DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 900387-0183]

RIN 0648-AD13

Listing of Steller Sea Lions as Threatened Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS) NOAA, Commerce.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: An emergency rule published April 5, 1990 (55 FR 12645) listing the Steller (northern) sea lion as threatened will expire December 3, 1990. In a separate notice of proposed rulemaking, NMFS is proposing to list the Steller sea lion as a threatened species under the Endangered Species Act of 1973 (ESA) with protective measures similar to those contained in the emergency rule. In this advance notice of proposed rulemaking, NMFS is requesting comments to assist in developing a proposed rule that will consider the designation of critical habitat and a broader range of conservation measures. Public comments received will be considered in conjunction with recommendations by the Steller Sea Lion Recovery Team and the Marine Mammal Commission.

DATES: Comments must be received by August 20, 1990.

ADDRESSES: Comments should be mailed to Dr. Nancy Foster, Director, Office of Protected Resources (F/PR), NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, Chief, Protected Species Management Division, Silver Spring, MD, 301-427-2322.

SUPPLEMENTARY INFORMATION: On November 21, 1989, the Environmental Defense Fund and 17 other environmental organizations petitioned NMFS for an emergency rule listing the Steller sea lion as endangered and to initiate a rulemaking to make that emergency listing permanent. Under section 4 of the Endangered Species Act, NMFS determined that the petition presented substantial information indicating the action may be warranted and requested comments (February 22, 1990, 55 FR 6301).

On April 5, 1990, NMFS published an emergency interim rule (55 FR 12645) listing the Steller sea lion as a threatened species under ESA and establishing conservation regulations as emergency interim measures to begin the population recovery process. The interim measures prohibit shooting at or near Steller sea lions, establish a 3-nautical mile buffer zone around certain rookeries in Alaska in which all vessel traffic is prohibited, and limit the number of Steller sea lions that may be killed incidental to commercial fishing. Also, as a result of the emergency listing, Federal agencies will have to consult in accordance with section 7 of the ESA to ensure that their actions are not likely to jeopardize the continued existence of the species.

In March 1990, NMFS commissioned a recovery team for the Steller sea lion. The team held its first meeting on April 27, 1990. A second meeting was held on June 13, 1990. The team is scheduled to meet again on July 23, 1990 in Anchorage, Alaska. A draft recovery plan describing site-specific management actions necessary for recovery and criteria for determining when the species can be removed from the list of endangered and threatened species is scheduled to be available in late July. In addition, the team will provide estimates of the time and cost to carry out the recommended recovery measures and any areas that should be considered for critical habitat.

Current Steller sea lion research conducted by NMFS includes aerial surveys from the Kenai Peninsula to Kiska Island, Alaska. Adults and juveniles will be counted from photographs obtained by flying in fixed-wing airplanes at low levels over rookeries and haul-out sites. Counts will be compared to historical data for significant differences. Pups will be counted by spook counts at most Gulf of Alaska and Aleutian Island rookeries. Counts obtained in 1990 will be compared to historical data for statistical significance. Under an existing scientific research permit, 24 satellite monitored tags will be attached to female sea lions at selected rookeries. The tags will transmit information on location, depth of dive, and water temperature by depth. The at-sea position information obtained from the satellite tag will be mapped and compared to rookery or haul-out location to determine the maximum, minimum, and mean distance travelled during feeding trips. Another 20 tags will be placed on females during November, 1990. The satellite tags deployed will fall from the animal during the autumn molt. Two or three satellite tags will be placed on females in Oregon during fall, 1990, and about 12 will be placed on females in the Kuril Islands during summer, 1991.

A body fitness, physiological status, and foraging energetics study will assess the relative health and fitness of sea lions in Alaska and Oregon. Body fitness will be measured by blubber thickness, lean body mass, and water content. Physiological status will be measured by blood and tissue levels of important metabolites, hematocrit, and other blood measures. Milk samples will be analyzed for nutrient content.

A stock identification study to determine if different genetic and morphological characters exist between Steller sea lions that breed in the Kuril Islands from those that breed in the Aleutian Islands, Gulf of Alaska, or Oregon and California.

Other studies to be conducted by NMFS include an analysis of fisheries data and a blood and tissue analysis. Commercial catch data, fisheries abundance data, and sea lion abundance data will be summarized by 60 square nautical mile areas near existing sea lion rookeries. These data will be statistically analyzed to determine the relative influence of commercial fish catch on sea lion abundance by correlation analysis and other statistical procedures. Existing tissue samples will be analyzed for pollutants. Blood samples will be analyzed for disease antibodies.

In proposing a rule, NMFS will consider the measures that may be needed to avoid or control impacts that may be contributing to the decline of the species, including but not limited to, the following: (1) Prey deprivation and food stress; (2) commercial fishery interactions, including incidental and direct mortality from fishing; (3) biological interactions; (4) subsistence harvesting; (5) nonhuman predator interactions; (6) effect of marine debris; (7) rookery disturbance; and (8) oil and gas development.

NMFS is requesting comments on the need for and types of conservation regulations that should be proposed. The range of alternatives suggested in comments to previous rulemaking and at public meetings have included the following: Reducing the quota for allowed mortalities incidental to commercial fishing operations; limiting trawling to daylight hours; prohibiting fishing for pollock when they are carrying roe and reducing the overall quota of groundfish; increasing the buffer zones and including buffer zones around other rookeries and haul-out areas throughout the species range; regulating subsistence taking; and designating critical habitat.

In proposing critical habitat, NMFS will consider physical and biological factors essential to the conservation of the species that may require special management consideration or protection. These habitat requirements include breeding rookeries, haulout sites, feeding areas and nutritional requirements. In describing critical habitat, NMFS will take into consideration terrestrial habitats adjacent to rookeries and their need for protection from development and other uses, such as logging or mining.

In a separate rulemaking, NMFS is proposing to list the Steller sea lion as threatened with conservation regulations similar to those contained in the previous emergency rule. The listing is being done separately to expedite the final listing of the Stellar sea lion. The final listing is scheduled to be in place within the 240-day period as described in which the emergency rule is effective.

Authority: 16 U.S.C. 1531 et seq.
Date: July 13, 1990.

William W. Fox, Jr.
Assistant Administrator for Fisheries, National Marine Fisheries Service.

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50 CFR Part 227

#89-90

[Docket No. 900387-0182]

RIN 0648-AD13

Listing of Steller Sea Lions as Threatened Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: The number of Steller (northern) sea lions (*Eumetopias jubatus*) observed on certain rookeries in Alaska has declined by 63% since 1985 and by 82% since 1960. Declines are occurring in previously stable areas and are accelerating. Significant declines have also occurred on the Kuril Islands, USSR. NMFS is proposing to list the Steller sea lion throughout its range as threatened under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA) and is proposing to establish protective measures similar to those contained in the previous emergency rule (April 5, 1990, 55 FR 12645). More comprehensive protective regulations and critical habitat designation are being considered in a separate rulemaking. These actions are being separated to expedite the final listing of the Steller sea lion.

DATES: Comments on the proposed rule must be received by September 18, 1990. Requests for public hearings must be received by September 4, 1990.

ADDRESSES: Comments on this proposed rule, requests for supporting documents, and requests for a public hearing should be sent to Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs (F/PR), NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, Chief, Protected Species Management Division, Silver Spring, MD, 301-427-2322.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1989, the Environmental Defense Fund and 17 other environmental organizations petitioned NMFS for an emergency rule listing the Steller sea lion as an endangered species and to initiate a rulemaking to make the listing permanent. Under section 4 of the ESA, NMFS determined that the petition presented substantial information indicating the action may be warranted and requested comments (February 22, 1990, 55 FR 6301). On April 5, 1990 (55 FR 12645), NMFS issued an emergency interim rule listing the Steller sea lion as threatened and requested comments.

In response to the emergency listing, NMFS appointed a Steller sea lion recovery team, which held its first meeting on April 27, 1990. The team is responsible for drafting a recovery/conservation plan and providing recommendations to NMFS on necessary protective regulations for the Steller sea lion. A draft recovery plan is expected to be made available to NMFS by late July.

The emergency listing is effective for 240 days and expires on December 3, 1990. There is not sufficient time to issue a proposed rule with comprehensive protective regulations including a proposed critical habitat designation, solicit public comments, provide an opportunity for public hearings, conduct the required regulatory and economic analyses, and issue a final rule by December 3, 1990. NMFS believes it is imperative to avoid a lapse in listing and to continue protective measures similar to those in the emergency rule. Further, NMFS believes it is preferable to consider the views of the recovery team prior to publishing comprehensive proposed protective regulations. Therefore, NMFS issues this proposed rule with protective regulations similar to those of the emergency rule. More comprehensive protective regulations and critical habitat will be proposed in a separate rulemaking, after considering the recommendations of the Recovery Team, the Marine Mammal Commission, and the public (See Advance Notice of Proposed Rulemaking in this issue of the Federal Register).

Comments on Emergency Interim Rule

NMFS received eight comments specifically in response to the emergency rule, including comments from Congressman Norm Dicks and the Marine Mammal Commission. Comments pertinent to the listing classification and regulations are discussed below. The comments received concerning the recovery team, funding priorities, necessary research and other actions necessary for the conservation of the species are being considered by NMFS in developing an overall recovery program.

Process

One commenter objected to the publication of the emergency rule without the opportunity for public comment on the draft.

NMFS does not release draft proposed or final rules for public comment. Under section 4(b)(7) of the ESA, emergency regulations may be issued without prior opportunity for public comment if there is a significant risk to the well-being of the species. On February 22, 1990, NMFS published a notice in the Federal Register concerning the petition to list the Steller sea lion as endangered and requested public comment.

Listing Classification

Some commenters believed that the species should be listed as endangered rather than threatened based on the dramatic and continuing declines in abundance in Alaska. One commenter noted that if the rate of decline observed between 1985 and 1989 persists, by the year 2000, the population in the area from Kiska Island to Kenai Peninsula will have been reduced to about 1% of its 1960 level. Further, Steller sea lion numbers in other areas have experienced substantial declines. Other commenters believed that the available information about the decline and threats does not support listing as endangered because the "danger of extinction" standard cannot be met. One commenter believed that NMFS did not justify even a threatened listing based on the listing criteria because evidence of a decline without knowledge of the causes of the decline is not sufficient justification for listing.

NMFS believes that a demonstrated decline can justify listing a species as threatened or endangered, and that precise knowledge of the reasons for the decline is not a prerequisite for listing. Each of the five factors described in section 4(a)(1) of the ESA is discussed in detail below. NMFS has determined that the Steller sea lion is a threatened species and that it is likely that this condition is caused by a combination of the factors specified under section 4(a)(1) of the ESA.

NMFS believes that the available information supports a threatened classification for the Steller sea lion rather than an endangered classification. There is not sufficient information to consider animals in different geographic regions as separate populations; therefore, the status of the entire species must be considered. Total counts of sea lions at rookeries and haulout sites throughout most of Alaska and the USSR in 1989 were about 56,000, which would indicate a total population size in this area of at least one third more than this number. There are areas where Steller sea lion abundance is stable or not declining significantly. Therefore, NMFS does not believe that the species currently is in danger of extinction throughout all or a significant portion of its range (i.e., endangered). If the declines continue at the present rate and continue to spread, NMFS will reconsider the listing classification. In this regard, the 1989 sea lion survey in Alaska is being repeated this summer, which will provide additional information regarding the species status.

One commenter believed that the available data supported the threatened listing for certain Alaska populations only and that the lack of comparable population declines from southeastern Alaska southward argues against classifying these segments as threatened.

Under the ESA, only "species" may be listed as threatened or endangered. The term "species" includes any subspecies of fish or wildlife and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (see section 3(15) of the ESA). As discussed above, NMFS does not believe that there is sufficient information to consider animals in different geographic regions as distinct population segments, and therefore NMFS proposes to list the entire species.

Three commenters requested that the listing be amended to include the California populations of Steller sea lion. One of these commenters provided significant information concerning the status of the Steller sea lion in California, noting declines since the 1930's of 90% at Ano Nuevo, 93% at the Farallon Islands and 90% at Sugarloaf Rock.

The emergency rule listed, and this rule proposes to list, the Steller sea lion throughout its range; therefore, the California populations are included. Although specific protective measures for Steller sea lions in California (such as buffer areas) are not proposed, NMFS and the Recovery Team are reviewing the status of the species throughout its range and the need for additional protective measures. In a separate rulemaking, NMFS will propose more comprehensive protective regulations and critical habitat after considering the recommendations of the Recovery Team, the Marine Mammal Commission and the public.

Inadequate Data

One commenter expressed concern over NMFS' inability to determine the cause of the Steller sea lion's population decline and emphasized the necessity to have solid scientific data on which to base management decisions for threatened species.

NMFS agrees that more information is needed to determine the cause(s) of the decline and the steps that need to be taken to reverse this trend. NMFS has expanded its research program to address some important questions. Studies have begun to determine important feeding locations by using satellite monitored tags attached to female sea lions, which should also provide information on locations of at-sea mortalities. Studies to determine stock differentiation will continue. Resource surveys on the density of sea lion prey species are proposed. Satellite-linked telemetry will be used to determine sea lion feeding areas for comparison to the findings from these surveys. The behavior of sea lions in relation to commercial fishing activities and the association between feeding sea lions and principal fishing areas will also be examined.

Emergency Protective Measures

One commenter believed that NMFS should include specific procedures for restricting fishing activities in a timely fashion when the kill quota is approached or reached.

NMFS proposes to clarify the quota provisions contained in the emergency rule to specify that if "data indicate that the quota is being approached, the Assistant Administrator will issue emergency rules to establish closed areas, allocate the remaining quota among fisheries, or take other action(s) to ensure that commercial fishing operations do not exceed the quota."

One commenter recommended that the exception for research be modified to require a permit issued under the ESA.

NMFS concurs and has proposed this requirement. The blanket exception for research in the emergency rule was made to allow essential research to continue without delays of applying for and receiving an additional permit under the ESA.

One commenter objected to the exception to the prohibitions allowing government officials to (1) take sea lions for the protection or welfare of the animal, the protection of the public health and welfare or the non-lethal removal of nuisance animals and (2) enter buffer areas to perform legitimate governmental activities.

The first provision parallels section 109(h) of the Marine Mammal Protection Act that, among other things, allows the taking of beached and stranded animals for rehabilitation purposes, an activity that may benefit the species. NMFS believes that local officials need the authority to protect the safety of their citizens when necessary. Only a very small number of animals would likely be taken for the protection of the public health and welfare or by non-lethally removal of "nuisance animals," and this provision is not likely to have any affect on the population. NMFS believes the second provision is necessary to allow government functions, such as Coast Guard activities, NOAA's nautical charting responsibilities and wildlife surveys, to continue. None of these activities is expected to significantly affect the sea lion population. Further, Federal agencies must consult under section 7(a)(2) of the ESA on any action that may affect Steller sea lions to ensure that the action is not likely to jeopardize its continued existence.

One commenter objected to the exception for navigational transit and believed that advanced approval and a showing of necessity should be required.

NMFS believes that alternative navigational routes exist and has not included this exception in this proposed rule. The exception for emergency situations is included. Therefore, any strait, narrow or pass can be used for navigation if an emergency exists in which compliance with the restriction presents a threat to the health, safety or life of a person or presents a significant threat to the vessel of property.

Two commenters objected to the exemption provision for any activity that has been conducted historically traditionally in the buffer areas for

which there is no feasible alternative to, or site for, the activity. The commenters believed that NMFS should justify this exception and detail the procedure for applying for and receiving an exemption, including required public notice and consultation with the Marine Mammal Commission.

Although NMFS expects very few exemptions, NMFS believes this provision should be retained to account for unforseen circumstances. Notice of any exemption must be published in the **Federal Register**. In developing the proposed comprehensive protective regulations, NMFS will review the exemptions and any comments received on the exemptions to determine if a regulatory exception is appropriate and if the exemption provisions should be deleted.

Additional Protective Measures

Most commenters believed that additional protective regulations are needed and that the interim protective measures under the emergency rule are inadequate. Additional protective regulations suggested include reducing the quota for allowed mortalities incidental to commercial fishing operations and establishing quotas by area with a zero quota in areas experiencing significant declines; limiting trawling to daylight hours; prohibiting the use of gill nets around rookeries; prohibiting fishing for pollock when they are carrying roe and reducing the overall quota of groundfish; increasing the buffer zone (up to a 60-mile (96.6-kilometer) radius in some areas) and including buffer zones around other rookeries and haulout areas throughout the species range; establishing protective measures off Washington, Oregon and California; regulating subsistence taking; and designating critical habitat. One commenter recommended that, if the species is listed as threatened rather than endangered, NMFS should implement a blanket prohibition on taking and importing Steller sea lions and establish appropriate exceptions.

In a separate rulemaking, NMFS will propose more comprehensive protective regulations and critical habitat after considering the recommendations of the Recovery Team, the Marine Mammal Commission and the public. NMFS does not want to delay the listing of the species while proposed protective regulations are being determined and evaluated. Further, NMFS believes it is preferable to consider the views of the recovery team prior to publishing comprehensive proposed protective regulations. Therefore, NMFS proposes to include with the proposed listing only limited protective regulations similar to those in the emergency rule.

Summary of the Status of the Species

The Steller (northern) sea lion, *Eumetopias jubatus*, ranges from Hokkaido, Japan, through the Kuril Islands and Okhotsk Sea, Aleutian Islands and central Bering Sea, Gulf of Alaska, southeast Alaska, and south to central California. There is not sufficient information to consider animals in different geographic regions as separate populations. The centers of abundance and distribution are the Gulf of Alaska and Aleutian Islands, respectively. Rookeries (breeding colonies) are found from the central Kuril Islands (45° N) to Ano Nuevo Island, California (37° N); most large rookeries are in the Gulf of Alaska and Aleutian Islands. More than 50 Steller sea lion rookeries and a greater number of haulout sites have been identified.

During the 1985 breeding season, 68,000 animals were counted on Alaska rookeries from Kenai Peninsula to Kiska Island, compared to 140,000 counted in 1956–60. A 1988 Status Report concluded that the population size in 1985 was probably below 50% of the historic population size in 1956–60 and below the lower bound of its optimum sustainable population level under the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* (MMPA). A comparable survey conducted in 1989 showed that the number observed on rookeries from Kenai to Kiska declined to 25,000 animals. This indicates a decline of about 82% from 1956–60 to 1989 in this area. The counts are not an estimate of total numbers of animals but include only those animals on the beach (excluding pups) at the time of the survey. As such, they can be used to indicate trends in abundance, rather than to estimate total species abundance. Copies of the 1988 Status Report and a 1989 Update are available from the ADDRESS listed above.

Species abundance estimates during the late 1970's ranged from 245–290,000 adult and juvenile animals. A current total population estimate is not available. However, counts at rookeries and haulout sites throughout most of Alaska and the USSR in 1989, plus estimates from surveys conducted in recent years at locations not counted in 1989, provide a minimum number for the species during 1989. The summaries of these counts and estimates are:

Alaska	53,000
WA, OR and CA	4,000
British Columbia	6,000
USSR	3,000
	66,000

Summary of Factors Affecting the Species

An endangered species is any species in danger of extinction throughout all or a significant portion of its range and a threatened species is any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the ESA. These factors as they apply to Steller sea lions are discussed below.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Steller sea lions breed on islands in the North Pacific Ocean, generally far from human habitations. There is no evidence that the availability of rookery space is a limiting factor for this species. As the number of animals continues to decline, rookeries are being abandoned and available rookery space is increasing. However, activities that result in disturbance, prey availability or other factors may be affecting the suitability of the available habitat.

The feeding habitats of Steller sea lions in Alaska may have changed. State of Alaska biologists found that populations in the Gulf of Alaska during the 1980's had slower growth rates, poorer physical fitness (lower weights, smaller girth), and lowered birth rates. Some data show a high negative correlation between the amount of walleye pollock caught and sea lion abundance trends in the eastern Aleutians and central Gulf of Alaska. It is possible that a reduction in availability of pollock, the most important prey species in most areas, is a contributing factor in the decline in the amount of Steller sea lions in western and central Alaska.

B. *Over-utilization for commercial, recreational, scientific, or educational purposes.* Between 1963 and 1972, more than 45,000 Steller sea lions pups were commercially harvested in the eastern Aleutian Islands and Gulf of Alaska. This harvest may explain the declines in these areas through the 1970's. The actual level of subsistence harvest of Steller sea lions is unknown, but is probably less than 100 animals annually, primarily at St. Paul Island in the Pribilofs during fall and winter months. This taking is not of sufficient magnitude to contribute to the overall decline. A small number have also been taken for public display and scientific research purposes.

C. *Disease or predation.* Sharks, killer whales and brown bears are known to prey on Steller sea lion pups. Mortality from sharks and bears is not believed to be significant. When sea lion abundance was high, the level of mortality from killer whales was probably not significant, but as sea lion numbers decline, this mortality may exacerbate the decline in certain areas.

Disease resulting in reproductive failure or death could be a source of increased mortality in Steller sea lions populations, but it probably does not explain the massive declines in numbers. Antibodies to two types of pathological bacteria (*Leptospira* and *Chlamydia*), marine calicivirus (San Miguel Sea Lion Virus), and seal herpesvirus were found in the blood of Steller sea lions in Alaska. Leptospires and San Miguel sea lion viruses may be associated with reproductive failures and deaths in California sea lions and North Pacific fur seals. *Chlamydia* has not been studied previously in sea lions, but is known from studies of Pribilof Island fur seals. None of these agents is thought to be a significant cause of mortality in Steller sea lions.

D. *The inadequacy of existing regulatory mechanisms.* Some protection for the Steller sea lion is provided under the MMPA, which prohibits the taking of Steller sea lions, with certain exceptions, including an interim exemption for commercial fishing. Once 1,350 Steller sea lions have been killed incidental to commercial fishing, section 114 of the MMPA requires NMFS to prescribe emergency regulations to prevent, to the maximum extent practicable, for further taking. Intentional lethal takes are prohibited. In addition, section 114(g) of the MMPA provides that regulations may be prescribed to prevent taking of a marine mammal species in a commercial fishery if it is determined that such taking is having, or is likely to have, a significant adverse impact on that marine mammal population stock. The MMPA also requires NMFS to prepare a conservation plan for Steller sea lions by December 31, 1990.

E. *Other natural or manmade factors affecting its continued existence.* Steller sea lions are taken incidental to commercial fishing operations in the Gulf of Alaska and the Bering Sea. Between 1973 and 1988, U.S. observers on foreign and joint venture vessels operating in these areas reported 3,661 marine mammals taken. Steller sea lions accounted for 90% of this observed total. Based on these observed takes and an extrapolation of total tonnage of fish caught over this time period, the total number of Steller sea lions incidentally killed by the foreign and joint venture commercial trawl fisheries during 1973–1988 is estimated at 14,000. However, since 1985, the level and rate of observed incidental take has decreased to the point where, by itself, it is not significant to account for the most recently observed declines.

Observer programs under the MMPA, and for the groundfish fisheries of Alaska under the Magnuson Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.* (Magnuson Act), will assist NMFS in determining whether the incidental take of Steller sea lions during commerical fishing operations or other observable activities are factors in the decline in the number of these animals in Alaska.

There are reports of fishermen and other people shooting adult Steller sea lions at rookeries, haulout sites, and in the water near boats, but the magnitude of this mortality is unknown. These activities also have the potential for disruption of breeding activities and use of rookeries and haulout sites.

Proposed Determination

NMFS believes the available data support the proposed threatened classification for Steller sea lions. NMFS has determined that it is likely that this condition is caused by a combination of the factors specified under section 4(a)(1) of the ESA, although the precise causes(s) are not fully understood.

The number of Steller sea lions observed on certain rookeries in Alaska declined by 63% since 1985 and by 82% since 1960. Declines are occurring in previously stable areas and are accelerating. The decline has spread from the eastern Aleutian Islands, where it began in the early 1970's, east to the Gulf of Alaska, and west to the previously stable central Aleutian Islands. Significant declines have also occurred on the Kuril Islands, USSR. However, there is not sufficient information to consider animals in different geographic regions as separate populations; therefore, the status of the entire species must be considered. Total counts of sea lions at rookeries and haulout sites throughout most of Alaska and the USSR in 1989 were about 56,000, which would indicate a total population size in this area of at least one-third more than this number. There are areas were Steller sea lion abundance is stable or not declining significantly. Therefore, NMFS does not believe that the species currently is in danger of extinction throughout all or a significant portion of its range (i.e. endangered), and proposes to list the species as threatened.

Proposed Protective Regulations

Until more comprehensive regulations are developed, NMFS proposes to adopt protective measures similar to those in the emergency interim rule, as follows:

1. *Prohibit shooting near sea lions.* Although the MMPA prohibits intentional lethal take of Steller sea lions in the course of commercial fishing, fishermen have not been prohibited from harassing sea lions that are interfering with their gear or catch by shooting at or near them. Since these practices may result in inadvertent mortalities, NMFS proposes to prohibit shooting at or within 100 yards (91.4 meters) of a Steller sea lion.

Exceptions to the shooting provisions are proposed: For activities authorized by a permit issued in accordance with the endangered species permit provisions of 50 CFR part 222, subpart C; for government officials taking Steller sea lions in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare or the nonlethal removal of nuisance animals; and for the taking of Steller sea lions for subsistence purposes under section 10(e) of the ESA.

2. *Establish Buffer Zones.* NMFS proposes to establish a buffer zone of 3 nautical miles (5.6 kilometers) around the principal Steller sea lion rookeries in the Gulf of Alaska and the Aleutian Islands. Rookeries in southeastern Alaska, east of 141 °W. longitude, have not experienced the declines reported in central and western Alaska and no buffer zones are proposed for these areas. No vessels would be allowed to operate within the 3-mile buffer zones, with certain exceptions. Similarly, no person would be allowed to approach on land closer than one-half (½) mile (0.8 kilometer) or within sight of a listed Steller sea lion rookery. On Marmot Island, no person would be allowed to approach on land closer than one and one-half (1½) miles (2.4 kilometers) from the eastern shore. Marmot Island has traditionally been the largest Steller sea lion rookery in Alaska and the eastern beaches are used throughout the year by the sea lions.

The purposes of the buffer zones include restricting the opportunities for individuals to shoot at sea lions and facilitating enforcement of this restriction; reducing the likelihood of interactions with sea lions, such as accidents or incidental takings in these areas where concentrations of these animals are expected to be high;

minimizing disturbances and interference with sea lion behavior, especially at pupping and breeding sites; and avoiding or minimizing other related adverse effects.

Exceptions to the buffer zone restrictions are proposed: For activities authorized by permits issued in accordance with the endangered species permit provisions of 50 CFR part 222, subpart C; for government officials taking Steller sea lions in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare or the nonlethal removal of nuisance animals; for government officials conducting activities necessary for national defense or the performance of other legitimate governmental activities; and for emergency situations that present a threat to the health, safety or life of a person or a significant threat to the vessel or property. Further, a mechanism is provided to allow the Director, Alaska Region, NMFS (Regional Director) to issue exemptions for traditional or historic activities that do not have a significant adverse effect on sea lions and for which there is no readily available and acceptable alternative. Notice of all such exemptions will be published in the Federal Register. There is no overall exception to the buffer zone restrictions for subsistence taking of Steller sea lions; an exemption issued by the Regional Director, would be needed.

3. *Establish Incidental Kill Quota.* When the MMPA was amended in 1988 to require emergency regulations once 1,350 Steller sea lions were incidentally killed in any year, the population numbers were based, in part, on 1985 data. In four study areas in Alaska, Steller sea lions declined by an average of 63% from 1985 to 1989. Therefore, NMFS proposed to prohibit the incidental killing of more than 675 Steller sea lions on an annual basis in Alaskan waters and adjacent areas of the U.S. Exclusive Economic Zone (EEZ) west of 141 °W. longitude. In association with the emergency rule, NMFS instituted a more efficient monitoring system. Foreign processors and domestic groundfish vessels 125 feet (38 meters) or more in length now carry observers during 100% of their operations in the EEZ of the Bering Sea and in the Gulf of Alaska. Groundfish vessels of 60 to 124 feet (18 to 38 meters) n length carry observers during 30% of eir operations in each quarter. Three ditional fisheries in Alaska that are ssified as Category I under the PA, the Prince William Sound set drift gillnet fishery for salmon and the South Unimak (Unimak and False Passes) drift gillnet fishery for salmon, will have observer coverage during the 1990 fishing season. The total incidental take of sea lions will be estimated monthly during the course of the fishing season, based on the in-season observer reports. In order to continue to monitor this quota, NMFS proposes to retain the observer authority of the emergency rule by allowing the Regional Director to place an observer on any fishing vessel. If data indicate that the quota is being approached, the Assistant Administrator for Fisheries, NOAA, will issue emergency rules to establish closed areas, allocate the remaining quota among fisheries, or take other action to ensure that commercial fishing operations do not exceed the quota.

Critical Habitat

The ESA requires that critical habitat be specified to the maximum extent prudent and determinable at the time the species is proposed for listing. NMFS intends to propose critical habitat at the earliest possible date as a part of the comprehensive protective regulations.

Additional Conservation Measures

In addition to protective regulations, conservation measures for species that are listed as endangered or threatened under the ESA include recognition, recovery actions, designation and protection of critical habitat, and Federal agency consultation. NMFS has established a Recovery Team to assist in developing a Recovery Plan for the Steller sea lion. This plan will help guide the recovery efforts of NMFS and other agencies and organizations.

Section 7(a)(2) of the ESA requires that each Federal agency insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. Federal actions most likely to affect the Steller sea lion include approval and implementation of Fishery Management Plans and regulations under the Magnuson Act; permitted activities on land near rookeries and haulout sites, such as timber, mineral and oil development; and leasing activities associated with offshore oil and gas exploration and development on the Outer Continental Shelf.

Once the Steller sea lion is listed as endangered or threatened, it is, by definition, considered depleted under the MMPA, and additional restrictions apply under the Act, such as a prohibition on taking for public display purposes.

Classification

Section 4(b)(1) of the ESA restricts the information that may be considered when assessing species for listing. Based on this limitation and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F.2d 829 (6th Cir. 1981), NMFS has categorically excluded all listing actions under the ESA from environmental assessment requirements of the National Environmental Policy Act (48 FR 4413, February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process.

List of Subjects in 50 CFR Part 227

Endangered and threatened wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.4, paragraph (f) is revised to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(f) Steller (northern) sea lion (*Eumetopias jubatus*).

3. In subpart B, § 227.12 is revised to read as follows:

§ 227.12 Steller sea lion.

(a) *Prohibitions*—(1) *No discharge of firearms.* Except as provided in paragraph (b) of this section, no person subject to the jurisdiction of the United States may discharge a firearm at or within 100 yards (91.4 meters) of a Steller sea lion. A firearm is any weapon, such as a pistol or rifle, capable of firing a missile using an explosive charge as a propellant.

(2) *No approach in buffer areas.* Except as provided in paragraph (b) of this section:

(i) No owner or operator of a vessel may allow the vessel to approach within 3 nautical miles (5.6 kilometers) of a Steller sea lion rookery site listed in paragraph (a)(3) of this section;

(ii) No person may approach on land not privately owned within one-half statutory mile (0.8 kilometers) or within sight of a Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater, except on Marmot Island; and

(iii) No person may approach on land not privately owned within one and one-half statutory miles (2.4 kilometers) or within sight of the eastern shore of Marmot Island, including the Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater.

(3) *Listed sea lion rookery sites.* Listed Steller sea lion rookery sites consist of the rookeries in the Aleutian Islands and the Gulf of Alaska listed in Table 1.

TABLE 1. LISTED STELLER SEA LION ROOKERY SITES [1]

Island	From		To		NOAA Chart	Notes
	Latitude	Longitude	Latitude	Longitude		
1. Outer I	59°20.5 N	150°23.0 W	59°21.0 N	150°24.5 W	16681	S quadrant.
2. Sugarloaf I	58°53.0 N	152°02.0 W			16580	Whole island.
3. Marmot I	58°13.0 N	151°48.0 W	58°09.5 N	151°52.0 W	16580	SE quadrant.
4. Chirikof I	55°47.5 N	155°33.5 W	55°48.5 N	155°43.0 W	16580	S quadrant.
5. Chowiet I	56°02.0 N	156°41.0 W	56°01.5 N	156°44.0 W	16013	S quadrant.
6. Atkins I	55°03.5 N	159°18.5 W			16540	Whole island.
7. Chernabura I	54°47.5 N	159°31.0 W	54°45.5 N	159°33.5 W	16540	SE corner.
8. Pinnacle Rock	54°46.0 N	161°46.0 W			16540	Whole island.
9. Clubbing Rks (N)	54°43.0 N	162°26.5 W			16540	Whole island.
9. Clubbing Rks (S)	54°42.0 N	162°26.5 W			16540	Whole island.
10. Sea Lion Rks	55°28.0 N	163°12.0 W			16520	Whole island.
11. Ugamak I	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W	16520	E end of island.
12. Akun I	54°17.5 N	165°34.0 W	54°18.0 N	165°31.0 W	16520	Billings Head Bight.
13. Akutan I	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W	16520	SW corner, Cape Morgan.
14. Bogoslof I	53°56.0 N	168°02.0 W			16500	Whole island.
15. Ogchul I	53°00.0 N	168°24.0 W			16500	Whole island.
16. Adugak I	52°54.5 N	169°09.5 W			16500	Whole island.
17. Yunaska I	52°42.0 N	170°38.5 W	52°41.0 N	170°34.5 W	16500	NE end.
18. Seguam I	52°21.0 N	172°35.0 W	52°21.0 N	172°33.0 W	16480	N coast, Saddleridge Pt.
19. Agligadak I	52°06.25N	172°54.0 W			16480	Whole island.
20. Kasatochi I	52°10.0 N	175°31.0 W	52°10.5 N	175°29.0 W	16480	N half of island.
21. Adak I	51°36.0 N	176°55.5 W	51°38.0 N	176°59.0 W	16460	SW point, Cape Yakak.
22. Gramp rock	51°29.0 N	178°20.5 W			16460	Whole island.
23. Tag I	51°33.5 N	178°34.5 W			16460	Whole island.
24. Ulak I	51°20.0 N	178°57.0 W	51°18.5 N	178°59.5 W	16460	SE corner, Hasgox Pt.
25. Semisopochnoi	51°58.5 N	179°45.5 E	51°57.0 N	179°46.0 E	16440	E quadrant, Pochnoi Pt.
25. Semisopochnoi	52°01.5 N	179°37.5 E	52°01.5 N	179°39.0 E	16440	N quadrant, Petrel Pt.
26. Amchitka I	51°23.5 N	179°26.0 E	51°22.0 N	179°23.0 E	16440	East Cape.
27. Amchitka I	51°32.5 N	178°50.0 E			16440	Column Rocks.
28. [unnamed I.]	51°45.5 N	178°24.5 E			16440	1 mi. SE of Ayugadak Pt.
29. Kiska I	51°56.5 N	177°19.0 E	51°58.0 N	177°20.5 E	16440	W central, Lief Cove.
30. Kiska I	51°53.0 N	177°13.0 E	51°54.0 N	177°14.0 E	16440	Cape St. Stephen.
31. Walrus I	57°11.0 N	169°56.0 E			16380	Whole island.

[1] Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates; or, if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.

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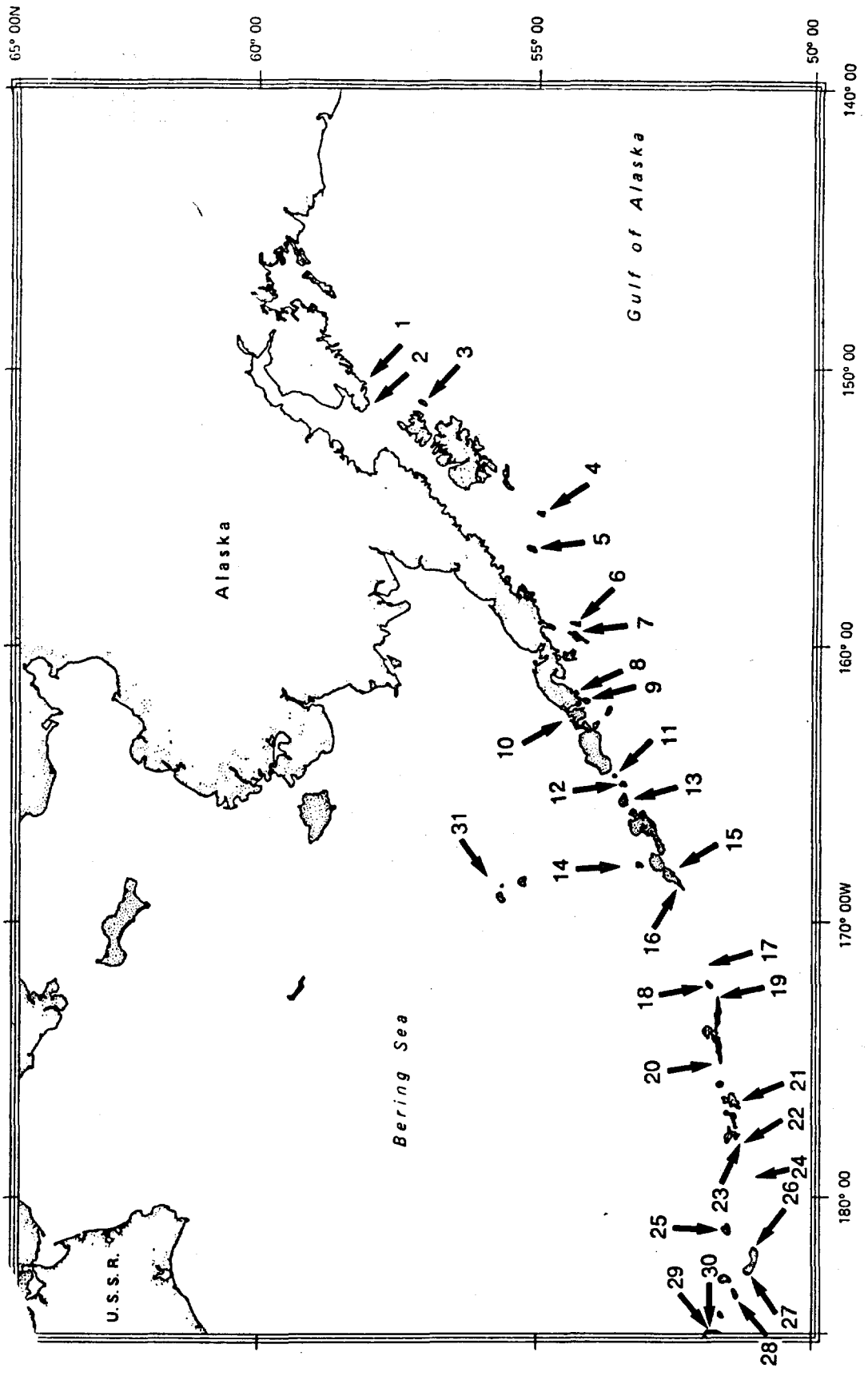
65° 00N
60° 00
55° 00
50° 00
140° 00
150° 00
160° 00
170° 00W
180° 00
Alaska
Gulf of Alaska
Bering Sea
U.S.S.R.
1
2
3
4
5
6
7
8
9
10
11
12
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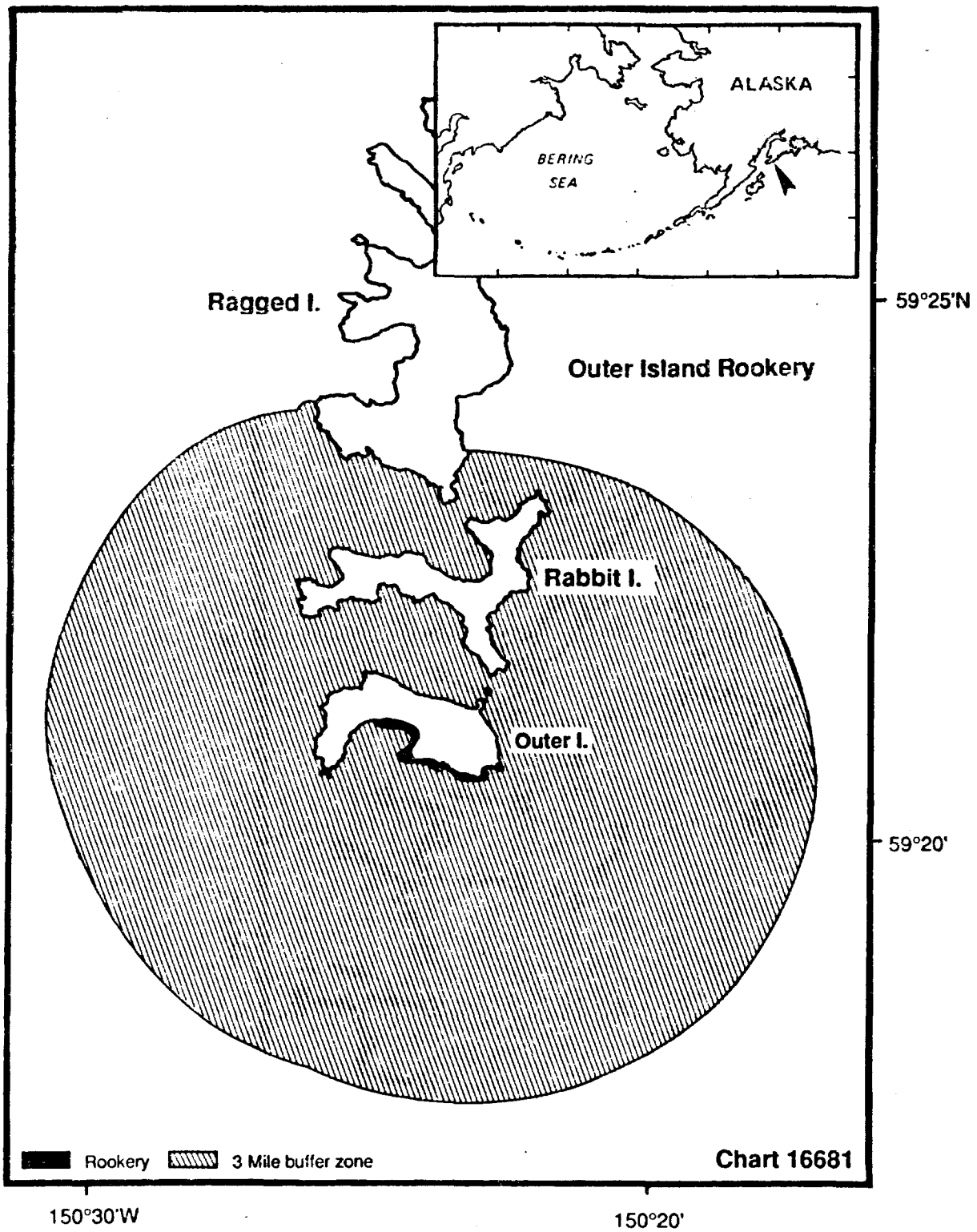
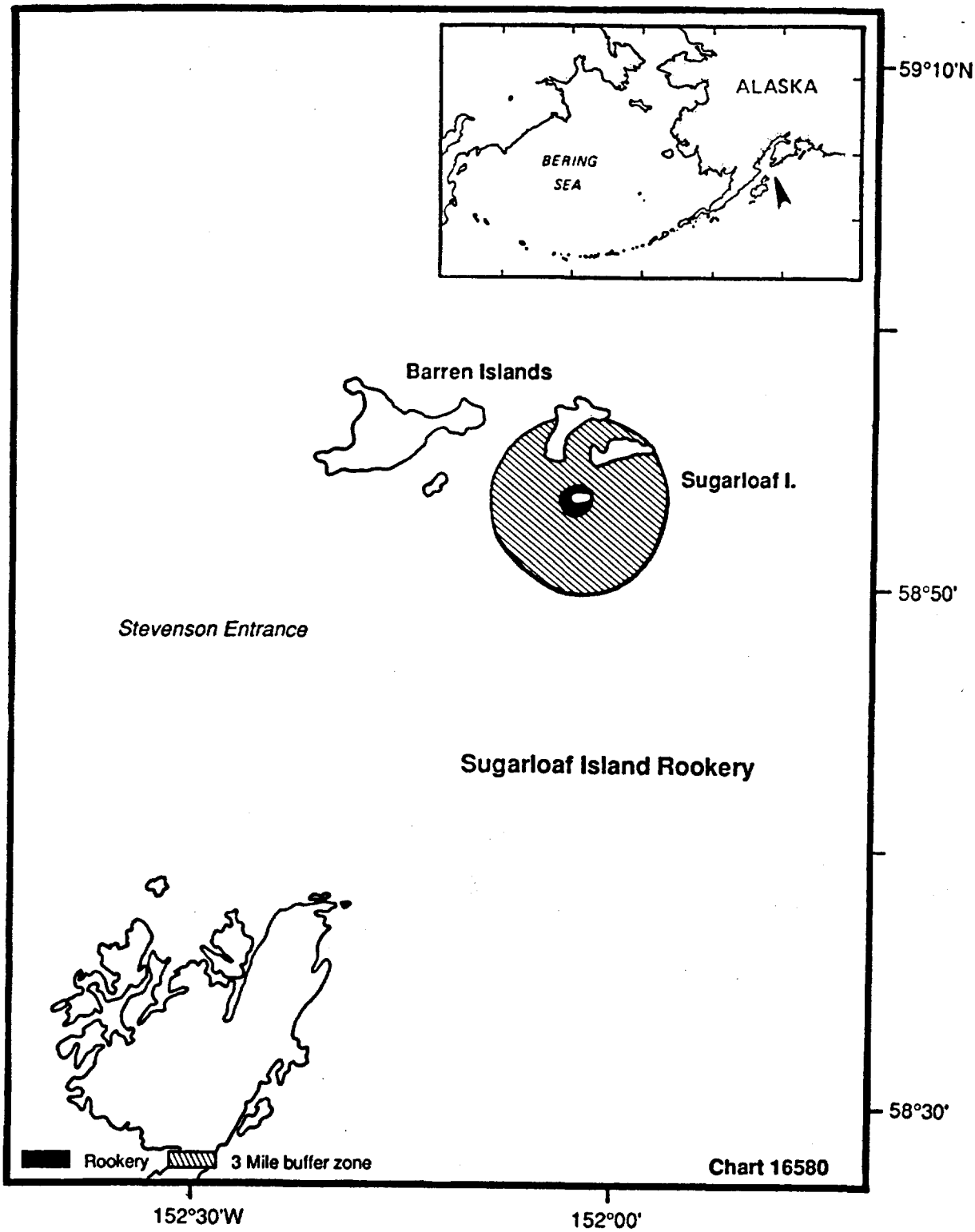
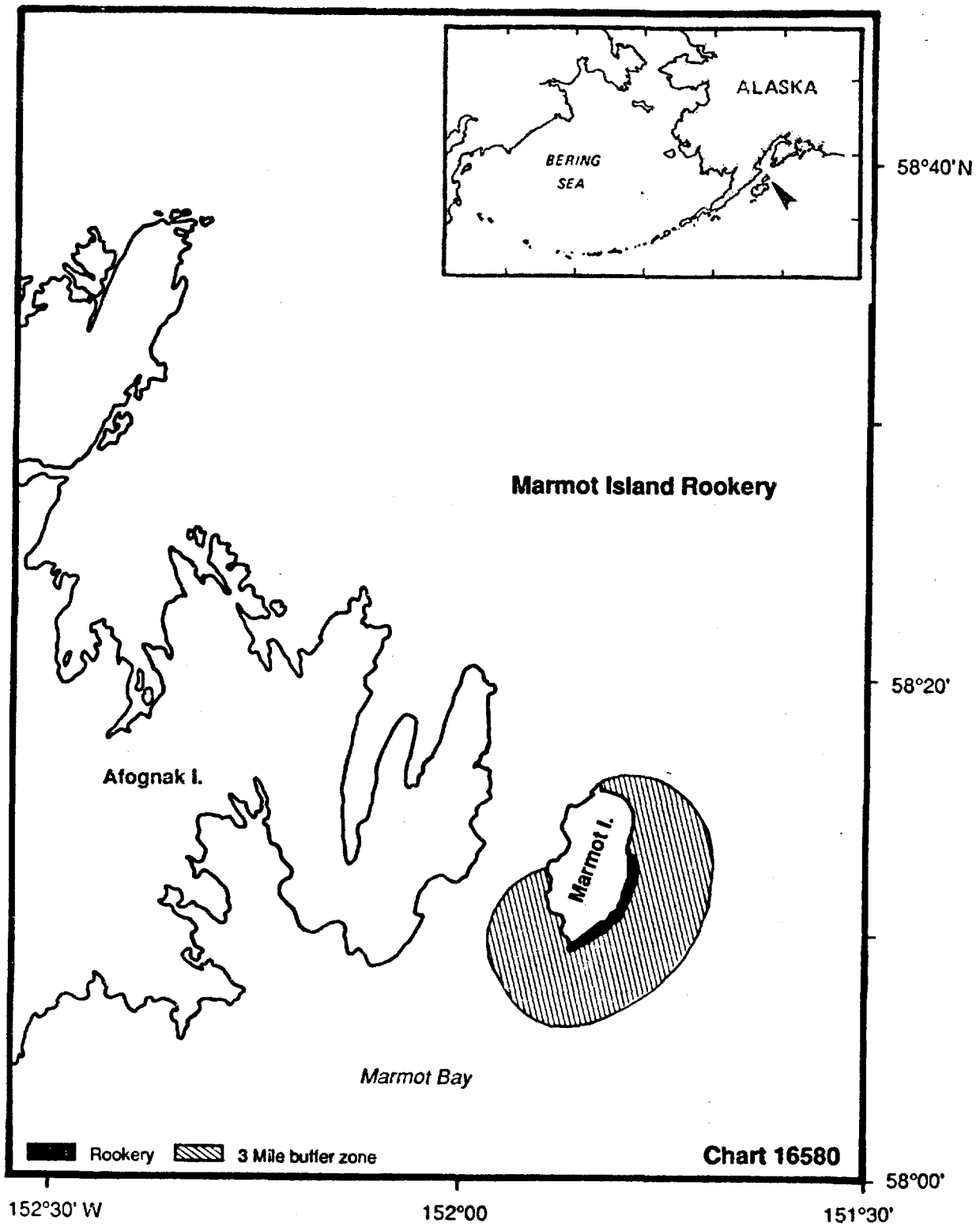
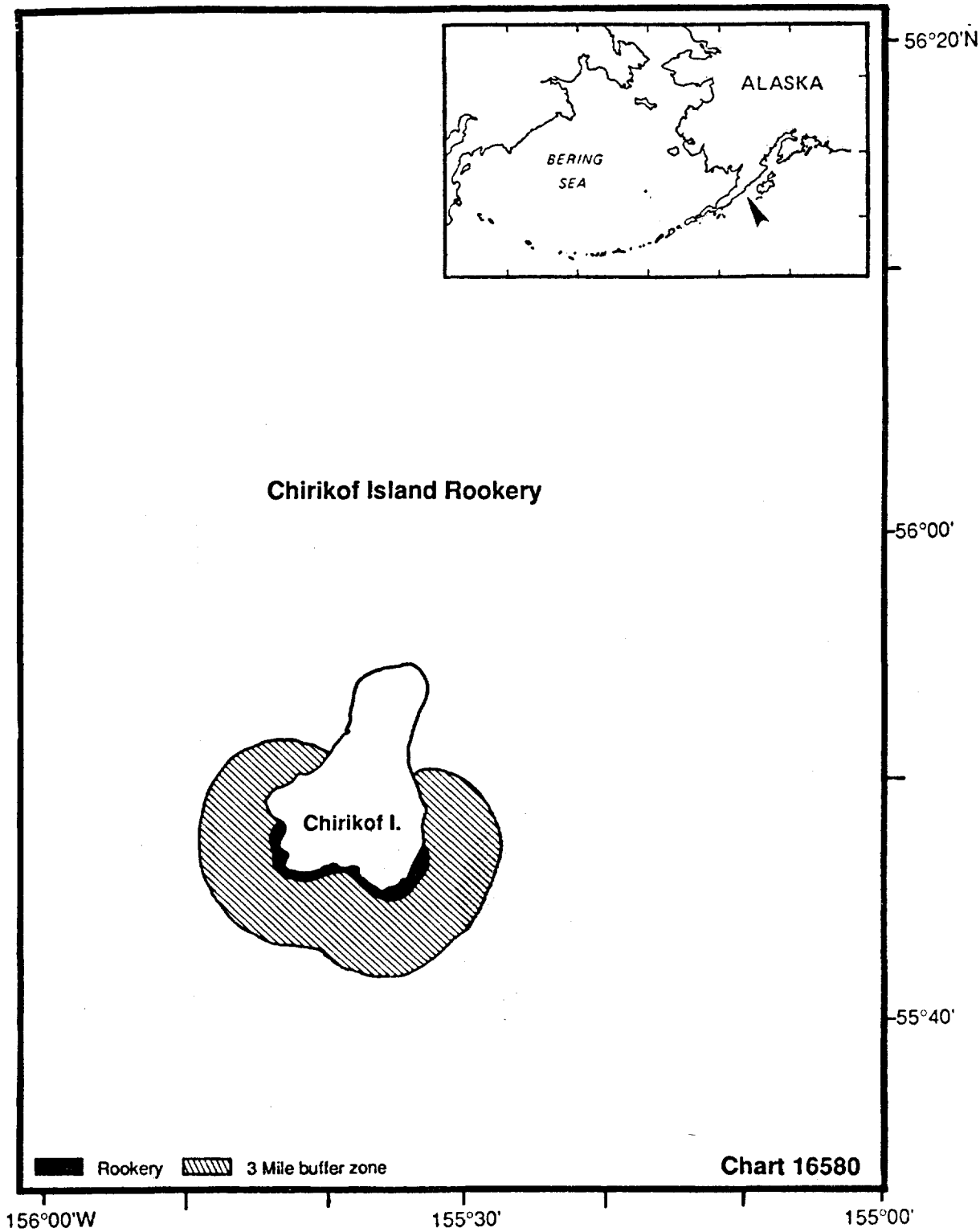
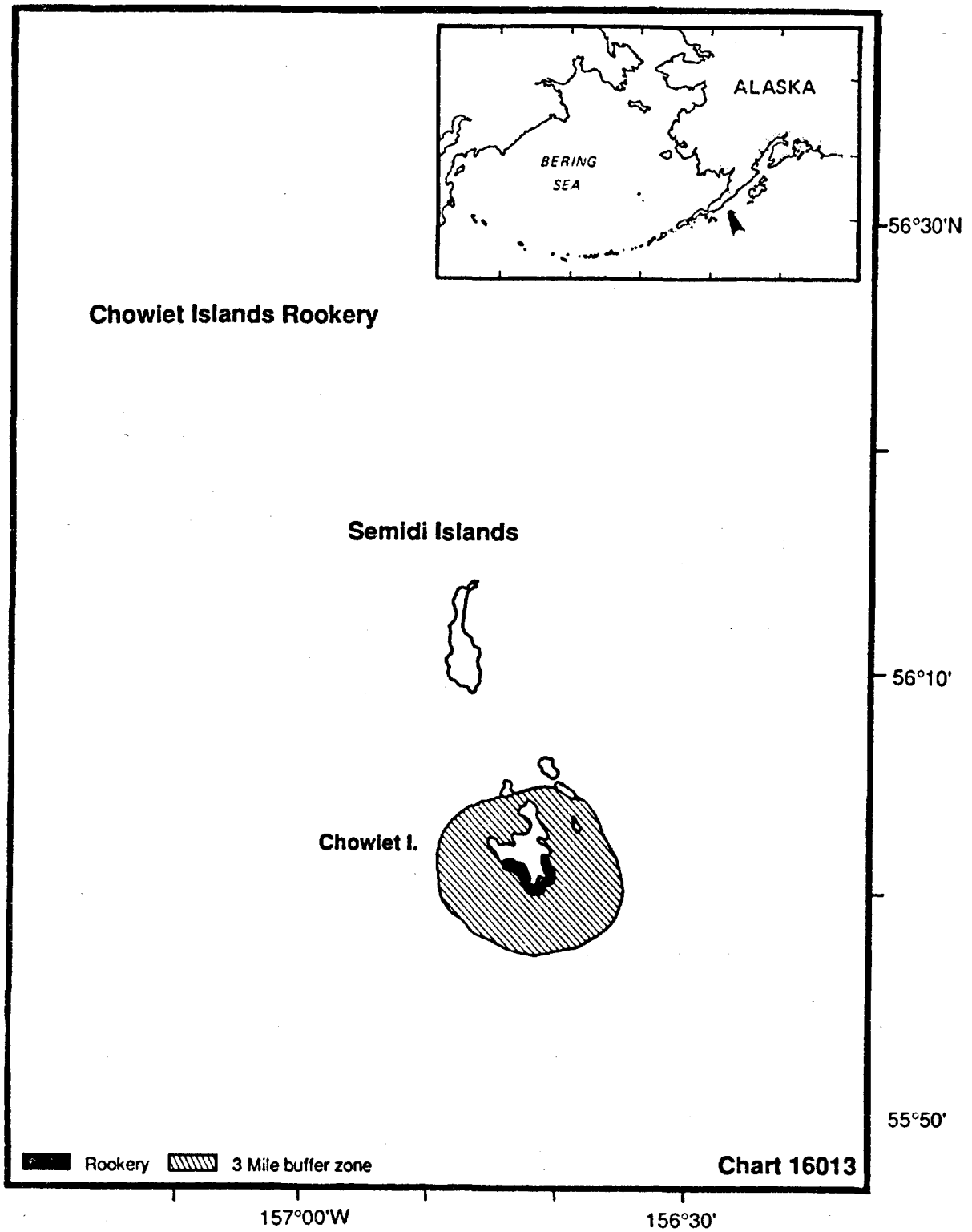
31

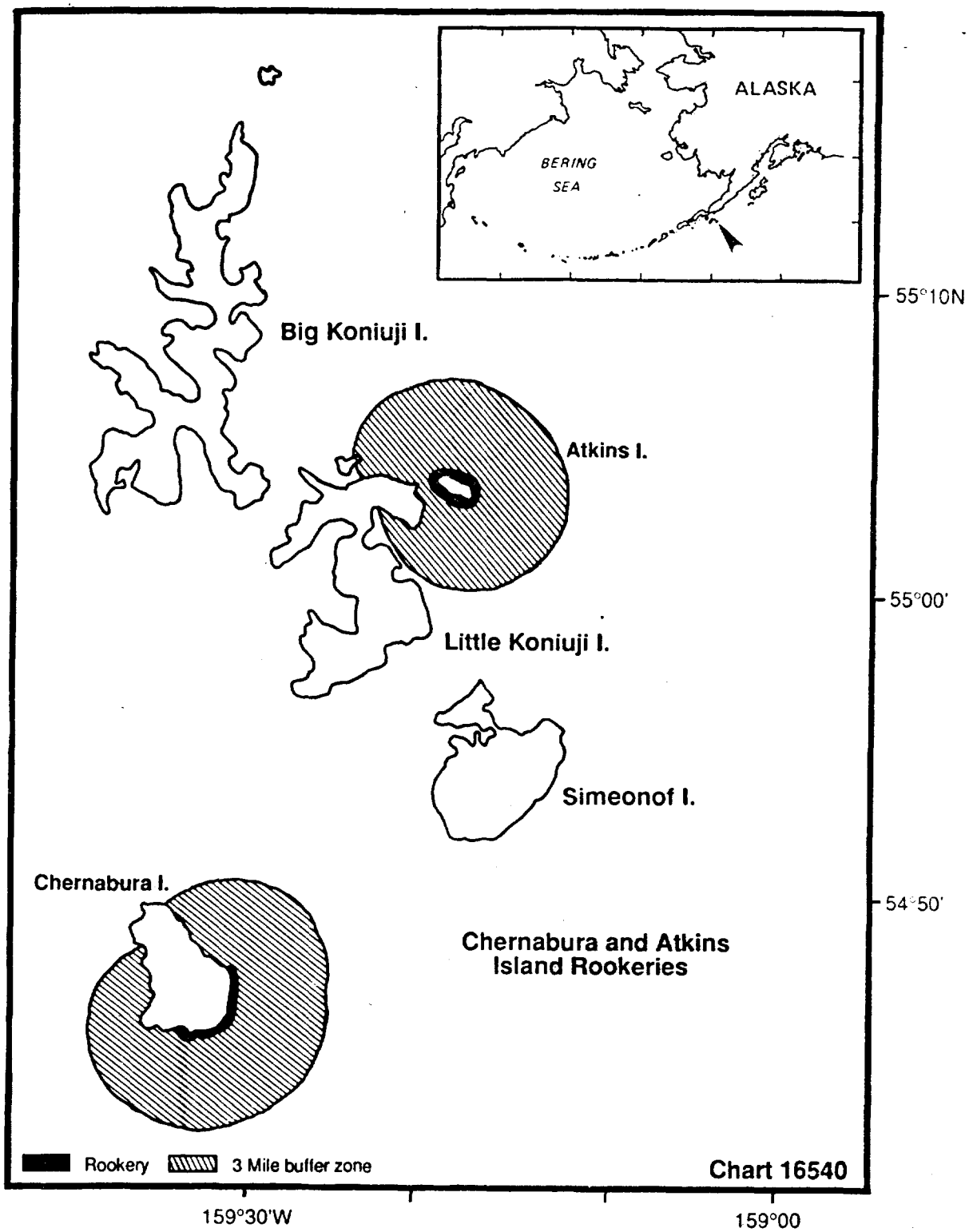

ALASKA
BERING SEA
Ragged I.
59°25'N
Outer Island Rookery
Rabbit I.
Outer I.
59°20'
Rookery
3 Mile buffer zone
Chart 16681
150°30'W
150°20'

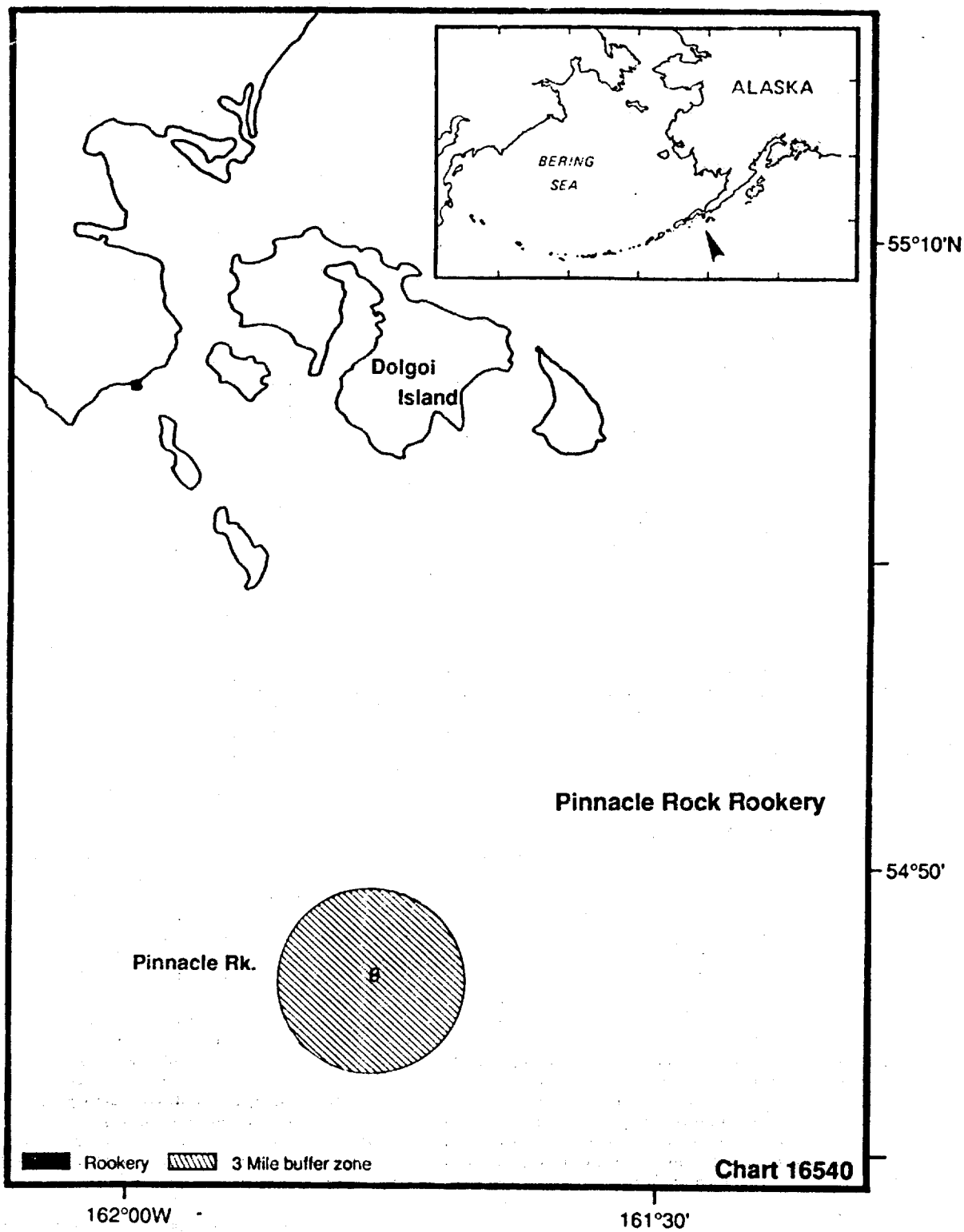

ALASKA
BERING SEA
59°10'N
Barren Islands
Sugarloaf I.
58°50'
Stevenson Entrance
Sugarloaf Island Rookery
58°30'
Rookery
3 Mile buffer zone
Chart 16580
152°30'W
152°00'

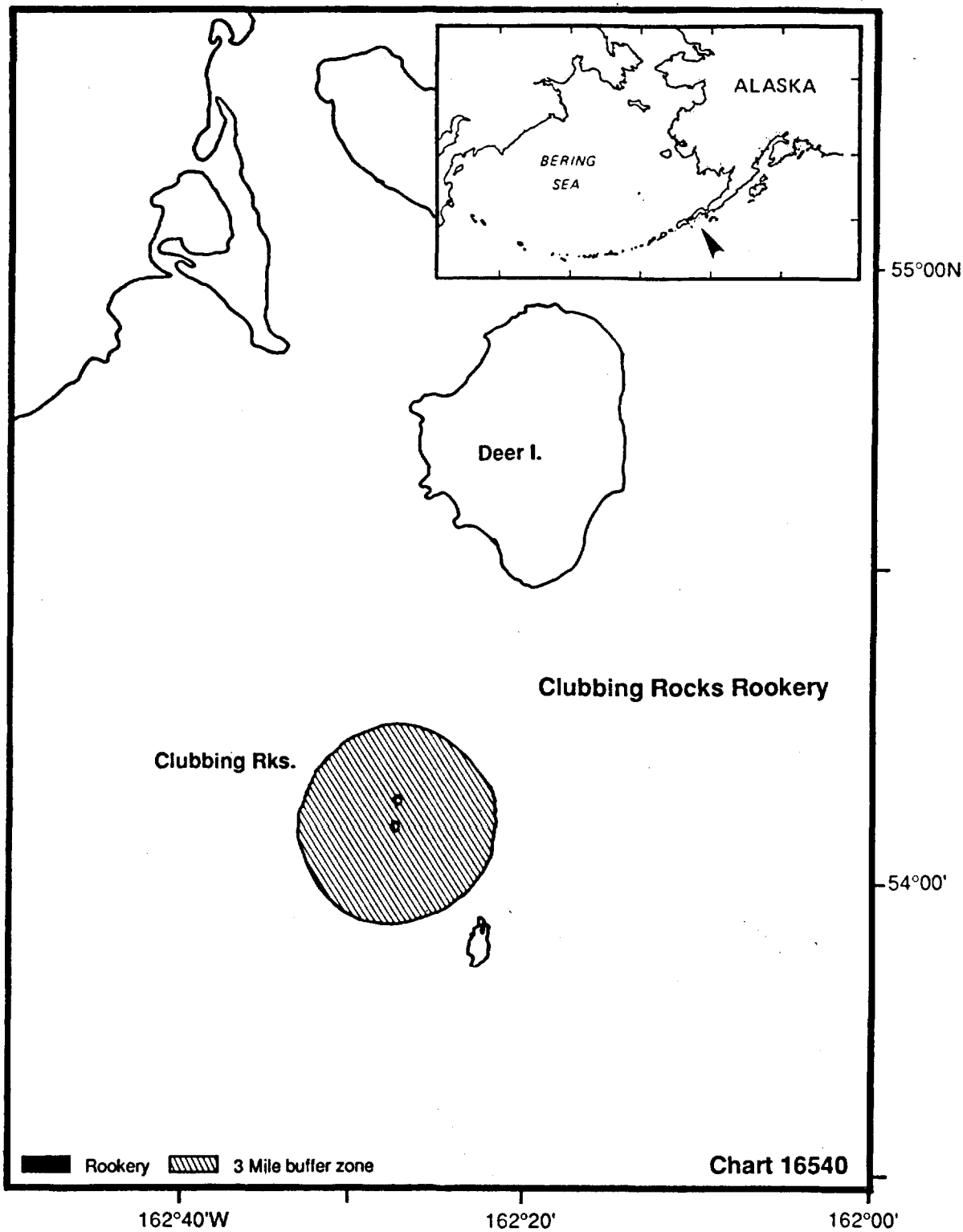

ALASKA
BERING SEA
58°40'N
Marmot Island Rookery
58°20'
Afognak I.
Marmot I.
Marmot Bay
Rookery
3 Mile buffer zone
Chart 16580
58°00'
152°30' W
152°00
151°30'

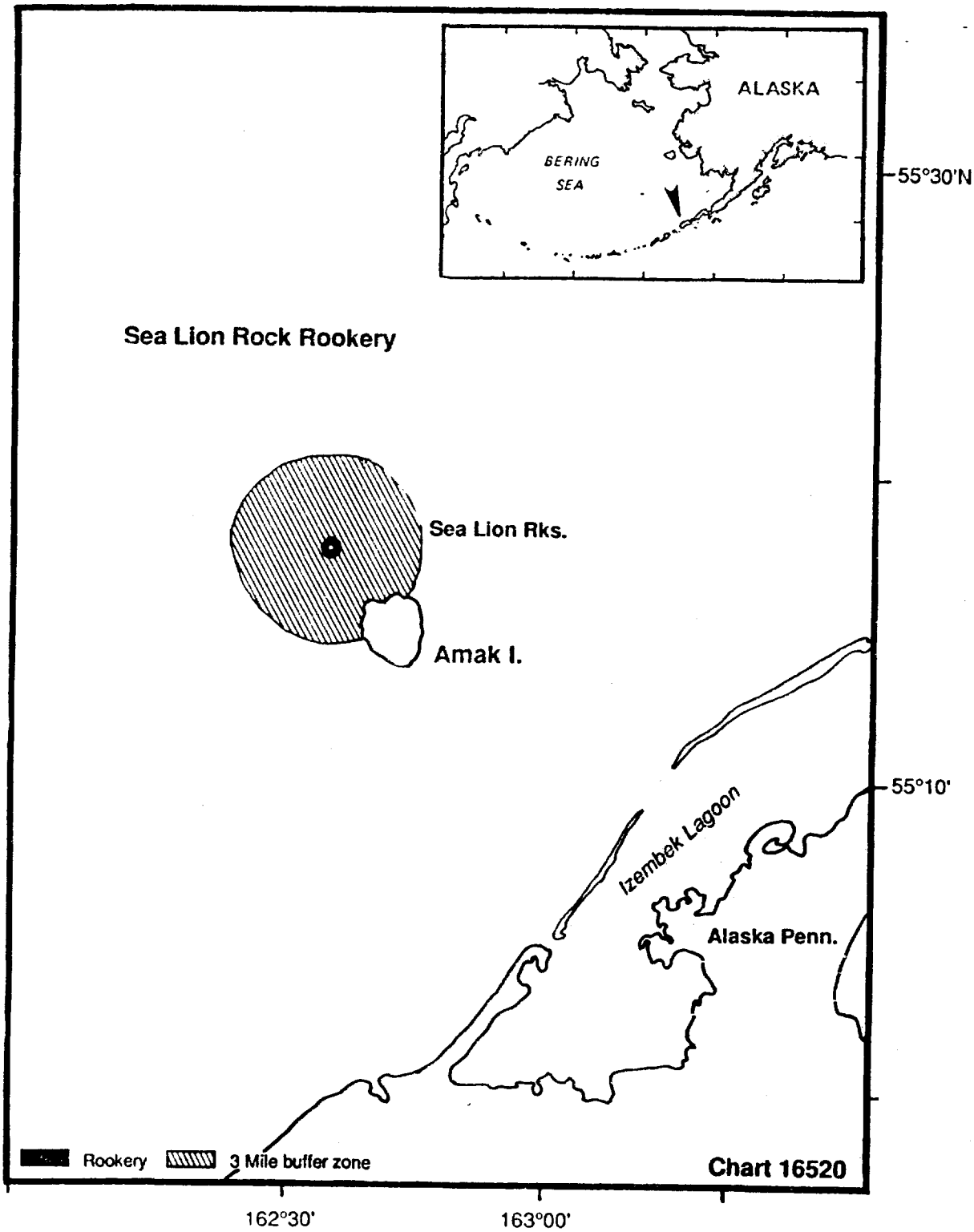

ALASKA
BERING SEA
Chirikof Island Rookery
Chirikof I.
56°20'N
56°00'
55°40'
156°00'W
155°30'
155°00'
Rookery
3 Mile buffer zone
Chart 16580

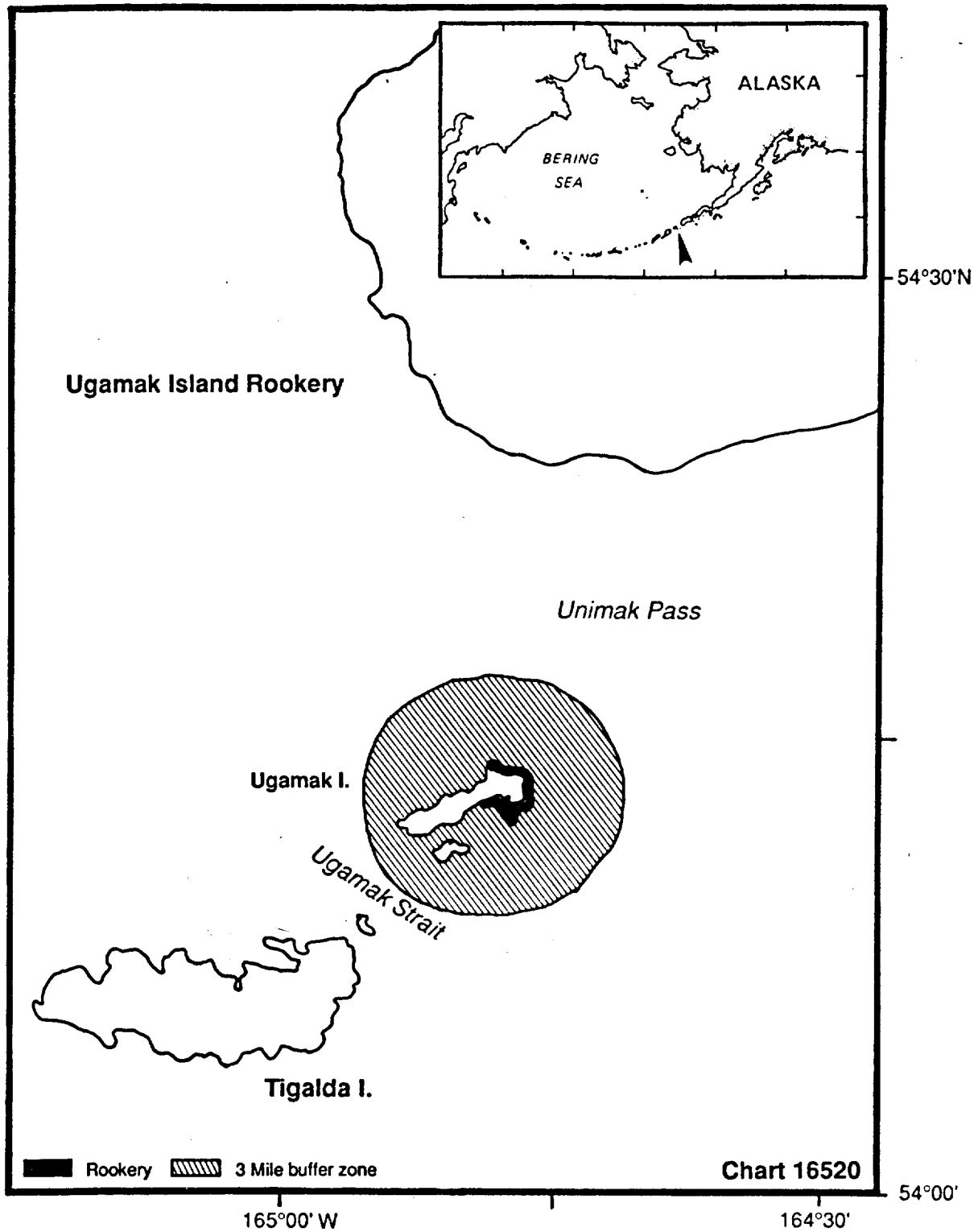

ALASKA
BERING SEA
56°30'N
Chowiet Islands Rookery
Semidi Islands
56°10'
Chowiet I.
55°50'
Rookery
3 Mile buffer zone
Chart 16013
157°00'W
156°30'

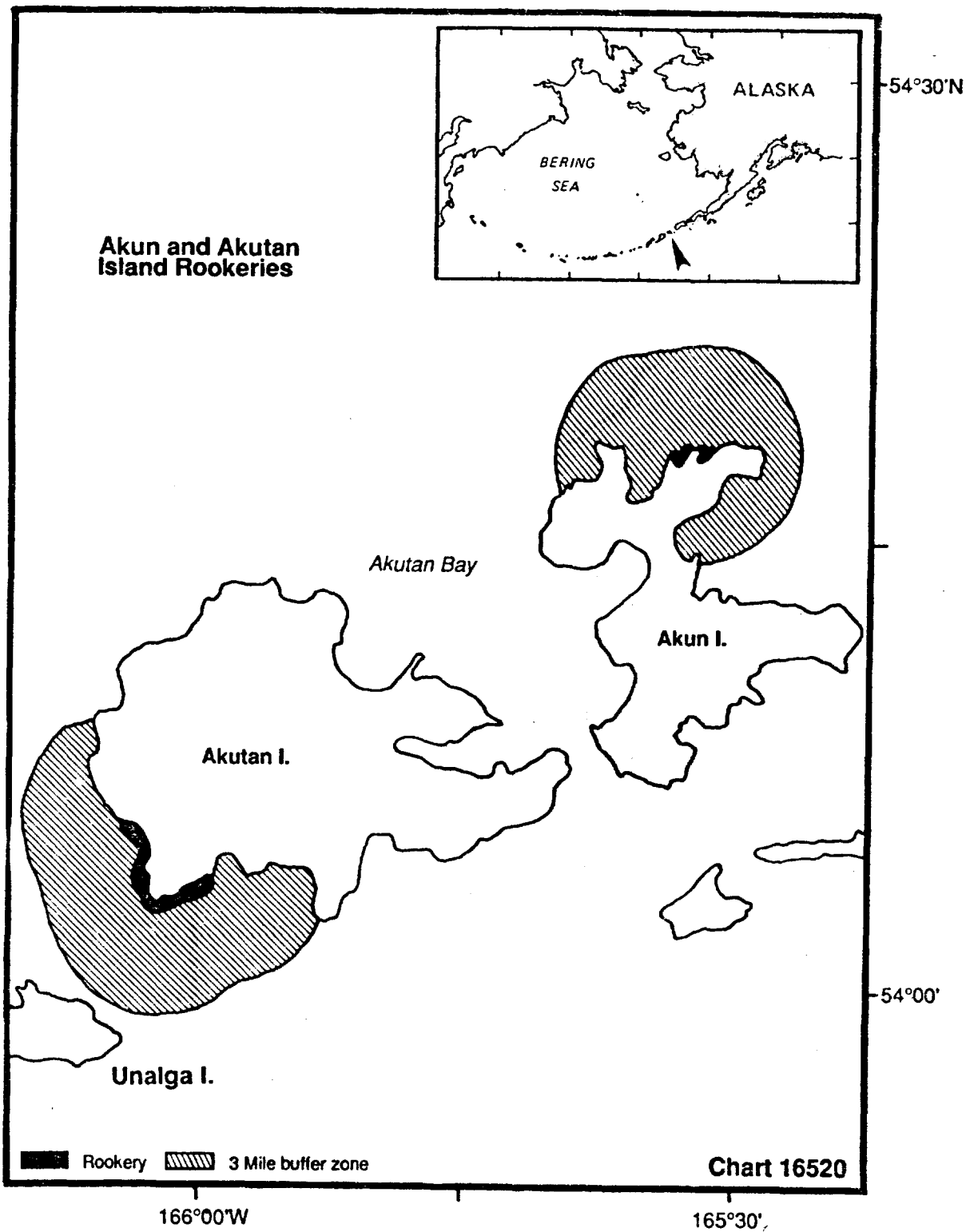

ALASKA
BERING SEA
55°10N
Big Koniuji I.
Atkins I.
55°00'
Little Koniuji I.
Simeonof I.
Chernabura I.
54°50'
Chernabura and Atkins Island Rookeries
Rookery
3 Mile buffer zone
Chart 16540
159°30'W
159°00

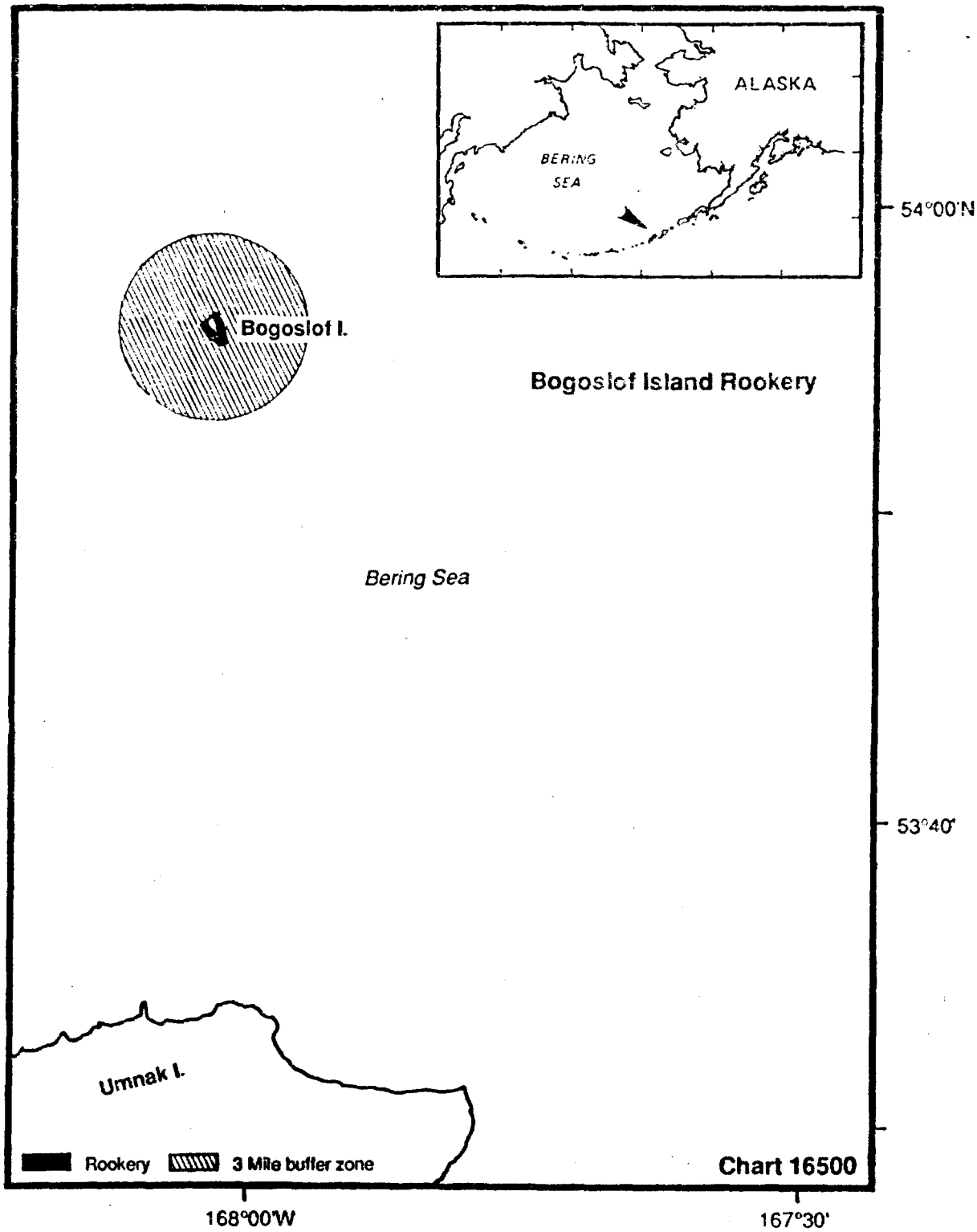

ALASKA
BERING SEA
55°10'N
Dolgoi Island
Pinnacle Rock Rookery
54°50'
Pinnacle Rk.
8
Rookery
3 Mile buffer zone
Chart 16540
162°00W
161°30'

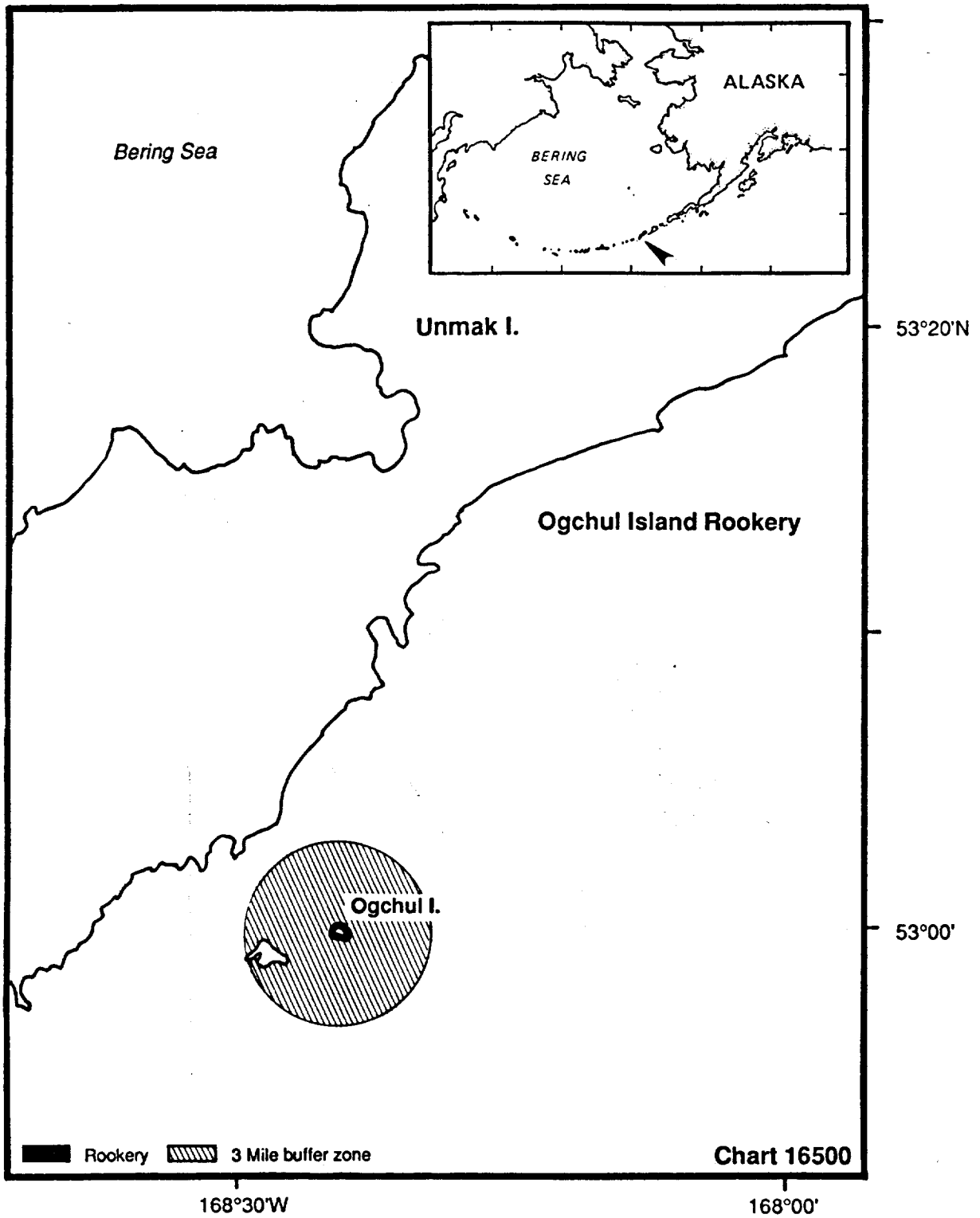

ALASKA
BERING SEA
55°00N
Deer I.
Clubbing Rocks Rookery
Clubbing Rks.
54°00'
Rookery
3 Mile buffer zone
Chart 16540
162°40'W
162°20'
162°00'

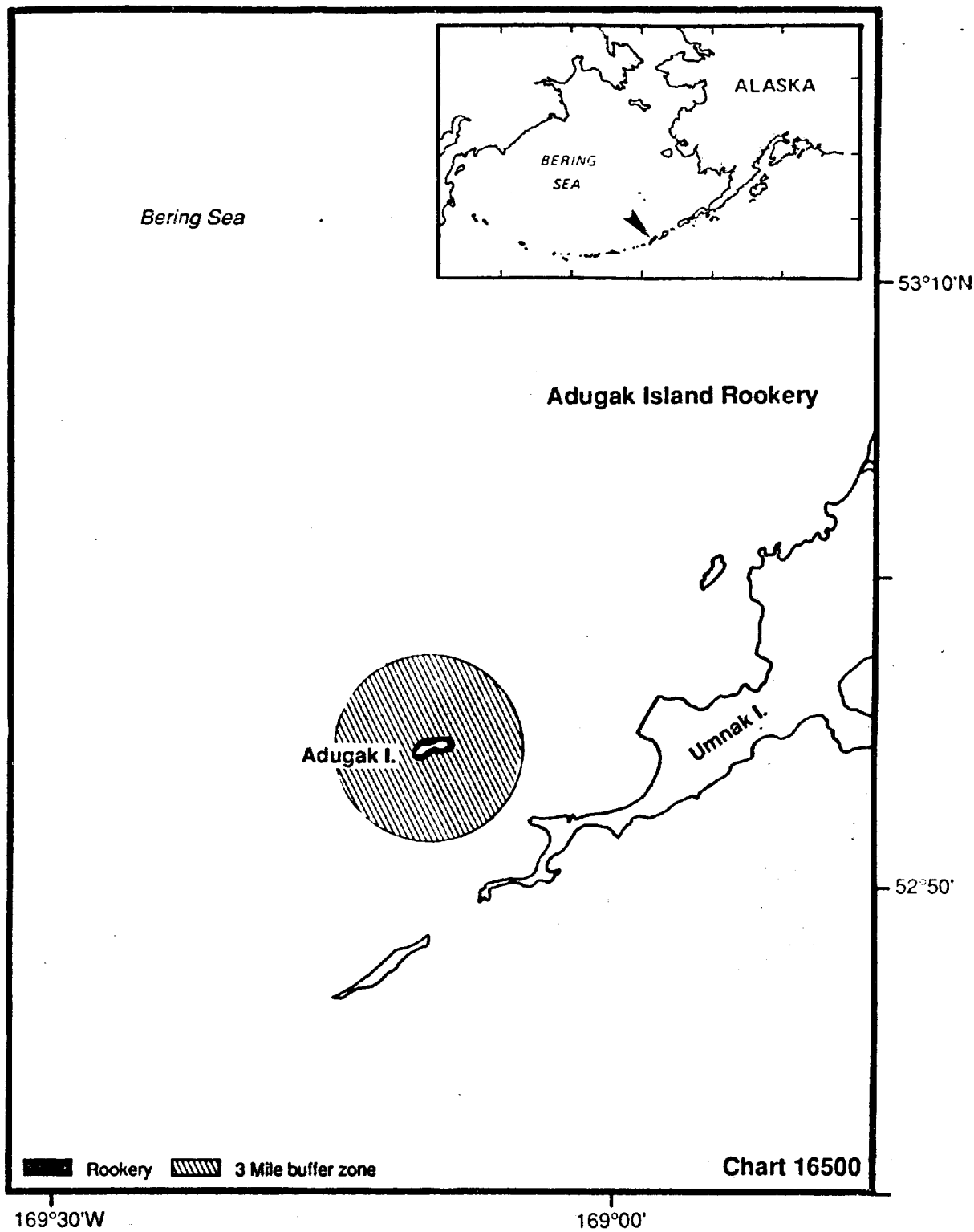

ALASKA
BERING SEA
55°30'N
Sea Lion Rock Rookery
Sea Lion Rks.
Amak I.
55°10'
Izembek Lagoon
Alaska Penn.
Rookery
3 Mile buffer zone
Chart 16520
162°30'
163°00'

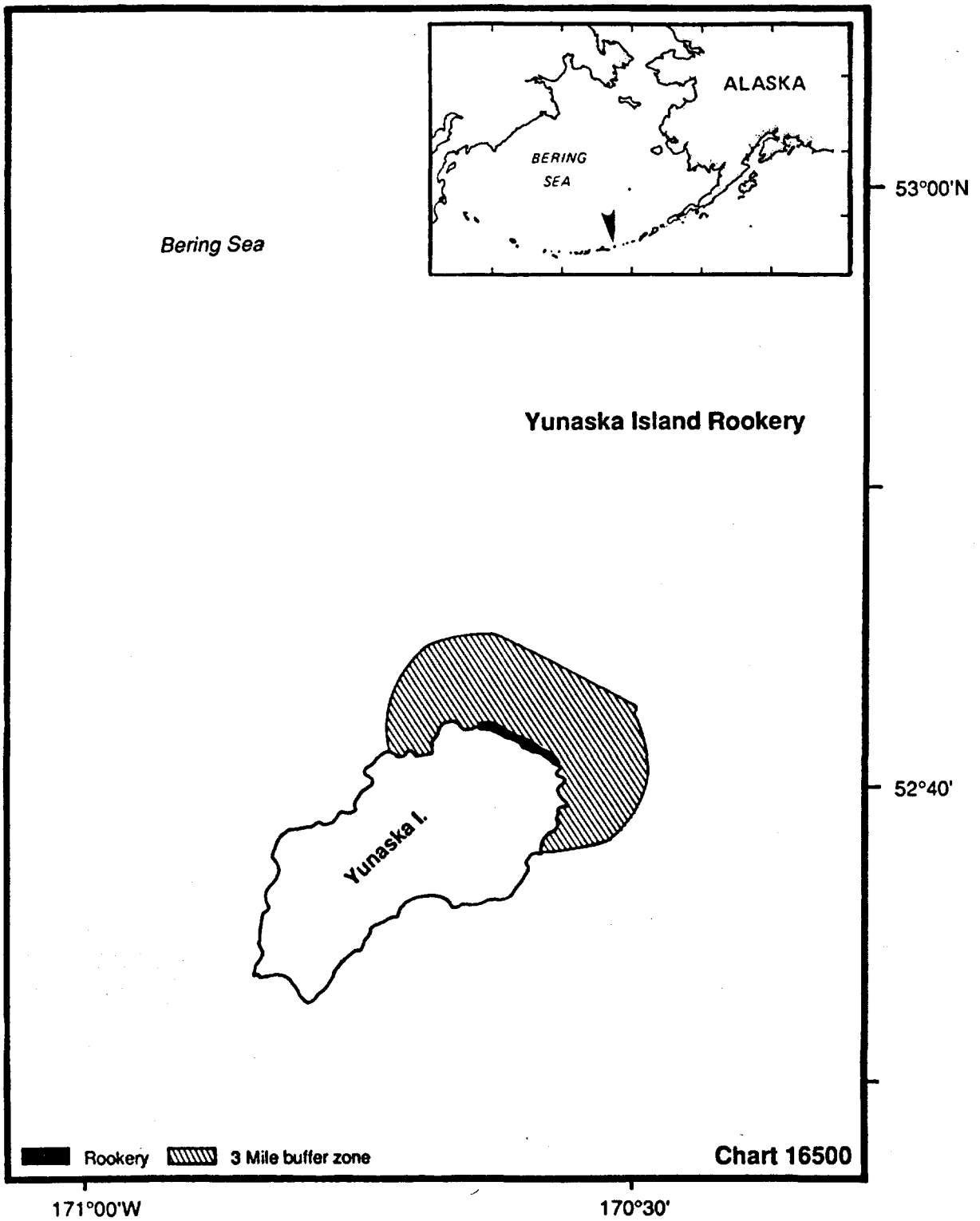

ALASKA
BERING SEA
54°30'N
Ugamak Island Rookery
Unimak Pass
Ugamak I.
Ugamak Strait
Tigalda I.
Rookery
3 Mile buffer zone
Chart 16520
54°00'
165°00' W
164°30'

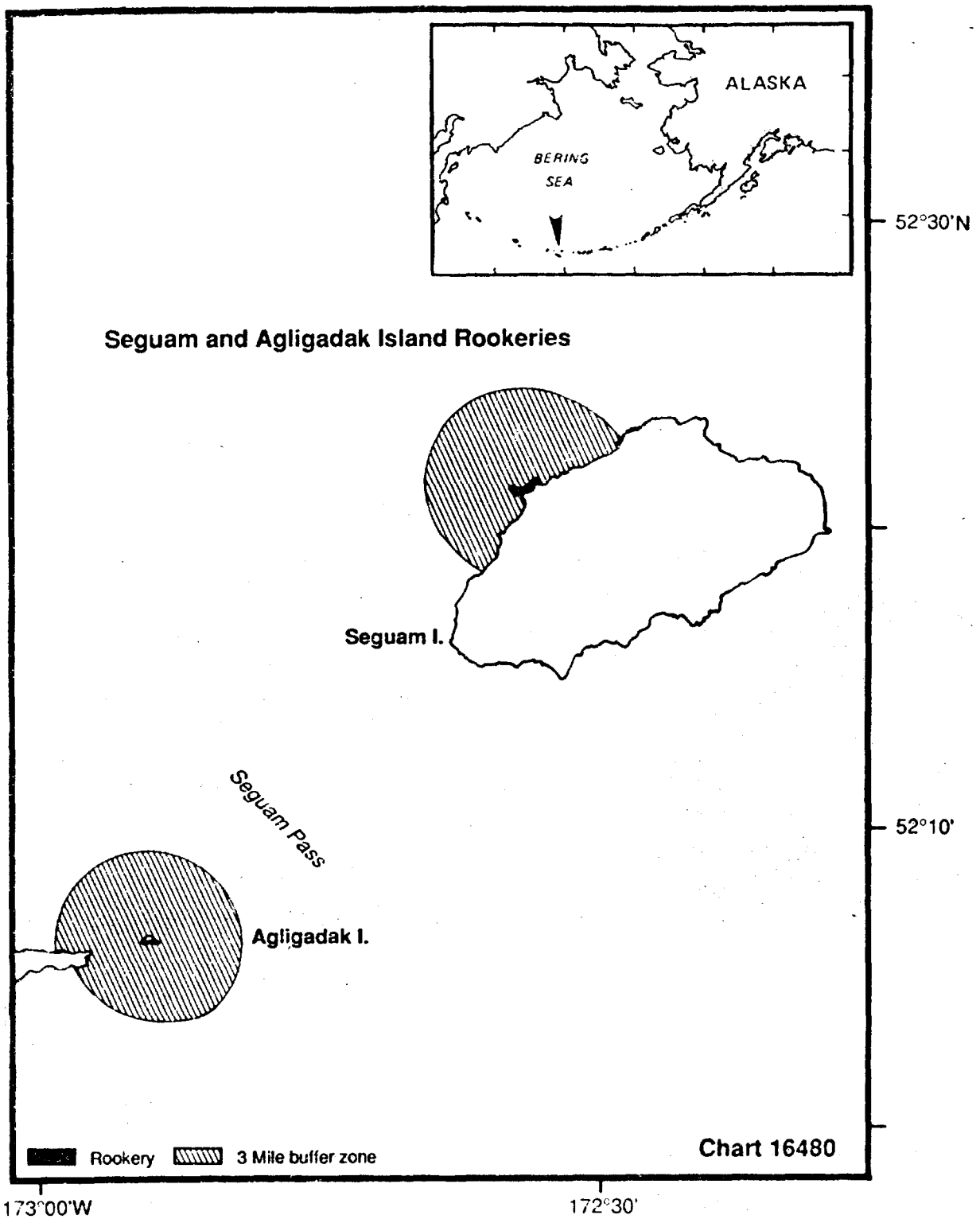

ALASKA
BERING SEA
Akun and Akutan Island Rookeries
54°30'N
Akutan Bay
Akun I.
Akutan I.
54°00'
Unalga I.
Rookery
3 Mile buffer zone
Chart 16520
166°00'W
165°30'

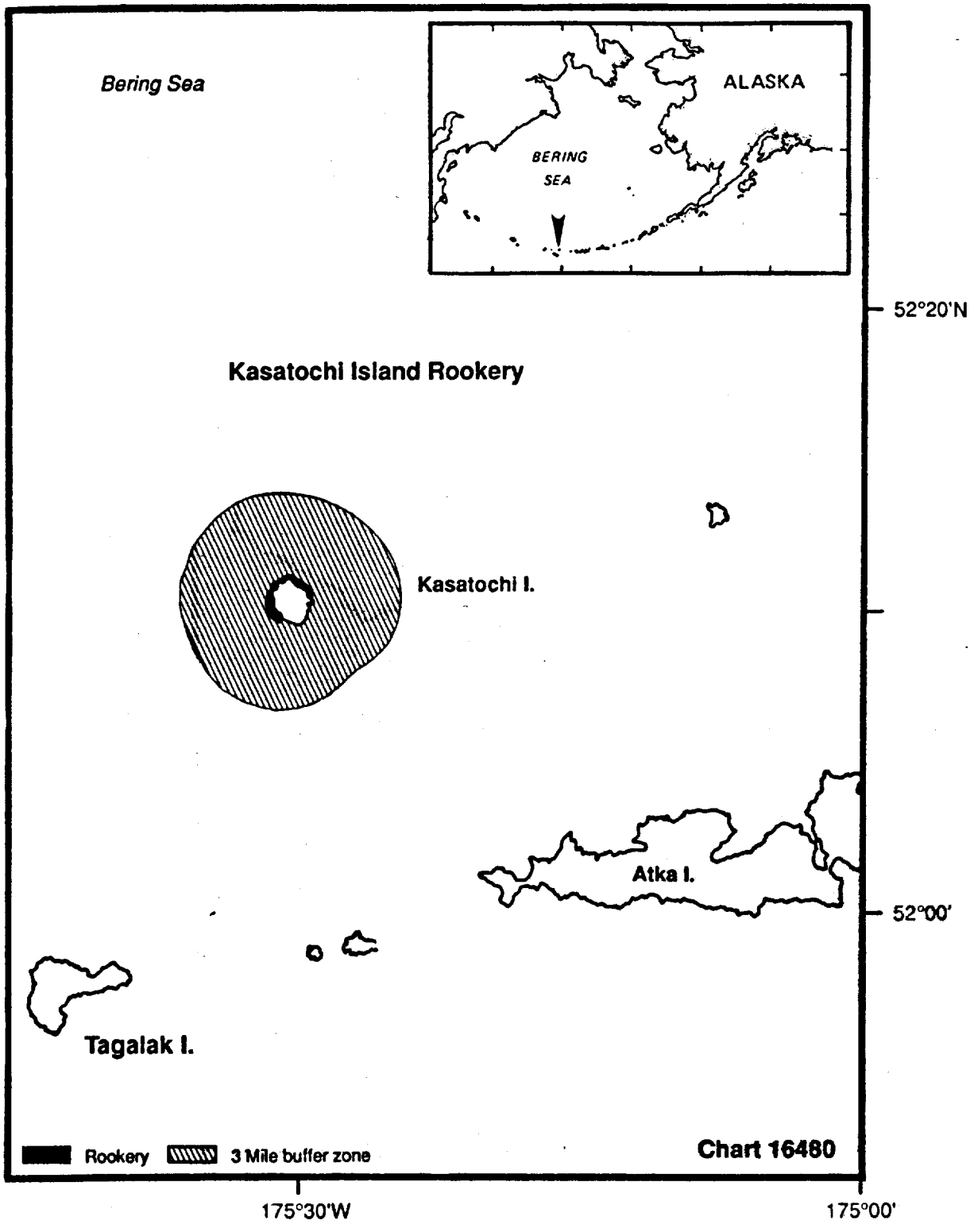

ALASKA
BERING SEA
54°00'N
Bogoslof I.
Bogoslof Island Rookery
Bering Sea
53°40'
Umnak I.
Rookery
3 Mile buffer zone
Chart 16500
168°00'W
167°30'

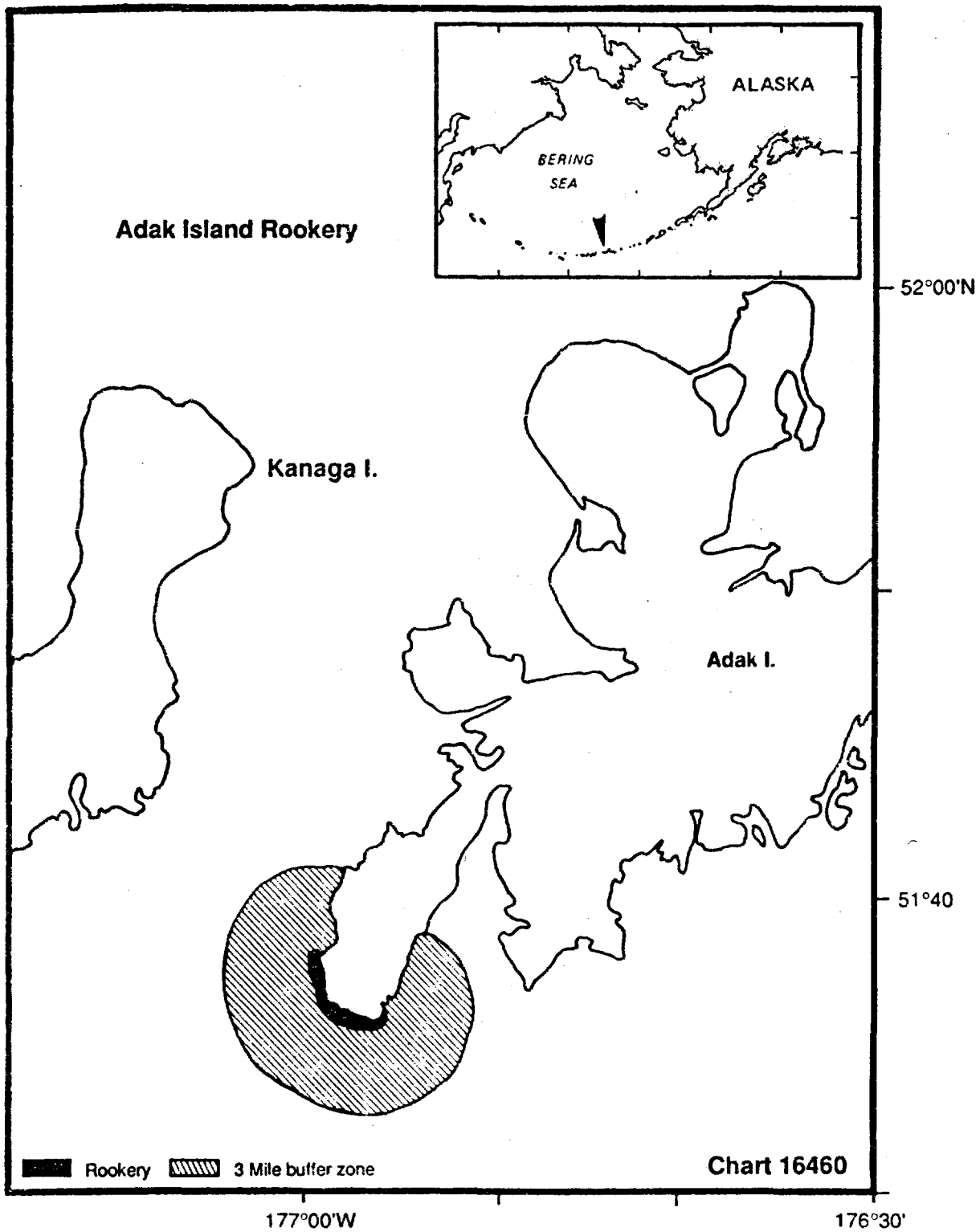

ALASKA
BERING SEA
Bering Sea
Unmak I.
Ogchul Island Rookery
Ogchul I.
53°20'N
53°00'
Rookery
3 Mile buffer zone
Chart 16500
168°30'W
168°00'

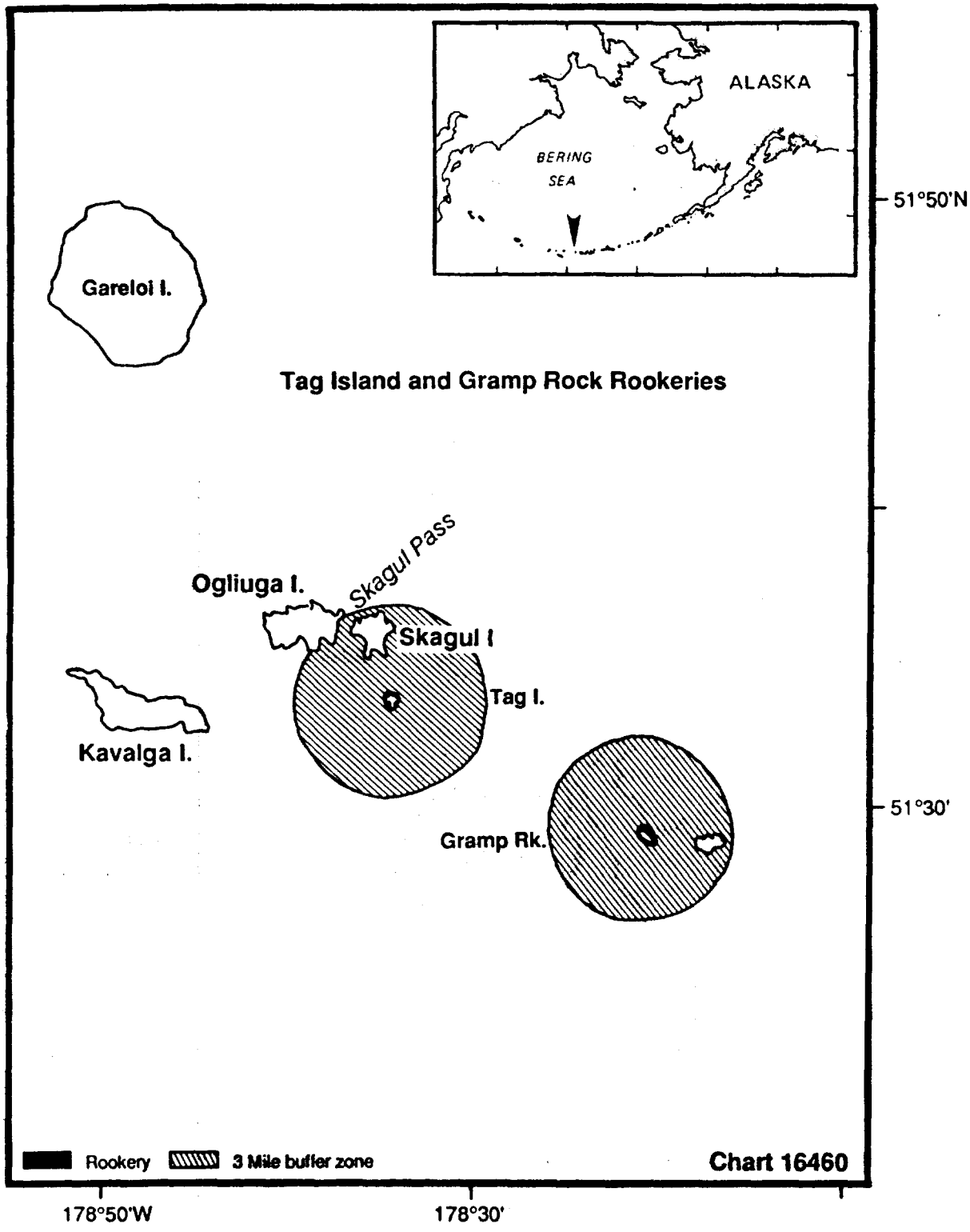

ALASKA
BERING SEA
Bering Sea
53°10'N
Adugak Island Rookery
Adugak I.
Umnak I.
52°50'
Rookery
3 Mile buffer zone
Chart 16500
169°30'W
169°00'

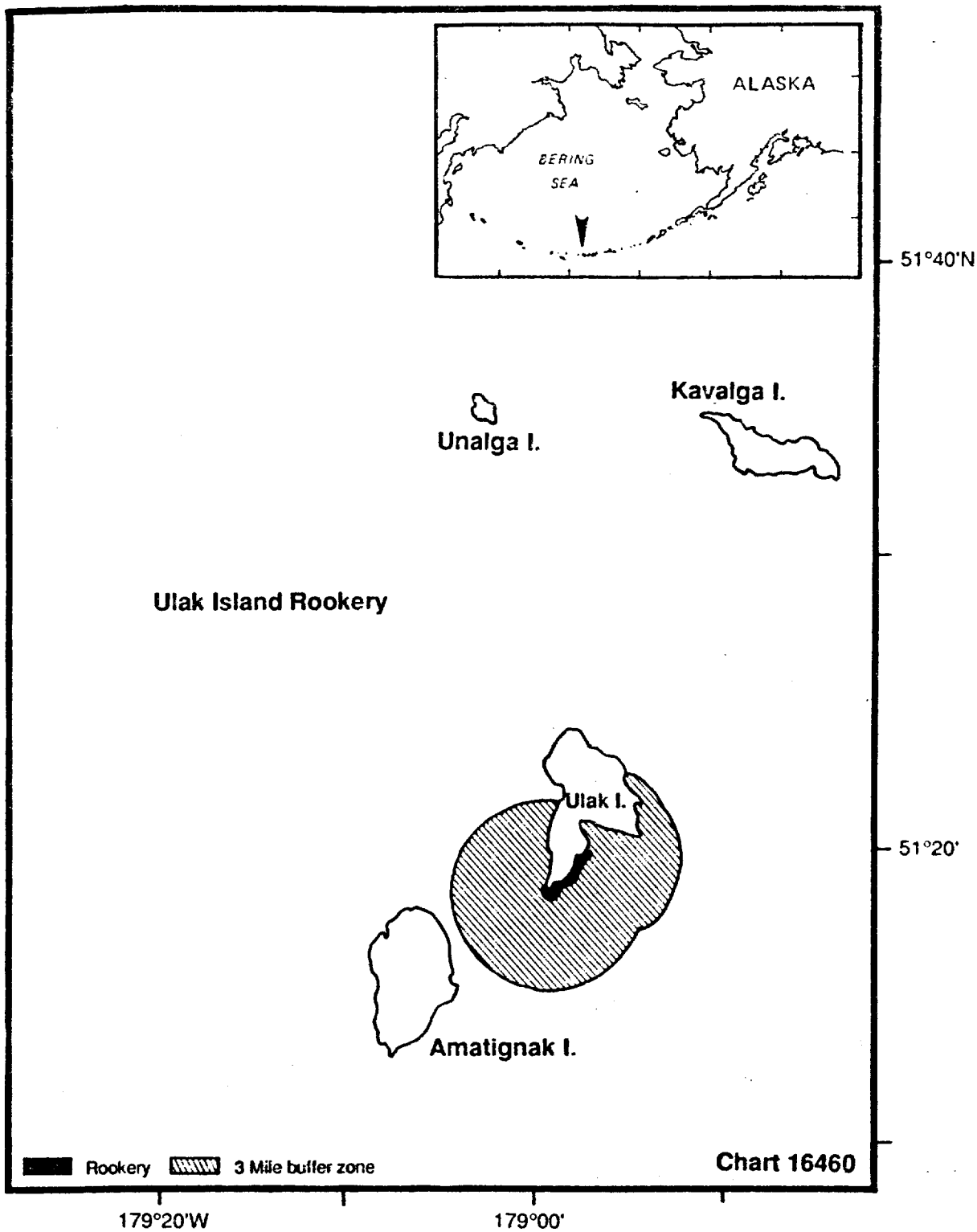

ALASKA
BERING SEA
Bering Sea
53°00'N
Yunaska Island Rookery
Yunaska I.
52°40'
Rookery
3 Mile buffer zone
Chart 16500
171°00'W
170°30'

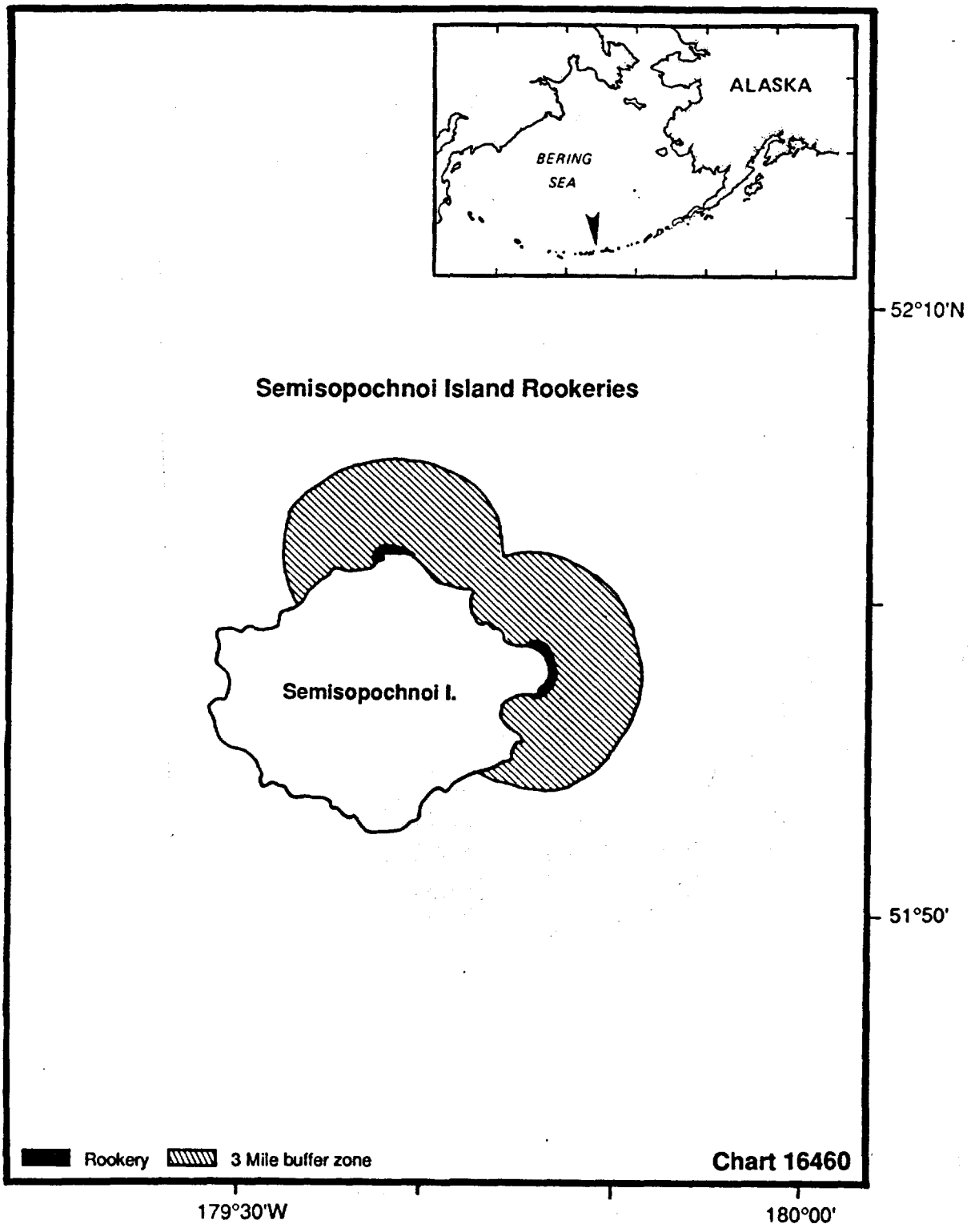

ALASKA
BERING SEA
52°30'N
Seguam and Agligadak Island Rookeries
Seguam I.
Seguam Pass
52°10'
Agligadak I.
Rookery
3 Mile buffer zone
Chart 16480
173°00'W
172°30'

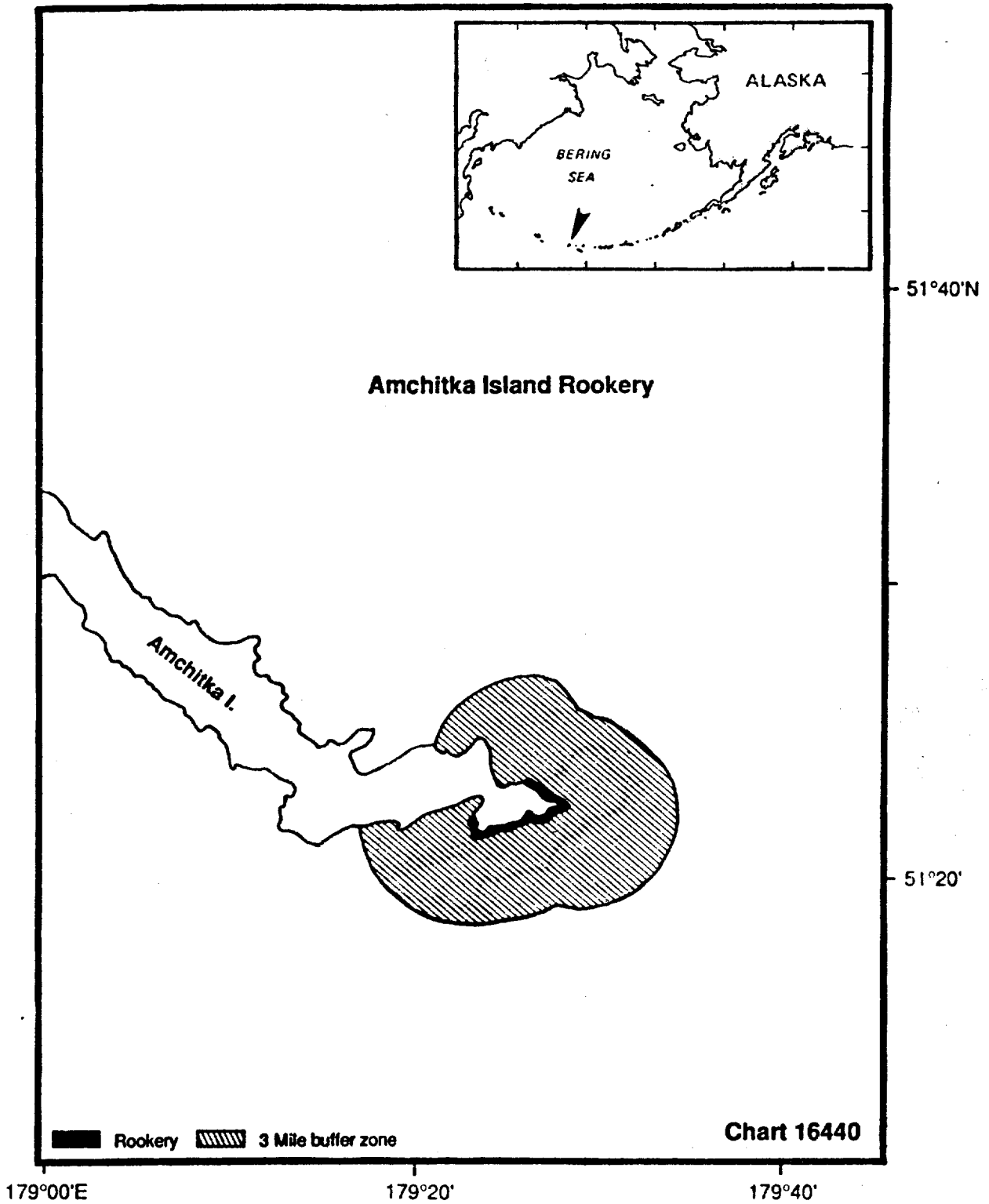

Bering Sea
ALASKA
BERING SEA
52°20'N
Kasatochi Island Rookery
Kasatochi I.
Atka I.
52°00'
Tagalak I.
Rookery
3 Mile buffer zone
Chart 16480
175°30'W
175°00'

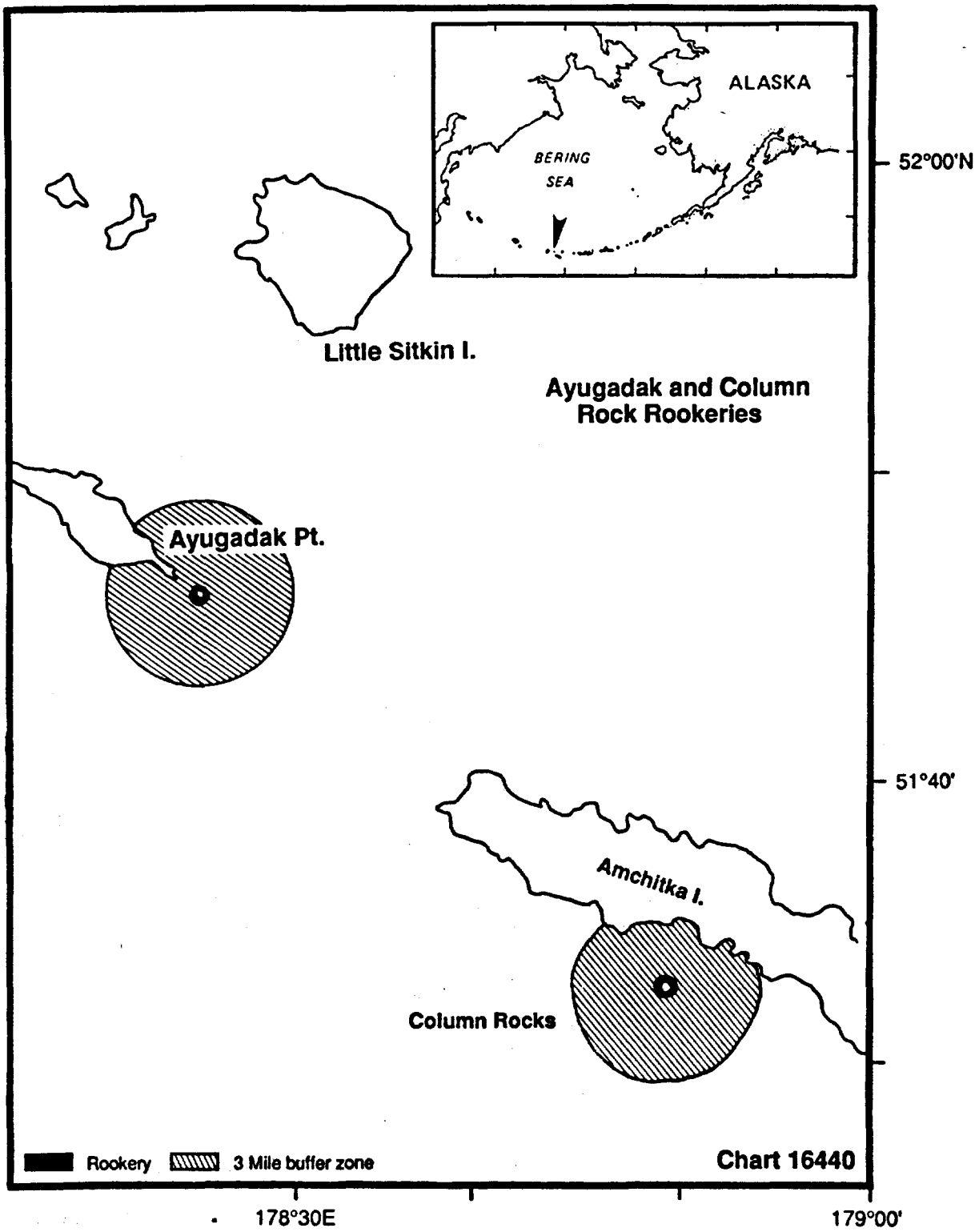

ALASKA
BERING SEA
Adak Island Rookery
52°00'N
Kanaga I.
Adak I.
51°40
Rookery
3 Mile buffer zone
Chart 16460
177°00'W
176°30'

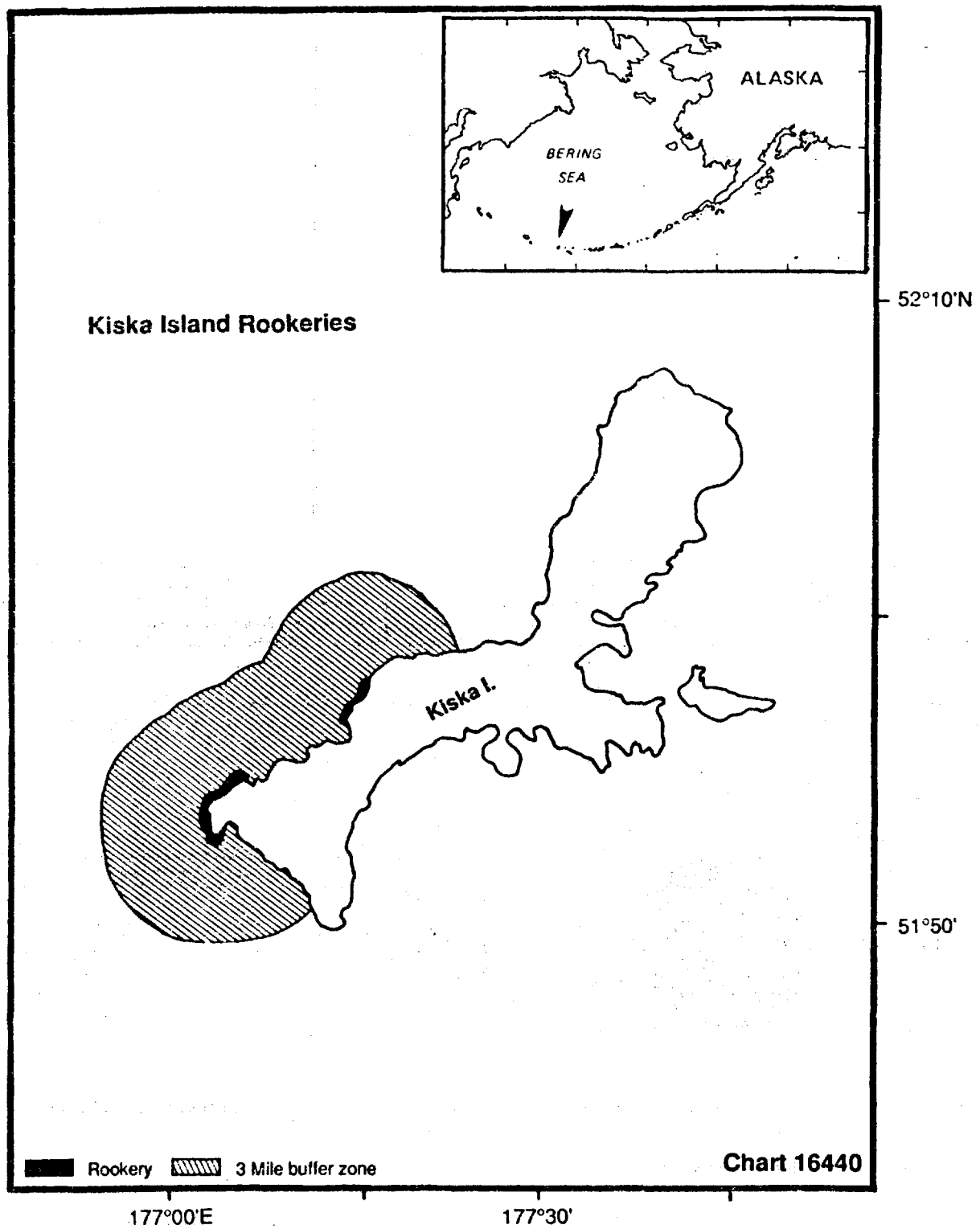

ALASKA
BERING SEA
51°50'N
Gareloi I.
Tag Island and Gramp Rock Rookeries
Ogliuga I.
Skagul Pass
Skagul I
Tag I.
Kavalga I.
Gramp Rk.
51°30'
Rookery
3 Mile buffer zone
Chart 16460
178°50'W
178°30'

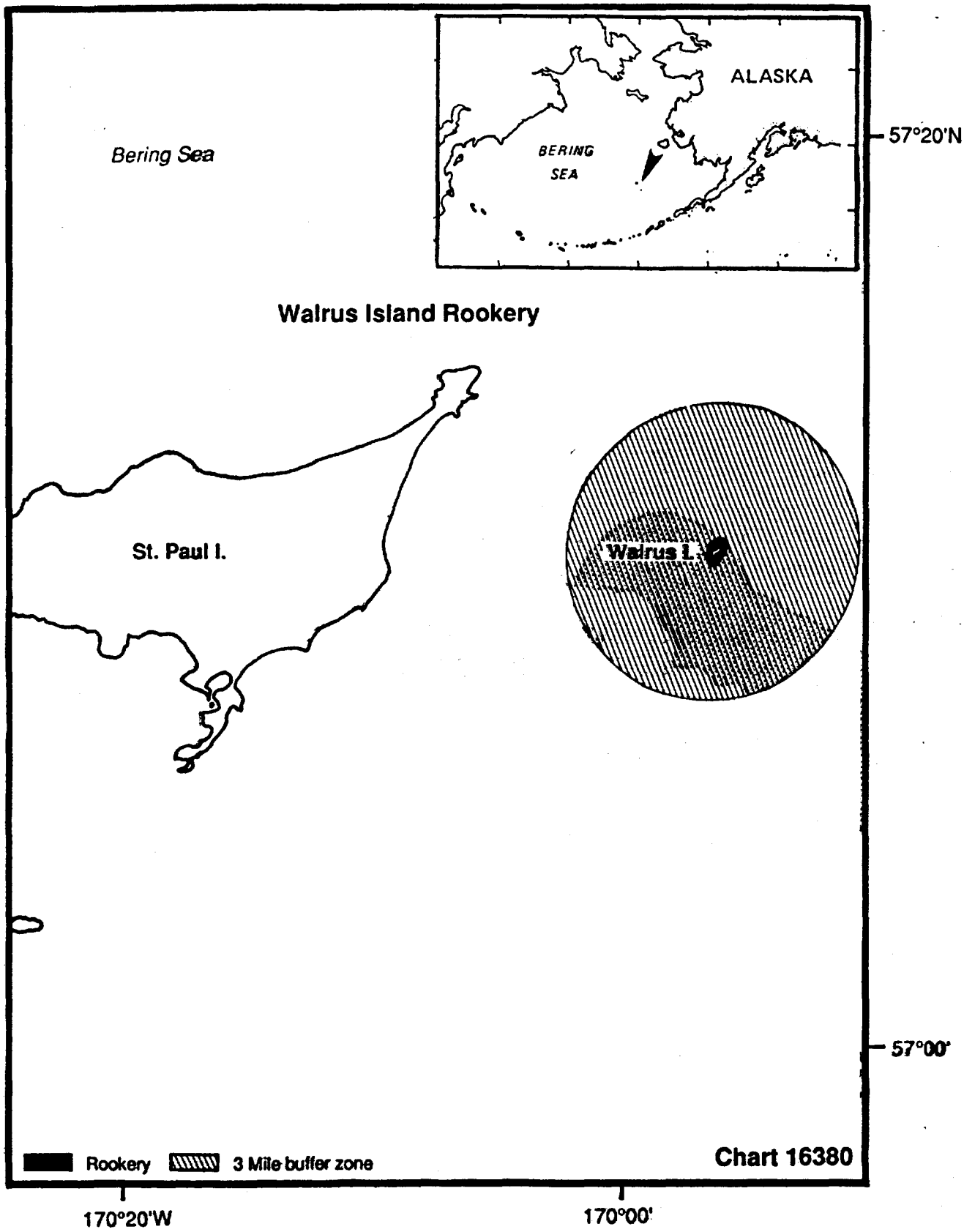

ALASKA
BERING SEA
51°40'N
Kavalga I.
Unalga I.
Ulak Island Rookery
Ulak I.
51°20'
Amatignak I.
Rookery
3 Mile buffer zone
Chart 16460
179°20'W
179°00'


ALASKA
BERING
SEA
52°10'N
Semisopochnoi Island Rookeries
Semisopochnoi I.
51°50'
Rookery
3 Mile buffer zone
Chart 16460
179°30'W
180°00'


ALASKA
BERING SEA
51°40'N
Amchitka Island Rookery
Amchitka I.
51°20'
Rookery
3 Mile buffer zone
Chart 16440
179°00'E
179°20'
179°40'


ALASKA
BERING SEA
52°00'N
Little Sitkin I.
Ayugadak and Column Rock Rookeries
Ayugadak Pt.
51°40'
Amchitka I.
Column Rocks
Rookery
3 Mile buffer zone
Chart 16440
178°30E
179°00'


ALASKA
BERING SEA
Kiska Island Rookeries
Kiska I.
52°10'N
51°50'
Rookery
3 Mile buffer zone
Chart 16440
177°00'E
177°30'



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(4) *Quota.* If the Assistant Administrator determines and publishes notice that 675 Steller sea lions have been killed incidentally in the course of commercial fishing operations in Alaskan waters and adjacent areas of the U.S. Exclusive Economic Zone (EEZ) west of 141° W longitude during any calendar year, then it will be unlawful to kill any additional Steller sea lions in this area. In order to monitor this quota, the Director, Alaska Region, National Marine Fisheries Service, may require the placement of an observer on any fishing vessel. If data indicate that the quota is being approached, the Assistant Administrator will issue emergency rules to establish closed areas, allocate the remaining quota among fisheries, or take other action(s) to ensure that commercial fishing operations do not exceed the quota.

(b) *Exceptions*—(1) *Permits.* The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under paragraph (a) of this section in accordance with and subject to the provisions of 50 CFR part 222, subpart C—Endangered Fish or Wildlife Permits.

(2) *Official activities.* Paragraph (a) of this section does not prohibit or restrict a Federal, state or local government official, or his or her designee, who is acting in the course of official duties from:

(i) Taking a Steller sea lion in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals; or

(ii) Entering the buffer areas to perform activities that are necessary for national defense, or the performance of other legitimate governmental activities.

(3) *Subsistence takings by Alaska natives.* Paragraph (a)(1) of this section does not apply to the taking of Steller sea lions for subsistence purposes under section 10(e) of the Act.

(4) *Emergency situations.* Paragraph (a)(2) of this section does not apply to an emergency situation in which compliance with that provision presents a threat to the health, safety, or life of a person or presents a significant threat to the vessel or property.

(5) *Exemptions.* Paragraph (a)(2) of this section does not apply to any activity authorized by a prior written exemption from the Director, Alaska Region, National Marine Fisheries Service. Concurrently with the issuance of any exemption, the Assistant Administrator will publish notice of the exemption in the **Federal Register.** An exemption may be granted only if the activity will not have a significant adverse affect on Steller sea lions, the activity has been conducted historically or traditionally in the buffer zones, and there is no readily available and acceptable alternative to or site for the activity.

(c) *Penalties.* (1) Any person who violates this section or the Act is subject to the penalties specified in section 11 of the Act, and any other penalties provided by law.

(2) Any vessel used in violation of this section or the Act is subject to forfeiture under section 11(e)(4)(B) of the Act.

Date: July 13, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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