their oral testimony either electronically or computer disk, CD–ROM, or paper copy at the public hearing. Verbatim transcripts of the public hearings and written statements will be included in the docket to this rulemaking.

Any person needing special accommodations at the public hearings, including wheelchair access or sign language translation, should contact Bonnie Robinson or Elaine Eby at the addresses given above under **FOR FURTHER INFORMATION CONTACT** at least five business days in advance of the public hearing.

Finally, in addition to today's public hearing announcement, EPA will be maintaining a Web site providing the most up-to-date information on these public hearings. *See http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/ccr-rule/ccr-hearing.htm.* Those persons planning to participate in the public hearing process, either by providing oral testimony or observing the hearing, are urged to visit this Web site at least two days prior to the date of the each public hearing to determine if there are any relevant announcements or changes related to the hearing.

Dated: July 8, 2010.

Suzanne Rudzinski,

Acting Director, Office of Resource Conservation and Recovery.

[FR Doc. 2010–17143 Filed 7–14–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–1060; MB Docket No. 10–118; RM–11603].

Radio Broadcasting Services; Gearhart, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR Section 73.202(b). The Commission requests comment on a petition filed by Black Hills Broadcasting, L.P. proposing the allotment of FM Channel 243A as the first local service at Gearhart, Oregon. The channel can be allotted at Gearhart in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.2 km (5.1 miles) south of Gearhart, at 45–57–11 North Latitude and 123–56–14 West Longitude. *See* Supplementary Information *infra.*

DATES: The deadline for filing comments is August 16, 2010. Reply comments must be filed on or before August 31, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: J. Dominic Monahan, Esq., Forum Building, 777 High Street–Suite 300, Post Office Box 10747, Eugene, Oregon 97401.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 10–118, adopted June 10, 2010, and released June 14, 2010. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Gearhart, Channel 243A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2010–17300 Filed 7–14–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0911031392–91399–01]

RIN 0648–AY34

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea Subarea

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 94 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 94, if approved, would require 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 would change 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 would be required to be modified to raise portions of the gear off the ocean bottom if used in any directed fishery for groundfish in the proposed 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: Written comments must be received by August 30, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified for this action by 0648–AY34 (PR), by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal 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, AK.

No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *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). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of Amendment 94, maps of the action area, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from *www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.* The EA for Amendment 89, which contains information referenced in this proposed rule, is available 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, with comments on Amendment 94 invited through August 30, 2010 (75 FR 37371). Comments may address Amendment 94 or this proposed rule, but must be received by 1700 hours, A.D.T. on August 30, 2010 to be considered in the approval/disapproval decision on Amendment 94. All comments received by that time, whether specifically directed to Amendment 94, or to this proposed rule, will be considered in the approval/disapproval decision on Amendment 94.

Background

If approved by NMFS, Amendment 94 would require participants in the directed fishery for flatfish in the Bering Sea subarea to use modified nonpelagic trawl gear. It also would change the boundaries of the Northern Bering Sea Research Area (NBSRA) to establish the MGTZ, and would expand the Saint Matthew Island Habitat Conservation Area (SMIHCA). Four minor technical changes to the FMP also would be made, three of which do not result in regulatory changes. Details on these minor technical changes are in the EA/RIR/IRFA 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 would require a regulatory amendment and is further explained below.

In October 2009, the Council unanimously adopted Amendment 94. Modifying nonpelagic trawl gear was considered with the Council's development of Amendment 89 to the FMP (73 FR 43362, July 25, 2008). Amendment 89 established the Bering Sea Habitat Conservation Measures, closing portions of the Bering Sea subarea to nonpelagic trawling and establishing the NBSRA and SMIHCA. The Council adopted Amendment 89 in June 2007, but developed the modified nonpelagic trawl gear action separately through subsequent coordination with NMFS, the United States Coast Guard, and the nonpelagic trawl fishing industry.

Modified Nonpelagic Trawl Gear

Nonpelagic trawl gear uses a pair of long lines called sweeps to herd fish into the net. These lines drag across the bottom and may adversely impact benthic organisms (*e.g.,* crab species, sea whips, sponges, and basket stars). Approximately 90 percent of the bottom contact of nonpelagic trawl gear used to target flatfish is from the sweeps, which can be more than 1,000 feet (304.8 m) in length. Based on research by the Alaska Fisheries Science Center (AFSC), NMFS and described in the EA/RIR/IRFA (see **ADDRESSES**), nonpelagic trawl gear can be modified to raise the sweeps off the bottom to reduce potential adverse effects on bottom habitat while maintaining effective catch rates for flatfish target species in sand and mud bottom habitat. AFSC studies comparing nonpelagic trawl gear to modified nonpelagic trawl gear show that the modified nonpelagic trawl gear reduces mortality and disturbance of sea whips, basket stars, sponges, and crab species. The studies further show that modified nonpelagic trawl gear does not significantly reduce catch rates of flatfish species. In 2008 and 2009, the AFSC and NOAA Office for Law Enforcement worked with the fishing industry to test the modified nonpelagic trawl gear under normal fishing conditions and determined that this gear can be safely used and efficiently inspected. Details of the development of the modified nonpelagic trawl gear are in the EA/RIR/IRFA for this action (see **ADDRESSES**).

The Council recommended that nonpelagic trawl gear used in the Bering Sea flatfish fishery or in the MGTZ be modified by adding elevating devices to a portion of the trawl gear that contacts the bottom, including sweeps and portions of the net bridles. Some gear configurations may have long net bridles that make up a substantial portion of the gear's bottom contact. The elevating devices are any kind of a device that raises the sweeps or net bridles off the bottom (*e.g.,* bobbins, discs). The modified nonpelagic trawl gear would have to be constructed and maintained to meet three gear standards for elevating devices: location, clearance, and spacing. These standards are intended to allow flexibility in the construction of the modified gear, while ensuring the gear functions in a manner that would reduce the potential adverse impacts of the nonpelagic trawl gear on benthic organisms, as demonstrated in the AFSC studies described above.

The first proposed standard would apply to the location of the elevating devices on the gear. Proposed Figure 26

to part 679 shows a diagram of the modified nonpelagic trawl gear, including identification of the parts of the gear. The portion of the gear where elevating devices would be required is identified as the elevated section shown in the proposed Figure 26. The elevated section is identified in proposed Figure 26 both for gear using, and for gear not using, headline extensions from the net to provide flexibility in the construction of the modified gear. A vessel would be required to place elevating devices on the sweeps beginning no more than 180 feet (54.9 m) from the door bridles and ending at the connection of the net bridles to the sweeps, if the net bridles are 180 feet (54.9 m) or less in length. If the net bridles are longer than 180 feet (54.9 m), then the elevating devices would be required on the bottom net bridle ending 180 feet (54.9 m) before the net attachment to the net bridles. Elevating devices would not be required on the 180-foot (54.9 m) portion of the bottom lines adjacent to the door bridle and the portion of the net bridle less than 180 feet (54.9 m), because these locations either do not contact the bottom, or the elevating devices in these locations may interfere with the handling of the gear. This 180-foot (54.9 m) elevating device allowance for the net bridles provides some flexibility in the construction of the gear as net bridles are typically between 90 feet (27.4 m) and 200 feet (61 m). Some vessels may use pelagic doors, which are likely to lift up to 180 feet (54.9 m) of the sweep off the bottom; therefore the 180-foot (54.9 m) elevating device allowance at the door end of the gear would ensure elevating devices are not required where the gear is not likely to contact the bottom. These 180-foot (54.9 m) allowances would result in approximately two to four fewer elevating devices being used on part of this portion of gear that may contact the bottom. The locations of the elevating devices were recommended to the Council by the AFSC in consultation with the fishing industry. The Council determined that the recommended locations were appropriate to raise the sweeps and any bottom lines beyond the 180-foot (54.9 m) allowances, while not requiring more elevating devices than would be necessary to achieve results similar to the AFSC-modified nonpelagic trawl gear studies.

The second proposed gear standard would require that elevating devices provide a minimum clearance of 2.5 inches (6.4 cm). Clearance is the separation that a device creates between the sweep or net bridle and a parallel hard surface, measured adjacent to the elevating device. The size of the elevating devices would likely depend on the type of equipment used to retrieve and deploy the gear, the size of elevating devices available, and the cost of the gear.

Proposed Figure 25 to part 679 shows locations for measuring the clearance of a variety of elevating devices and methods used to attach the elevating devices to the sweeps and net bridles. Proposed Figure 25 to part 679 should be used as a reference to ensure identification of the correct location for measuring compliance with the clearance standard, regardless of the methods and materials used to construct and maintain the gear.

The proposed regulations also would prohibit the cross section of the line between elevating devices from being greater than the cross section of the material at the nearest measurement location. This would prevent the use of line material of a larger cross section than the material at the measurement location, which would likely result in not achieving the clearance intended with the gear standards as shown in proposed Figures 25 and 27 to part 679. Portions of the line between elevating devices that are doubled for section terminations, or used for line-joining devices, would not be required to be a smaller cross section than the measuring location. This would allow some flexibility for the construction and maintenance of the gear while ensuring that most, if not all, of the line between elevating devices provides the intended clearance. To ensure sufficient strength in the joining of line sections, supporting material used for the elevating devices may need to be a greater cross section than the cross section of the line material between elevating devices. To ensure this larger cross section of the supporting material is accounted for in measuring the clearance, the proposed regulations would include equations to reduce the required minimum clearance at the measuring points in proposed Figure 25 to part 679 by one half the portion of the supporting material cross section that is greater than the cross section of the line material between elevating devices. Using these equations would ensure that the additional elevation provided by supporting material with a cross section larger than the line material would be credited towards meeting the minimum clearance required as measured per proposed Figure 25 to part 679. Figure 27 would be added to 50 CFR part 679 to show the measurement locations to determine the cross sections of the line material, and of the supporting material for the elevating devices. Cross section measurements made as directed in proposed Figure 27 to part 679 would provide information to determine the minimum clearance needed when the supporting material for the elevating device has a larger cross section than the cross section of the line between elevating devices.

While the proposed clearance standard does not directly measure the distance between the seafloor and the sweep during fishing—such distance may be affected by the devices pressing into the substrate and the sag of the sweeps between devices—the clearance standard would provide an objective measurement that could be compared to the elevation gained by devices used during AFSC studies. The AFSC-modified nonpelagic trawl gear studies show that 3 inches (7.6 cm) of clearance for elevating devices spaced 60 feet (18.3 m) apart, and 4 inches (10.2 cm) of clearance for elevating devices spaced 90 feet (27.4 m) apart, reduced effects on benthic organisms. To allow for a minor amount of wear of the elevating devices but to ensure clearances similar to those used in the AFSC studies, the proposed clearance standard would be based on 2.5 inches (6.4 cm) and 3.5 inches (8.9 cm).

The third proposed gear standard would require spacing the elevating devices at a minimum of 30 feet (9.1 m) and a maximum of 95 feet (29 m), depending on the clearance provided by the elevating devices. The minimum distance between elevating devices is necessary to ensure no more contact of the elevating devices occurs than is necessary to provide clearance from the bottom. Elevating devices that provide more clearance allow for greater distance between the elevating devices.

The AFSC studies determined that spacing the devices at 60 feet (18.3 m), with a clearance of less than 3.5 inches (8.9 cm) produced similar reductions in impacts to benthic organisms as spacing the elevating devices at 90 feet (27.4 m) with more than 3.5 inches (8.9 cm) of clearance. The spacing standard would require that if the elevating devices provide more than 3.5 inches (8.9 cm) of clearance, the devices must be spaced at least 30 feet (9.1 m) and no more than 95 feet (29 m) apart. If the elevating devices provide between 2.5 inches (6.4 cm) and 3.5 inches (8.9 cm) of clearance, the devices must be spaced at least 30 feet (9.1 m) and no more than 65 feet (19.8 m) apart. The additional 5 feet (1.5 m) in the spacing standard compared to the spacing used in the AFSC studies would allow for minor movement of the elevating devices during use, as well as for minor amounts of extra spacing that may occur

from gear construction and maintenance. This would allow some flexibility in the construction and maintenance of the gear, while reducing impacts to a similar degree as seen in the AFSC-modified nonpelagic trawl gear studies. Manufacturers of the modified nonpelagic trawl gear likely would place the elevating devices at 60 feet (18.3 m) and 90 feet (27.4 m) spacing as the devices would likely be mounted where sections of line are joined, and the line is available in 90 feet (27.4 m) lengths. By working with the nonpelagic trawl fishing industry, the AFSC determined that locating the elevating devices on the gear in this manner would elevate the majority of the gear similar to the elevation used in the AFSC research and allow for operational and maintenance efficiencies for the vessel operators.

Boundary Changes of Specific Areas

Proposed Amendment 94 would include boundary changes to areas with nonpelagic trawl gear restrictions in the Bering Sea subarea. Amendment 94 and this proposed rule would reduce the NBSRA to establish the MGTZ and to increase the SMIHCA (Figure 1). The NBSRA and the SMIHCA are currently closed to fishing with nonpelagic trawl gear. The NBSRA was established under Amendment 89 (73 FR 43362, July 25, 2008) to provide a location with little to no nonpelagic trawling for the purpose of studying the effects of nonpelagic trawling on bottom habitat. The SMIHCA also was established under Amendment 89 to protect blue king crab habitat from the potential impacts of nonpelagic trawl gear. Figure 1 shows the current southern boundary of the NBSRA, and how this boundary would change with the proposed revision to the SMIHCA eastern border and with the proposed MGTZ.

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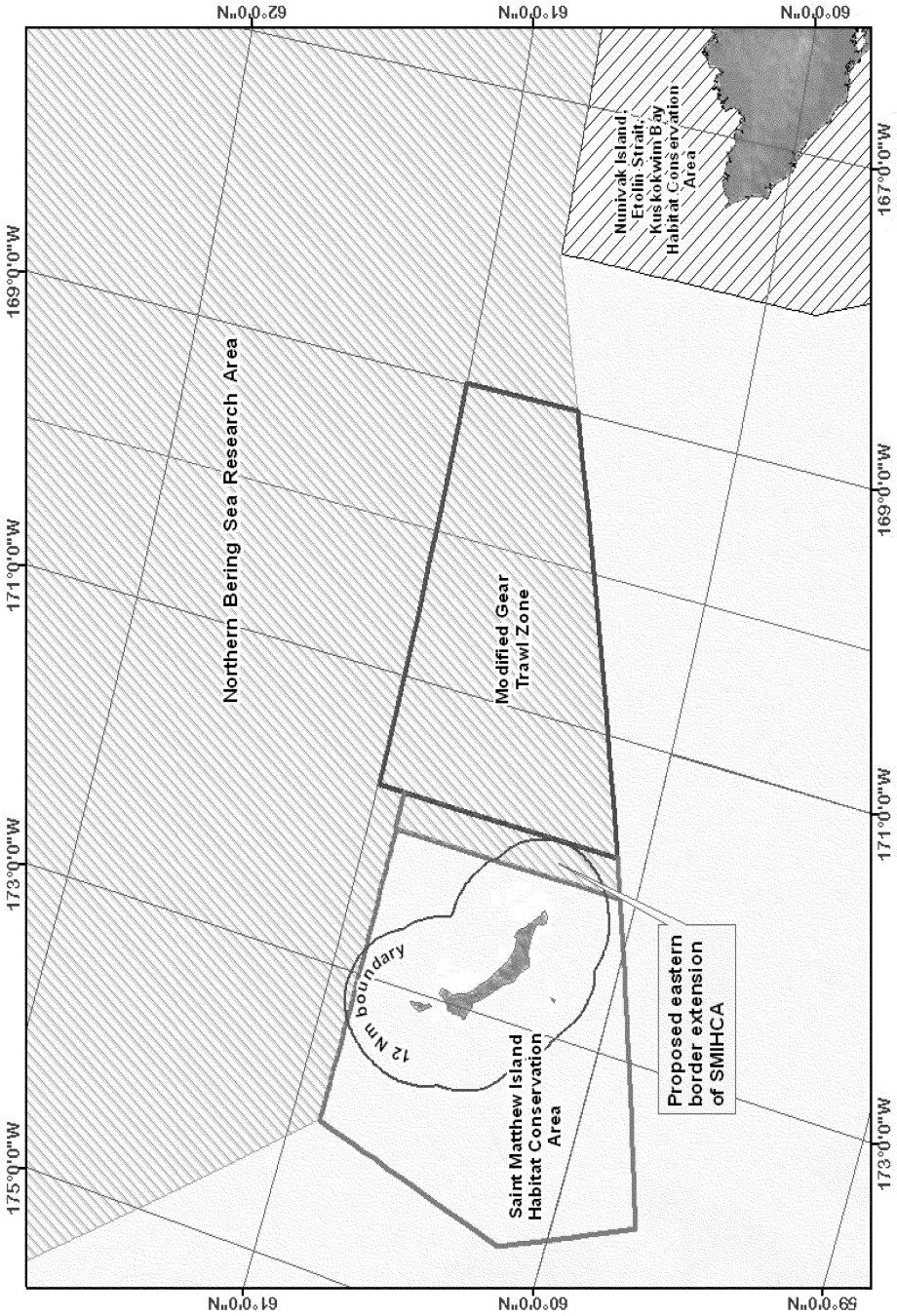

Figure 1. The Northern Bering Sea Research Area (NBSRA), Proposed Expansion of the Saint Matthew Island Habitat Conservation Area (SMIHCA) and the Proposed Modified Gear Trawl Zone (MGTZ). The current boundary of the NBSRA is shown by the area filled with the right-slanting lines. The NBSRA would be reduced with the expansion of the SMIHCA and the establishment of the MGTZ.

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The Council recommended moving the eastern boundary of the SMIHCA, parallel to the current boundary, to the eastern edge of the 12-nautical mile (nm) Territorial Sea surrounding Saint Matthew Island. NMFS' annual trawl surveys from 2007 through 2009 have found blue king crab in the area east of the SMIHCA out to the edge of the 12-nm Territorial Sea. Based on this information, the Council's Crab Plan Team recommended moving the eastern boundary of the SMIHCA to the eastern extent of the 12-nm Territorial Sea. Expanding the SMIHCA based on the best available information would ensure the SMIHCA meets the Council's intent to protect blue king crab habitat east of Saint Matthew Island. The Council also recommended that the eastern border of the SMIHCA meet the western border of the proposed MGTZ, so that no portion of the NBSRA would lie between these areas, thus simplifying management. This common boundary also would lie along a division in habitat types, with the habitat in the western side of the proposed MGTZ more favorable to flatfish species and the habitat in the eastern side of the proposed revised SMIHCA more favorable to crab species. Detailed information regarding NMFS' resource surveys and bottom habitats of the SMIHCA and the proposed MGTZ are in the EA/RIR/IRFA for this proposed action (see **ADDRESSES**).

The proposed boundaries of the MGTZ are based on management goals, local area resources, and stock survey information. The geographic coordinates designating the northern boundary of the MGTZ follow the whole number latitude to facilitate mapping and management in the area, and includes the area identified by the fishing industry as an important location for flatfish resources. Based on public testimony in October 2009, the Council recommended the proposed eastern boundary of the MGTZ, to create a buffer between flatfish fishing and the Nunivak Island, Etolin Strait, Kuskokwim Bay Habitat Conservation Area, a location important for subsistence activities that was established under Amendment 89 (73 FR 43362, July 25, 2008). The southern boundary of the MGTZ matches the current boundary of the NBSRA, allowing for fishing in the MGTZ in waters adjacent to the portion of the Bering Sea subarea currently open to nonpelagic trawl fishing. Nonpelagic trawling within the MGTZ would require the use of modified nonpelagic trawl gear, regardless of the target species. Because the MGTZ is currently closed to nonpelagic trawling, the Council recommended mitigating any potential effects from nonpelagic trawling by requiring that all nonpelagic trawl fishing gear used in the MGTZ meet the standards proposed here for modified nonpelagic trawl gear. The AFSC surveys in the western portion of the MGTZ show primarily flatfish species, with little Pacific halibut occurrence. This area would provide the opportunity to fish for flatfish resources with little potential for Pacific halibut bycatch. The opportunity for directed fishing for flatfish in the MGTZ is important to the fishing industry because of the low abundance of Pacific halibut in this area, and the potential movement of the flatfish species distribution farther north under changing ocean conditions. The reopening of the MGTZ to fishing with modified nonpelagic trawl gear was an incentive to the fishing industry to continue the development of modified nonpelagic trawl gear after the Council's recommendation of Amendment 89.

The minor technical change to the FMP that requires a regulatory change is the revision to the northern boundary of the NBSRA to match the southern boundary of Statistical Area 400 at the Bering Strait. Area 514 of the Bering Sea subarea extends north to the southern boundary of Area 400 (Figure 2). The coordinates of the current northern boundary of the NBSRA are incorrectly described in Table 43 to part 679, and leave an area open to nonpelagic trawling near the Bering Strait. The Council intended for the entire northern portion of the Bering Sea subarea to be part of the NBSRA. This minor technical amendment would close this area, which is currently open to nonpelagic trawling.

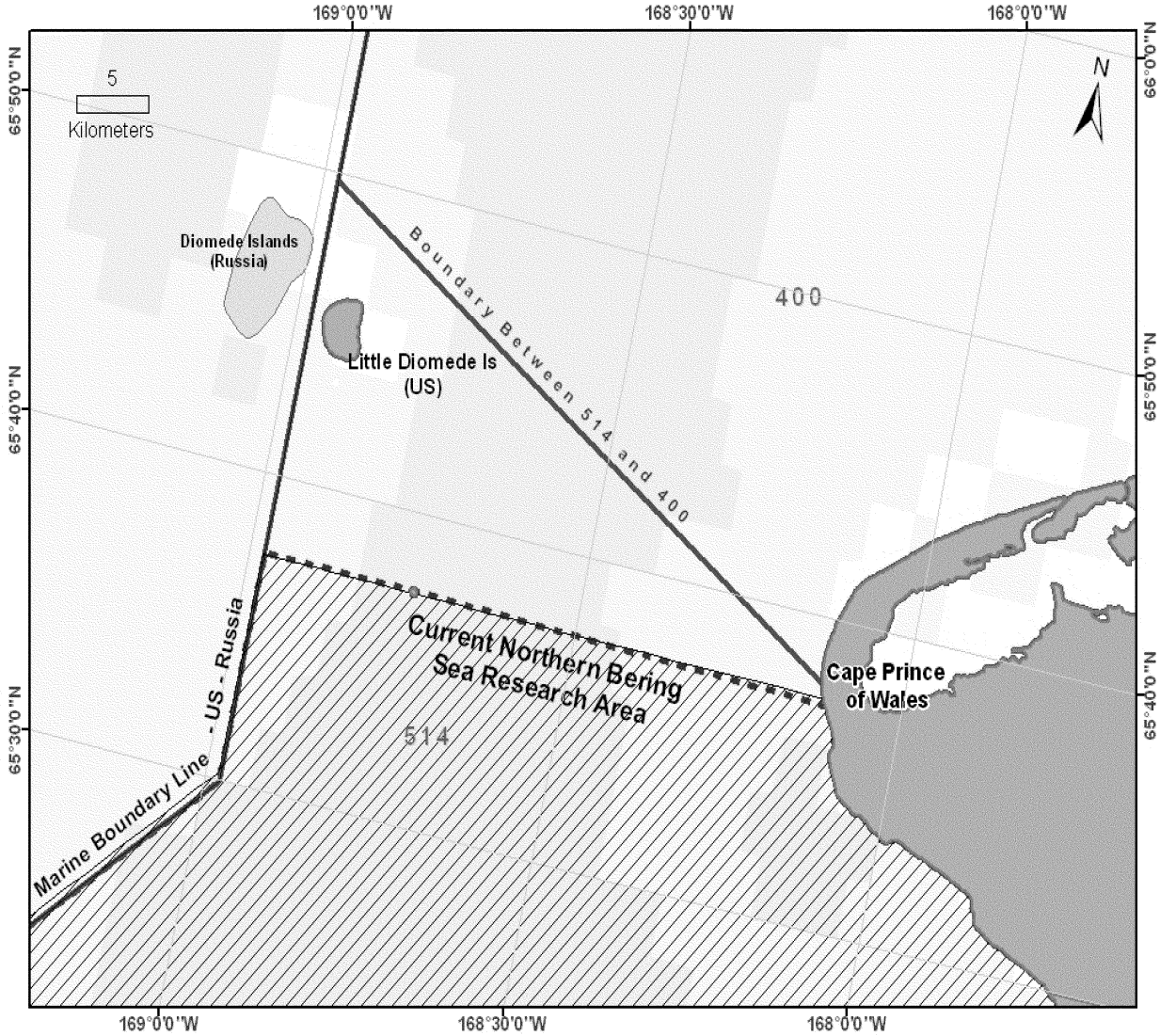


Figure 2. Northern Boundary of the Northern Bering Sea Research Area and Boundary Between Statistical Areas 514 and 400. The area between the current NBSRA boundary and Statistical Areas 514 and 400 boundary is currently open to nonpelagic trawl fishing, but would be closed with Amendment 94.

Proposed Regulatory Amendments

The Council recommended, and the Secretary proposes, the following regulatory changes and additions to 50 CFR part 679 to implement Amendment 94.

1. Section 679.2 would be revised to add a definition for the MGTZ, and to add text to several definitions to support the requirement to use nonpelagic trawl gear that has been modified to meet the gear standards that would be specified at § 679.24. The definition for "directed fishing" would be revised by adding a subparagraph specific to directed fishing for flatfish in the Bering Sea subarea. This revision would require the use of modified nonpelagic trawl gear for the directed flatfish fishery in the Bering Sea subarea under proposed § 679.7(c)(5), and would list the species that are flatfish for purposes of the modified nonpelagic trawl gear requirement. The definition for "federally permitted vessels" would be revised to include the fishery restrictions that would be established for the MGTZ, and for modified nonpelagic trawl gear fishing in the Bering Sea subarea. This revision would identify vessels that would need to comply with the modified nonpelagic trawl gear requirements. The definition for "fishing trip" would be 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 proposed definition for directed fishing for flatfish. The fishing trip definition also applies to recordkeeping and reporting requirements in § 679.5. Under this proposed rule, the heading for the first definition of a fishing trip would be revised to add "recordkeeping and reporting requirements under § 679.5" to reflect the full scope of the current application of this definition in 50 CFR part 679. A definition for the "Modified Gear Trawl Zone" would be added to define this proposed fishery

management area consistent with other fishery management area definitions and for use under the proposed revised definition for "federally permitted vessels."

2. Subparagraph (5) would be added to § 679.7(c) to prohibit directed fishing for Bering Sea flatfish without modified nonpelagic trawl gear that meets the standards specified at proposed § 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) would be added and reserved to allow for future rulemaking recommended by the Council for Pacific cod fishing in the BSAI parallel fisheries. If approved, the Pacific cod parallel fishery rulemaking is likely to be effective before rulemaking for Amendment 94. Adding and reserving subparagraphs (3) and (4) will provide less confusion as these rulemakings progress simultaneously.

3. Figure 17 to part 679 and Table 43 to part 679 would be revised to show the proposed boundaries of the NBSRA. Figure 17 to part 679 would be revised to remove the area that is proposed to create the MGTZ, and to remove the area that would become part of the eastern portion of the SMIHCA. The northern portion of Figure 17 to part 679 also would be revised to include the area of the Bering Sea subarea near the Bering Strait that is currently open to nonpelagic trawling (Figure 2). The coordinates in Table 43 to part 679 would be revised to delineate the proposed 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 would be become the MGTZ.

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

5. Proposed Table 51 to part 679 would be added to delineate the coordinates of the MGTZ. Because the proposed 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 proposed MGTZ.

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

7. Paragraph (f) would be added to § 679.24 to establish enforceable standards for modified nonpelagic trawl gear. The standards would include a minimum clearance for the sweeps, and a minimum and maximum distance between elevating devices, depending on the clearance provided by the elevating devices. The standards also would 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 would 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 would be added to describe the measuring locations for determining compliance with the clearance standards, and to describe the location of the elevating devices that would be required under proposed § 679.24(f). Section 679.24(f) would refer to these figures to facilitate the description of how the modified nonpelagic trawl gear is to be configured and how to determine compliance 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.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with and necessary to implement Amendment 94, and in accordance with other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. Descriptions of the action, the reasons it is under consideration, and its objectives and legal basis, are included at the beginning of this section in the preamble and in the summary section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The proposed action would: Require nonpelagic trawl vessels targeting flatfish in the Bering Sea subarea to use elevating devices on trawl sweeps to raise them off the seafloor; adjust the southern boundary of the NBSRA to exclude the MGTZ; and provide additional closure area to the SMIHCA. Any person fishing with nonpelagic trawl gear in the MGTZ would be required to use the modified nonpelagic trawl gear that meets the gear standards. Amendment 94 would adjust the SMIHCA eastern boundary to be consistent with the Council's intent to protect blue king crab habitat, based on the best available scientific information. This proposed rule also would adjust the northern boundary of the NBSRA northwards to meet the northern boundary of the Bering Sea subarea to ensure the northern boundary of the NBSRA meets the Council's intent for Amendment 89. The effect of the NBSRA boundaries, including this northern portion, was analyzed in the EA for Amendment 89 (see **ADDRESSES**).

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. Thus due to their combined groundfish revenues, the CPs would be considered large entities for purposes of the 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 all vessels at an entity level. Therefore, the IRFA may overestimate the number of small entities directly regulated by the proposed action.

The Council considered three alternatives, an option, and a set of minor technical 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. The proposed regulations for implementing the nonpelagic trawl gear modification were developed in consultation with members of the nonpelagic trawl CP fleet to minimize potential adverse economic effects on directly regulated entities while still meeting the Council's Magnuson-Stevens Act objectives to minimize potential adverse effects on bottom habitat caused by nonpelagic trawl gear. Performance standards (rather than design standards) would be required for the modified nonpelagic trawl gear, which 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 options 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 consistent with applicable statutes.

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

The IRFA did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

Tribal Consultation

Executive Order (E.O.) 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 (Pub. L.) 108–199 (188 Stat. 452), as amended by section 518 of Public Law 109–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations.

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. Among the recommendations provided to NMFS, the tribal representatives requested that no nonpelagic trawling be allowed to expand northward into the northern Bering Sea. This would include not establishing the MGTZ in this proposed action. In March 2010, NMFS received letters from the communities of Shishmaref, King Island, Saint Michael, Solomon, Koyuk, Wales, Brevig Mission, and Savoonga stating concerns regarding commercial nonpelagic trawling in the NBSRA. NMFS will provide opportunity for further discussion on this proposed action, and will consider information shared during these discussions in the review of this proposed action. NMFS will contact all tribal governments and Alaska Native corporations that may be affected by the proposed action and provide them with a copy of this proposed rule.

Section 5(b)(2)(B) of E.O. 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) the agency's position supporting the need to issue the regulation, and (4) a statement of the extent to which the concerns of tribal officials have been met. If the Secretary of Commerce approves Amendment 94, a tribal impact summary statement that summarizes and responds to issues raised on the proposed action—and describes the extent to which the concerns of tribal officials have been met—will be included in the final rule for Amendment 94.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 8, 2010.

Eric C. Schwaab,

Assistant Administrator, For Fisheries, National Marine Fisheries Services.

For reasons set out in the preamble, NMFS proposes to amend 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 definitions for "Federally permitted vessels" and "Fishing trip," add in alphabetical order the definition for "Modified Gear Trawl Zone" and paragraph (5) to "Directed fishing," to read as follows:

§ 679.2 Definitions.

* * * * *

Directed Fishing means:

* * *

(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 means:

(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, 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 (3)(iii) of this paragraph, 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 (3)(ii), based on measurements taken in locations shown in Figure 27 to this part, the required minimum clearance shall be as following:

(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 device spaced 66 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. 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 each 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.

7. 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 each 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.

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

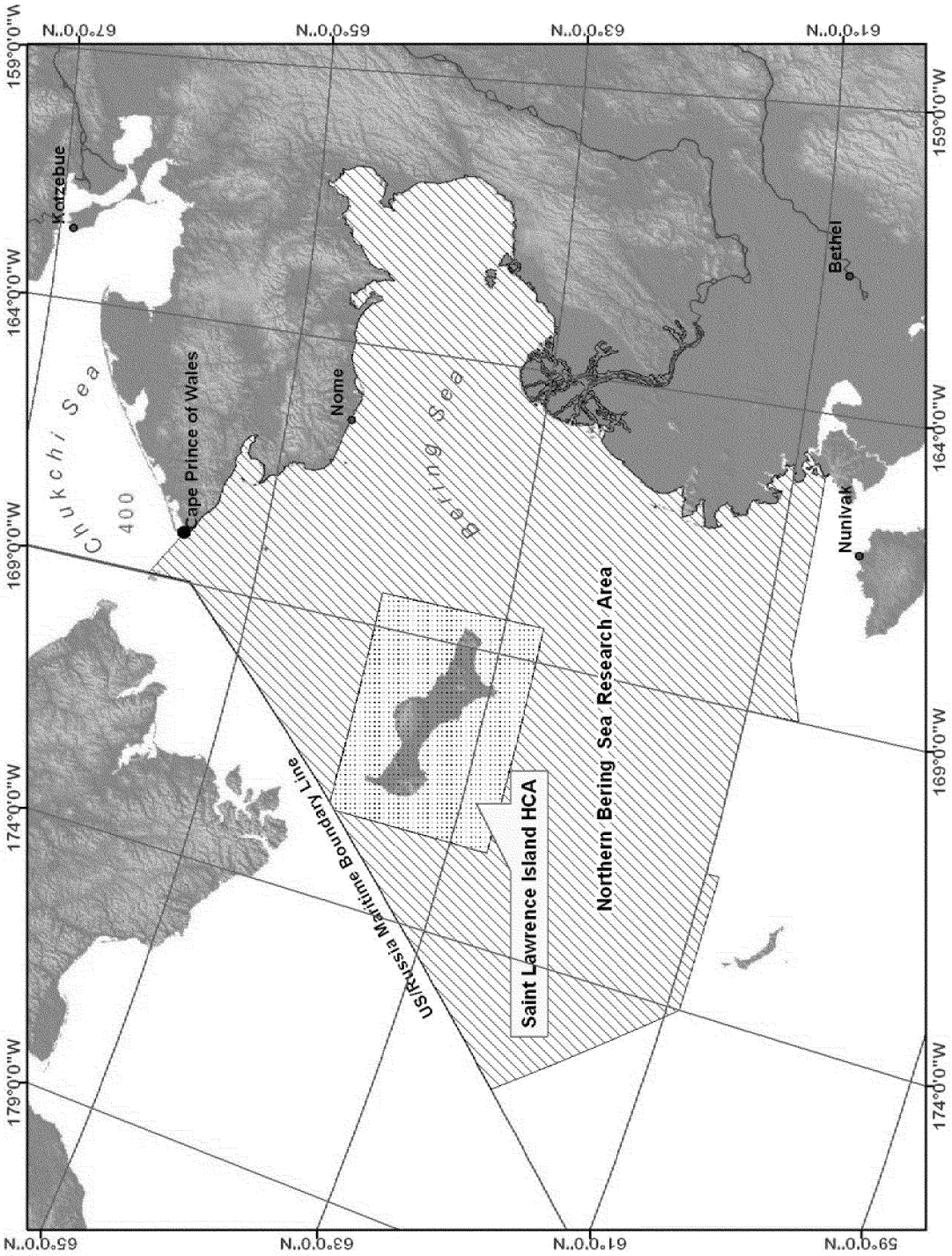
Table 51 to Part 679 – Modified Gear Trawl Zone

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 each 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.

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

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



10. 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

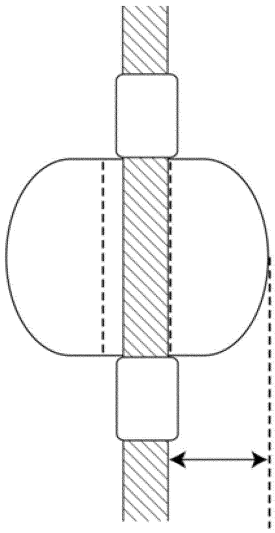


Figure 25a Line Clamps Flush to Elevating Device

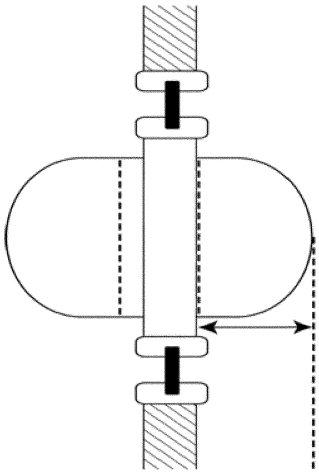


Figure 25b Elevating Device Supported by Material Different from Line Material

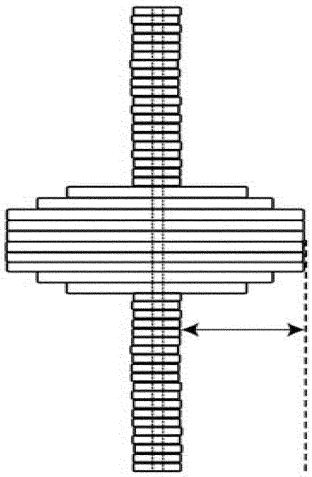


Figure 25c Cookie Gear

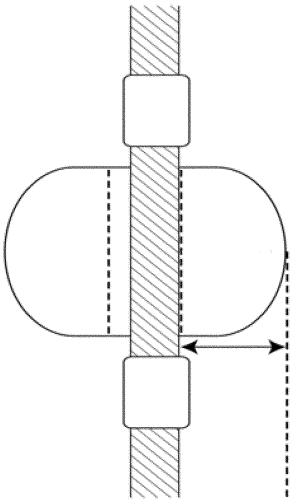


Figure 25d Line Clamps Not Flush to Elevating Device

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.

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

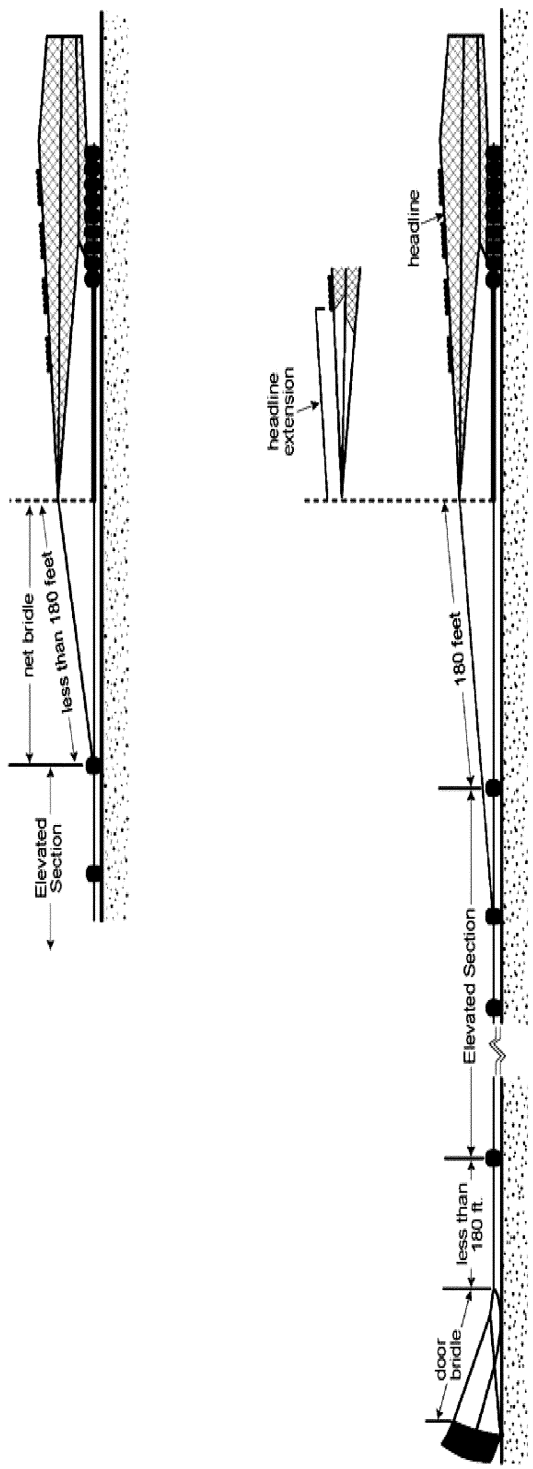
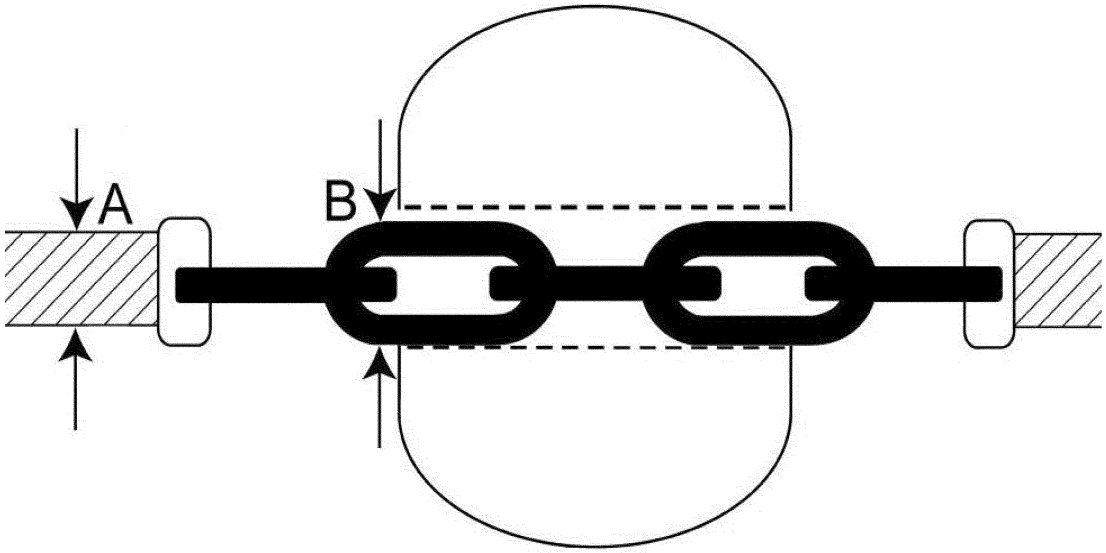


Figure 26 to Part 679 – Modified Nonpelagic Trawl Gear

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 device 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.

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



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