. MATTHEW ISLAND HABITAT CONSERVATION AREA

Longitude		Latitude	
171	45.00 W	60	54.00 N
171	45.00 W	60	6.15 N
174	0.50 W	59	42.26 N
174	24.98 W	60	9.98 N
174	1.24 W	60	54.00 N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for the area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

■ 12. Tables 48 through 50 to part 679 are added and reserved.

■ 13. Table 51 to part 679 is added to read as follows:

TABLE 51 TO PART 679—MODIFIED GEAR TRAWL ZONE

Longitude		Latitude	
171	45.00 W	61	00.00 N
169	00.00 W	61	00.00 N
169	00.00 W	60	35.48 N
171	45.00 W	60	06.15 N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for the area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

[FR Doc. 2010–25211 Filed 10–5–10; 8:45 am]

BILLING CODE 3510–22–P