

Wildlife Management Assistance and Habitat Restoration, U.S. Fish and Wildlife Service, Telephone 703-358-1718, or on the Internet at Jeffrey\_Horwath@fws.gov.

**SUPPLEMENTARY INFORMATION:** On December 15, 1998, our regulations at 50 CFR Part 18, Subpart J expired. These regulations were effective beginning on December 16, 1993 (58 FR 60402, November 16, 1993), and authorized the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry exploration, development, and production operations in the Beaufort Sea and adjacent coast of Alaska. We subsequently issued final regulations on January 29, 1999 (64 FR 4328) "revising" these expired regulations. Later regulations appear on February 3, 2000 (65 FR 5275), and March 30, 2000 (65 FR 16828). Rather than "revising" our regulations, we should have stated that we were "adding" these regulations at 50 CFR Part 18. Therefore, this action corrects this technical error by changing the amendatory instructions in our March 30, 2000, final rule to state that we are "adding" those regulations to 50 CFR Part 18, Subpart J. Letters of Authorization issued under the regulations are not affected by this action.

Accordingly, make the following correction to FR Doc. 00-7912 published at 65 FR 16828 on March 30, 2000:

#### **PART 18—[CORRECTED]**

On page 16842, in column one, correct amendatory instruction 2. to read as follows:

2. Add Subpart J to Part 18 to read as follows:

Dated: November 6, 2000.

**Cathleen Short,**

*Assistant Director, Fisheries and Habitat Conservation, Fish and Wildlife Service.*

[FR Doc. 00-28778 Filed 11-8-00; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Parts 300 and 679**

[Docket No. 000616184-0290-02; I.D. 050500A]

RIN 0648-AK74

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Sitka Pinnacles Marine Reserve**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 59 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) and to make changes to the regulations governing the Individual Fishing Quota (IFQ) commercial fishery and halibut sport fishery. This action designates an unusually productive and fragile 2.5 square nautical mile (nm) area of habitat as the Sitka Pinnacles Marine Reserve (Reserve) and closes this area to groundfish fishing and anchoring by commercial groundfish vessels, to halibut fishing and anchoring by IFQ halibut fishing vessels, to sport fishing for halibut, and to anchoring by any vessel if halibut is on board. The intent of this action is to protect an area containing important fish habitat from the effects of fishing and anchoring and to create a groundfish reserve.

**DATES:** Effective December 11, 2000.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Impact Review (EA/RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Regional Administrator, Alaska Region, NMFS, 709 West Ninth Street, Federal Office Building, Suite 453, Juneau, AK 99801.

**FOR FURTHER INFORMATION CONTACT:** Nina Mollett, 907-586-7228; fax 907-586-7465.

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries of the Gulf of Alaska (GOA) are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery

Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the domestic groundfish fisheries in the exclusive economic zone of the GOA appear at 50 CFR parts 600 and 679. Regulations governing the IFQ halibut fisheries in the exclusive economic zone of the GOA appear at 50 CFR part 679. Regulations governing the domestic halibut fisheries appear at 50 CFR 300.60 to 300.65, which supplements the annual fishery management measures adopted by the International Pacific Halibut Commission (IPHC) under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea.

Amendment 59 was submitted to NMFS for review and a notice of availability of the FMP amendment was published on May 12, 2000 (65 FR 30559), with comments on the FMP amendment invited through July 11, 2000. Amendment 59 was approved by NMFS on August 9, 2000. The proposed rule to implement Amendment 59 was published on June 26, 2000 (64 FR 39342). The public comment period ended on August 10, 2000. One letter of comments was received on Amendment 59 and its implementing regulations. A summary of this letter and NMFS' response is provided in the "Response to Comments" section.

#### **Background**

The Sitka Pinnacles area, in the Southeast Outside District of the GOA near Cape Edgecumbe, provides highly productive habitat for many species at different stages of their life cycles. Information collected during manned submersible surveys of groundfish habitat by the Alaska Department of Fish & Game (ADF&G) indicates that the diversity and density of fish around the Sitka Pinnacles are much greater than the typical eastern continental shelf of the GOA. The pinnacles habitat is fragile, and the concentration of fishes in a relatively small, compact space can lend itself to overfishing of certain species, particularly lingcod, at sensitive life stages.

The Sitka Pinnacles (also called the Cape Edgecumbe Pinnacles) consist of two large volcanic cones that rise abruptly off the seafloor. The top of one is within 70 meters (229.6 feet) of the sea surface, and the other within 40 meters (131.2 feet). The area from sea surface to seafloor provides a variety of rich habitat suitable for different species. The field of boulders on the bottom provides a spawning bed for

lingcod and refuge for large numbers of such commercially valuable species as yelloweye and tiger rockfish, and of such non-commercial species as prowfish. The flat, irregular tops of the pinnacles are used as a feeding platform by juvenile and adult rockfish and by huge concentrations of lingcod. The walls of the pinnacles, covered with

algae, anemones, and other organisms, provide shelter to large numbers of juvenile and adult bottom-dwelling rockfish. Finally, schooling species, such as yellowtail and widow rockfish, feed along the pinnacle walls and in the water column between the top of the pinnacles and the surface.

Since 1997, when the State of Alaska (State) initially proposed this action to the Council, NMFS, ADF&G, and the IPHC have cooperated on creating the Reserve, as different species are managed under different jurisdictions (see Table 1).

THE SITKA PINNACLES TABLE 1—AGENCY ACTIONS TO CLOSE FISHERIES OFF CAPE EDGE CUMBE

Species	Agency	Law
Commercial and recreational fishing for lingcod and black rockfish	ADF&G .....	These fisheries are closed under 5 AAC 28.150.
Groundfish	NMFS .....	Closed by Amd. 59 and regulatory amendments at 50 CFR 679.2 and § 679.22.
Halibut	NMFS and IPHC .....	Closed by regulatory amendments at 50 CFR 300.63 and § 679.22.
Scallops	ADF&G .....	Under Amd. 3 to the Fishery Management Plan for Scallop Fisheries off Alaska, NMFS delegates responsibility to the State for managing the scallop fishery. Scallop dredging has been closed under 5 AAC 38.120 in the "Central Southeast Outside" area, including the Sitka Pinnacles, since July, 1994.
Commercial and Recreational Salmon	NMFS and ADF&G .....	The Alaska State Board of Fish considered closure to salmon fishing at its February 2000 meeting and rejected the proposal.

The area has been used for fishing, especially with hook-and-line gear, for decades. In the late 1980s, a directed fishery for lingcod developed on the pinnacles. The high density and aggressive feeding behavior of lingcod made them extremely susceptible to capture; hourly catch rates of lingcod at the site exceeded catch rates in the surrounding area by threefold. In 1991, the State of Alaska (State) began attempting to preserve lingcod populations in nearby State waters (the Sitka Pinnacles are in Federal waters) through closures during winter when male lingcod are nest guarding and, in 1994, through spring/summer in-season closures of State-regulated fishing in areas that included the pinnacles. In 1995, the pinnacles area was included in the winter closure as well. In 1997, ADF&G issued an emergency order closing the area to all State-regulated groundfish fishing for the entire season. However, the sport fishery was not affected by any of the State's management actions and continued to take lingcod and Pacific halibut. In May 1998, the commercial and sportfish divisions of ADF&G submitted joint proposals to the State's Board of Fish and the Council to close the Sitka Pinnacles area. The Board of Fish closed the area to fishing for lingcod and black

rockfish, which are species under its jurisdiction. It took up the question of closing the area to commercial and recreational salmon fishing in February 2000 but rejected the proposal.

This action has two parts:

*1. Implementation of Amendment 59; Designation of Sitka Pinnacles Marine Reserve and Closure to Groundfish Fishing and Anchoring*

This action complements State regulations by designating a 2.5 square nm area of the GOA as the Sitka Pinnacles Marine Reserve and closing this area to groundfish fishing or anchoring by vessels required to have a Federal fisheries permit under § 679.4(b).

*2. Regulatory amendment for halibut*

The Pacific halibut fishery is managed by the IPHC, under the Northern Pacific Halibut Act. The Act states that the Regional Fishery Management Council with authority for a geographic area may develop regulations governing U.S. waters "which are in addition to, and not in conflict with, regulations adopted by the Commission" (16 U.S.C. 773c(c)). Pursuant to this authority, this action closes the Reserve to fishing for halibut or anchoring by vessels required to have on board an Individual Fishing Quota

(IFQ) halibut permit under § 679.4(d). Also pursuant to this authority, this action closes the area to sport fishing for halibut as defined at § 300.61, or anchoring by any vessel having halibut on board.

The combined effect of State and Federal regulations will allow the Sitka Pinnacles ecosystem to maintain its natural level of production by eliminating the harvest or bycatch of fish during critical portions of their life history. The prohibition on anchoring will prevent degradation of the area's fragile habitat.

**Response to Comments**

One letter was received during the public comment period. It was from the Center for Marine Conservation (CMC). CMC's comments are summarized and responded to as follows:

*Comment:* CMC supported the closure generally with certain reservations: (1) It would have preferred an "ecosystem-based management strategy" including designation of the reserve as a Habitat Area of Particular Concern (HAPC) to the "species-specific strategy" adopted by NMFS; (2) it supports a ban on all anchoring in the pinnacles area; (3) it supports closing a larger area to fishing that would include a buffer zone around

the pinnacles, noting that initial State-regulated closures designated a 3.1 square nm area.

*Response:* (1) The Reserve is being considered by the Council for HAPC designation as part of a broader HAPC amendment, which is undergoing a public planning process. (2) NMFS agrees that the anchoring prohibition is selective, not comprehensive. However, NMFS' authority under the Magnuson-Stevens Act is limited to the regulation of fishing vessels. Thus, NMFS does not have authority to prohibit anchoring by non fishing vessels. NMFS has delegated the management of commercial and sport salmon fishing to the State. NMFS has corresponded with the State over the possibility of prohibiting anchoring by salmon fishing vessels. (3) Initial state-regulated closures designated a 3.1 square nm area around the pinnacles. The discrepancy is due to an initial miscalculation of the area, which has been corrected. The area is actually 2.5 square nm. The area delineated has remained the same dimension and includes the entire area around the pinnacles recommended by the State in its initial presentation to the Council, as described in the final rule. A larger closed area would lead to greater impacts on fishermen and would have less community support. The 2.5 square nm closure adequately protects the discrete habitat area surrounding the Sitka Pinnacles.

#### Classification

This action has been determined to be not significant under Executive Order 12866. No new reporting, recordkeeping, or compliance requirements are imposed by this final rule.

NMFS has prepared an FRFA that describes the impact this final rule is expected to have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). At the upper limit, the total number of entities that could be affected by this action is estimated at 2,618, which includes 1,048 fixed gear groundfish vessels and 1,570 halibut vessels, based on 1998 data for vessels that fished in the GOA. This figure does not include trawl vessels, which are already prohibited from fishing in this area under Amendment 41 (63 FR 8356, February 19, 1998). Of the non-trawl vessels, the great majority (90 percent) are catcher vessels under 60 feet in length overall (as opposed to larger catcher vessels and catcher-processors). The necessary data on ownership, affiliation, contractual relationships, and the rest from which to conclusively determine which of these operations are "small entities" for

Regulatory Flexibility Act purposes are not available, and some of these 2,618 vessels might not qualify under Small Business Administration criteria. However, for the purposes of the FRFA analysis, all of these groundfish and commercial halibut vessels are assumed to be small entities, given the nature of the fisheries they participate in and the unlikelihood that many of them have annual gross revenues in excess of \$3 million. This simplifying assumption avoids the risk of understating the potential impact on small entities.

Realistically, the assumption that all vessels fishing in the GOA could be affected greatly inflates the estimate of vessels whose opportunity to fish could potentially be affected by this final rule. The closure is in Statistical Area (S.A.) 355631. Information from the State's Commercial Fisheries Entry Commission fish ticket data shows that, in 1998, 97 vessels fished for groundfish in S. A. 355631. The NMFS IFQ landings database shows that 67 vessels caught IFQ halibut in 1998 in S. A. 355631 (4.2 percent of halibut vessels). Therefore, 157 is a more realistic estimate of the universe of commercial groundfish and halibut vessels that fish in the vicinity and whose opportunity to fish could potentially be affected by the final rule.

The total landings of State and federally managed species in 1998 in S. A. 355631, based on fish ticket data, were 748,378 lb (or about 0.14 percent of the total landings in the GOA that year). The total amount of halibut landed in S. A. 355631 was 409,000 lb, or 0.9 percent of the total landed in the GOA, a percentage which remained consistent from 1995 to 1998. The closure area itself is less than 1 percent of S. A. 355631 (2.5 sq nm out of a total of 466 sq nm). The historical poundage of groundfish and halibut taken in the closure area cannot be ascertained with any further accuracy, however, because the data built from fish tickets give only statistical areas and not exact catch locations.

In addition to the commercial fishing vessels, 588 charter vessels, owned by 397 unique businesses, fished for halibut in 1988 in IPHC Area 2C, in which the Sitka Pinnacles are located. Of the charter vessels, 364 were homeported in Sitka, and 191 of the Sitka vessels targeted bottomfish, including Pacific halibut. Opportunities of charter boat operators, as well as individual anglers, to fish for Pacific halibut could be affected by this action. But few, if any, of these charter boats have been fishing on the pinnacles since the State closed the area to fishing for lingcod and State-managed rockfish

species in the summer of 1998. The aggregations of lingcod present on the pinnacles were an incentive to travel to this site. Although halibut may be found near the Sitka Pinnacles, they do not aggregate there in any greater numbers than elsewhere in S. A. 355631.

The actual number of vessels affected by the rule will be even smaller than the number outlined. Few fishing vessels currently use the area. Most, if not all, groundfish and halibut fishermen have voluntarily avoided the pinnacles area for the past 2 years, since ADF&G regulations prohibiting the take of groundfish species under its jurisdiction took effect. Local fishermen have been supportive of protecting the Sitka Pinnacles.

If any vessels continue to fish in the reserve, they are not likely to be adversely affected by the closure to any significant extent, as the area constitutes less than 1 percent of the grounds in S. A. 355631 and less than .001 percent of the total available fishing grounds in the GOA (about 340,000 sq nm). Some long-term advantage may accrue to fishermen in terms of fishing opportunity in nearby areas because leaving an area of notably high biological importance and productivity (e.g., unique breeding, spawning, rearing habitat) undisturbed has the potential of increasing production through a spillover effect in adjacent areas that remain open to fishing. Any such benefits from increased production, however, could be offset in an open-access situation because increased catch per unit effort in adjacent areas could lead to crowding externalities. The preferred alternative selected, under which salmon fishing would continue to be allowed, was chosen in order to reduce the potential impact on small entities. The State Board of Fish considered and rejected closing the area to salmon fishing at its February 2000 meeting in order to minimize unwarranted adverse impacts on numerous salmon vessels that fish in the GOA.

In summary, the cost to small entities of implementing the final rule is expected to be quite low, as the area being proposed for closure constitutes an extremely small percentage of available fishing grounds, and few, if any, vessels have been fishing in the area since ADF&G promulgated regulations prohibiting fishing for groundfish species under its jurisdiction in 1998. No total allowable catch quotas will be changed by the rule, and NMFS does not anticipate a reduction in catch for any species as a result of this rulemaking.

The Environmental Assessment concluded that implementing the

amendment is not likely to affect the quality of the human environment.

The President has directed Federal agencies to use plain language in their communication with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Alaska Regional Administrator (see ADDRESSES).

**List of Subjects**

*50 CFR Part 300*

Administrative practice and procedure, Exports, Fish, Fisheries, Marine resources.

*50 CFR Part 679*

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 1, 2000.

**William T. Hogarth,**

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

For the reasons discussed in the preamble, 50 CFR parts 300 and 679 are amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

**Authority:** 16 U.S.C. 773 - 773k.

2. In subpart E, Pacific Halibut Fisheries, § 300.63, paragraph (e) is added to read as follows:

**§ 300.63 Catch sharing plans, local area management plans, and domestic management measures.**

\* \* \* \* \*

(e) *Prohibition on halibut fishing and anchoring in the Sitka Pinnacles Marine Reserve.* (1) For purposes of this paragraph (e), the Sitka Pinnacles Marine Reserve means an area totaling 2.5 square nm off Cape Edgecumbe, defined by straight lines connecting the following points in a counterclockwise manner:

- 56°55.0'N lat., 135°54.0'W long;
- 56°57.0'N lat., 135°54.0'W long;
- 56°57.0'N lat., 135°57.0'W long;
- 56°55.5'N lat., 135°57.0'W long.

(2) No person shall engage in sport fishing, as defined in § 300.61, for halibut within the Sitka Pinnacles Marine Reserve.

(3) No person shall anchor a vessel within the Sitka Pinnacles Marine Reserve if halibut is on board.

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

3. 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.*

4. In § 679.2, a new definition for the “Sitka Pinnacles Marine Reserve” is added in alphabetical order, to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Sitka Pinnacles Marine Reserve* means an area totaling 2.5 square nm in the GOA, off Cape Edgecumbe, in Statistical Area 650. See Figure 18 to this part.

\* \* \* \* \*

5. In § 679.22, paragraph (b)(5) is added to read as follows:

**§ 679.22 Closures.**

\* \* \* \* \*

(b) \* \* \*

(5) *Sitka Pinnacles Marine Reserve.* (i) No vessel required to have a Federal fisheries permit under § 679.4(b) may fish for groundfish or anchor in the Sitka Pinnacles Marine Reserve, as described in Figure 18 to this part.

(ii) No vessel required to have on board an IFQ halibut permit under § 679.4(d) may fish for halibut or anchor in the Sitka Pinnacles Marine Reserve, as described in Figure 18 to this part.

\* \* \* \* \*

6. In part 679, Figure 18 is added to read as follows:

**Figure 18 to Part 679—Sitka Pinnacles Marine Reserve**

**BILLING CODE 3510-22-S**

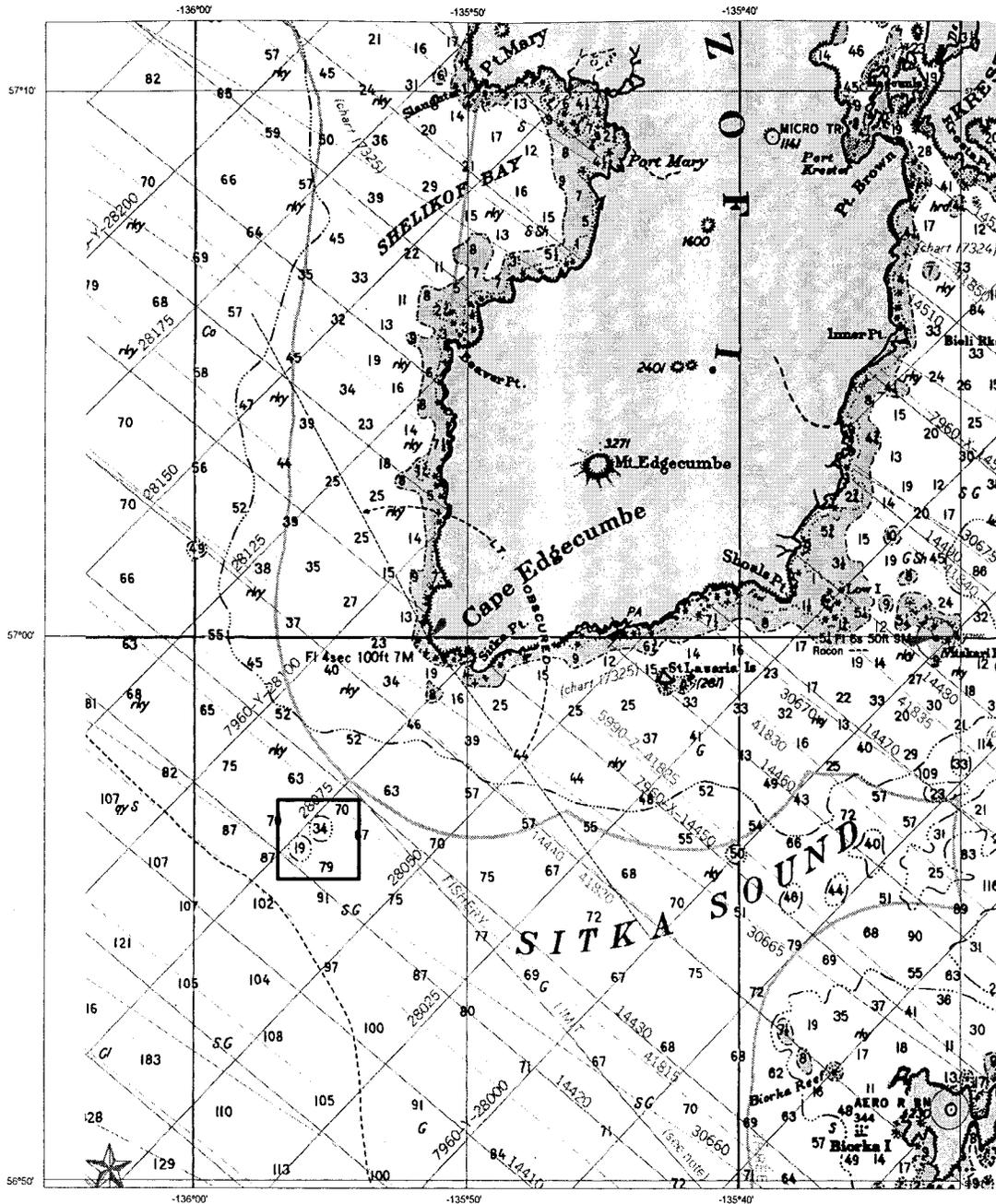


Figure 18 to Part 679. Sitka Pinnacles Marine Reserve (area enclosed within rectangle).

a. Map

b. Coordinates

An area totaling 2.5 square nm off Cape Edgecumbe, defined by straight

lines connecting the following points in a counterclockwise manner:

- 56°55.5'N lat., 135°54.0'W long;
- 56°57.0'N lat., 135°54.0'W long;

- 56°57.0'N lat., 135°57.0'W long;
- 56°55.5'N lat., 135°57.0'W long.

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