

May 15, and from September 15–December 31, except as provided in paragraph (b)(1) of this section; the restrictions and requirements specified in paragraph (a) of this section apply to the Mid-Coast Closure Area, which is the area bounded by straight lines connecting the following points in the order stated.

#### MID-COAST CLOSURE AREA

Point	N. Lat.	W. Long.
MC1 .....	42°30'	(1)
MC2 .....	42°30'	70°15'
MC3 .....	42°40'	70°15'
MC4 .....	42°40'	70°00'
MC5 .....	43°00'	70°00'
MC6 .....	43°00'	69°30'
MC7 .....	43°15'	69°30'
MC8 .....	43°15'	69°00'
MC9 .....	(2)	69°00'

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Maine shoreline.

(3) *Massachusetts Bay Closure Area.* From February 1–April 30, except as provided in paragraph (b)(2) of this section, the restrictions and requirements specified in paragraph (a) of this section apply to the Massachusetts Bay Closure Area, which is the area bounded by straight lines connecting the following points in the order stated.

#### MASSACHUSETTS BAY CLOSURE AREA

Point	N. Lat.	W. Long.
MB1 .....	42°30'	(1),
MB2 .....	42°30'	70°30'
MB3 .....	42°12'	70°30'
MB4 .....	42°12'	70°00'
MB5 .....	(2)	70°00'
MB6 .....	42°00'	(2),
MB7 .....	42°00'	(1)

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Cape Cod shoreline.

(4) *Cape Cod South Closure Area.* From February 1–April 30, except as provided in paragraph (b)(3) of this section, the restrictions and requirements specified in paragraph (a) of this section apply to the Cape Cod South Closure Area, which is the area bounded by straight lines connecting the following points in the order stated.

#### CAPE COD SOUTH CLOSURE AREA

Point	N. Lat.	W. Long.
CCS1 .....	(1)	71°45'
CCS2 .....	40°40'	71°45'
CCS3 .....	40°40'	70°30'
CCS4 .....	(2)	70°30'

<sup>1</sup> Rhode Island shoreline.

<sup>2</sup> Massachusetts shoreline.

(b) For the purposes of this subpart, a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz ( $\pm 2$  kHz) sound at 132 dB ( $\pm 4$  dB) re 1 micropascal at 1 m, lasting 300 milliseconds ( $\pm 15$  milliseconds), and repeating every 4 seconds ( $\pm .2$  seconds). An operating and functional pinger must be attached at the end of each string of the gillnets and at the bridle of every net within a string of nets.

(1) Vessels, subject to the restrictions and regulations specified in paragraph (a) of this section, may fish in the Mid-coast Closure Area from September 15 through December 31 of each fishing year, provided that pingers are used in accordance with the requirements of paragraph (b) of this section.

(2) Vessels, subject to the restrictions and regulations specified in paragraph (a) of this section, may fish in the Massachusetts Bay Closure Area from February 1 through the last day of February and from April 1–April 30 of each fishing year, provided that pingers are used in accordance with the requirements of paragraph (b) of this section.

(3) Vessels, subject to the restrictions and regulations specified in paragraph (a) of this section, may fish in the Cape Cod South Closure Area from February 1 through the last day of February and from April 1–April 30 of each fishing year, provided that pingers are used in accordance with the requirements of paragraph (b) of this section.

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 679

[Docket No. 970801188–7188–01; I.D. 070797C]

RIN 0648–AJ45

##### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Prohibited Species Catch Limit for *Chionoecetes Opilio* Crab

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

**ACTION:** Proposed rule; proposed change to 1997 final groundfish harvest specifications; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 40 to the

Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This rule would establish a prohibited species catch (PSC) limit for *Chionoecetes opilio* in a new *C. opilio* Bycatch Limitation Zone (COBLZ) of the Bering Sea. Upon attainment of a *C. opilio* bycatch allowance apportioned to a particular trawl fishery category, the COBLZ would be closed to directed fishing for species in that trawl fishery category. This measure is necessary to protect the *C. opilio* stock in the Bering Sea, which has declined to a level that presents a conservation problem. This measure is intended to accomplish the objectives of the FMP with respect to the management of the Bering Sea and Aleutian Islands management area (BSAI) groundfish fishery.

**DATES:** Comments on the proposed rule must be received by September 29, 1997.

**ADDRESSES:** Comments should be sent to Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the amendment may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501–2252; telephone: 907–271–2809.

**FOR FURTHER INFORMATION CONTACT:** Kim S. Rivera, 907–586–7228.

#### SUPPLEMENTARY INFORMATION:

##### Background

The U.S. groundfish fisheries of the BSAI in the exclusive economic zone are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and is implemented by regulations for the fisheries off Alaska at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council has submitted Amendment 40 for Secretarial review and a Notice of Availability (NOA) of the FMP amendment was published on July 15, 1997 (62 FR 37860). Comments on this proposed rule are invited and must be received on or before September 29, 1997. Public comments on the FMP amendment and the proposed rule must be received on or before September 15, 1997, to be

considered in the approval/disapproval decision on Amendment 40.

Recruitment of Bering Sea *C. opilio* stocks is at a relatively low level, based on recent NMFS bottom trawl survey data. The 1996 *C. opilio* season produced only 64.6 million lb (29,302 metric tons) for the 235 vessels participating. This is the lowest catch since 1984. Survey data from 1996 indicate that adult males are abundant, but females and pre-recruits are becoming less abundant.

The groundfish fisheries incidentally catch crab. An objective of the FMP is to minimize the impact of groundfish fisheries on crab and other prohibited species, while providing for rational and optimal use of the region's fishery resources. All gear types used to catch groundfish have some potential to incidentally catch crab, but the large majority of crab bycatch occurs in trawl fisheries for flatfish.

In view of this FMP objective, the Council initiated an assessment in January 1995 of potential measures to further limit crab bycatch in the groundfish fisheries. At its January 1996 meeting, the Council requested that a suite of crab bycatch management measures be examined in one package, so that the impacts of these measures could be analyzed in a comprehensive manner. This Council initiative also was responsive to increasing concern about the potential impact of crab bycatch on declining stocks and future harvests in the commercial crab fisheries. Proposed alternatives included the establishment of bycatch limits for *C. opilio*. To date, bycatch limits for *C. opilio* have never been established for Bering Sea trawl fisheries.

In June 1996, the Council formed an industry work group to review proposed PSC limits for *C. opilio*. This work group consisted of three crab fishery representatives, three trawl fishery representatives, and one shoreside processing representative. The group met November 6-7, 1996, and came to a consensus on a PSC limit for *C. opilio*, based on the best available scientific information on the abundance and distribution of the specified crab species and their rate of bycatch in fisheries for certain species of groundfish. The agreement negotiated by affected industry groups resulted in a proposal for: (1) Establishment of a *C. opilio* COBLZ, (2) an annual specification of a PSC limit for *C. opilio* in the COBLZ based on the total abundance of *C. opilio* as indicated by the most recent NMFS bottom trawl survey, and (3) establishment of a minimum and maximum PSC limit. At its December 1996 meeting, the Council endorsed the

industry work group agreement and recommended that NMFS proceed to establish the COBLZ and implement a PSC limit for *C. opilio* under Amendment 40 to the FMP.

### **C. opilio Bycatch Limitation Zone (COBLZ)**

The bycatch of *C. opilio* in the BSAI groundfish fisheries is highest in the areas north and east of the Pribilof Islands, corresponding to Federal reporting areas 513, 514, and 521. Relatively few *C. opilio* are taken in Zone 1 (Federal reporting areas 508, 509, 512, and 516). About 75 percent of *C. opilio* bycatch comes from Zone 2 (Federal reporting areas 513, 517, and 521), which encompasses much of the adult population. In 1995, 90 percent of the *C. opilio* bycatch in Zone 2 was from Federal reporting areas 513 and 521. Federal reporting area 517 exhibits relatively low abundance of and low bycatch of *C. opilio*. During 1992 through 1994, the average annual *C. opilio* bycatch in Zone 2 was about 10.8 million crabs, or about 0.11 percent of the NMFS total population index. Bycatch of *C. opilio* in 1995 and 1996 was much lower than in previous years, totaling 5.4 million and 3.9 million crabs, respectively. Of the total, 4.3 million and 3.4 million *C. opilio* were taken in Zone 2 in 1995 and 1996, corresponding to 0.05 and 0.06 percent of the total population index, respectively.

The proposed COBLZ encompasses nearly the entire distribution of *C. opilio* in the Bering Sea. The proposed COBLZ includes Federal reporting areas 513, 524, most of 521, approximately half of 523, and a small portion of 514. Only a small number of *C. opilio* are found to the south, outside of this area. Very little fishing effort for flatfish has occurred to the south of the COBLZ. The Council believed that the COBLZ would offer more protection to the *C. opilio* stock than alternative areas examined in the EA/RIR/IRFA.

The proposed COBLZ within the EEZ is an area defined as that portion of the Bering Sea Subarea north of 56°30' N. lat. that is west of a line connecting the following coordinates in the order listed:

56°30' N. lat.	165°00' W. long.
58°00' N. lat.	165°00' W. long.
59°30' N. lat.	170°00' W. long.

and north along 170°00' W. long. to its intersection with the U.S.-Russian Boundary.

### **Establishment of a *C. opilio* PSC Limit in the COBLZ**

Amendment 40 would authorize the annual specification of a *C. opilio* PSC limit for the COBLZ. The *C. opilio* PSC limit would be set at 0.1133 percent of the total Bering Sea abundance as indicated by the most recent NMFS bottom trawl survey, with a minimum PSC limit of 4.5 million crabs and a maximum PSC limit of 13 million crabs.

The bycatch of *C. opilio* in the BSAI groundfish fisheries totaled 5.4 million and 3.9 million in 1995 and 1996, respectively, which is a significant reduction from 17.7 million in 1992. About 99 percent of the *C. opilio* bycatch occurs in the trawl fisheries. The yellowfin sole fishery accounts for most of the *C. opilio* bycatch (70 percent of 1992-1994 average).

The *C. opilio* PSC limit would be apportioned among trawl fishery categories as defined in § 679.21(e)(3). The sum of all bycatch allowances of the trawl fishery categories would equal the *C. opilio* PSC limit. Upon attainment of a *C. opilio* bycatch allowance apportioned to a particular trawl fishery category, the COBLZ would be closed to directed fishing for species in that trawl fishery category, except for pollock with nonpelagic trawl gear, according to § 679.21(e)(7)(i).

The Council's proposed *C. opilio* PSC limit is an effort to protect further the stocks of Bering Sea *C. opilio* by limiting the incidental take of this species when the stock is depressed. The proposed criteria for the annual specification of the *C. opilio* PSC limits were developed by the Council-appointed industry work group.

### **Implementation in 1997**

Estimation of prohibited species bycatch uses both observer and industry reports, which provide groundfish and prohibited species catch by Federal reporting area. Therefore, the catch estimation programs currently used by NMFS to monitor PSC limits are constrained by Federal reporting areas. The COBLZ as defined includes portions of existing Federal reporting areas. Therefore, NMFS must revise its current catch monitoring programs to allow for the monitoring of the annual *C. opilio* PSC limit in the COBLZ. These revisions cannot be completed before 1998 for programmatic reasons. If Amendment 40 is approved, monitoring of the *C. opilio* PSC limit in 1997 would be extended to Federal reporting areas 513, 514, 521, 523, and 524. The resulting combined area exceeds the boundaries of the proposed COBLZ. Based on the abundance of *C. opilio*

estimated from the 1996 NMFS trawl survey (5.4 billion crabs), the PSC limit for *C. opilio* in 1997 would have been 6,147,000 crabs in the COBLZ. In 1997, the PSC limit of 6,147,000 would be adjusted upward by 10 percent, for a total PSC limit of 6,760,000 crabs, to account for the larger area being monitored. *C. opilio* bycatch accrued from January 1 until publication of the final rule would apply to all fisheries that take *C. opilio* in 1997.

The industry work group proposed that until further information is available to suggest how best to apportion the *C. opilio* bycatch among the trawl fishery categories, the 1997 *C. opilio* PSC limit be a single bycatch allowance for all the trawl fisheries.

### Economic Considerations

Estimates based on a Bering Sea simulation model using 1993 and 1994 fishery data indicate that a trawl fishery closure based on a *C. opilio* PSC limit similar to that proposed in this rule would lead to a slight decrease in the net economic benefits to the Nation over the status quo (the model run assumed a closure area encompassing the entire Bering Sea outside of Zone 1 and a PSC limit of 7.32 million crabs). The decrease in net economic benefits to the Nation, had the assumed closure and PSC limit been effective during those years, would have been approximately \$771,000 and approximately \$11.5 million using 1993 and 1994 data, respectively. However, given the level of uncertainty inherent in the data and in the model procedures, these predicted changes in net economic benefits to the Nation are probably not great enough to indicate an actual change from the status quo. In 1993 and 1994, between 12 and 14 million crabs were caught as bycatch. Using 1995 or 1996 data when fewer crabs were caught as bycatch, the model would be expected to estimate lower impacts.

Implementation of the proposed measure, along with area closures to protect red king crab under Amendment 37 (61 FR 65985, December 16, 1996), and closures to protect *C. bairdi* upon attainment of a PSC limit under Amendment 41 (62 FR 13839, March 24, 1997) may have cumulative effects on groundfish trawl fisheries. As noted by the Council's Scientific and Statistical Committee, time and area closures cause temporal and spatial shifts in groundfish fishing effort. With each additional bycatch restriction, options for the groundfish trawl fleets are reduced, resulting in effort shifts that could increase the bycatch of other prohibited species. However, these

tradeoffs will occur with any protection closure that may be implemented.

Because the proposed minimum and maximum PSC limits for *C. opilio* were developed from historical bycatch data, the groundfish trawl fisheries may not be substantially impacted if the PSC limit can be optimally allocated among trawl fisheries. The potential benefit of setting minimum and maximum PSC limits is that they would allow bycatch levels to fluctuate with crab abundance and would temper annual variability in PSC limits caused by trawl survey abundance estimates.

### Proposed Changes to the Final 1997 Specifications of Prohibited Species Bycatch Allowances for the BSAI Trawl Fisheries

As part of the annual BSAI groundfish specification process, the Council recommended PSC allowances for the BSAI trawl fisheries at its December 1996 meeting. NMFS has published in the **Federal Register** the final 1997 BSAI groundfish specifications that include the PSC allowances for the trawl fisheries (62 FR 7168, February 18, 1997). Table 7 of the final 1997 PSC allowances for the BSAI trawl fisheries would be amended by adding *C. opilio* to the list of prohibited species in the first column under the "Trawl Fisheries" category; by adding a fifth column titled "COBLZ" and the proposed *C. opilio* PSC limit allowance total, 6,760,000, under that heading; and adding footnote 3 indicated below, as follows to add the proposed *C. opilio* PSC limit:

TABLE 7.—FINAL 1997 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL FISHERIES

Trawl fisheries	COBLZ <sup>3</sup>
<i>C. opilio</i> , number of animals .....	6,760,000

<sup>3</sup>The COBLZ, or *C. opilio* Bycatch Limitation Zone, is defined at § 679.21(e)(7)(iv)(B). For 1997 only, the PSC limit for the COBLZ is monitored in Federal reporting areas 513, 514, 521, 523, and 524.

### Classification

At this time, NMFS has not determined that the FMP amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. Based on the analysis, it was determined that this proposed rule could have a significant economic impact on a substantial number of small entities. Many trawl vessels and processors participating in the BSAI groundfish fishery could be affected by this proposed action. Catcher vessels harvesting groundfish in the BSAI are considered small entities and would be affected by the new *C. opilio* PSC limits. In 1995, 122 trawl catcher vessels harvested BSAI groundfish. Based on the best available information, NMFS anticipates that this proposed rule could result in over a 5 percent reduction in gross revenues for any one of these vessels. Therefore, this proposed rule could have a significant impact on a substantial number of small entities. A copy of this analysis is available from the Council (see ADDRESSES).

Consistent with the stated statutory objectives, the IRFA must discuss significant alternatives to the proposed rule, which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact on small entities. The no action alternative would establish no PSC limit for *C. opilio* for all groundfish fisheries, including small entities, which would not accomplish the Council's objective of reducing bycatch, especially if the BSAI allocations of flatfish are increased in the future. The alternative of establishing a fixed limit of *C. opilio* that, upon attainment, would close affected trawl fisheries in Zone 2 unless the optimum limit was specified prior to the fishing season was not selected, because if the optimum limit was not correctly specified in advance certain trawl fisheries (e.g., yellowfin sole fishery) could be adversely impacted. The alternative of setting a fixed limit for Zone 2 of *C. opilio* within a specific percentage of the NMFS bottom trawl survey index was not selected, because Zone 2 does not correspond to crab distribution as does the preferred COBLZ, which was proposed specifically for crab bycatch management. Alternatives that addressed modifying reporting requirements for small entities or the use of performance rather than design standards for small entities were not considered by the Council or in this proposed rule. These alternatives are not relevant to this proposed action. Exemptions for small entities from this proposed action would not be appropriate in that the objective of the

action to further limit *C. opilio* bycatch in the BSAI groundfish fisheries could not be adequately addressed.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 7, 1997.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the 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 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq., 1801 et seq., and 3631 et seq.

2. In § 679.2, the definition of “C. Opilio Bycatch Limitation Zone” and “U.S.-Russian Boundary” is added in alphabetical order to read as follows:

§ 679.2 Definitions.

\* \* \* \* \*

C. Opilio Bycatch Limitation Zone (COBLZ) (see § 679.21(e)(7)(iv)(B)).

\* \* \* \* \*

U.S.-Russian Boundary means the seaward boundary of Russian waters as defined in Figure 1 of this part.

\* \* \* \* \*

3. In § 679.21, paragraphs (e)(1)(iii) through (vi) are redesignated as paragraphs (e)(1)(iv) through (vii), respectively, a new paragraph (e)(1)(iii) is added, paragraphs (e)(3)(ii)(A) and (C) and (e)(6) are revised, paragraphs (e)(7)(iv) through (vii) are redesignated as paragraphs (e)(7)(v) through (viii), and a new paragraph (e)(7)(iv) is added to read as follows:

§ 679.21 Prohibited species bycatch management.

\* \* \* \* \*

(e) \* \* \* (1) \* \* \*

(iii) C. opilio. (A) (Applicable through December 31, 1997). The PSC limit of C. opilio caught by trawl vessels while engaged in directed fishing for groundfish in reporting areas 513, 514, 521, 523, and 524 is 6,760,000 animals.

(B) (Applicable after December 31, 1997). The PSC limit of C. opilio caught

by trawl vessels while engaged in directed fishing for groundfish in the COBLZ will be specified annually by NMFS under paragraph (e)(6) of this section, based on total abundance of C. opilio as indicated by the NMFS annual bottom trawl survey using the following criteria:

(1) PSC Limit. The PSC limit will be 0.1133 percent of the total abundance, unless;

(2) Minimum PSC Limit. If 0.1133 percent multiplied by the total abundance is less than 4.5 million, then the minimum PSC limit will be 4.5 million animals; or

(3) Maximum PSC Limit. If 0.1133 percent multiplied by the total abundance is greater than 13 million, then the maximum PSC limit will be 13 million animals.

\* \* \* \* \*

(3) \* \* \*

(ii) Red king crab, C. bairdi, C. opilio, and halibut—(A) General. (1) Except as provided in paragraph (e)(3)(ii)(A)(2) of this section, for vessels engaged in directed fishing for groundfish in the GOA or BSAI, the PSC limits for red king crab, C. bairdi, C. opilio, and halibut will be apportioned to the trawl fishery categories defined in paragraphs (e)(3)(iv)(B) through (F) of this section.

(2) Exception. For 1997, the C. opilio PSC limit is a single bycatch allowance for the trawl fishery categories defined in paragraphs (e)(3)(iv)(B) through (F) of this section.

(B) \* \* \*

(C) Incidental catch in midwater pollock fishery. Any amount of red king crab, C. bairdi, C. opilio, or halibut that is incidentally taken in the midwater pollock fishery as defined in paragraph (e)(3)(iv)(A) of this section will be counted against the bycatch allowances specified for the pollock/Atka mackerel/“other species” category defined in paragraph (e)(3)(iv)(F) of this section.

\* \* \* \* \*

(6) Notification—(i) General. NMFS will publish annually in the Federal Register the annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual C. bairdi PSC limit, the annual C. opilio PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner

in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, as required under this paragraph (e).

(ii) Public comment. Public comment will be accepted by NMFS on the proposed annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual C. bairdi PSC limit, the annual C. opilio PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, for a period of 30 days from the date of publication in the Federal Register.

(7) \* \* \*

(iv) C. opilio, C. Opilio Bycatch Limitation Zone (COBLZ), closure. (A) Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section will catch the COBLZ bycatch allowance, or seasonal apportionment thereof, of C. opilio specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the Federal Register the closure of the COBLZ, as defined in paragraph (e)(7)(iv)(B) of this section, to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(B) C. Opilio Bycatch Limitation Zone. The C. Opilio Bycatch Limitation Zone is an area defined as that portion of the Bering Sea Subarea north of 56°30' N. lat. that is west of a line connecting the following coordinates in the order listed:

Table with 2 columns: Latitude and Longitude. Coordinates: 56°30' N. lat. 165°00' W. long., 58°00' N. lat. 165°00' W. long., 59°30' N. lat. 170°00' W. long.

and north along 170°00' W. long. to its intersection with the U.S.-Russian Boundary.

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