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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140519437-4999-02]

RIN 0648-BE24

Fisheries of the Exclusive Economic Zone Off Alaska; Establishing Transit Areas through Walrus Protection Areas at Round Island and Cape Peirce, Northern Bristol Bay, Alaska; Amendment 107

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 107 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), as prepared and submitted by the North Pacific Fishery Management Council (Council), and approved by the Secretary of Commerce. This final rule allows vessels designated on Federal Fisheries Permits (FFPs) to transit through Walrus Protection Areas in the Exclusive Economic Zone (EEZ) near Round Island and Cape Peirce from April 1 through August 15, annually. These actions are necessary to restore the access of federally permitted vessels to transit through Walrus Protection Areas that was unintentionally limited by regulations implementing Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) and to maintain suitable protection for walrus on Round Island and Cape Peirce. This final rule

maintains an existing prohibition on deploying fishing gear in Walrus Protection Areas by vessels designated on an FFP. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the BSAI FMP, and other applicable law.

DATES: Effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Electronic copies of the BSAI FMP, Amendment 107 to the BSAI FMP, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Analysis) prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov/sustainablefisheries/>.

FOR FURTHER INFORMATION CONTACT: Anne Marie Eich, 907-586-7228.

SUPPLEMENTARY INFORMATION:

NMFS manages the groundfish fisheries in the EEZ off Alaska under the GOA FMP and the BSAI FMP. The Council prepared these FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

This final rule implements management measures contained in Amendment 107 to the BSAI FMP. This final rule allows vessels designated on FFPs to transit through Walrus Protection Areas in the EEZ near Round Island and Cape Peirce from April 1 through August 15, annually.

NMFS published the Notice of Availability (NOA) of Amendment 107 to the BSAI FMP in the Federal Register on September 24, 2014, with a 60-day comment

period that ended November 24, 2014 (79 FR 57041). The Secretary of Commerce approved Amendment 107 to the BSAI FMP on December 19, 2004. NMFS published a proposed rule to implement management measures contained in Amendment 107 to the BSAI FMP on October 3, 2014 (79 FR 59733). The 30-day comment period on the proposed rule ended November 3, 2014. NMFS received four comment letters on Amendment 107 to the BSAI FMP during the NOA and proposed rule comment periods. Two comment letters were duplicates. The comment letters contained two unique comments. A summary of these comments and NMFS' responses are provided in the "Comments and Responses" section of this preamble. NMFS did not make any changes in this final rule to the regulatory text contained in the proposed rule.

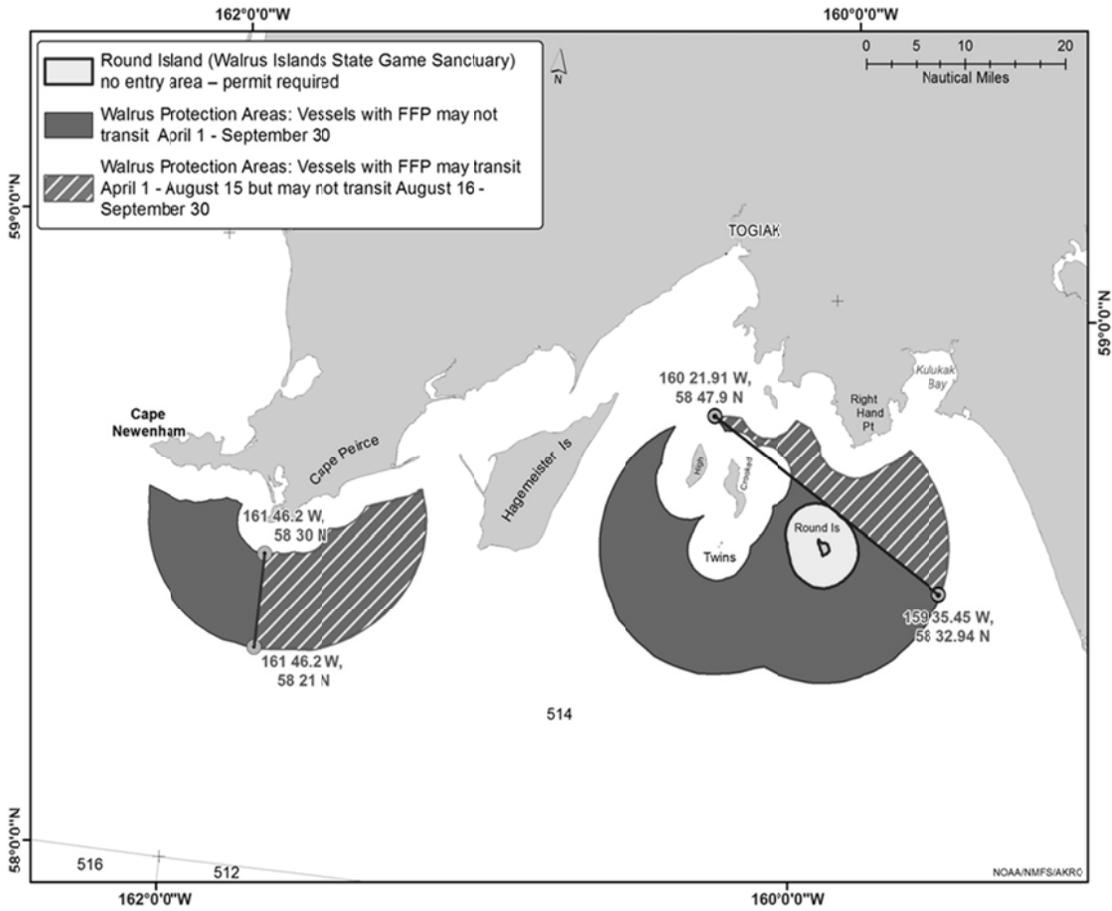
The proposed rule (79 FR 59733, October 3, 2014) preamble provides additional information on the development of the action, the impacts and effects of the action, and the Council's and NMFS' rationale for the action. The proposed rule is available from the NMFS Alaska Region web site (see ADDRESSES).

#### Management Measures Contained in this Final Rule

This final rule allows vessels designated on FFPs to enter and transit through specific areas of the Walrus Protection Areas near Round Island and Cape Peirce. This final rule applies to Federal waters in northern Bristol Bay, specifically in statistical area 514 of the BSAI, as shown in Figure 1 to 50 CFR part 679. This action does not apply in State of Alaska (State) waters. The State restricts vessel transit in State waters around Round Island but not in State waters elsewhere in the area. All vessels, including vessels designated on an FFP, can transit through State waters around Cape Peirce and The Twins. This action only affects vessels designated on an FFP. Vessels that are not

designated on an FFP are not regulated in the Walrus Protection Areas and can enter and transit through Walrus Protection Areas. The transit areas implemented by this final rule are shown in Figure 1 below.

Figure 1. Seasonal Transit Areas near Round Island and Cape Peirce



### Transit Area Near Round Island

This final rule adds regulations at § 679.22(a)(4)(ii) to establish a transit area through the Walrus Protection Area near Round Island. This final rule establishes a transit area in the EEZ near Round Island from April 1 through August 15, annually, north of a line from 58° 47.90' N, 160° 21.91' W to 58° 32.94' N, 159° 35.45' W. (See Figure 1 of this preamble.)

This transit area is at least 3 nm from Round Island at its closest point and is more than 9 nm from the haulouts on The Twins at its closest point. As noted in Section 3.2.7.2.1 of the Analysis, there has been no recorded visible disturbance to walruses from vessel traffic more than 3 nm from Round Island, but disturbance from vessel traffic has been documented within 3 nm from Round Island. This final rule does not allow vessels designated on an FFP to transit within 3 nm of Round Island or The Twins.

This transit area is established to maintain suitable protection for walruses on Round Island and to allow vessels designated on an FFP access to a transit route north of Round Island. NMFS expects this transit area to reduce the potential for vessels to transit near Hagemeister Island, a known walrus haulout, because vessels will be allowed to transit north of Round Island and to avoid the route near Hagemeister Island. This final rule also allows vessels to transit through Federal waters farther from shore and thereby reduces transit through shallower State waters that are more difficult to navigate.

The transit area near Round Island opens April 1 to relieve the existing regulations that prohibit entry and transit to vessels designated on an FFP in Walrus Protection Areas on April 1, the start of peak walrus use in the area. This transit area closes on August 16 because of the following: 1) the herring and most salmon fisheries

are completed by August 15, and tender vessels that are designated on FFPs (i.e., vessels used to carry unprocessed fish to processing facilities) are no longer active and do not require transit through Walrus Protection Areas after that date; 2) vessels transiting to deliver groundfish in northern Bristol Bay typically have completed their deliveries by August 15 and do not require transit through Walrus Protection Areas after that date; and 3) limiting vessel transit by August 15 will reduce vessel traffic near walrus haulouts that could interfere with vessels used for the subsistence harvest of walrus on Round Island that begins in September of each year. Vessels designated on FFPs are still prohibited from entering and transiting through the Walrus Protection Areas near Round Island from August 16 through September 30. NMFS expects that this prohibition will not adversely affect vessels designated on FFPs because tendering operations and groundfish deliveries in northern Bristol Bay do not occur between August 16 and September 30.

#### Transit Area Near Cape Peirce

This rule adds regulations at § 679.22(a)(4)(ii) to establish a transit areas through the Walrus Protection Areas at Cape Peirce. This rule establishes a transit area in the EEZ near Cape Peirce from April 1 through August 15, annually, east of a line from 58° 30.00' N, 161° 46.20' W to 58° 21.00' N, 161° 46.20' W. (See Figure 1 of this preamble.) This transit area is at least 3 nm from Cape Peirce at its closest point.

The transit area through the Walrus Protection Areas near Cape Peirce will provide an opportunity for vessels with FFPs to travel farther from shore while tendering herring or salmon and avoid transit through State waters near walrus haulouts at Cape Peirce. NMFS expects, based on the analyses, that the transit area will reduce the likelihood of disturbance to walrus at the Cape Peirce Walrus Protection Areas.

The transit area will be open from April 1 through August 15, annually, consistent with the opening and closing dates established for the Round Island transit area. As noted in the previous section of this preamble, these dates facilitate vessel transits for tendering and groundfish deliveries. Vessels designated on FFPs are still prohibited from entering and transiting through the Walrus Protection Areas near Cape Peirce from August 16 through September 30. NMFS expects this prohibition will not adversely affect vessels designated on FFPs because tendering operations and groundfish deliveries in northern Bristol Bay do not occur between August 16 and September 30.

#### Prohibition on Vessels with FFPs Deploying Fishing Gear in Walrus Protection Areas

This final rule adds regulations at § 679.22(a)(4)(i) (incorrectly identified in the preamble of the proposed rule as § 679.22(a)(4)(ii)) to prohibit vessels designated on an FFP from deploying fishing gear in Walrus Protection Areas from April 1 through September 30, annually. As noted throughout this preamble, this rule removes a prohibition that limits vessels from entering and transiting through Walrus Protection Areas. This final rule does not allow vessels designated on FFPs to fish in Walrus Protection Areas from April 1 through September 30, annually. Section 3.1 of the Analysis explains that this final rule will not affect the timing, duration, effort, or harvest levels in the fisheries in northern Bristol Bay because this final rule does not open Walrus Protection Areas to fishing by vessels designated on an FFP. Because vessels designated on FFPs are already prohibited from deploying fishing gear in Walrus Protection Areas, this prohibition maintains the status quo prohibition on deploying fishing gear in Walrus Protection Areas. Therefore, this final rule does not affect any existing fishing operations.

## Changes from Proposed to Final Rule

No changes were made from proposed to final rule.

## Comments and Responses

NMFS received four comment letters during the NOA and proposed rule comment periods. Two comment letters were duplicates. The comment letters contained two unique comments. A summary of the comments and NMFS' response follows.

Comment 1: Commercial fishing vessels, tourist boats, and transit boats should not be allowed to transit through the walrus protected area. This area should be nominated for a marine protected area.

Response: As noted in the preamble to the proposed rule and this preamble, the purpose of this action is to allow vessels designated on FFPs to enter and transit through specific areas of the Walrus Protection Areas near Round Island and Cape Peirce. Therefore, not allowing transit through these areas is inconsistent with the purpose of this action. Also, the commenter's recommendation to nominate these areas as marine protected areas is outside of the scope of this action.

NMFS notes that the Council has recommended and NMFS has implemented a series of closure areas, known as Walrus Protection Areas, around important walrus haulout sites in Bristol Bay to reduce potential disturbances to walruses from fishing activities.

As noted in Section 3.2.7 of the Analysis and in the preamble of the proposed rule (79 FR 59733, October 3, 2014) for this action, all of the alternative management approaches considered, and this action specifically, were determined to be consistent with

the best practices in the guidelines established by the U.S. Fish and Wildlife Service (USFWS), the agency responsible for the protection of walrus.

Comment 2: Two commenters provided support for Amendment 107 and its associated implementing proposed rule for the following reasons: 1) fuel use and operating costs would decrease significantly for vessels designated on FFPs with the implementation of this rule by reducing transit time, 2) vessels designated on FFPs would be less exposed to weather by being allowed to transit through the Walrus Protection Areas, 3) walrus traveling from Round Island to feeding grounds in central Bristol Bay are less likely to encounter vessel traffic if vessels designated on FFPs can use alternate transit routes, and 4) vessel traffic will decrease near the walrus haulout on the south end of Hagemeister Island because vessels designated on FFPs would be less likely to transit through this area.

Response: NMFS acknowledges this comment and agrees with the commenters' support of this action. Additional detail on the effects of this action on vessel fuel use, exposure to weather, and vessel traffic are provided in preamble to the proposed rule and in Section 3.2 of the Analysis and are not described further here.

#### Classification

The Administrator, Alaska Region, NMFS, determined that this final rule is necessary for the conservation and management of the BSAI groundfish fishery and that it is consistent with the BSAI FMP, including Amendment 107, the Magnuson-Stevens Act, and other applicable laws.

The final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

## 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 final regulatory flexibility analysis, 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. The preamble to the proposed rule and the preamble to this final rule serve as the small entity compliance guide. This rule does not require any additional compliance from small entities that is not described in the preamble to the proposed rule. Copies of the proposed rule and this final rule are available from NMFS at the following website: <http://alaskafisheries.noaa.gov>.

## Final Regulatory Flexibility Analysis (FRFA)

Section 604 of the Regulatory Flexibility Act requires an agency to prepare a FRFA after being required by that section or any other law to publish a general notice of proposed rulemaking and when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code.

Section 604 describes the required contents of a FRFA: 1) a statement of the need for, and objectives of, the rule; 2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; 3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the

proposed rule in the final rule as a result of the comments; 4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; 5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and 6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

#### Need for and Objectives of the Rule

A statement of the need for, and objectives of, the rule is contained in the preamble to this final rule and is not repeated here. This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and the summary of the IRFA in the proposed rule (79 FR 59733, October 3, 2014).

#### Public and Chief Counsel for Advocacy Comments on the Proposed Rule

NMFS published the proposed rule on October 3, 2014 (79 FR 59733). The 30-day comment period on the proposed rule closed on November 3, 2014. An IRFA was prepared for the “Classification” section of the preamble to the proposed rule.

NMFS received four letters of public comment on the proposed rule, containing a total of two comments. No comments were received on the IRFA, or on the small entity

impacts of this action. The Chief Counsel for Advocacy of the Small Business Administration (SBA) did not file any comments on the proposed rule.

#### Number and Description of Small Entities Regulated by the Final Rule

The determination of the number and description of small entities regulated by this action is based on small business size standards established by the SBA. On June 12, 2014, the SBA issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33647, June 12, 2014). The rule increased the size standard for Finfish Fishing from \$19.0 million to \$20.5 million, Shellfish Fishing from \$5.0 million to \$5.5 million, and Other Marine Fishing from \$7.0 million to \$7.5 million.

The entities that will be directly regulated by this action are those businesses that tender herring or salmon from fisheries to delivery locations in northern Bristol Bay, and those businesses that deliver processed groundfish from the Bering Sea to locations in northern Bristol Bay. Vessels tendering herring or salmon are transporting harvested fish. Because tender vessel operators enter into private contracts with herring and salmon fishing vessel operators to transport their catch, revenue information from tenders is not available. Based on information from 2012, the most recent year of complete data, a maximum of 64 vessels were estimated to have operated as tenders in the herring and salmon fisheries in northern Bristol Bay. These vessels could have been designated on an FFP and could be affected by this action. Because no revenue information is available on these vessels, each of these vessels was assumed to be a small entity.

Based on information from 2012, the most recent year of complete data, a maximum of 6 vessels were estimated to have delivered processed groundfish to

locations in northern Bristol Bay. These vessels could have been designated on an FFP and could be affected by this action. All of these vessels were affiliated through common management under cooperative fishing arrangements. These affiliated vessels had ex-vessel annual revenues in 2012 that exceeded the annual revenue limit of \$20.5 million used by the SBA to define a small entity harvesting or processing groundfish (79 FR 33647, June 12, 2014). Therefore, these vessels are considered to be large entities.

#### Recordkeeping, Reporting, and Compliance Requirements

This action will not change existing reporting, recordkeeping, or other compliance requirements.

#### Description of Significant Alternatives to the Final Action that Minimize Adverse Impacts on Small Entities

A FRFA must describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected. The FRFA considered three alternatives.

Alternative 1, the no action (status quo) alternative, would maintain the existing closures between 3 and 12 nm around Round Island and Cape Peirce, and would not allow vessels designated on an FFP to transit these areas. Therefore, Alternative 1 represents the most restrictive alternative considered and the alternative with the highest potential cost to regulated small entities.

Alternative 2 would establish a transit area through the existing Walrus Protection Areas near Round Island. Alternative 2 also included three options, Options 1, 2, and 3 to allow the closest point of the transit area to be within 3 nm, 4.5 nm, and 6 nm from Round Island, respectively.

Alternative 3 would establish a transit area through Walrus Protection Areas near Cape Peirce.

The alternatives analyzed but not selected are Alternative 1 (status quo, do not allow transit through the protection areas) and Alternative 2, Options 2 and 3. All of these alternatives and options are more restrictive than the Council's preferred alternatives, which are implemented by this final rule. The Council's preferred alternatives and the actions implemented by this final rule are Alternative 2, Option 1 and Alternative 3. Alternative 2, Option 1 allows vessels to transit closer to Round Island than Alternative 2, Option 2 and Alternative 2, Option 3. Therefore, Alternative 2, Option 1 is the least restrictive of the three options under Alternative 2. Alternative 3 provides a seasonal transit area around Cape Peirce. This final rule represents the alternatives that minimize the potential cost to directly regulated small entities. The boundaries farther from Round Island (Options 2 and 3) may incrementally reduce the potential for disturbance to walrus on Round Island (see Section 3.2.7 of the Analysis), but are not likely to significantly affect the distances traveled as vessels with FFPs transit the protected area. The differences in transit time or fuel costs are not likely to be significantly different between these options. As noted in Section 3.2.7.2.1 of the Analysis, there has been no recorded visible disturbance to walrus from vessel traffic more than 3 nm from Round Island.

The Council also considered rescinding the protection areas around Round Island and Cape Peirce for all or a portion of the year, eliminating the barriers to transiting the Walrus Protection Areas. Rescission of the protection areas would reduce costs to regulated small entities more than this action. However, these alternatives were not analyzed because they do not meet the purpose and need of the action to maintain protection of walrus in these important haulout sites.

#### Tribal Consultation

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), the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995), and the Department of Commerce Tribal Consultation and Coordination policy (78 FR 33331, June 4, 2013) outline the responsibilities of NMFS for Federal policies that have tribal implications. 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 E.O. 13175 to Alaska Native corporations. Under the E.O. and agency policies, NMFS must ensure meaningful and timely input by tribal officials and representatives of Alaska Native corporations in the development of regulatory policies that have tribal implications. NMFS provided a copy of the proposed rule to the federally recognized tribes and Alaska Native corporations in the Bristol Bay area to notify them of the opportunity to comment or request a consultation on this action.

Section 5(b)(2)(B) of E.O. 13175 requires NMFS to prepare a “tribal summary impact statement” for any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and is not required by statute. The

tribal summary impact 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.

#### Tribal Summary Impact Statement

Pursuant to E.O. 13175, NMFS mailed letters to approximately 162 federally recognized tribes and Alaska Native corporations in the Bristol Bay area providing information about Amendment 107 and the proposed rule. The letter invited comments and requests for consultation on this action. NMFS received no requests for consultation. This final rule is needed to restore the access of federally permitted vessels to transit through Walrus Protection Areas that was limited by regulations implementing Amendment 83 to the GOA FMP and to maintain suitable protection for walrus on Round Island and Cape Peirce. During the development of this action, the Council communicated with the USFWS and the Qayassiq Walrus Commission to avoid adverse impacts to walrus from this action. As noted in Section 3.2.7 of the Analysis and discussed in the preamble of the proposed rule for this action, all of the alternative management approaches considered, and this action specifically, were determined to be

consistent with the best practices in the guidelines established by USFWS, the agency responsible for the protection of walrus.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: December 30, 2014.

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Eileen Sobeck,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended 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; Pub. L. 111-281.

2. In § 679.22, revise paragraph (a)(4) to read as follows:

§ 679.22 Closures.

(a) \* \* \*

(4) Walrus protection areas. (i) From April 1 through September 30 of each calendar year, vessels designated on a Federal fisheries permit issued under § 679.4 are prohibited from deploying fishing gear in that part of the Bering Sea subarea between 3 and 12 nm seaward of the baseline used to measure the territorial sea around islands

named Round Island and The Twins, as shown on National Ocean Survey Chart 16315, and around Cape Peirce (58° 33' N. lat., 161° 43' W. long.).

(ii) From April 1 through September 30 of each calendar year, vessels designated on a Federal fisheries permit issued under § 679.4 are prohibited in that part of the Bering Sea subarea between 3 and 12 nm seaward of the baseline used to measure the territorial sea around islands named Round Island and The Twins, as shown on National Ocean Survey Chart 16315, and around Cape Peirce (58° 33' N. lat., 161° 43' W. long.), except that from April 1 through August 15 of each calendar year vessels designated on a Federal fisheries permit are not prohibited from entering and transiting through waters off:

(A) Round Island, north of a straight line connecting 58° 47.90' N. lat./160° 21.91' W. long., and 58° 32.94' N. lat./ 159° 35.45' W. long.; and

(B) Cape Peirce, east of a straight line connecting 58° 30.00' N. lat./161° 46.20' W. long., and 58° 21.00' N. lat./161° 46.20' W. long.

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