STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
SOUTHCENTRAL REGION LAND OFFICE

PRELIMINARY BEST INTEREST FINDING
AQUATIC FARMSITE LEASE APPLICATION

APPLICANT: Ron Folger
dba *Alaska Shellfish Growers, LLC*
ADL #107841

LOCATION: Shikat Bay, Southwest of Shikat Point

The Department of Natural Resources is accepting public comment on the following preliminary decision document for the renewal of an existing aquatic farm site. **Written comments must be received on or before 5:00 p.m., Tuesday, December 8, 2009.**

PROPOSED ACTION: The applicant is requesting an aquatic farm site lease south and west of Shikat Point approximately 4.1 miles northwest of the community of Naukati, Alaska. The applicant is proposing two shellfish grow-out areas. Each grow-out area consists of 10, 16 ft. x 24 ft. floating rafts for hanging oyster gear. Between the grow-out rafts and within the farm site footprint, the applicant proposes a 40 ft. x 24 ft. covered processing facility connected to a 16 ft. x 30 ft. work float.

The total acreage of the farm site proposal is 2.99 acres, more or less.

The farm site location is only accessible by boat or floatplane. A location map is attached to this decision.

*The applicant is cooperatively working with two other applicants, Jim Greeley and Greg Parsley, who are proposing identical contiguous farm sites within Shikat Bay for a total usage of 8.97 acres

AUTHORITY: AS 38.05.035; AS 38.05.070; AS 38.05.075; AS 38.05.083; AS 38.05.127; AS 38.05.128; 11 AAC 63.020

This decision addresses and is based on those issues under the authority of the Department of Natural Resources (DNR) under Title 38. While other issues may be addressed that are not within the scope of DNR's responsibilities, this decision's purpose is to determine whether or not to issue a DNR lease and does not make any determinations whatsoever on the issuance of other agency authorizations that are necessary for aquatic farming activities.

ADMINISTRATIVE RECORD: The administrative record for this application is ADL 107841.

GEOGRAPHIC LOCATION: The farm site is located on state-owned tide and submerged within an unnamed bay, locally known as Shikat Bay, on the north side of Tuxekan Island approximately

4 miles northwest of the community of Naukati.

USGS MAP COVERAGE: Craig D-4

NAUTICAL CHART: 17403

LEGAL DESCRIPTION:

Township 69 South, Range 79 East, Copper River Meridian

And more specifically described as:

Section 4; SE ¼, SE ¼ plus Section 3; SW ¼ , SW ¼ plus Section 10; NW ¼ , NW ¼ plus Section 9; NE ¼ ,NE ¼ in an unnamed bay off the north portion of Tuxekan Island for suspended culture grow-out, a processing facility and a work-raft.

The total area encompassed by this aquatic farm is approximately 2.99 acres, more or less.

Lands are located in the Ketchikan Recording District.

POLITICAL INFORMATION:

BOROUGH/MUNICIPALITY: This existing aquatic farm application is outside of an organized borough.

COASTAL DISTRICT: The application lies outside of an approved coastal district. The nearest coastal district is the City of Klawock.

REGIONAL CORPORATION: Sealaska Corporation

FISH AND GAME ADVISORY COMMITTEES: Edna Bay Fish and Game Advisory Committee.

ACQUISITION AUTHORITY: Submerged Lands Act of 1953. (PL 31, 83rd Congress, First Session; 67 Statute 29); Equal Footing Doctrine; Section 1 of the Alaska Statehood Act.

TITLE REPORT: A title report was requested on November 2, 2009

PLANNING AND CLASSIFICATION:

LAND MANAGEMENT PLAN: Prince of Wales Island Area Plan, Unit 7, Sea Otter Sound, Subunit 7b.

LAND CLASSIFICATION: The Prince of Wales Island Area Plan designates state owned tidelands in the Shikat Point area as (Ra) Recreation (anchorages).

SURFACE MINERAL ORDERS: All state lands in subunit 7b are open to mineral entry.

ALASKA COASTAL MANAGEMENT PROGRAM: The proposed aquatic farm is currently undergoing Alaska Coastal Management consistency review. If the project is found to be inconsistent the project can not obtain a lease.

ACCESS: Access to the proposed sites is by boat or floatplane. A fifty-foot-wide easement will be reserved to protect public access in accordance with 11 AAC 63.050(b)(6) and 11 AAC 53. If additional specific easements are required, they will be addressed under the final recommendation section of this document.

SURVEY AND APPRAISAL:

SURVEY: A survey is not required by law before issuing a 10-year negotiated lease. However, the department has the right to require one in the future, at the applicant's expense, if boundary conflicts or disputes over acreage arise.

APPRAISAL: The Division of Mining, Land and Water has approved an administrative lease fee schedule for aquatic farm sites that meet the conditions listed within the schedule. The most current lease fee schedule will be used to establish the fair market rental each lessee must pay. The applicant has the option to have a site-specific appraisal done, at the applicant's expense, before the lease is issued, if he or she does not wish to use the fee schedule. If an applicant opts for a site-specific appraisal, the division-approved appraisal will establish the rental for the lease and the fee schedule will no longer be an option.

PUBLIC/AGENCY NOTICE AND COMMENTS: Public notice of the proposal has been sent to various newspapers, post offices, agencies, boroughs/cities, native corporations and, Fish and Game Advisory committees. Public and agency comments are welcome during the comment period and will be considered in the final best interest finding. Only those who provide written comments during the comment period or who testify at a public hearing will be sent a copy of the final best interest finding and will be eligible to appeal. The final best interest finding will include an explanation of the appeal process. The public comment period begins on November 9, 2009 and will end at 5:00 p.m. on December 8, 2009.

PENDING INTERESTS: The Alaska Department of Fish and Game has provided the following information:

The Alaska Department of Fish and Game (ADF&G) has reviewed the subject proposal and has done a partial review and determination of this proposal under its statutory and regulatory requirements.

Project Description

The applicant is requesting a proposed aquatic farm site located in Shikat Bay under ADL 107841, approximately 4 miles northwest of Naukati, Alaska, on state-owned tide and submerged

lands. The northeast corner of the site is located at 55° 54.557' N, 133° 17.608' W and runs south 300 feet, then west 435 feet for a total of 2.8 acres.

Evaluation

I. Physical and Biological Characteristics: The proposed aquatic farm site is located in a location area that has physical and biological characteristics that are suitable for culture of oysters.

Protection from Oceanographic and Atmospheric Extremes: The proposed aquatic farm operation project is in an area that appears to be protected from extreme oceanographic and atmospheric extremes. The farm gear proposed for use at the site have a similar configuration and anchoring systems as existing adjacent aquatic farms in the area and appears to be able to withstand these extremes.

Sufficient environmental conditions: The proposed aquatic farm operation project is in an area that apars to have sufficient water exchange, water temperatures, currents, salinity, and primary production to support an aquatic farm and maintain healthy environment for other marine organisms.

Sufficient Water Depth: The water depth for the Parcel 1 where the suspended gear will be placed at the aquatic farm site was specified on the application to be between 42 and 80 feet mean low water line and is sufficient to prevent gear from grounding and impacting the benthos under floating structures.

Eelgrass and Kelp Beds Maintained: Based on the application information provided by the applicant, there was no eelgrass observed at the proposed project area at 20 feet. The exact locations and extent of kelp beds is not well documented in the area. If the health and the abundance of kelp beds in the area are not properly maintained within the proposed aquatic farm site, project modifications to the Aquatic Farm Operations Permit will be made to correct the condition.

Anadromous Fish Streams: Anadromous streams catalogued for various salmon species are located near the proposed project[1]. The proposed aquatic farm operation is not located within 300 feet of the mouth of an anadromous fish stream. The closest anadromous stream is 2.1 miles from the site being proposed. Table 1 summarizes the distance between the aquatic farm site coordinate and the mouth of the anadromous stream, the classification number for the stream, and lists all the fish species that reside or spawns there.

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[11]Johnson, J. and K. Klein. 2009. Catalog of waters important for spawning, rearing, or migration of anadromous fishes - Southeast Region, Effective June 1, 2009. Alaska Department of Fish and Game, Special Publication No. 09-04, Anchorage.

Table 1: Distance of Anadromous Streams From Proposed Aquatic Farm Sites (Source: ADF&G Division of Sport Fish, Fish Distribution Database)					
Site No.	**Location**	**Name of Stream**	**Number**	**Dist. Between site and mouth of stream (feet)**	**Fish Species**
107841	Shikat Bay		103-90-10220	2.1 miles	chum salmon, pink salmon

II. Existing Uses not Significantly Altered: The proposed aquatic farm site is not expected to cause any significant alterations an established use defined as commercial fishery, sport fishery, personal use fishery, and subsistence fishery. Table 2 summarizes the traditional and existing uses for commercial, sport, and subsistence fisheries and anchorages in the proposed aquatic farm site area.

Table 2: Existing Uses for Commercial, Sport, and Subsistence Fisheries and Anchorages at the Sites

ADL-site	Gener-al Area	Species	ADF&G Stat Area	Geoduck Comm-ercial Fishery	Sea Cucum-ber Comm-ercial Fishery	Red Urchin Com-mercial Fishery	Salmon Gillnett-ing Comme-r-cial Fishery	Salmon Troll-ing/ Salmon Purse Seining	Herring /Dung-eness crab	Recrea-tional Sport Fishery/ Personal Use	Anchor	Sub-sistence
107841	Shikat Bay	Pacific oysters	103-90	No	Yes	No	No	Yes	No	Probably	No	No

Commercial Fisheries: The proposed aquatic farm is located in ADF&G Commercial Fisheries Division Statistical Area subdistrict 103-90. The proposed aquatic farm site is not expected to cause any significant alterations to the existing commercial fishery uses in the area.

Geoducks: The site is 5.2 miles away, from the Turn Point geoduck gommercial fishery harvest area bed code 103-90-003 in subdistrict 103-90. The proposed aquatic farm site is not expected to cause any significant alterations to the existing geoduck commercial dive fishery in the area.

Sea cucumber: This site is in the Sea Otter Sound commercial sea cucumber dive fishery harvest statistical area 010390. On a three year rotation, the last fishery occurred there in 2008/09. The number of permits (individuals) for this statistical area harvesting sea cucumbers accounted for 33% (38 out of 116) of all the 2008/09 season permits recorded that harvested in the Ketchikan Management Area. The proposed aquatic farm site is not expected to cause any significant alterations to the existing sea cucumber commercial dive fishery in the area.

Red Sea Urchins: No commercial red sea urchin dive fishery takes place at the site.

attached map, Figure 1, for the location of the farm site and the haulout areas). During survey of 1998, a mean count of between 0 and 10 harbor seals were present at this haulout. During the survey of 2007, no counts were determined for harbor seals at this haulout. Relative to the numbers of the population stock for this management area, the haulout is secondary based on the harbor seal counts. The primary haulout for harbor seals in this area based on a count of between 101 and 500 seals is 2.8 miles away. This proposed aquatic farm project is not expected to adversely impact sea mammal habitats. Table 1 summarizes the actual estimated distances from harbor seal haulout areas.

*** Map on following page**

researchers from NOAA Fisheries Service, Alaska Fisheries Science Center, and National Marine Mammal Laboratory.

Salmon: No salmon gillnetting fishery, salmon trolling, or gillnet salmon fishery occurs at the site. The site lies within a subdistrict area where commercial salmon seine and troll fisheries occur. In 2009, there were 381 recorded salmon landings for this statistical subdistrict area. The proposed aquatic farm site is not expected to cause any significant alterations to the existing salmon commercial fishery in the area.

Herring: No commercial herring fishery occurs in this area.

Dungeness crab: No commercial crab fishery occurs in this area.

Sport Recreational Fishery: The area is not a significant site for Sport Anglers. Traditional troll and bottom fishing area for sport fishers is not known to occur in this area. Due to their design, oyster farms have not seemed to have significant negative impact on anglers. The proposed aquatic farm site is not expected to cause any significant alterations to the existing sport recreational fishery in the area.

Subsistence Use: The proposed aquatic farm site is not expected to cause any significant alterations to the existing subsistence uses in the area.

Anchorages: This area is not known to have any critical vessel anchorages.

III. Compatible with Fish and Wildlife Resources: The proposed aquatic farm site is compatible with fish and wild life resources in the area.

Predator and Pest Control Methods: Predator exclusion devices to be used at the proposed site are expected to be utilized in a manner that minimizes impacts on non-targeted fish and wild life resources in the area.

Sensitive Wildlife: The proposed aquatic farm site is not expected to adversely impact seabird colonies, sea lion haulouts and rookeries, seal haulouts and pupping areas, and walrus haulouts.

Sea Bird Colonies – There are no sea bird colonies identified within 1 mile of the proposed sites.[2]

Sea Mammal Habitat - The proposed aquatic farm is located within 1 mile of a known harbor seal haulout area based on the linear distance from the northeastern latitude and longitude coordinate of the proposed aquatic farm site and the center point of the nearest known marine mammal haulout[3] (See the

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[2] U.S. Fish and Wildlife Service, (current year). Beringian Seabird Colony Catalog -- computer database. U.S. Fish and Wildlife Service, Migratory Bird Management, Anchorage, Alaska 99503.

[3] Analysis completed by NOAA Fisheries Service, Alaska Region, Protected Resources Division. Specifically, the data used to complete this analysis were provided by

Figure 1: Harbor seal haulouts and one mile buffer in area of Shikat Bay.

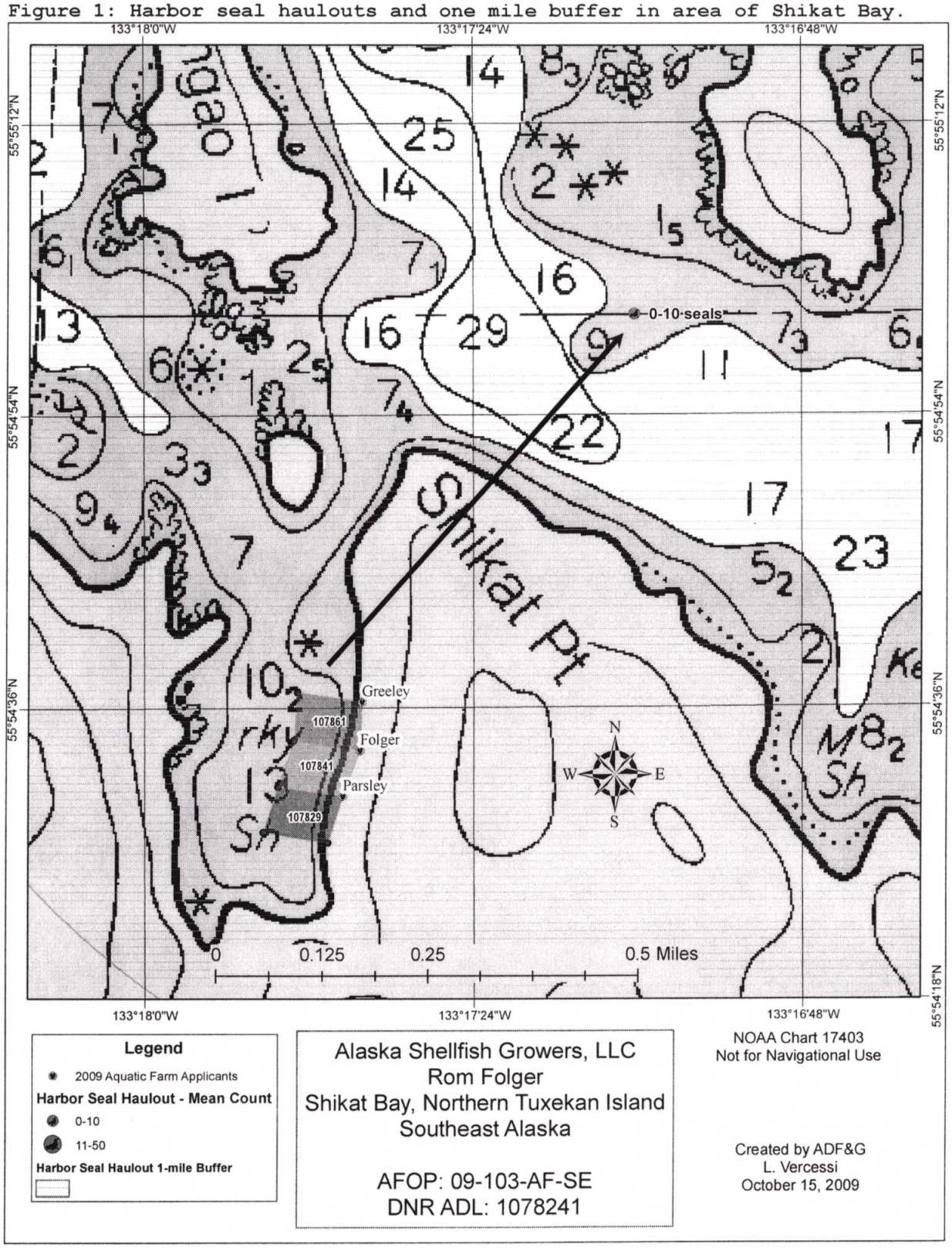


Table 1: Distance of Aquatic Farm to Sea Mammal Haulouts							
ADL	General Area	Applicant Contact Name	Species	Sea Lion Haulout	Harbor Seal Haulout	Count	Distances from Haulout Area (miles)
107841	Shikat Bay	Folger	Pacific oyster	No	**Yes**	0-10	0.6 mile
107841	Shikat Bay	Folger	Pacific oyster	No	**Yes**	101-500	2.8 miles

Endangered species: The proposed aquatic farm project is not expected to adversely impact endangered and threatened species recovery and habitat efforts.

IV. Operation and Development Plan:

Increase Productivity: The operation and development plan for this project sufficiently describes how the operation will improve the productivity of the species intended for culture above what would occur in natural conditions using approved methods such as predator exclusion, reduction of competing species, destiny manipulation, import of naturally produced seed, import of hatchery produced seed, programming harvest to optimize growth and shellfish condition, and habitat improvements.

Maintenance: The operation and development plan for this project indicates that support facilities and culture gear and anchoring system will be installed with sufficient anchors and maintained.

Rotation Schedule: The projected rotation schedule is consistent with the life history of the species intended for culture.

V. Species to be Cultured and Site Suitability

The department has not conducted a site suitability study for this site. Based on information provided by the applicant, the proposed site is capable of supporting the activities proposed. The proposed parcels in this aquatic farm operation project are located in an area that is thought to be suitable for suspended oyster culture.

ENVIRONMENTAL RISK ASSESSMENT: The applicant has submitted a signed environmental risk questionnaire. The questionnaire asks for information on potentially hazardous materials, such as plans for onsite storage of fuel or chemicals. The applicant has indicated that no on-site use, storage, transport, disposal, or otherwise, of any petroleum products will be used during the course of the proposed activities.

BONDING AND INSURANCE: Bonding, or another form of security, is required under AS 38.05.083 and 11 AAC 63.080. The bond must cover the costs of site cleanup and restoration, any associated cleanup costs after termination of the lease, including any unpaid rentals or other obligations accruing until site restoration is complete. The bond regulations require:

The minimum security amount for a lease is $2,500. However, if three or more lessees post an association bond to cover all of their leases, the minimum security amount is 50 percent of the amount individually calculated for each lease. The association must designate an agent for notification purposes. The association has the right to be notified of the termination of a lease covered by its association bond. If neither the former lessee nor the association completes the site restoration as required by AS 38.05.090, the department will use the association bond for this purpose, up to 100 percent of the amount individually calculated for that lease. The association may remove a lease in good standing from the coverage of its association bond after a 60-day notice to the department, during which time the affected lessee must make other arrangements to comply with 11 AAC 64.080(b). A lease that is in default or that has been terminated with site restoration still pending may not be removed from the coverage of an association bond.

At this time, the Department does not require these operations to have insurance. Insurance may be required in the future depending on the operation and the policies of the department at the time changes are made to the lease or another lease is issued. Insurance, such as Workman's Compensation Insurance, may be required under other state laws.

TRADITIONAL USE FINDING: The presence of aquatic farm sites should not disrupt traditional and/or existing uses of the area, such as commercial and sport fishing, subsistence activities, boat travel, anchorage and recreation. Through agency and public input, more traditional and existing use information may surface. If such information becomes available, any potential and/or existing conflicts will be addressed in the final best interest finding.

PRINCE OF WALES ISLAND AREA PLAN INFORMATION SPECIFIC TO THIS PROPOSAL: This farm site lies within Unit 7, Sea Otter Sound, Subunit 7b. The Bay is designated Recreation (anchorages) commonly used by recreation or commercial vessels for anchoring. The leasing of up to 3 aquatic farm sites must not take up more than 1/3 of the Bay and should not cause conflicts with anchorage areas. There are no other known pending interests at the location of the proposal.

UPLAND OWNER MANAGEMENT: The U.S. Forest Service (Tongass National Forest) is the upland owner of lands adjacent to the aquatic farm.

ENVIRONMENTAL RISK QUESTIONNAIRE: The applicant has indicated that this proposed activity will not generate, use, store, transport, disposal of, or otherwise come in contact with toxic and/or hazardous materials, and/or hydrocarbons.

CONSIDERATIONS: The following criteria, set out in 11 AAC 63.050(b), has been considered and represents what is known at this time:

Land Management: There are no known land management policies or designations, other than those in the Alaska Coastal Management Program, the Prince of Wales Island Area Plan, and potentially the Tongass Land and Resource Management Plan that may impact this proposal. Measures taken to mitigate impacts on the resources

identified in the above-mentioned plans are listed below.

Pending/Existing Uses:

1. There are no known pending use conflicts or potential impacts to nearby communities or residential land due to the placement of this farm at the proposed location.

2. Information available suggests the aquatic farm should not disrupted traditional and existing uses of the site for use as an anchorage, commercial and sport fishing, recreation, and tourism.

   Issuing a lease for an aquatic farm would not compete with commercial and sport fisheries as access to those resources being sought after would be protected and stipulated in any resultant lease agreement.

   In order to inform the public of their continued access rights, any resultant lease would stipulate the requirement that signs be posted with information that informs the public of their rights of access through the farmsite as well as access to those fish and wildlife resources not being cultured at the aquatic farmsite.

3. There are no historic and cultural resources known to exist in the area.

4. There are no commercial or industrial facilities known to exist in the area.

Public Access: Public access has been and will be protected in accordance with 11 AAC 63.050(b)(6) and 11 AAC 53 and will be addressed in any resultant lease agreement.

Public Trust Doctrine: Any resultant lease agreement is subject to the principles of the Public Trust Doctrine in order to protect the public's right to use navigable waters and the land beneath them for navigation, commerce, fishing, and other purposes.

Mitigation Measures: In addition to the mitigation measures identified above under Pending/Existing Uses, paragraph 2, any resultant lease renewal may include additional stipulations necessary to mitigate conflicts identified during the public/agency comment period

Social, Economic, and Environmental Concerns: There are no known significant social, economic, and environmental effects from the existing lease.

Surface Area: The proposal does not encumber more than a third of the surface area of a bay, bight, or cove in accordance with 11 AAC 63.050(c).

ADVANTAGES AND DISADVANTAGES OF THE PROPOSAL: This aquatic farm could provide opportunities to increase income and diversify the state's economy by utilizing state tide and submerged lands for this purpose. The advantage of this lease on state owned tide and submerged lands would be possible employment opportunities as well as any secondary jobs created or increased from businesses involved in marketing, transport or sale of farmed products.

There are no obvious disadvantages of this activity on state owned tide and submerged lands. The public should be aware that access through the site, as well as access to any of the common property resources not being cultured at the site are public uses that remain intact. Therefore, any resultant lease would stipulate the requirement that there is proper signage of the aquatic farm sites to inform the public of the owners name, address, ADFG and DNR permit and lease numbers.

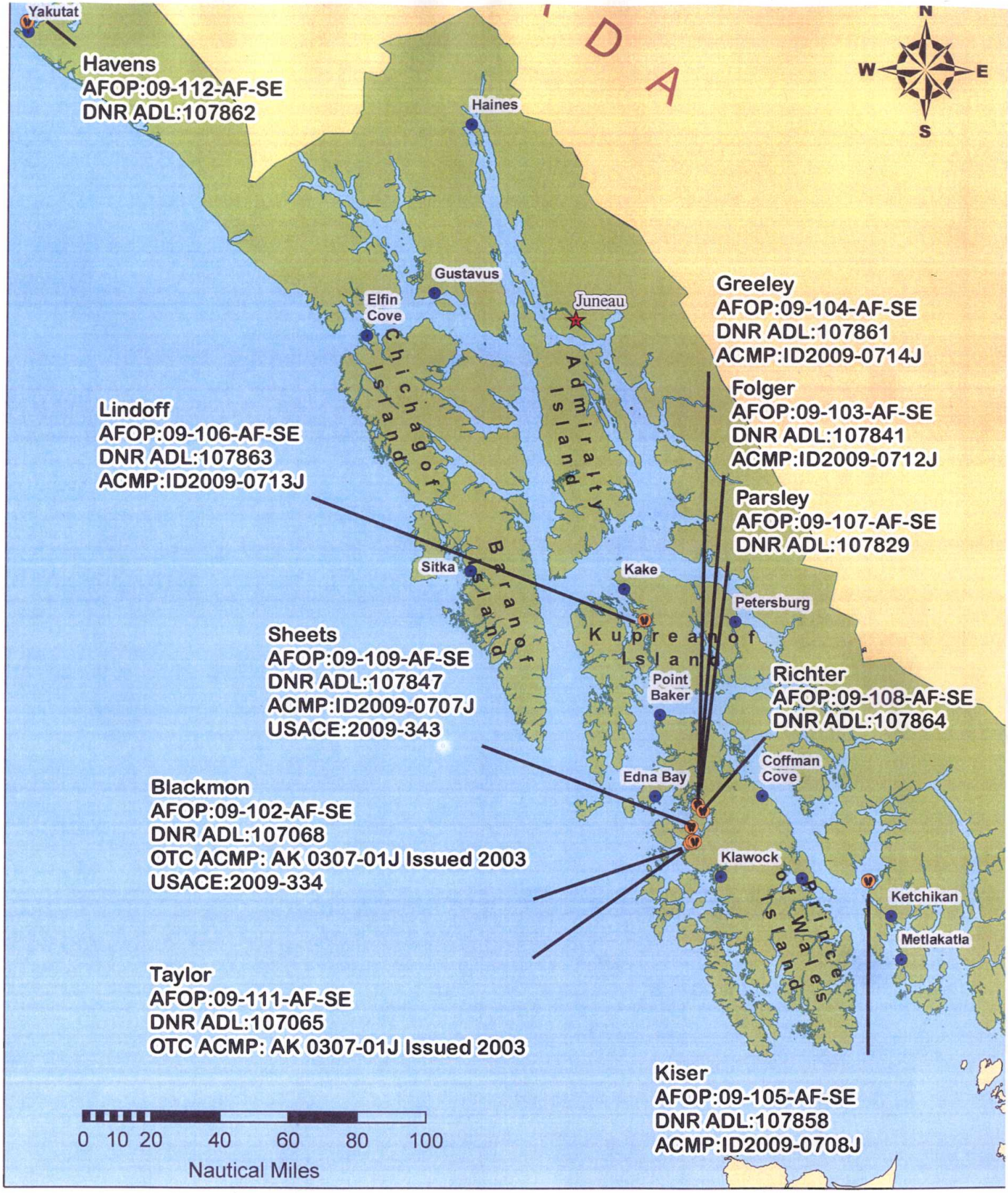
RECOMMENDATION: Considering the information known at this time and described within this decision, it appears to be in the state's best interest to proceed forward toward the lease for approximately 2.99 acres more or less to the applicant for shellfish culture. Any resultant lease will include stipulations that may be identified as a result of public comments. Approval of the application is recommended with a security bond set at $2,500 or $1250 with an association bond. Should the Division of Governmental Coordination find the project inconsistent with the Coastal Management Program, the lease would not be issued.

John S. Thiede

John S. Thiede, Aquatic Farm Program Manager

November 6, 2009

Date



2009 Aquatic Farm Opening Sites
Southeast Alaska

Attachment
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2009 Aquatic Farm Application Sites

Capital

ASG-T3

Rom Folger Alaska Shellfish Growers, LLC. PO Box 644, Craig, Alaska 99921

(928) 377-6559 folger@hughes.net

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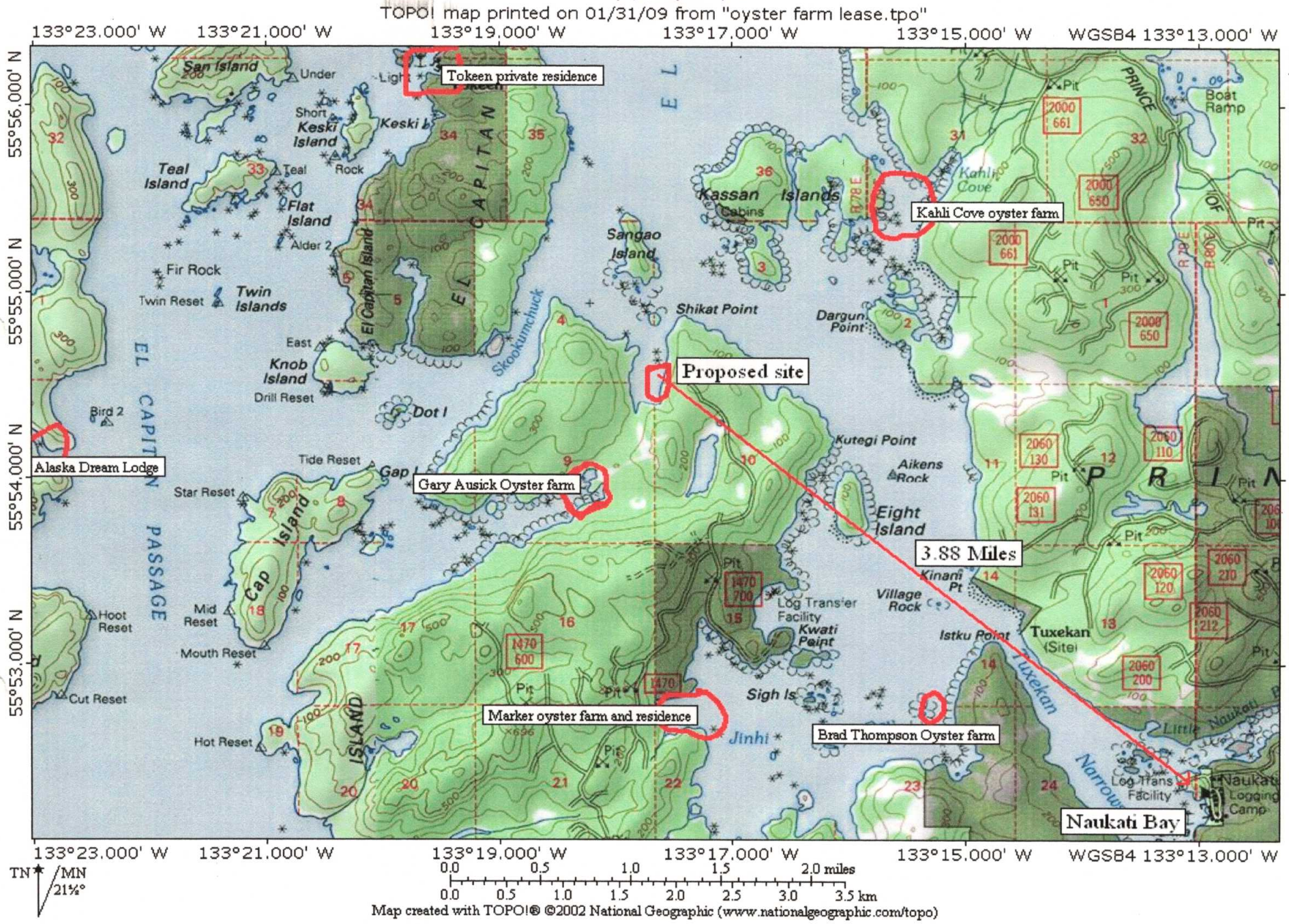
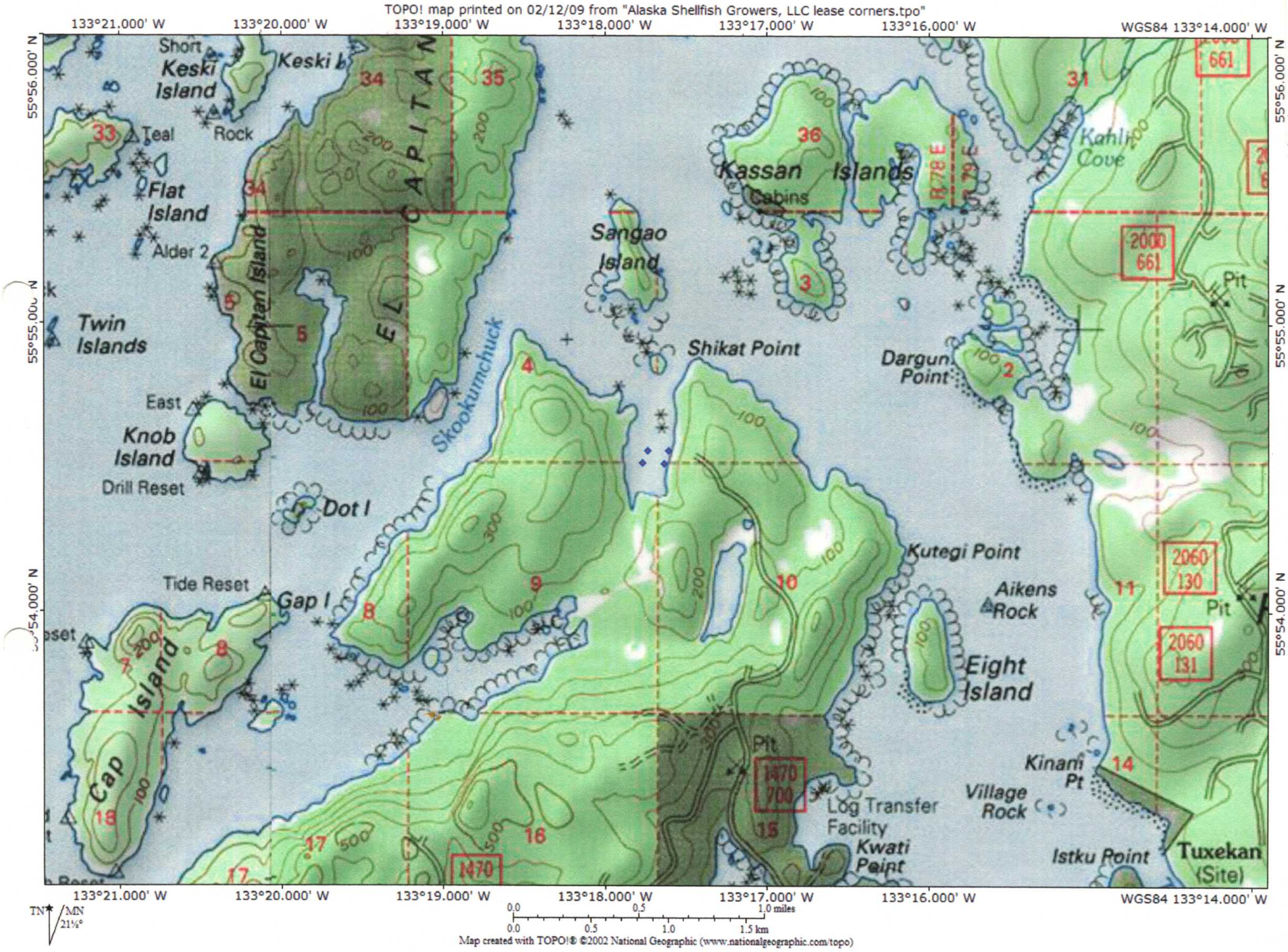
ASG-T2



Rom Folger Alaska Shellfish Growers, LLC. *PO Box 644, Craig, Alaska 99921* *(928) 377-6559* *folger@hughes.net*

ASG-T1



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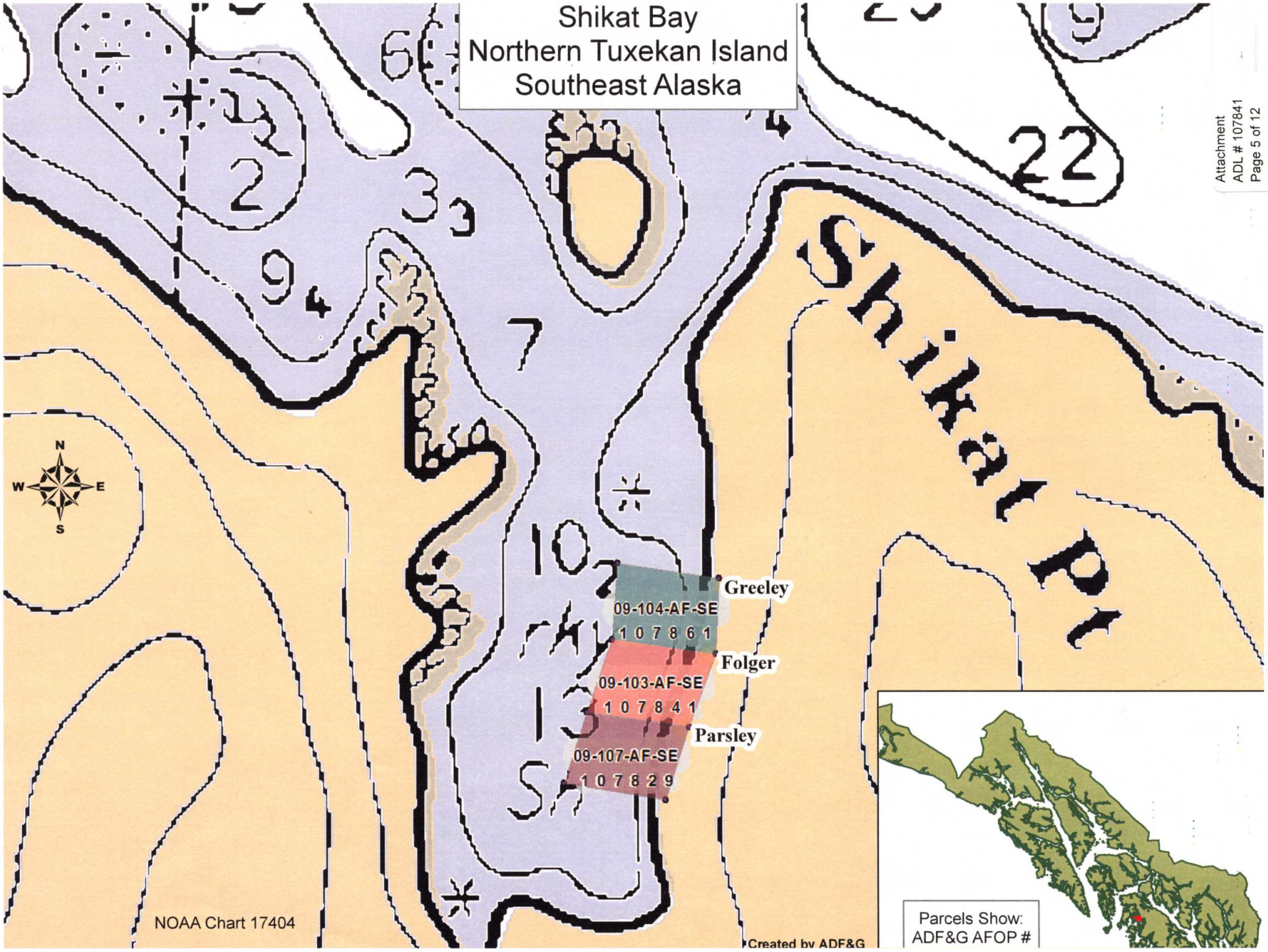
Shikat Bay
Northern Tuxekan Island
Southeast Alaska
Shikat Pt
Greeley
09-104-AF-SE
107861
Folger
09-103-AF-SE
107841
Parsley
09-107-AF-SE
107829
NOAA Chart 17404
Created by ADF&G
Parcels Show:
ADF&G AFOP #

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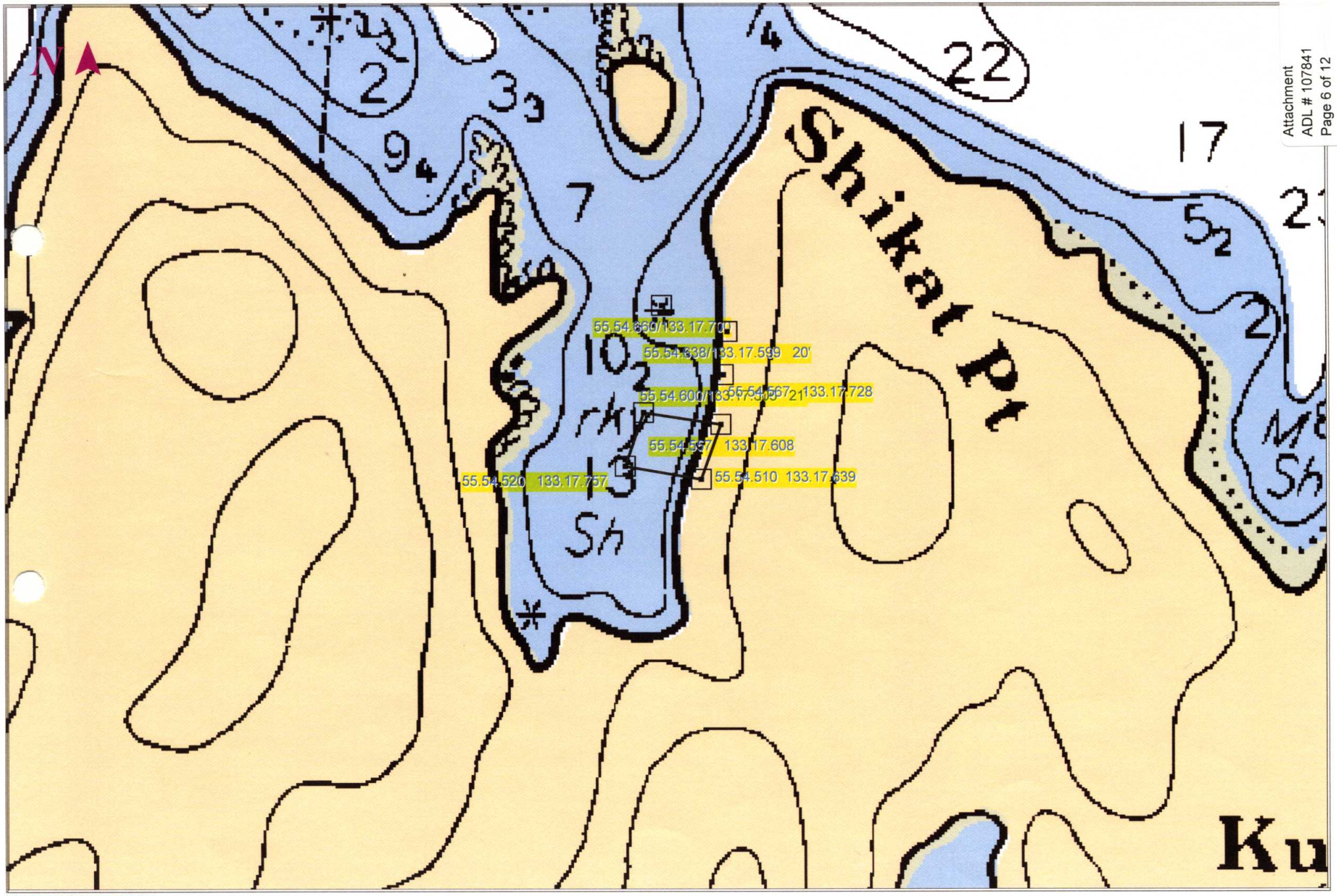
DAVIDSON INLET AND SEA OTTER SOUND - 1 : 37,400
(NOAA Chart) Chart #17403_1 - Depth Units: FATHOMS AND FEET



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DO NOT USE FOR NAVIGATION
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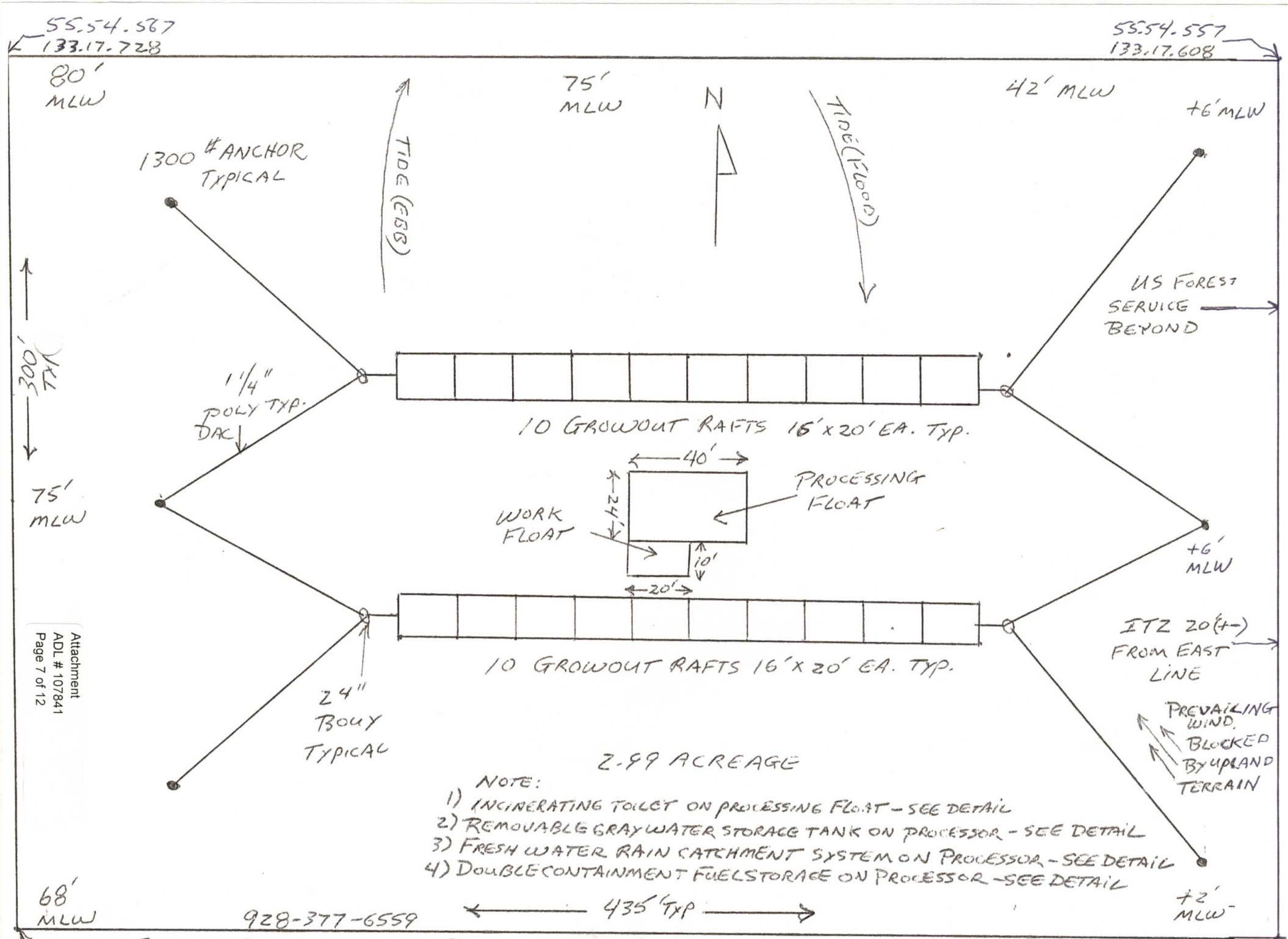

928-377-6559

Rom Folger
Alaska Shellfish Growers, LLC

PO Box 644
Craig, AK
99921

SCALE
1/4" - 10'

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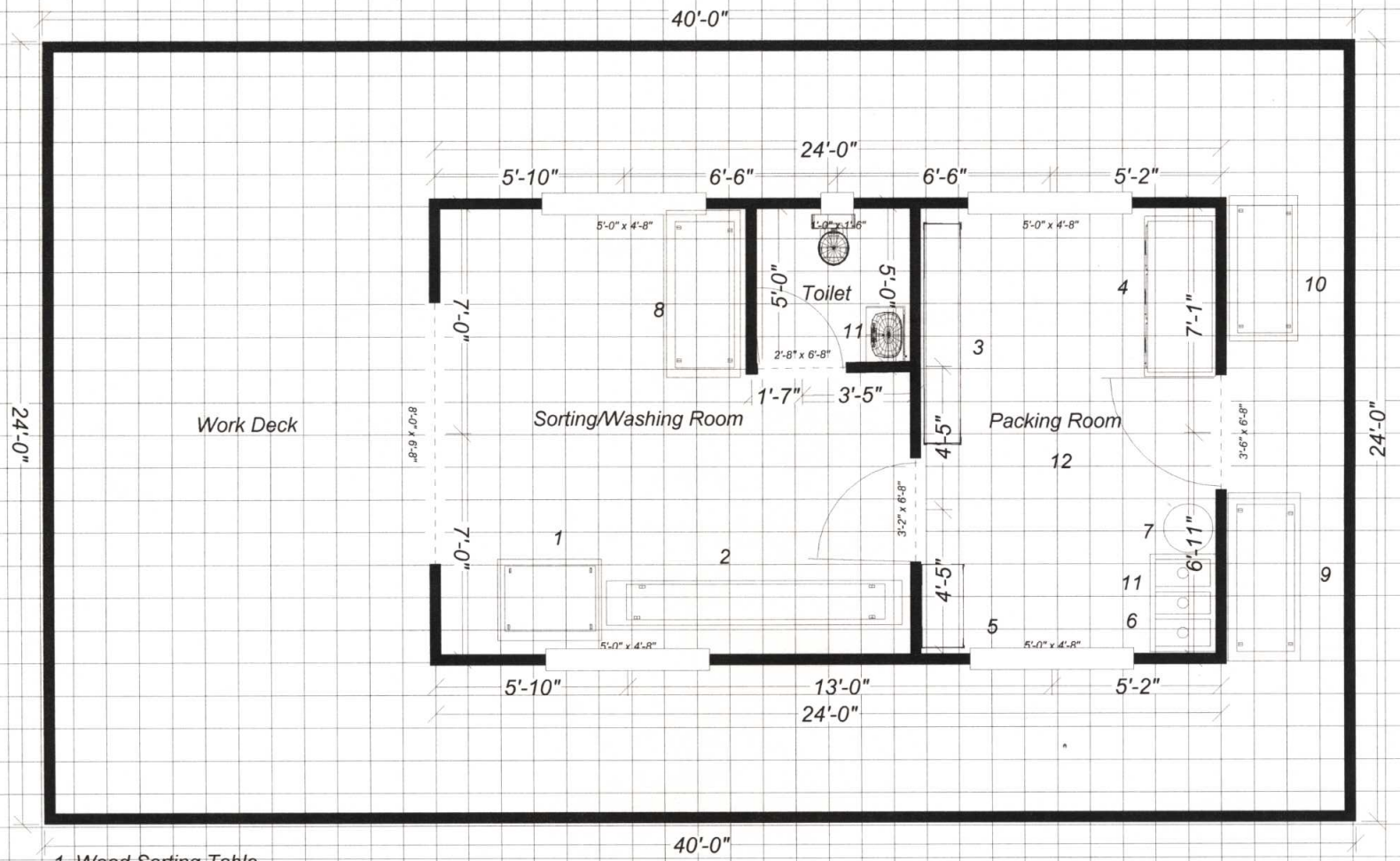
Work Float, Processing Facility



1. Wood Sorting Table
2. Stainless Saltwater Sorting/Washing Equipment
3. Stainless Storage Shelves
4. Stainless Packing Table
5. Stainless Supplies and Sanitation Chemical Storage
6. Stainless Three Compartment Sink
7. Stainless 6 gallon Propane Water Heater
8. Diesel Tank Storage Locker (Double Containment)
9. Potable Water Tank Locker (with Transportable Tanks)
10. Propane Locker
11. Transportable Grey Water Tanks Below Sinks with Air Gap
12. Packing Room shall have Washable Surface Floor and Walls

Rom Folger Alaska Shellfish Growers, LLC
P.O. Box 644, Craig, Alaska 99921
(928) 377-6559 folger@hughes.net
www.oystersalaska.com

Work Float, Processing Facility

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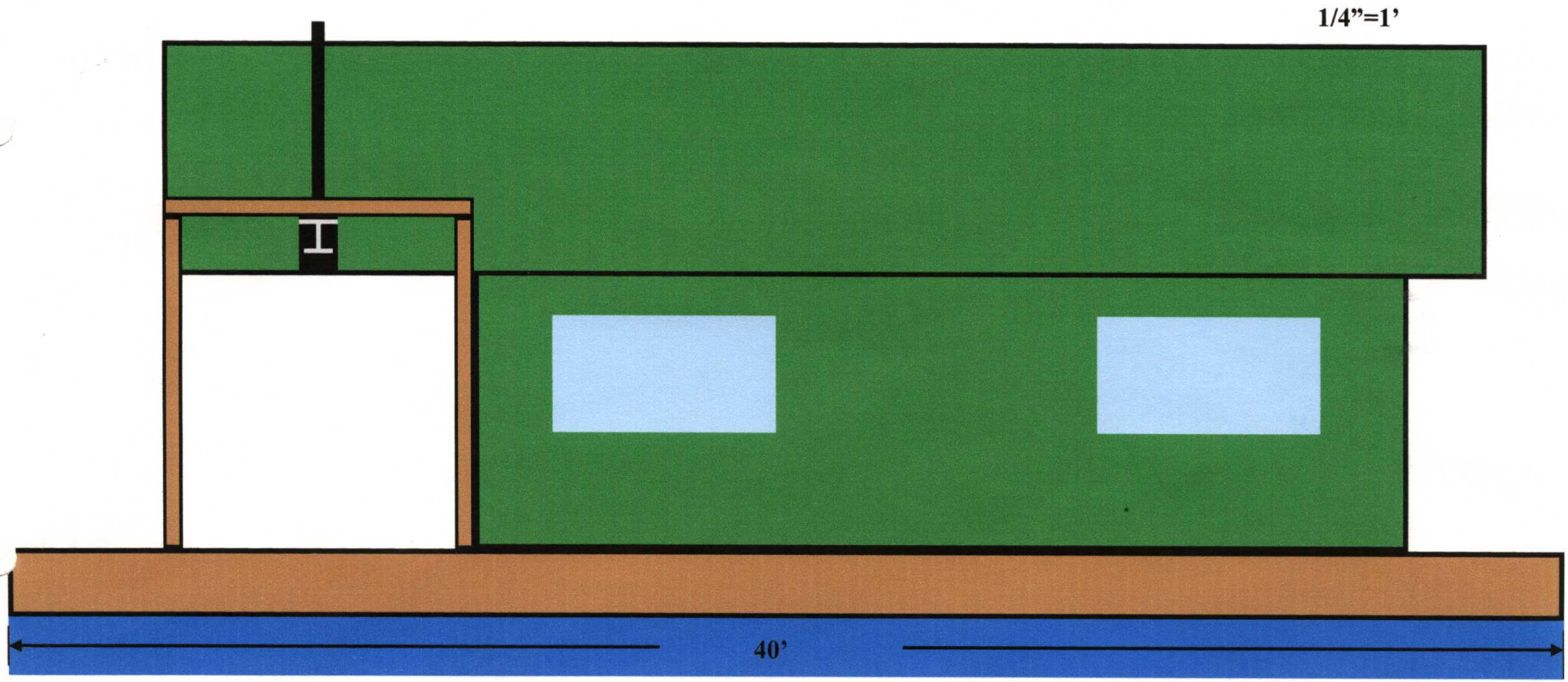

The Work Float is 40' X 24'. A 24'X14' processing building is centered at one end of the Work Float. Oyster Grow Out Rafts are moved to the Work float where the stacks of Grow Out Trays are lifted from the water and moved to the Work Float with an overhead electric hoist and beam trolley. Once the oysters are tumbled, cleaned and sized in the front half of the Processing building they are placed back in trays and lowered back into the water on the same Grow Out Raft or a empty Grow out Raft waiting on the opposite side. Oysters ready for market would be tumbled and cleaned then enter the clean room for packaging and preparation for shipping. NOTE: Processing Facility shall be shared with Parsley lease application adjacent to this application.

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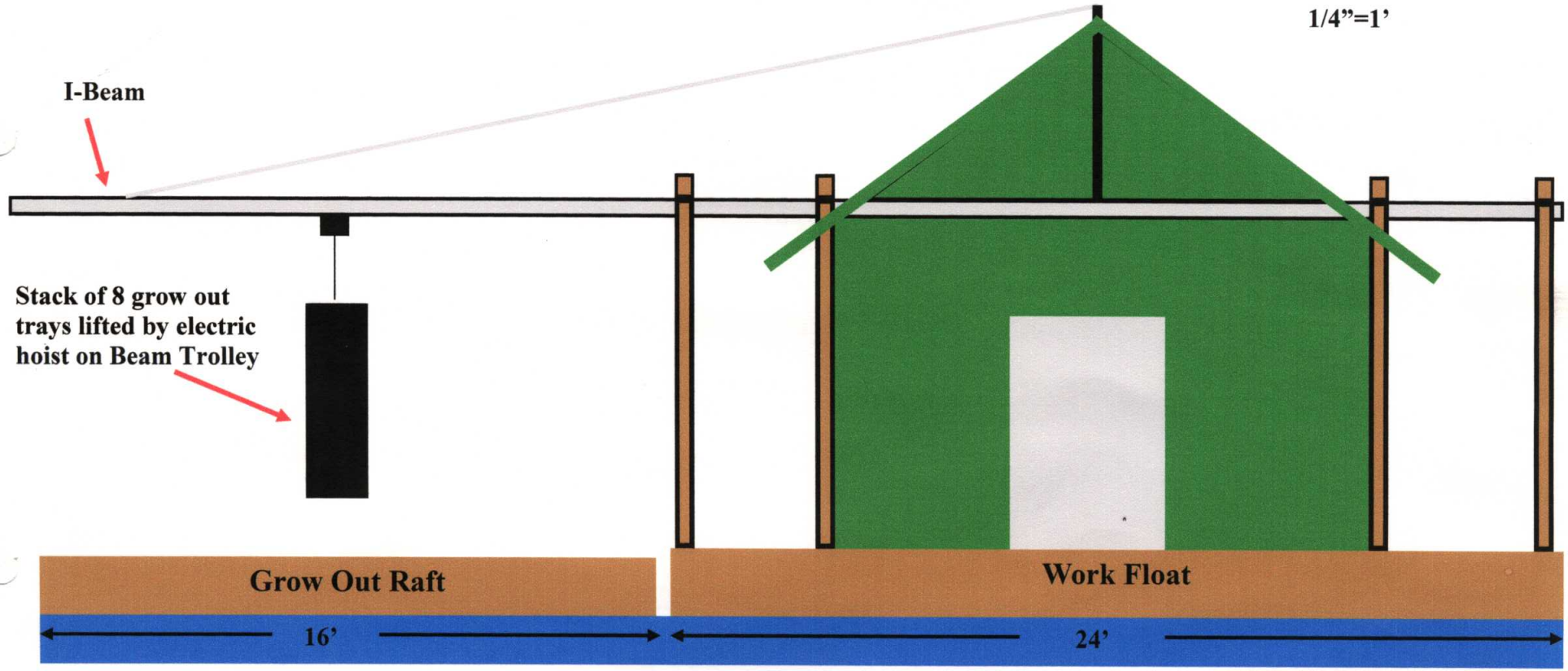
Work Float, Processing Facility and Method of Operation

Rom Folger Alaska Shellfish Growers, LLC. PO Box 644, Craig, Alaska 99921
(928) 377-6559 folger@hughes.net



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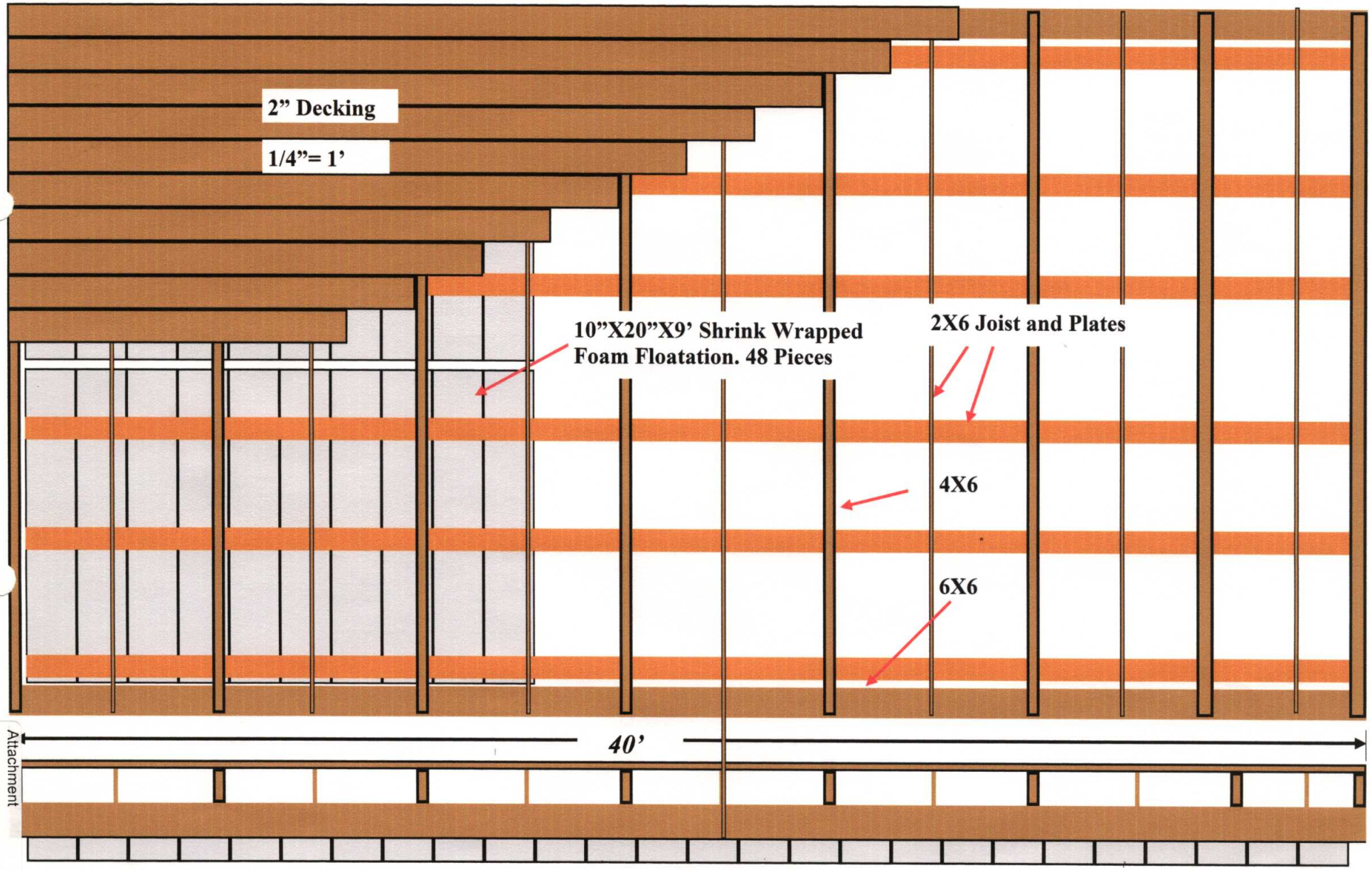
Work Raft

Work raft is constructed of rough sawn lumber. All corners and 4" stringers are bolted using galvanized dock bolts (economy bolts). Additional structure uses marine grade screws and galvanized nails. The 24'X40' raft will have a 14'X24' building used to wash, size and process oysters. The raft will also include an overhead lift off the side for lifting the stacks of oyster trays from the grow out floats.



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Rom Folger Alaska Shellfish Growers, LLC. PO Box 644, Craig, Alaska 99921 (928) 377-6559 folger@hughes.net

Typical Oyster Grow Out Raft

Grow out rafts are constructed of rough sawn lumber and foam flotation. Fasteners are stainless steel and marine grade. The foam floatation is commercially shrink wrapped. Each raft measures 16' X 20' and sits approximately 20" out of the water. Rafts are then moored to each other and anchored to the bottom.

Each raft can handle a minimum of 42 hanging stacks of 8 trays, each tray can hold 120 oysters at marketable size for a total of 40,320 oysters or 3,360 dozen per raft. Each raft could hold up to 336,000 25mm (1") spat when purchased from Naukati Bay Shellfish Nursery.

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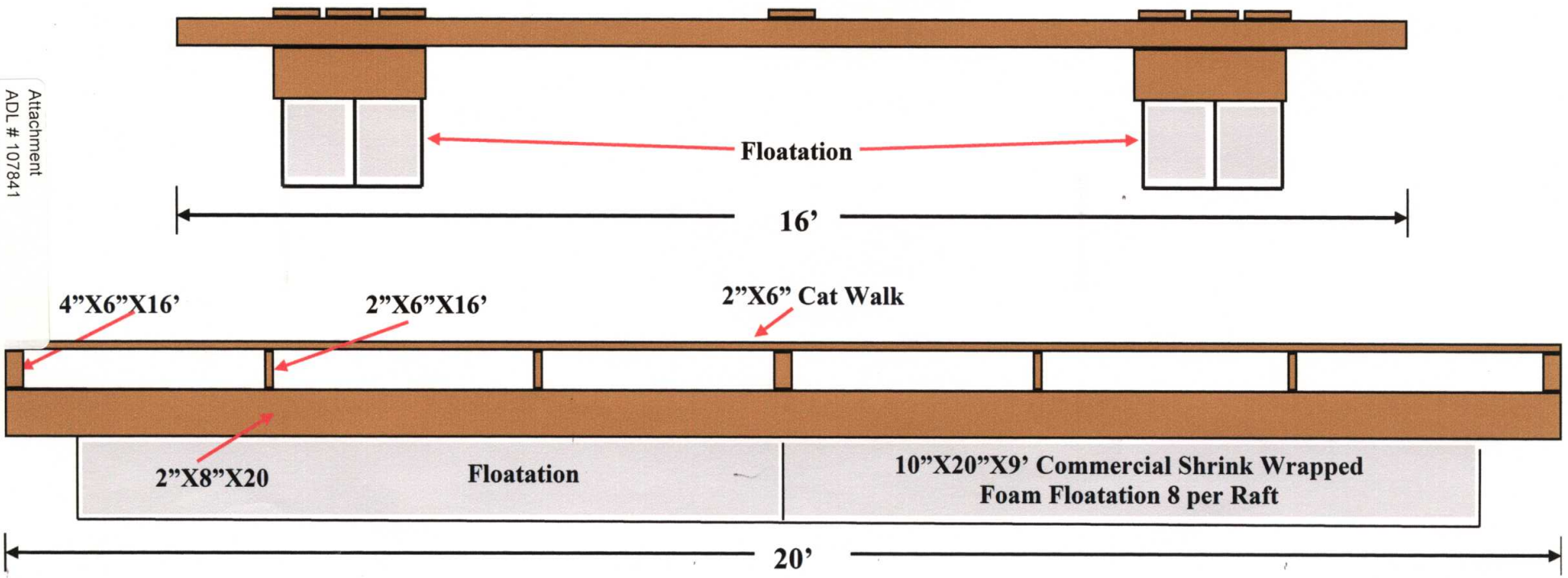
Scale 1/2"=1'



Attachment
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