

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679****RIN 0648–AY34****Fisheries of the Exclusive Economic Zone Off Alaska; Fisheries of the Bering Sea Subarea**

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

ACTION: Availability of a fishery management amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council has submitted 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 the use of modified nonpelagic trawl gear to directed fish for flatfish in the Bering Sea subarea and would change the boundaries of the Northern Bering Sea Research Area to establish the Modified Gear Trawl Zone and to expand the Saint Matthew Island Habitat Conservation Area. The amendment also would make several minor technical changes to the FMP. This action is necessary to reduce the potential adverse effects of nonpelagic trawl gear on benthic habitat, to protect additional blue king crab habitat near St. Matthew Island, to provide for efficient flatfish harvest under changing ocean conditions, and to revise the FMP by removing errors and ensuring program descriptions are consistent with the Magnuson-Stevens Fishery Conservation and Management Act. 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. Comments from the public are encouraged.

DATES: Written comments on the amendment must be received by 1700 hours, A.D.T., on August 30, 2010.

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

- Electronic Submissions: Submit all electronic public comments via the

Federal eRulemaking Portal: <http://www.regulations.gov>.

- Mail: P.O. Box 21668, Juneau, AK 99802.

- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

- Fax: 907–586–7557.

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 <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). 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 <http://www.regulations.gov> or from the Alaska Region website at <http://alaskafisheries.noaa.gov>.

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

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that the North Pacific Fishery Management Council (Council) submit any FMP amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that the Secretary, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the FMP amendment is available for public review and comment. The responsibilities of the Secretary under the Magnuson-Stevens Act have been delegated to NMFS.

If approved, Amendment 94 would require modified nonpelagic trawl gear for directed fishing for flatfish in the Bering Sea subarea and would change the boundaries of the Northern Bering Sea Research Area (NBSRA) to establish the Modified Gear Trawl Zone (MGTZ) and to expand the Saint Matthew Island

Habitat Conservation Area (SMIHCA). The amendment also would make several minor technical changes to the FMP.

In October 2009, the Council unanimously recommended Amendment 94. The consideration of modified nonpelagic trawl gear was initiated 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 established the NBSRA and SMIHCA. The Council adopted Amendment 89 in June 2007, but pursued the development of modified nonpelagic trawl gear through subsequent coordination with NMFS and the nonpelagic trawl fishing industry. Based on research by the Alaska Fisheries Science Center (AFSC), nonpelagic trawl gear can be modified to raise the sweeps off the bottom to reduce potential adverse effects on benthic habitat and maintain effective catch rates for flatfish target species. The gear would be modified by adding elevating devices to the trawl sweeps, which contribute up to 90 percent of the trawl gear contact with the bottom. AFSC studies have shown the use of modified nonpelagic trawl gear reduces mortality and disturbance of sea whips, basket stars, sponges, and crab species. The modified nonpelagic trawl gear did not significantly reduce catch rates of flatfish species. In 2008 and 2009, the AFSC and NOAA Office of 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 and effectively used.

Amendment 94 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 to provide a location with very little to no nonpelagic trawling for the purpose of studying the effects of nonpelagic trawling on bottom habitat. The SMIHCA was established to provide protection to blue king crab habitat from the impacts from 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 establishing the MGTZ.

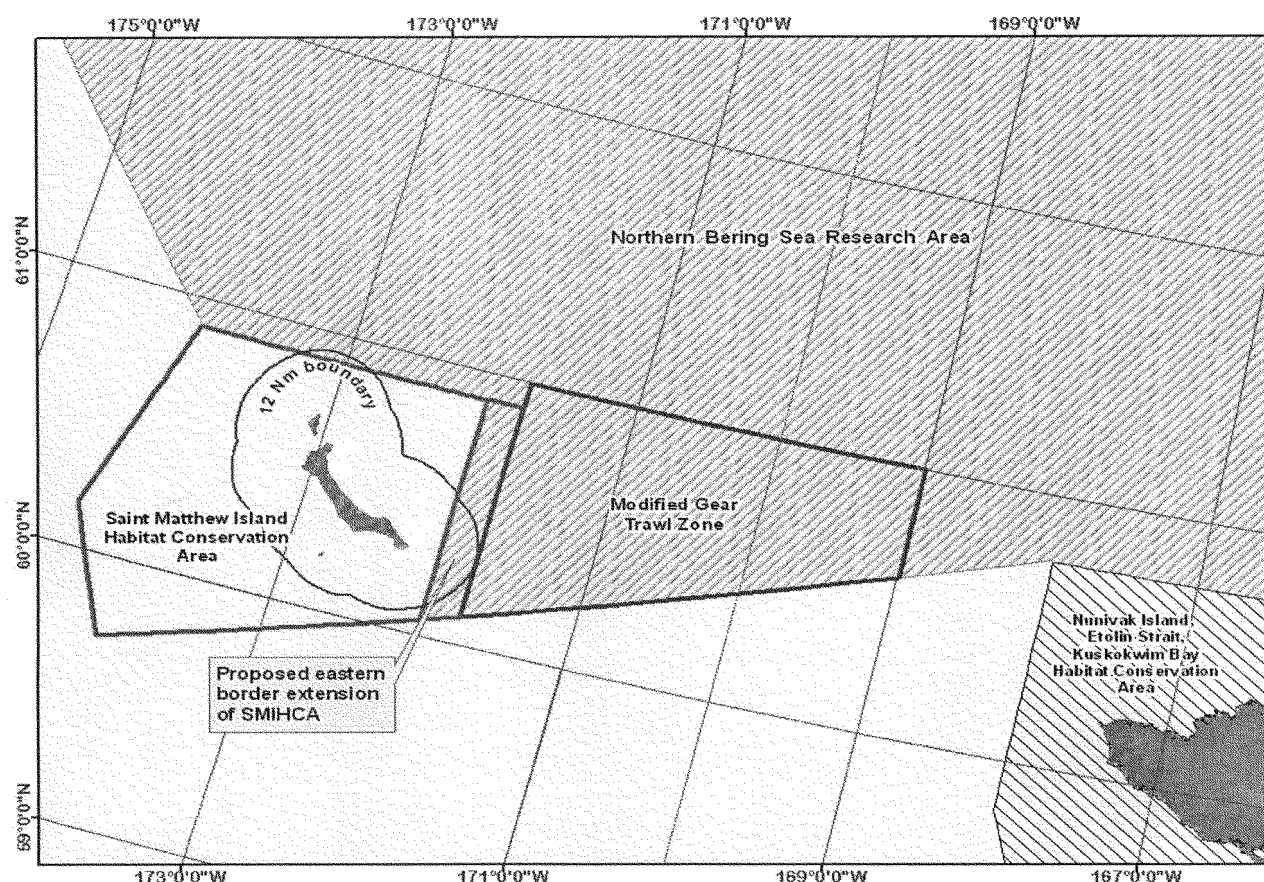


Figure 1. The Northern Bering Sea Research Area (NBSRA), Proposed Expansion of the Saint Matthew Island Habitat Conservation Area (SMIHCA) and the Proposed Modified Gear Trawl Zone (MGTZ). The current boundary of the NBSRA is shown by the area filled with the right-slanting lines.

The Council recommended moving the eastern boundary of the SMIHCA to the eastern edge of the 12-nautical mile (nm) Territorial Sea surrounding Saint Matthew Island. NMFS trawl annual surveys in 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 near Saint Matthew Island. The Council recommended that the eastern border of the SMIHCA meet the western border of the MGTZ so that no portion of the NBSRA would lie between these areas, 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 being more favorable to flatfish species and the habitat in the eastern side of the proposed SMIHCA being more favorable to crab species. More detailed information regarding the NMFS resource surveys and bottom habitats of the SMIHCA and the proposed MGTZ are in the EA/RIR/IRFA for this action (see **ADDRESSES**).

The northern boundary of the MGTZ follows a whole number latitude to facilitate mapping and management in the area. Based on public testimony in October 2009, the Council recommended the proposed eastern boundary of the MGTZ to allow for a buffer between an area of fishing and the Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area, an area important for subsistence activities. The AFSC surveys in the western portion of the MGTZ show primarily flatfish species with little Pacific halibut occurrence.

Nonpelagic trawling within the MGTZ would require the use of modified

nonpelagic trawl gear, regardless of the target species. This requirement would reduce the potential adverse effects on bottom habitat from nonpelagic trawl gear used for flatfish and the Pacific cod fishing in the MGTZ. The opening of this area 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 Council also recommended four minor technical changes to the FMP. The first would remove the description of the Crab and Halibut Protection Area, which was effectively superseded by the Nearshore Bristol Bay Trawl Closure at § 679.22(a)(9). The second change would renumber figures and correct cross-references to these figures in Section 3 of the FMP, which became confused with the adoption of figures under Amendment 89. The third change would revise 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 current northern boundary of the

NBSRA leaves an area open to nonpelagic trawling near the Bering Strait due to the wrong coordinates being used for this boundary. The Council intended for the entire northern

portion of the Bering Sea subarea to be part of the NBSRA, and this minor technical amendment would close this area of water currently open to nonpelagic trawling.

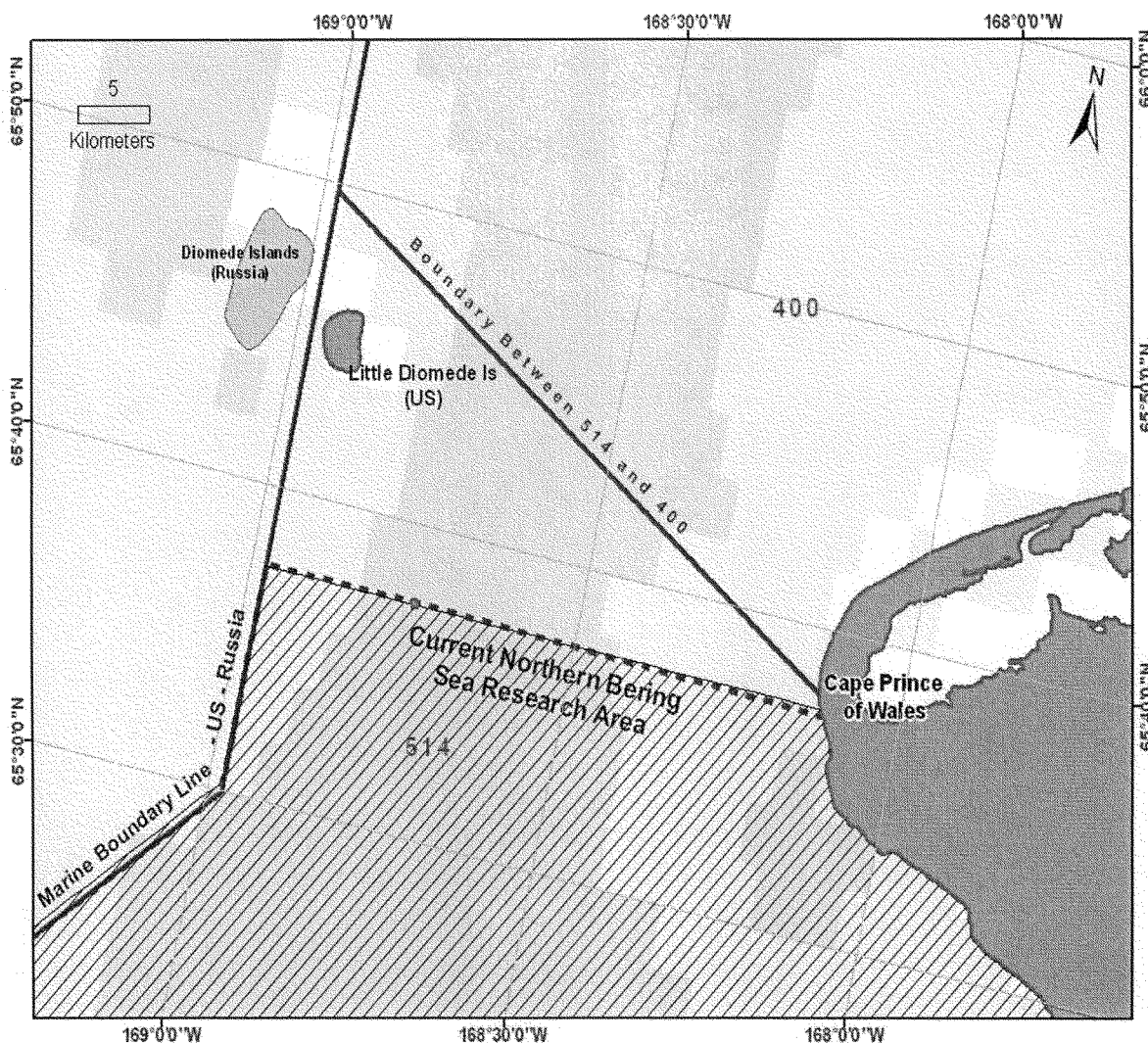


Figure 2. Northern boundary of the Northern Bering Sea Research Area and boundary between Statistical Areas 514 and 400. The area between the NBSRA boundary and Statistical Areas 514 and 400 boundaries is currently open to nonpelagic trawl fishing, but would be closed with Amendment 94.

The fourth minor technical amendment would replace outdated language describing the structure of the Community Development Quota Program (CDQ), as stated in the reauthorized Magnuson-Stevens Act of 2006 (see section 305(i) of the Magnuson-Stevens Act). The 2006 amendments to the Magnuson-Stevens Act included changes in the way allocations to the CDQ groups are established and adjusted, listed the

eligible communities and the groups through which they can participate in the CDQ program, and increased many of the groundfish allocations to the CDQ Program to 10.7 percent of the total allowable catch for each species. Amendment 94 would ensure that the FMP accurately describes these CDQ program changes from the Magnuson-Stevens Act.

Public Comments

NMFS is soliciting public comments on the proposed FMP amendment through August 30, 2010. A proposed rule that would implement Amendment 94 will be published in the **Federal Register** for public comment at a later date, following NMFS' evaluation pursuant to the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 94 in

order to be considered in the approval/disapproval decision on the amendment. All comments received on the amendment by the end of the comment period, whether specifically directed to the amendment or to the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will

not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received-not just postmarked or otherwise transmitted-by 1700 hours, A.D.T., on the last day of the comment period (See DATES and ADDRESSES).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 23, 2010.

Carrie Selberg,

*Acting Director, Office Sustainable Fisheries,
National Fisheries Marine Service.*

[FR Doc. 2010-15767 Filed 6-28-10; 8:45 am]

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