

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

**PRELIMINARY BEST INTEREST FINDING
AQUATIC FARMSITE LEASE RENEWAL**

**APPLICANT: RODGER PAINTER AND DAVID ROGERS
ADL #106149
TENASS PASS SHELLFISH COMPANY**

LOCATION: EI CAPITAN PASSAGE

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., Friday, November 14, 2008.**

PROPOSED ACTION: The applicants are requesting renewal of their existing aquatic farm site lease. The applicants currently holds a lease consisting of several clam harvesting areas, oyster grow-out and hardening areas located in the southern portion of El Capitan Passage off the northwest side of Prince of Wales Island.

The total combined acreage of the sites is 6.88 acres, more or less.

The applicant has been successfully harvesting littleneck clams and culturing Pacific oysters, rock scallops and geoduck clams and has met or exceeded the required commercial use threshold which is a requirement to renew an existing aquatic farm tideland lease.

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

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. Information included in the original preliminary decision document may not be included in this document if conditions have not been altered. Original preliminary decisions for this lease can be obtained by contacting the aquatic farm program manager for the DNR in Anchorage.

ADMINISTRATIVE RECORD: The administrative record for this renewal application is file **ADL 106149**.

LOCATION:

USGS MAP COVERAGE: Craig D - 5

NAUTICAL CHART: 17403

LEGAL DESCRIPTION:

Township 67 South, Range 78 East, Copper River Meridian,
And more specifically described as:

Section 23: SE ¼, in El Capitan Passage, encompassing an area measuring 10 ft. x 500 ft. for clam harvesting;

Section 34: SE ¼, within Kosciusko Bay, encompassing an area measuring 300 ft. x 55 ft. for shellfish grow-out and processing.

- Area 1: an oyster hardening and clam harvesting area measuring 50 ft. x 60 ft.
- Area 2a: a clam harvesting area measuring 20 ft. x 130 ft.
- Area 2b: a clam harvesting area measuring 20 ft. x 100 ft.
- Area 2c: a clam harvesting area measuring 40 ft. x 35 ft.
- Area 3a: a clam harvesting area measuring 20 ft. x 200 ft.
- Area 3b: a clam harvesting area measuring 20 ft. x 200 ft.

Section 35: SE ¼, within an unnamed bight adjacent to Kosciusko Bay, encompassing an area measuring 75 ft. x 690 ft. for shellfish grow-out and work-raft.

- Area 4a: a clam harvesting area measuring 30 ft. x 50 ft.
- Area 4b: a clam harvesting area measuring 30 ft. x 50 ft.
- Area 5a: a clam harvesting area measuring 30 ft. x 50 ft.
- Area 5b: a clam harvesting area measuring 30 ft. x 90 ft.

according to the drawings attached to this document and labeled as Attachment B, containing approximately 5.65 acres, more or less.

In addition, a caretaker facility measuring 40 ft. x 50 ft. with shore ties is located in Kosciusko Bay approximately 600 feet east of the grow-out area in Section 34.

Section 23: SW ¼ and Section 26; NW ¼, on the south end of North island, encompassing an area measuring 10 ft. x 5,000 ft. for clam harvest;

Section 3: S ½, on Spanberg island, encompassing an area measuring 10 ft. x 340 ft. for clam harvesting according to the drawings attached to this document and labeled as Attachment B, containing approximately 1.23 acres, more or less.

The total area encompassed by this aquatic farm is approximately 6.88 acres, more or less.

Lands are located in the Ketchikan and Petersburg Recording Districts.

GEOGRAPHIC: The proposed farm site is located on state-owned tide and submerged lands in the southern portion of El Capitan Passage, the northeast side of Spanberg Island, and the southwest side of North Island, off the northwest side of Prince Of Wales Island.

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.

PLANNING AND CLASSIFICATION:

LAND MANAGEMENT PLAN: Prince of Wales Area Plan, Unit 4, Subunit 4a and 4b.

SURFACE CLASSIFICATION: The Prince of Wales Area Plan designates state owned tidelands in Subunit 4a as public recreation and wildlife habitat; subunit 4b as public recreation.

SURFACE MINERAL ORDERS: The proposed site is closed to mineral entry.

ALASKA COASTAL MANAGEMENT PROGRAM: The proposed aquatic farm was found consistent with the Alaska Coastal Management Program (ACMP) on December 8, 1995, under State I.D. No. AK 9406-09JJ. The applicant's request to renew and amend his lease does not require another consistency review.

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, , Fish and Game Advisory committees, etc. 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 October 13, 2008 and will end on November 14, 2008.

The preliminary best interest finding is subject to public comments received during the comment period. The final best interest finding will consider and address any comments related to the subject proposal and will be available on or about December 8, 2008. If significant changes occur to this decision as a result of public comments received, additional notice will be sent to those who provided comments, either in writing or by testifying at a public hearing.

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: 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 regulations require the minimum security amount of \$2,500 (or \$1,250 with an association bond) for an aquatic farm lease. Factors such as location and amount of improvements at the site are taken into consideration when the bond amount is determined. Please refer to the Recommendation section at the end of this decision for the bond amount that was determined appropriate for this proposal.

INSURANCE: At this time the DNR does not require this type of activity to have general liability insurance. General liability insurance may be required in the future depending on the aquatic farming operations and the procedures of the department at the time changes are made to the lease or a renewal lease is issued. The lessee is responsible for acquiring other types of insurance, such as Workman's Compensation Insurance that may be required under other local/state/federal laws.

POTENTIAL CONFLICTS/PENDING INTERESTS: There are no known pending interests at the location of the proposal.

TRADITIONAL USE FINDING: The existing aquatic farm has caused no known disruption of traditional and/or existing uses of the area, such as commercial and sport fishing, subsistence activities, boat travel, 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 AREA PLAN INFORMATION SPECIFIC TO THIS PROPOSAL: This farm site lies within Management Unit 4, subunits 4a and 4b. State tidelands and submerged lands are managed for multiple use. Management for the subunit 4a emphasizes the important recreation and aesthetic values and the use of commercial forest resources of El Capitan Passage. Tidelands and submerged lands are also managed to protect the most important fish and wildlife habitat and harvest area. Management for the subunit 4b emphasizes the important recreation and fish and wildlife habitat and harvest values, and providing areas on the east side of El Capitan Island to support upland timber harvest activities. Consistent with U>S> Forest Service management proposals for adjacent uplands, the state tideland and submerged lands in the Tenass Pass and Brockman Pass area will be managed with primary emphasis on primitive recreation.

Upland Owner/Management Intent: The U.S. Forest Service (Tongass National Forest) is the upland owner of lands adjacent to the aquatic farm. Over the course of the 10-year lease there have been no known conflicts between upland owners and the lessee.

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 Area Plan, and potentially the Tongass National Forest 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 has not disrupted traditional and existing uses of the site for use as an anchorage, commercial and sport fishing, recreation, and tourism.
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).

This aquatic farm has provided opportunities to increase income and diversify the state's economy by utilizing state tide and submerged lands for this purpose. The advantage of renewing this lease on state owned tide and submerged lands is the continued employment opportunities as well as any secondary jobs created or increased from businesses involved in marketing, transport or sale of the farmed products.

After 10-years of successful operation of this site there seems to be no obvious disadvantages of renewing 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, and as mentioned above, any resultant lease would stipulate the requirement that signs be posted informing the public of their rights at the aquatic farm site.

RECOMMENDATION: Considering the information known at this time and described within this decision, it appears to be in the state's best interest to renew the lease for approximately 6.88 acres more or less to the applicant for intertidal 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.

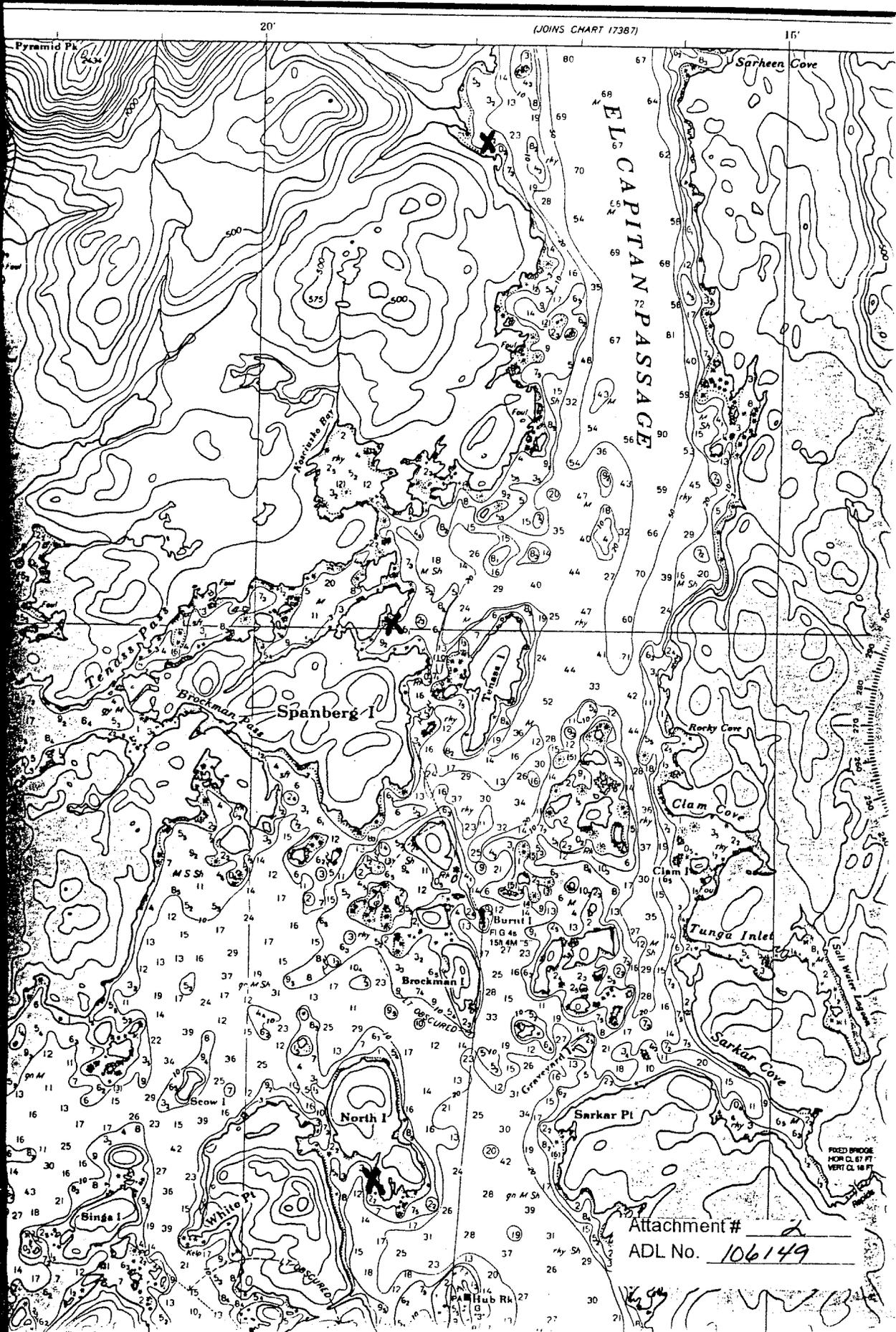


John S. Thiede, Aquatic Farm Program Manager

10/1/08

Date

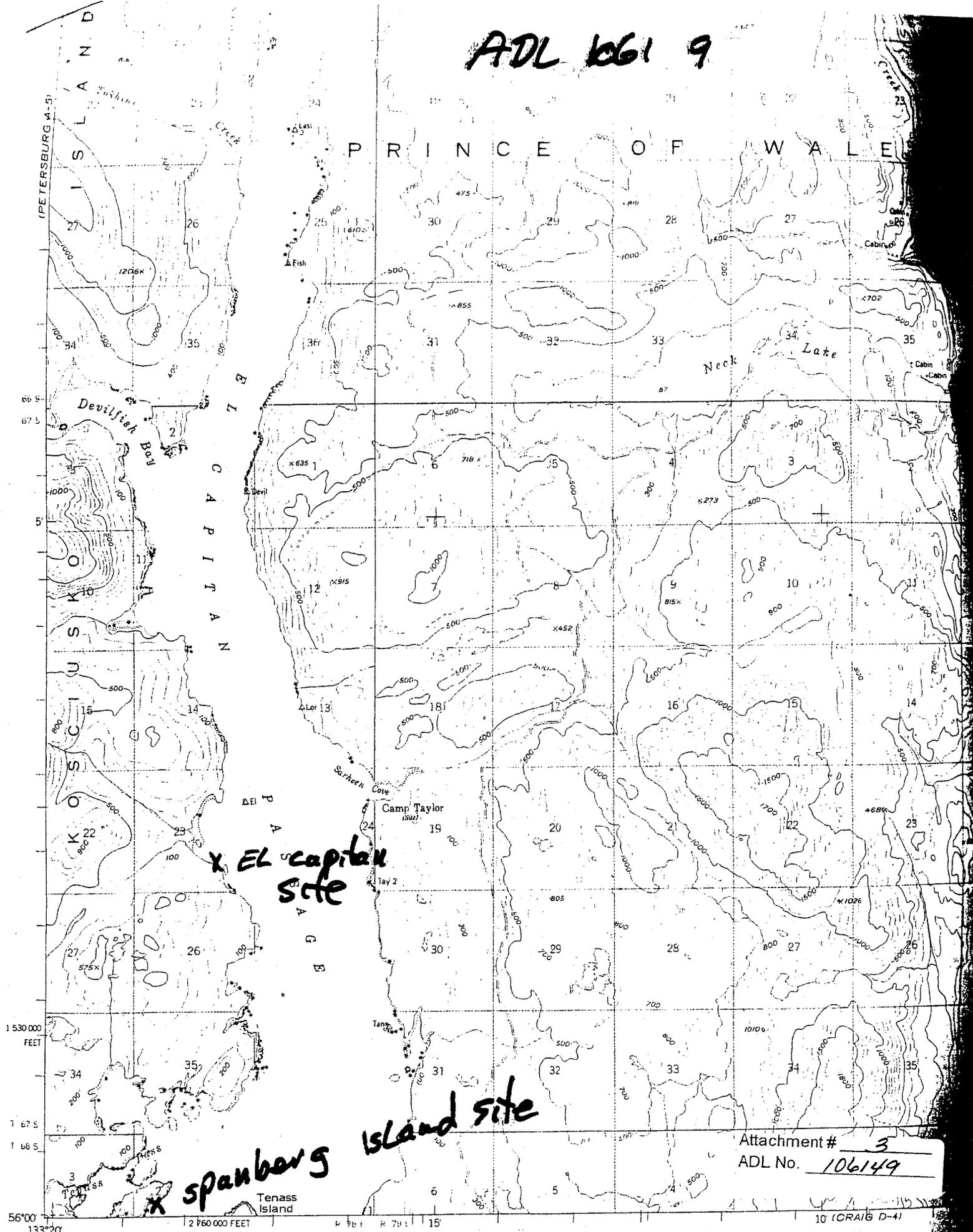
ADL 106149



Attachment # 2
ADL No. 106149

ADL 1061 9

PRINCE OF WALE

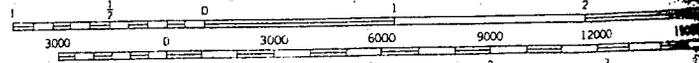


x EL Capitan site

x spanberg Island site

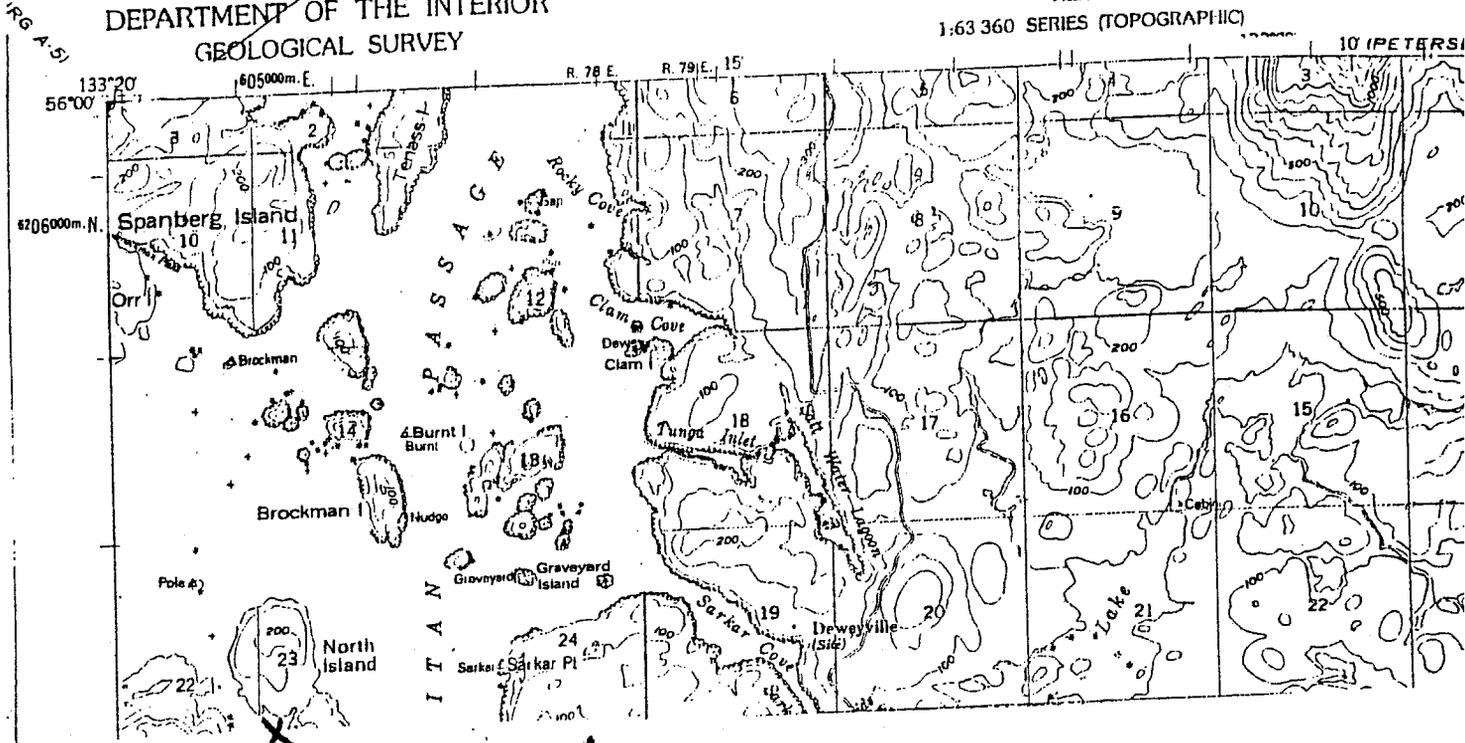
Attachment # 3
ADL No. 106149

10 (CRAIG D-4)
SCALE 1:63360

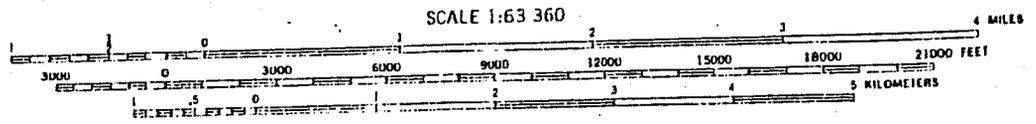


UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

CRAIG (D-4) QUADRANGLE
ALASKA
1:63 360 SERIES (TOPOGRAPHIC)



North Island
site



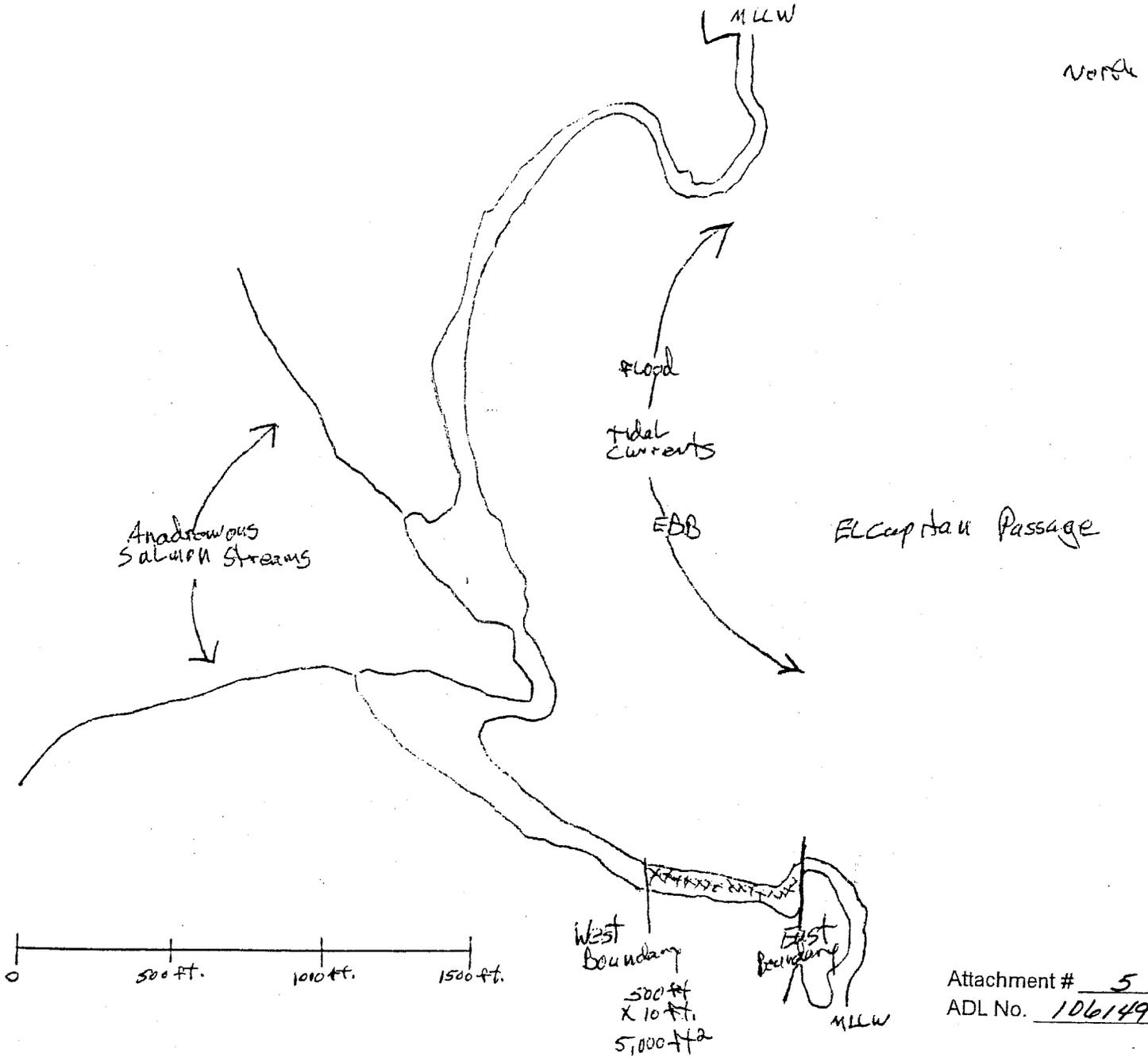
ADL 106149

Attachment # 4
ADL No. 106149

ADL 106149

Total Area
5,000 Ft.²

Kosciusko Island
upland owners:
U.S. Forest Service



Tennas Pass Shellfish Co.
EL Captain. clam site

T67S, R78E, CRM
SEC. 23: SE 1/4

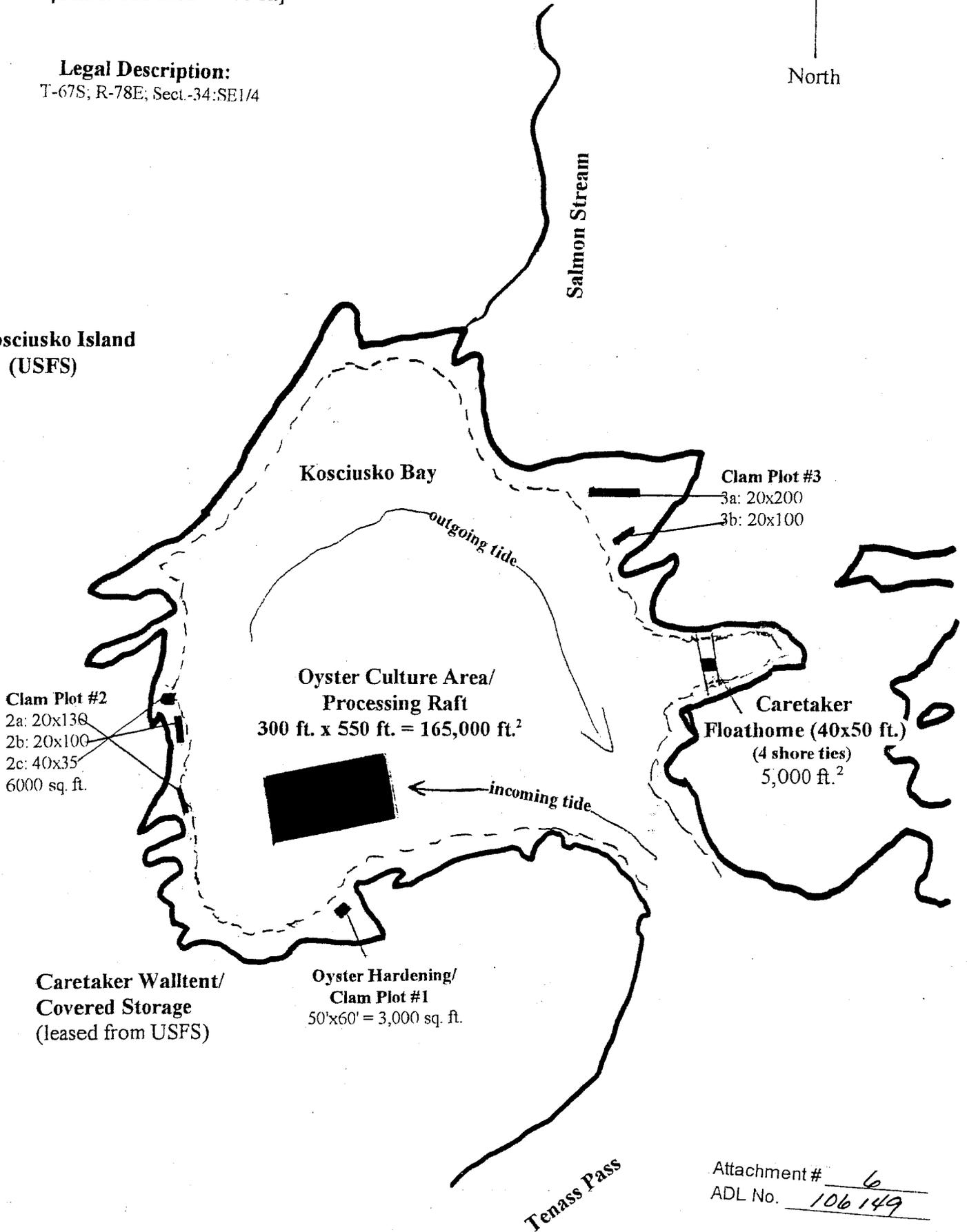
Scale: one inch = 500 ft.

**TENASS PASS SHELLFISH COMPANY
AREA NO. ONE - SITE PLAN**
[Scale: one inch = 600 ft.]

Legal Description:
T-67S; R-78E; Sect.-34:SE1/4



**Kosciusko Island
(USFS)**



Clam Plot #2
2a: 20x130
2b: 20x100
2c: 40x35
6000 sq. ft.

**Oyster Culture Area/
Processing Raft**
300 ft. x 550 ft. = 165,000 ft.²

Clam Plot #3
3a: 20x200
3b: 20x100

**Caretaker
Floathome (40x50 ft.)**
(4 shore ties)
5,000 ft.²

**Caretaker Walltent/
Covered Storage**
(leased from USFS)

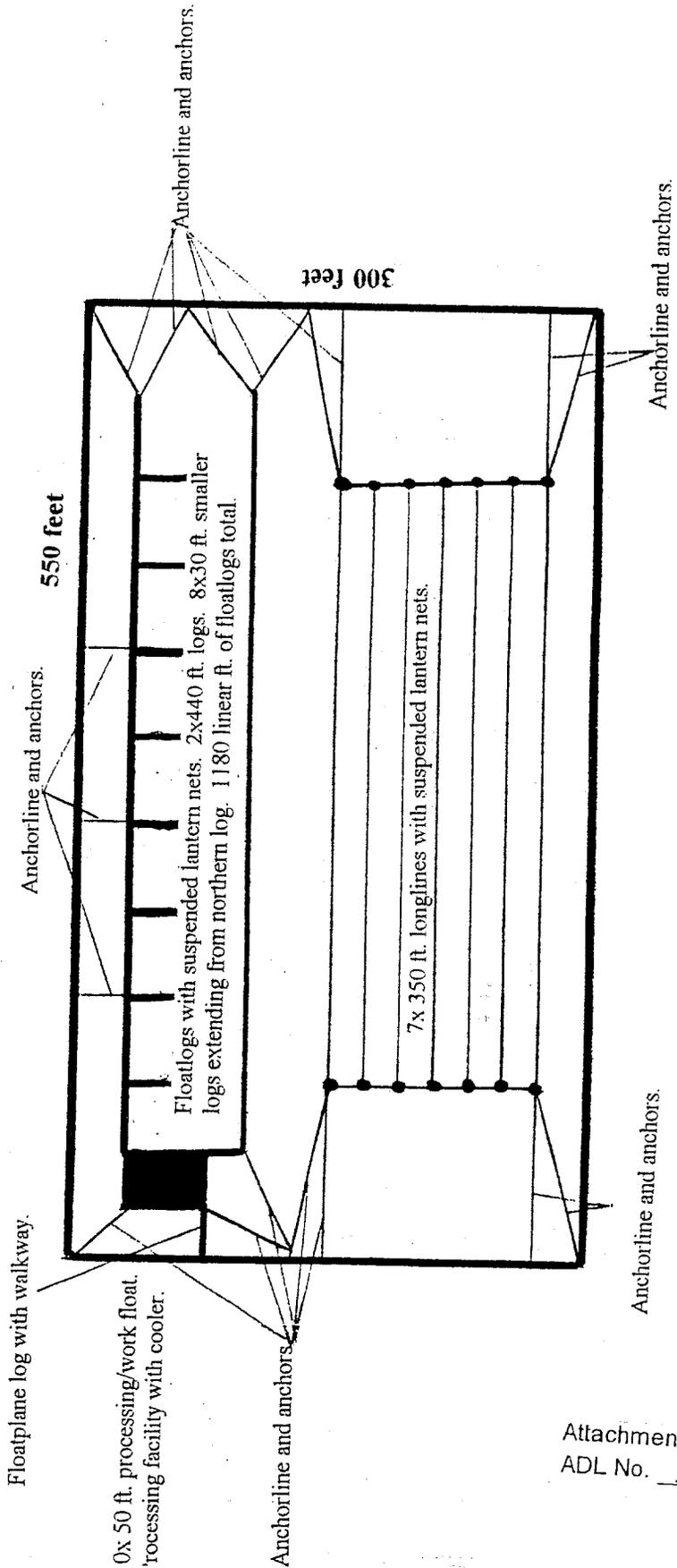
**Oyster Hardening/
Clam Plot #1**
50'x60' = 3,000 sq. ft.

Tenass Pass

Attachment # 6
ADL No. 106149

TENASS PASS SHELLFISH COMPANY
 AREA NO. ONE - SITE PLAN DRAWING
 OYSTER CULTURE/PROCESSING RAFT

[Scale: 1 inch = 100 feet]



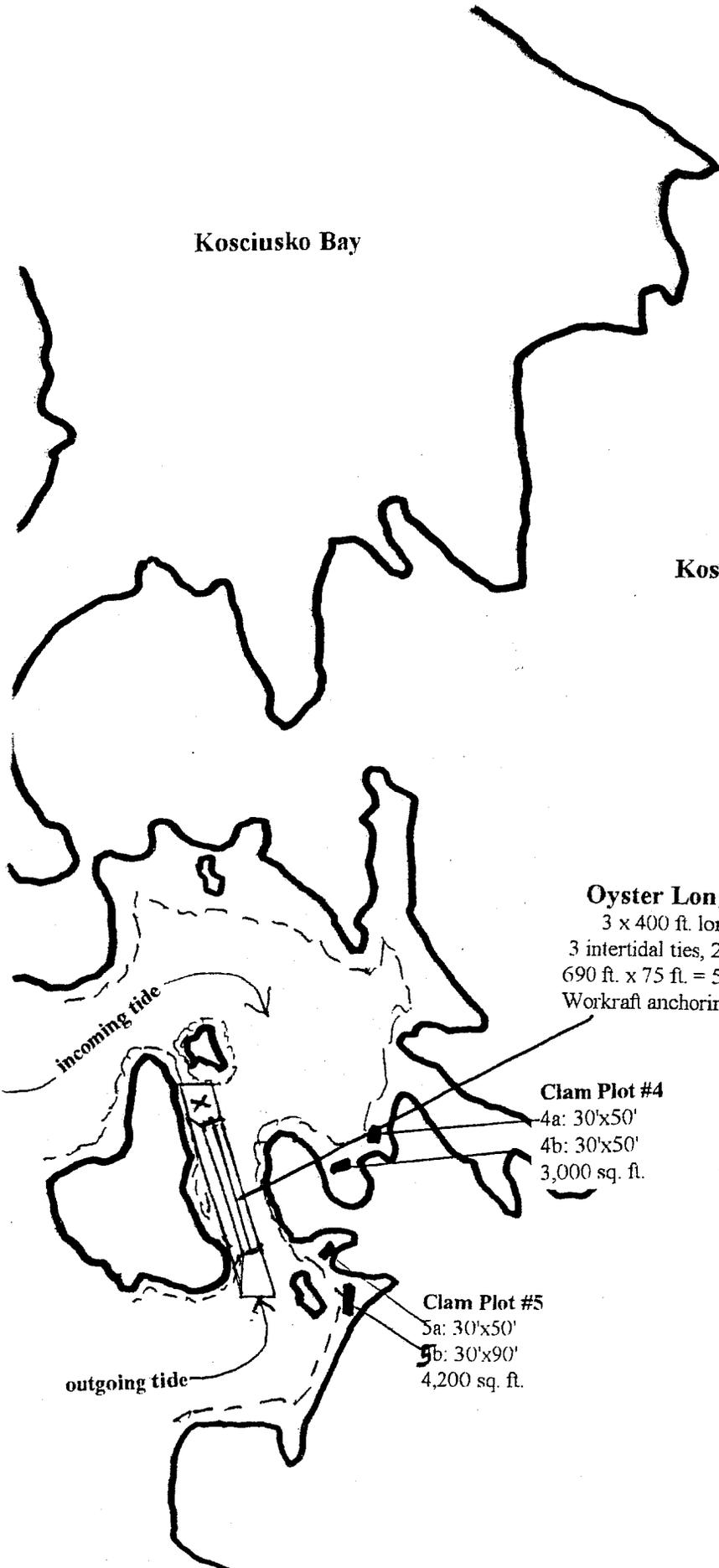
Attachment # 7
 ADL No. 106149

A L 105290

**TENASS PASS SHELLFISH COMPANY
AREA TWO - SITE PLAN
OYSTER/CLAM CULTURE**

[Scale: 1 inch = 500 ft.]

Legal Description:
T-67S; R-78E; Sect.-35:SW1/4



**Kosciusko Island
(USFS)**

Oyster Longlines
3 x 400 ft. longlines
3 intertidal ties, 2 anchors
690 ft. x 75 ft. = 51,750 sq. ft.
Workraft anchoring at X

Clam Plot #4
4a: 30'x50'
4b: 30'x50'
3,000 sq. ft.

Clam Plot #5
5a: 30'x50'
5b: 30'x90'
4,200 sq. ft.

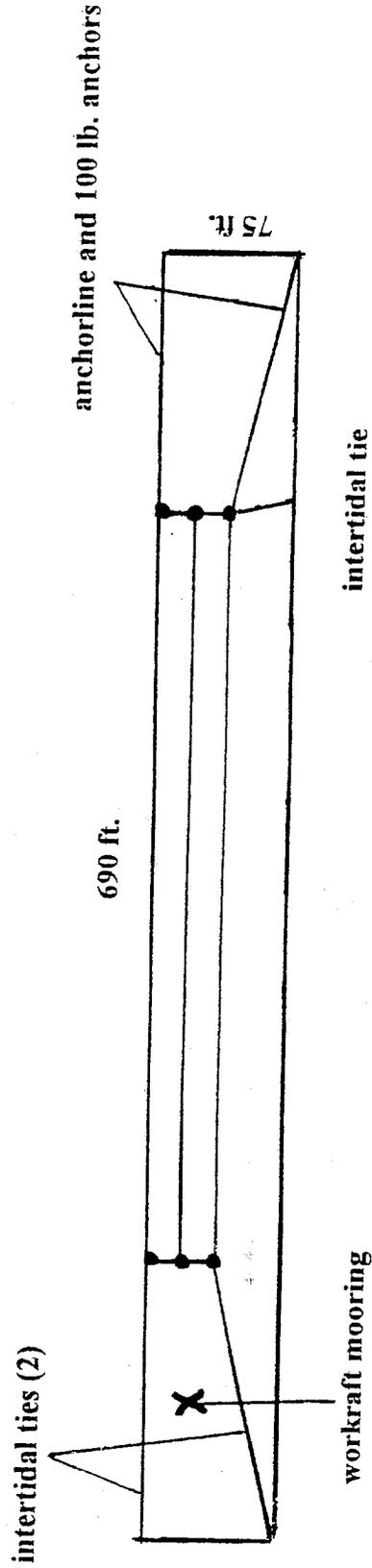


ADL 106290

TENASS PASS SHELLFISH COMPANY
AREA TWO - LONGLINE DETAIL

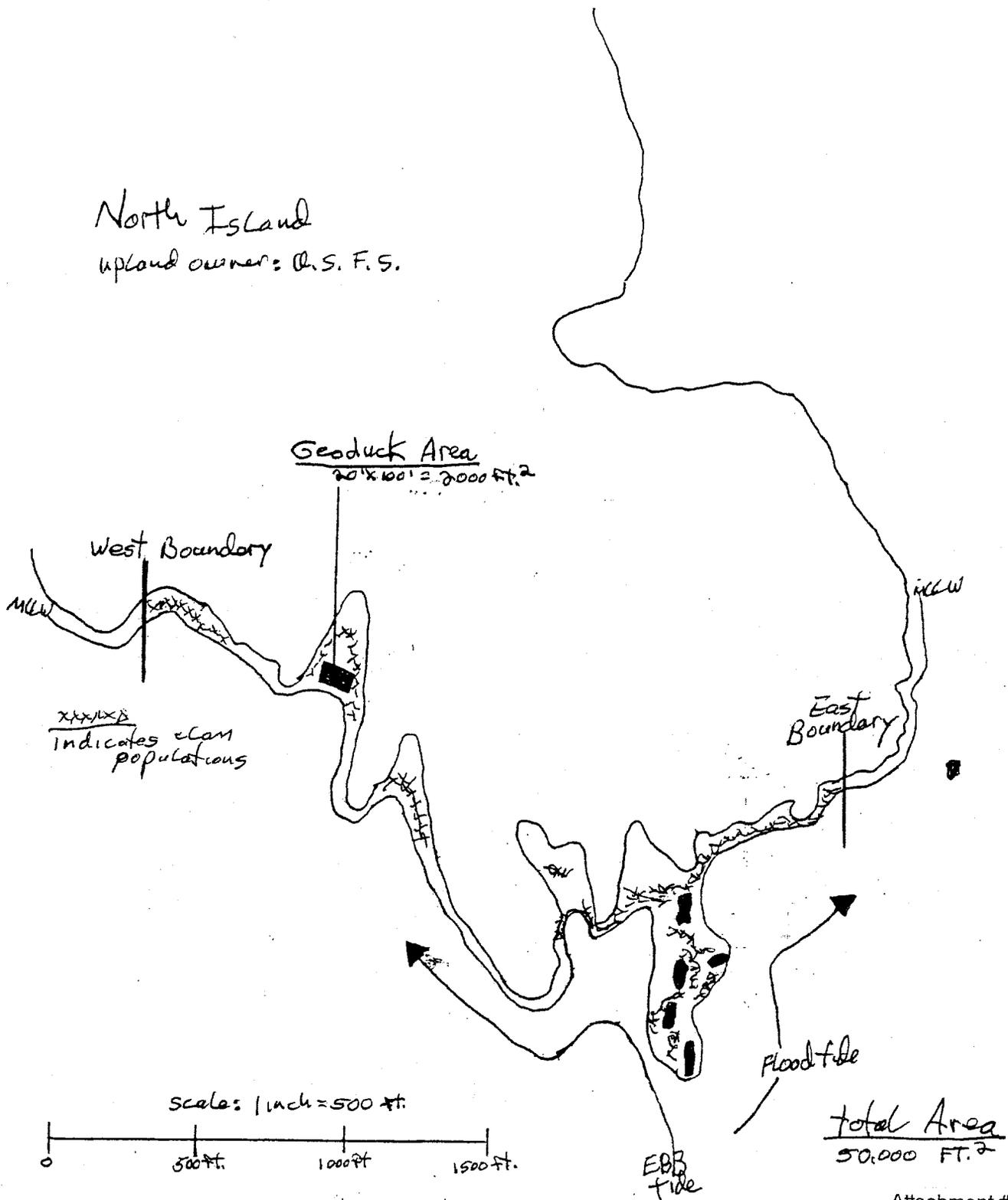
[Scale: 1 inch = 100 ft.]

3 x 400 ft. surface longlines
with lantern nets suspended from floats



ADL 106149

North Island
upland owner: U.S. F.S.

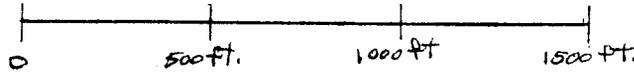


Attachment # 10
ADL No. 106149

Terass Pass Shellfish Co.
North Island Site
T685, 78E CRM sec. 23: SW $\frac{1}{4}$
sec. 26: NW $\frac{1}{4}$

ADL 106149

1 inch = 500 ft.



Total Area
3,400 ft²

Spanberg Island Sites

