

1003.710 Amount of penalties.

1003.720 Determinations regarding the amount of penalties.

**§ 1003.700 Basis for civil money penalties.**

OIG may impose a penalty against any person who it determines in accordance with this part—

(a) Is a hospital that knowingly makes a payment, directly or indirectly, overtly or covertly, in cash or in kind, to a physician as an inducement to reduce or limit services provided to an individual who is eligible for Medicare or Medicaid benefits and who is under the direct care of the physician;

(b) Is a physician who knowingly receives a payment described in paragraph (a) of this section.

**§ 1003.710 Amount of penalties.**

(a) OIG may impose a penalty against a hospital of not more than \$2,000 for each individual for whom payment was made to a physician in violation of § 1003.700.

(b) OIG may impose a penalty against a physician of not more than \$2,000 for each individual for whom the physician received payment from a hospital in violation of § 1003.700.

**§ 1003.720 Determinations regarding the amount of penalties.**

In determining the amount of any penalty or assessment, OIG will consider the factors listed in § 1003.140, as well as the following:

(a) The nature of the payment designed to reduce or limit services and the circumstances under which it was made,

(b) The extent to which the payment encouraged the limiting of medical care or the premature discharge of the patient,

(c) The extent to which the payment caused actual or potential harm to program beneficiaries, and

(d) The financial condition of the hospital (or physician) involved in the offering (or acceptance) of the payment.

Dated: March 1, 2014.

**Daniel R. Levinson,**  
*Inspector General.*

Approved: September 18, 2014.

**Sylvia M. Burwell,**  
*Secretary.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 140519437–4437–01]**

**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**

**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 107 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). If approved, Amendment 107 would establish seasonal transit areas for vessels designated on Federal Fisheries Permits (FFPs) through Walrus Protection Areas in northern Bristol Bay, AK. This action would allow vessels designated on 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. This action is necessary to restore the access of federally permitted vessels to transit through Walrus Protection Areas that was 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 action would maintain an existing prohibition on deploying fishing gear in Walrus Protection Areas by vessels designated on an FFP. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the BSAI FMP, and other applicable law.

**DATES:** Submit comments on or before November 3, 2014.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2014–0066, by either of the following methods:

• **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2014-0066](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2014-0066), click the “Comment Now!” icon,

complete the required fields, and enter or attach your comments.

• **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of 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/>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed action may be submitted to NMFS at the above address and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:**  
Anne Marie Eich, 907–586–7172.

**SUPPLEMENTARY INFORMATION:** NMFS manages groundfish fisheries in the EEZ off Alaska under the GOA FMP and the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared these FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (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.

**Background**

The following sections of the preamble describe: (1) The Walrus Protection Areas; (2) the effects of disturbance on walrus; (3) the areas and vessels affected by this proposed action; and (4) the proposed action.

### Walrus Protection Areas

Thousands of walruses, primarily adult males, use haulouts in northern Bristol Bay, AK, during spring through fall each year. The State of Alaska (State) and NMFS have implemented a variety of management measures to protect walruses in northern Bristol Bay. In 1960, the State established the Walrus Islands State Game Sanctuary (Walrus Sanctuary) to protect a group of seven small, craggy islands and their adjacent waters in northern Bristol Bay commonly used by walruses. The Walrus Sanctuary includes Round Island, Summit Island, Crooked Island, High Island, Black Rock, and The Twins.

The State maintains the most protective management measures around Round Island, one of the largest and well-established walrus haulouts in northern Bristol Bay. The State permits visitors to Round Island for wildlife viewing or research. The State prohibits all other vessel traffic within Alaska State waters (from 0 to 3 nautical miles (nm) from shore) around Round Island, but the State has no restrictions on vessel traffic in Alaska State waters around the other islands in the Walrus Sanctuary. The State limited vessel traffic around Round Island to reduce the potential for vessel activities that disturb walruses. Walruses are known to be sensitive to disturbance. Walrus calves or adults can be injured or killed by stampeding adults (see Section 3.2.1.6 of the Analysis).

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. These management measures apply in a portion of Federal waters in the EEZ (i.e., from 3 nm to 12 nm from shore). Walrus Protection Areas were first implemented in the early 1990s to reduce disturbance from fishing activities based on apparent correlations between fishing activities and observed declines in walrus populations at haulouts in northern Bristol Bay during the 1980s.

In January 1990, NMFS implemented Amendment 13 to the BSAI FMP to prohibit groundfish fishing within 3 to 12 nm from Round Island, The Twins, and Cape Peirce in northern Bristol Bay from April 1 through September 30 (54 FR 50386, December 6, 1989; corrected 55 FR 1036, January 11, 1990; technically amended 56 FR 5775, February 13, 1991). The Council and NMFS intended Amendment 13 to

reduce potential disturbance to walruses from groundfish fisheries. Amendment 13 prohibited vessels from fishing for groundfish in the areas around Round Island, Cape Peirce, and The Twins because these areas are known to be important terrestrial haulouts for walruses. Specifically, Round Island and Cape Peirce are the two largest walrus terrestrial haulouts in the United States. Amendment 13 prohibited vessels from fishing for groundfish annually from April 1 through September 30 to reduce disturbance to walruses during periods of peak walrus use (see Section 1.2 of the Analysis for additional information on patterns of use of haulouts by walruses). These regulations were in effect from January 1, 1990 through April 26, 1992.

On April 26, 1992, NMFS implemented Amendment 17 to the BSAI FMP (57 FR 10430, March 26, 1992). Amendment 17 encompassed the same areas and seasonal closure period as those established under Amendment 13. However, Amendment 17 closed Federal waters to all federally permitted vessels in 3 to 12 nm zones around Round Island, the Twins, and Cape Peirce annually from April 1 through September 30. Amendment 17 defined federally permitted vessels as vessels that are designated on an FFP (see regulations at § 679.22(a)(4)). Amendment 17 was more restrictive than Amendment 13. Amendment 13 prohibited fishing for groundfish, but did not prohibit vessels designated on an FFP from entering and transiting through Walrus Protection Areas. Because Amendment 17 prohibited entry and transit by vessels designated on an FFP in these areas, it effectively prohibited groundfish fishing in these areas because a vessel cannot fish for groundfish in Federal waters without being designated on an FFP. The regulations implementing Amendment 17 superseded those implementing Amendment 13.

### Effects of Disturbance on Walruses

Since the early 1990s, additional research by the Alaska Department of Fish and Game has improved NMFS' understanding of the potential disturbance to walruses from vessel traffic. The new research indicates that disturbance to walruses from vessel traffic more than 3 nm from haulouts has not been observed in northern Bristol Bay. Specifically, Section 3.2.1.6 of the Analysis notes that recent research at Round Island indicates that walruses were not disturbed (e.g., raised their heads, reoriented, or dispersed) by vessel traffic more than 3 nm from Round Island. In 2011, Sell and Weiss

from the Alaska Department of Fish and Game reported that of the 56 observed anthropogenic events (e.g., vessel traffic, aircraft traffic) occurring more than 3 nm from Round Island, only four events resulted in observable disturbance to walruses. All these disturbance events were due to aircraft noise. In 2012, Weiss and Sell reported that they did not observe any disturbance to walruses from anthropogenic events occurring more than 3 nm from Round Island.

Based on these findings, and other research described in Section 3.2.1.6 of the Analysis, the U.S. Fish and Wildlife Service (USFWS) released guidelines for vessels operating near walrus haulouts in Bristol Bay in September, 2012. Under the Marine Mammal Protection Act of 1972 (MMPA), walruses are co-managed by USFWS and the Eskimo Walrus Commission (EWC), with scientific research support from the U.S. Geological Survey and the State. The guidelines released by USFWS are intended to minimize potential disturbance to walruses. These guidelines include descriptions of disturbance behavior and best-practices for mariners to avoid disturbance to walruses. Best-practices include:

- Marine vessels 50 feet in length or less should remain at least 0.5 nm away from hauled out walruses;
- Marine vessels 50–100 feet in length should remain at least 1 nm away from hauled out walruses;
- Marine vessels greater than 100 feet in length should remain at least 3 nm away from hauled out walruses;
- All vessels should refrain from anchoring, or conducting tendering or fishing operations within 3 miles of hauled out walruses;
- All vessels should avoid sudden changes in engine noise, using loud speakers, loud deck equipment or other operations that produce noise when in the vicinity of walrus haulouts;
- All vessels should avoid excessive speed or sudden changes in speed or direction when approaching or departing walrus haulout areas;
- All vessels should reduce speed and maintain a minimum 0.5 nm exclusion zone around feeding walruses;
- All vessels should not operate in such a manner to separate members of a group of walruses from other members of the group; and
- All vessels should adjust speed according to weather conditions to reduce the likelihood of injury to walruses.

During the development of this proposed action, the Council communicated with the USFWS and the Qayassiq Walrus Commission to avoid

adverse impacts to walrus from this proposed action. As noted in Section 3.2.7 of the Analysis, all of the alternative management approaches considered, and this proposed action specifically, were determined to be consistent with the best practices in the guidelines established by USFWS and would not disturb walrus more than existing management. Therefore, NMFS concludes that this proposed action would have no adverse impact on walrus.

#### *Areas and Vessels Affected by This Proposed Action*

This proposed action would apply in the northern Bristol Bay. This proposed action would apply to Federal waters in statistical area 514 of the BSAI, as shown in Figure 1 to 50 CFR part 679. This proposed action would not apply in State waters. The State restricts vessel transit only 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 proposed action would only affect 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.

Prior to 2012, vessel owners were able to easily surrender an FFP for a period of time to allow that vessel to transit through Walrus Protection Areas. Some vessel owners surrendered their FFPs during the spring and summer so that these vessels could transit through Walrus Protection Areas around Round Island and Cape Peirce when operating as a tender. A tender is a vessel that is used to transport unprocessed fish or shellfish received from another vessel to an associated processor (see definition at § 679.2). In northern Bristol Bay, many vessels that are active in federally managed fisheries operate as tenders for vessels fishing in State-managed herring and salmon fisheries. These tenders receive catch in Togiak Bay, Kulukak Bay, and other bays in northern Bristol Bay and deliver that catch to processing plants in Dillingham and other communities in Bristol Bay. Prior to 2012, some vessel owners also surrendered their FFPs to allow a vessel to transit through Walrus Protection

Areas to deliver processed groundfish from fishing grounds in the Bering Sea to delivery locations in northern Bristol Bay.

Without an FFP, vessels can transit through Walrus Protection Areas and avoid the additional time, operating expenses, increased exposure to weather, and navigational challenges when operating in State waters compared to vessels that are designated on an FFP and are prohibited from entering Walrus Protection Areas. Section 1.3.2 of the Analysis describes the factors affecting vessels that are prohibited from transiting through Walrus Protection Areas. The following paragraphs summarize these factors.

On January 1, 2012, NMFS implemented Amendment 83 to the GOA FMP (76 FR 74670, December 1, 2011; corrected 76 FR 81872, December 29, 2011). Regulations implementing Amendment 83 to the GOA FMP (Amendment 83) limited the ability of vessel owners to easily surrender an FFP. An FFP is issued for 3 years under the FFP application process and is in effect from the effective date through the expiration date, unless it is revoked, suspended, surrendered (see regulations at § 679.4(b)(4)(i)). NMFS will not reissue a surrendered FFP with certain endorsements (see regulations at § 679.4(b)(4)(ii)); therefore, a vessel owner cannot surrender an FFP more than once in a 3-year period to transit the Walrus Protection Areas.

NMFS intended the regulations implementing Amendment 83 to allow the proper tracking and accounting of Federal fishery allocations. NMFS did not intend the regulations to specifically limit the ability of vessel owners to surrender FFPs to transit through Walrus Protection Areas when operating as tenders or delivering processed groundfish. However, the regulations implementing Amendment 83 require vessel owners to either surrender their FFPs to transit through Walrus Protection Areas when operating as tenders or delivering processed groundfish and be prohibited from deploying fishing gear in Federal waters for up to 3 years, or retain their FFPs and be prohibited from transiting through Walrus Protection Areas.

Vessel owners prefer to transit through the Walrus Protection Areas north of Round Island because transiting

to the north and outside of Walrus Protection Areas requires vessels to transit through shallower waters in State waters. Transit through shallower waters can be more difficult to navigate and may create additional safety concerns. Transiting to the south of Round Island and outside of the Walrus Protection Areas requires vessels to transit around Round Island and through Hagemeister Strait. This route adds considerable distance and time to each transit, which increases fuel costs and potentially exposes vessels to more adverse weather conditions for a longer period of time. Transit through Hagemeister Strait also puts vessels in close proximity (i.e., within 3 nm) to a walrus haulout on the southern tip of Hagemeister Island. This vessel traffic may disturb walrus using the haulout on Hagemeister Island. An alternative route that would allow vessels designated on FFPs to transit through a portion of the Walrus Protection Areas north of Round Island could reduce vessel transits through Hagemeister Strait and the potential for disturbance to walrus using the haulout on Hagemeister Island.

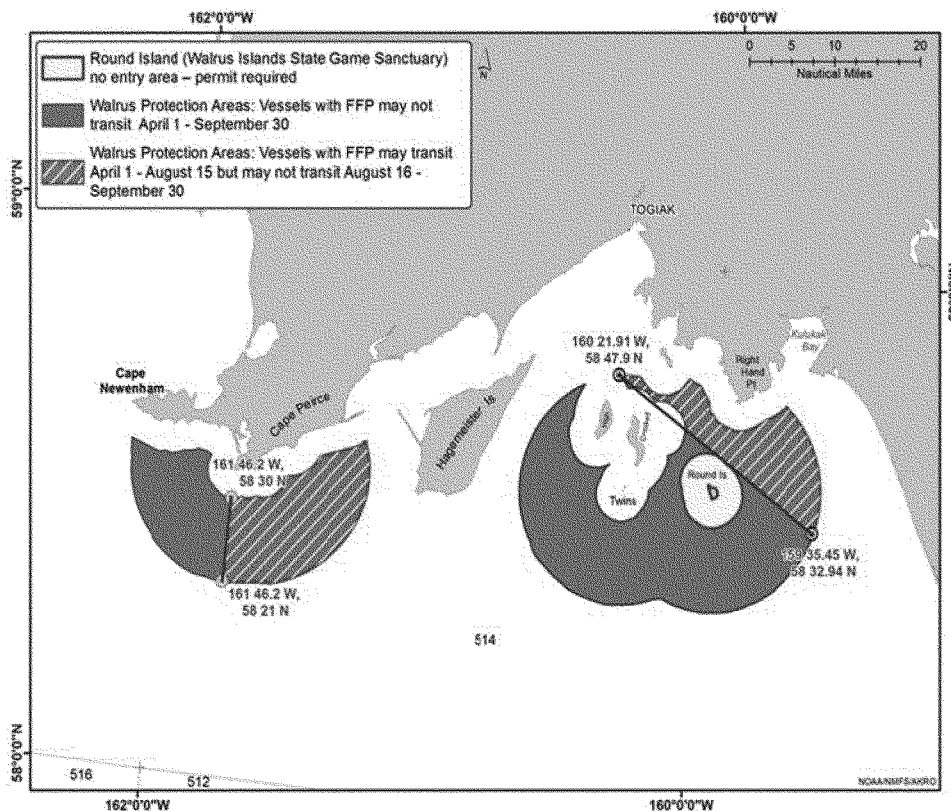
Currently, vessels can transit through State waters (from 0 to 3 nm from the shore) near Cape Peirce while tendering herring or salmon from fishing locations near Cape Peirce, or when delivering groundfish in northern Bristol Bay. As noted in Section 3.2.7.3 of the Analysis, USFWS has not monitored walrus in the Cape Peirce area for disturbance and the incidence of disturbance at Cape Peirce is not known. However, vessels transiting through State waters (i.e., within 3 nm of Cape Peirce) may be more likely to disturb walrus. An alternative route that would allow vessels designated on FFPs to transit through a portion of the Walrus Protection Areas east of Cape Peirce could reduce vessel transits through State waters near Cape Peirce and the potential for disturbance to walrus using the haulout at Cape Peirce.

#### **The Proposed Action**

This proposed action would allow vessels designated on FFPs to enter and transit through specific areas of the Walrus Protection Areas near Round Island and Cape Peirce. These transit areas are shown in Figure 1 below.

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



The Council recommended and NMFS proposes these transit areas based on information in Sections 3.7 and 4 of the Analysis indicating that allowing vessels designated on FFPs to transit areas near Round Island and Cape Peirce would: (1) Not increase potential disturbance of walrus on Round Island and Cape Peirce; (2) not be expected to increase vessel traffic through Walrus Protection Areas, particularly when compared to vessel traffic patterns prior to the implementation of Amendment 83; (3) restore the ability for vessels designated on an FFP that historically served as tenders for the northern Bristol Bay herring and salmon fisheries before implementation of Amendment 83 to transit through Walrus Protection Areas; (4) restore the ability of vessels designated on an FFP that delivered processed groundfish to northern Bristol Bay before implementation of Amendment 83 to transit through Walrus Protection Areas; and (5) reduce the potential for disturbance to walrus using haulouts on Hagemeister Island and Cape Peirce. The following sections describe proposed transit areas near Round Island and Cape Peirce and a proposed prohibition to vessels

designated on FFPs from deploying fishing gear in Walrus Protection Areas.

#### *Transit Area Near Round Island*

This proposed action would add regulations at § 679.22(a)(4)(ii) to establish a transit area through the Walrus Protection Areas near Round Island. This proposed action would establish 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. (Please 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 walrus 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 proposed action would not allow vessels designated on an FFP to transit within 3 nm of Round Island or The Twins.

The Council recommended and NMFS proposes this transit area to maintain suitable protection for walrus on Round Island and to allow tenders and vessels delivering

groundfish access to a transit route north of Round Island. NMFS expects this proposed transit area to reduce the potential for vessels to transit near Hagemeister Island, a known walrus haulout, because vessels would be allowed to transit north of Round Island and to avoid the route near Hagemeister Island. This proposed action would also allow vessels to transit through Federal waters further from shore and thereby reduce transit through shallower State waters that are more difficult to navigate.

The transit area near Round Island would open April 1 because this proposed action is intended 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 would be closed after August 15 because of the following: (1) The herring and most salmon fisheries are completed by August 15, and tender vessels 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 would reduce vessel traffic near walrus haulouts that could interfere with vessels used for the subsistence harvest of walrus on Round Island beginning in September of each year. NMFS notes that vessels designated on FFPs would still be prohibited from entering and transiting through the Walrus Protection Areas near Round Island after August 15 through September 30. NMFS expects that this prohibition would not adversely affect vessels designated on FFPs because tendering operations and groundfish deliveries in northern Bristol Bay do not occur during the August 15 through September 30 time period.

#### *Transit Area Near Cape Peirce*

This proposed action would add regulations at § 679.22(a)(4)(ii) to establish transit areas through the Walrus Protection Areas at Cape Peirce. This proposed action would establish a transit area in the EEZ near Cape Peirce that would be open 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. (Please see Figure 1 of this preamble.) This transit area is at least 3 nm from Cape Peirce at its closest point.

The Council recommended and NMFS proposes the transit area through the Walrus Protection Areas near Cape Peirce to 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 that the transit area will reduce the likelihood of disturbance to walrus at the Cape Peirce Walrus Protection Areas.

The transit area would be open from April 1 through August 15 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 would facilitate vessel transits for tendering and groundfish deliveries. NMFS notes that vessels designated on FFPs would still be prohibited from entering and transiting through the Walrus Protection Areas near Cape Peirce after August 15 through September 30. NMFS expects this prohibition would not adversely affect vessels designated on FFPs because tendering operations and groundfish deliveries in northern Bristol Bay do not occur during the August 16 through September 30 period.

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

This proposed action would add regulations at § 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 proposed action is intended to remove a prohibition that limits vessels from entering and transiting through Walrus Protection Areas. This proposed action is not intended to allow vessels designated on FFPs to fish in Walrus Protection Areas from April 1 through September 30. Section 3.1 of the Analysis notes that this proposed action would not be expected to affect the timing, duration, effort, or harvest levels in the fisheries in northern Bristol Bay because this proposed action would 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 proposed prohibition would maintain the status quo prohibition on deploying fishing gear in Walrus Protection Areas. Therefore, this proposed action would not affect any existing fishing operations.

#### **Classification**

Pursuant to section 304(b) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed action is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed action has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

#### *Regulatory Impact Review*

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. A copy of this analysis is available from NMFS (see **ADDRESSES**).

#### *Initial Regulatory Flexibility Analysis*

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. An IRFA is required to include (a) a description of the reasons why action by the agency is being considered; (b) a succinct statement of the objectives of, and legal

basis for, the proposed rule; (c) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (d) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule; (e) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule; and (f) a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the remainder of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

The entities that could be directly regulated by the proposed 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 proposed action. Because no revenue information is available on these vessels each of these vessels were 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 FFP and could be affected by this proposed 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 Small Business Administration to define a small entity harvesting or processing

groundfish (79 FR 33647, June 12, 2014). Therefore these vessels are considered to be large entities.

None of the alternatives would modify existing reporting, recordkeeping, or other compliance requirements. No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

An IRFA requires a description of any significant alternatives to the proposed alternative that accomplish the stated objectives, are consistent with applicable statutes, and that would minimize any significant economic impact of the proposed action on small entities. The IRFA 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 proposed action. The proposed action is 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 proposed action 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 the proposed action. However, these alternatives were not analyzed because they do not meet the purpose and need of the proposed action to maintain protection of walrus in these important haulout sites.

#### *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), 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 will provide a copy of this 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 proposed 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. If the Secretary of Commerce approves this proposed action, a tribal

impact summary statement that addresses the four questions above will be included in the final rule.

#### **List of Subjects in 50 CFR Part 679**

Alaska, Fisheries.

Dated: September 30, 2014.

**Samuel D. Rauch III,**

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

For reasons set out in the preamble, 50 CFR part 679 is proposed to be 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.

■ 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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