

**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: PAMELA & DANIEL STRICKLAND
BEAR COVE OYSTER COMPANY
ADL # 226873
LOCATION: KACHEMAK BAY / BEAR COVE**

The Department of Natural Resources is accepting public comment on the following preliminary decision document for the renewal of a 10-year lease for an existing aquatic farm site. **Written comments must be received on or before 5:00 p.m., Friday, November 14, 2008.**

PROPOSED ACTION: The applicant is requesting renewal of their existing aquatic farm site lease along with an amendment to reduce the size of the aquatic farm to 1.0 acres, more or less. The applicants currently hold a lease for 1.93 acres, encompassing an area measuring 165 ft. x 510 ft. for shellfish grow-out. The applicant has been successfully culturing Pacific oysters. The farm site is located at Bear cove, approximately 15 miles northeast of the City of Homer, Alaska.

Access to the site is 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 renew an existing tideland 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 the application submitted is file number ADL 226873.

LOCATION:

USGS MAP COVERAGE: Seldovia D -3

NAUTICAL CHART: 16645

LEGAL DESCRIPTION: Township 5 South, Range 10 West, Seward Meridian,
And more specifically described as:

Section 19: SW ¼ within Kachemak Bay adjacent to Bear island, encompassing an area measuring 85 ft x 510 ft. for shellfish grow-out.

According to the drawings attached to this document and labeled as Attachment B, containing approximately 1.0 acres, more or less.

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LATITUDE/LONGITUDE:

Growout Area: (GPS Readings estimated by ADF&G using All Topo)

Corner 1 - 59° 43.600' N and 151° 03.421' W

Corner 2 - 59° 43.579' N and 151° 03.398' W

Corner 3 - 59° 43.524' N and 151° 03.524' W

Corner 4 - 59° 43.547' N and 151° 03.550' W

GEOGRAPHIC: The proposed farmsite is located on state-owned tide and submerged lands 13.0 miles east of Homer in Bear Cove, Kachemak Bay.

POLITICAL INFORMATION:

BOROUGH/MUNICIPALITY: This application is inside the Kenai Peninsula Borough.

COASTAL DISTRICT: The application inside the Kenai Peninsula Borough Coastal District and is subject to their coastal district management plan and enforceable policies

REGIONAL CORPORATION: Cook Inlet Region, Incorporated and the Seldovia Village Tribe.

FISH AND GAME ADVISORY COMMITTEES: Homer and Seldovia Fish and Game Advisory Committees.

TITLE:

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

PLANNING AND CLASSIFICATION:

LAND MANAGEMENT PLAN: Kenai Area Plan (KAP), Region 8, Fritz Creek and Upper Kachemak Bay, Unit 532, Bear Cove Tidelands, adopted January 7, 2000.

SURFACE CLASSIFICATION: The KAP classifies state owned tidelands in this area as wildlife habitat and public recreation under classification Order No. SC-99-002. These classifications allow aquatic farming activities.

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

ALASKA COASTAL MANAGEMENT PROGRAM: The proposed aquatic farm was found consistent with the Alaska Coastal Management Program (ACMP) on November 26, 1996, State I.D. No. AK 9605-04AA.

The applicant's request to renew and amend his lease does not require another consistency review.

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 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.

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.

TRADITIONAL USE FINDING: The aquatic farm has not had an effect on 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.

KENAI AREA PLAN INFORMATION SPECIFIC TO THIS PROPOSAL: This proposal lies within Region 8, Fritz Creek and Upper Kachemak Bay, Unit 532, Bear Cove Tidelands, adopted January 7, 2000. The designations for this unit are Habitat and Public Recreation and Tourism-Dispersed Use. These areas are to be managed so that their principle resources are protected. The existence of the farm

site over the last 10-years has not appeared to have caused impacts to the habitat and harvest values in this area.

UPLAND OWNER/MANAGEMENT INTENT: The uplands adjacent to the proposed amendment are privately owned. Currently there is a conflict between the upland owners and the lessee involving a potential intertidal shellfish hardening area. To date, this conflict has not been resolved but does not affect the outcome of the lease renewal because the hardening area is not part of this renewal.

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 Kenai Area Plan, and the Management Plan for Kachemak Bay Critical Habitat Area.

Pending/Existing Uses:

1. There have been no known use conflicts or potential impacts to nearby communities or residential land due to the existing aquatic farm.
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.

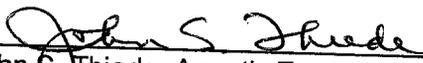
Surface Area: The proposal does not encumber more than a third of the surface area of a bay, bight, or cove in accordance with 11 AAC 63.050(c).

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 farmsite.

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 and temporarily reduce the acreage to approximately 1.0 acres more or less to the applicant for intertidal and on-bottom culture. Any resultant lease will include stipulations that may be identified as a result of public comments. It should be noted that the applicant may increase his farm site up to 1.93 acres as approved in the initial 10-year lease agreement, without further public notice if commercial use requirements can be made and maintained throughout the term of the lease. Any increase in acreage must be within the originally approved foot-print and approved by the DNR. Approval of the application is recommended with a security bond set at \$2,500 or \$1250 with an association bond.

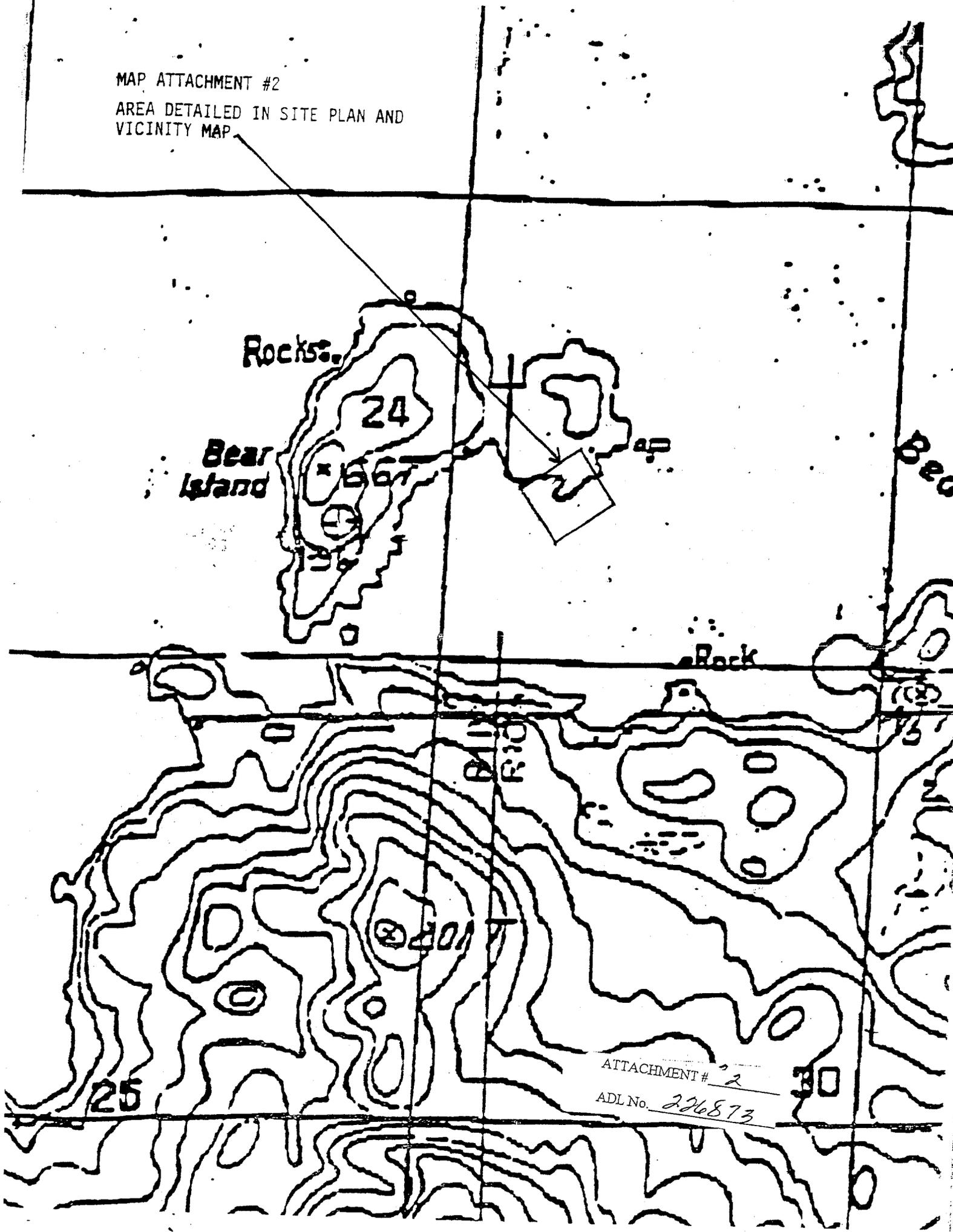


John S. Thiede, Aquatic Farm Program Manager

10/1/08

Date

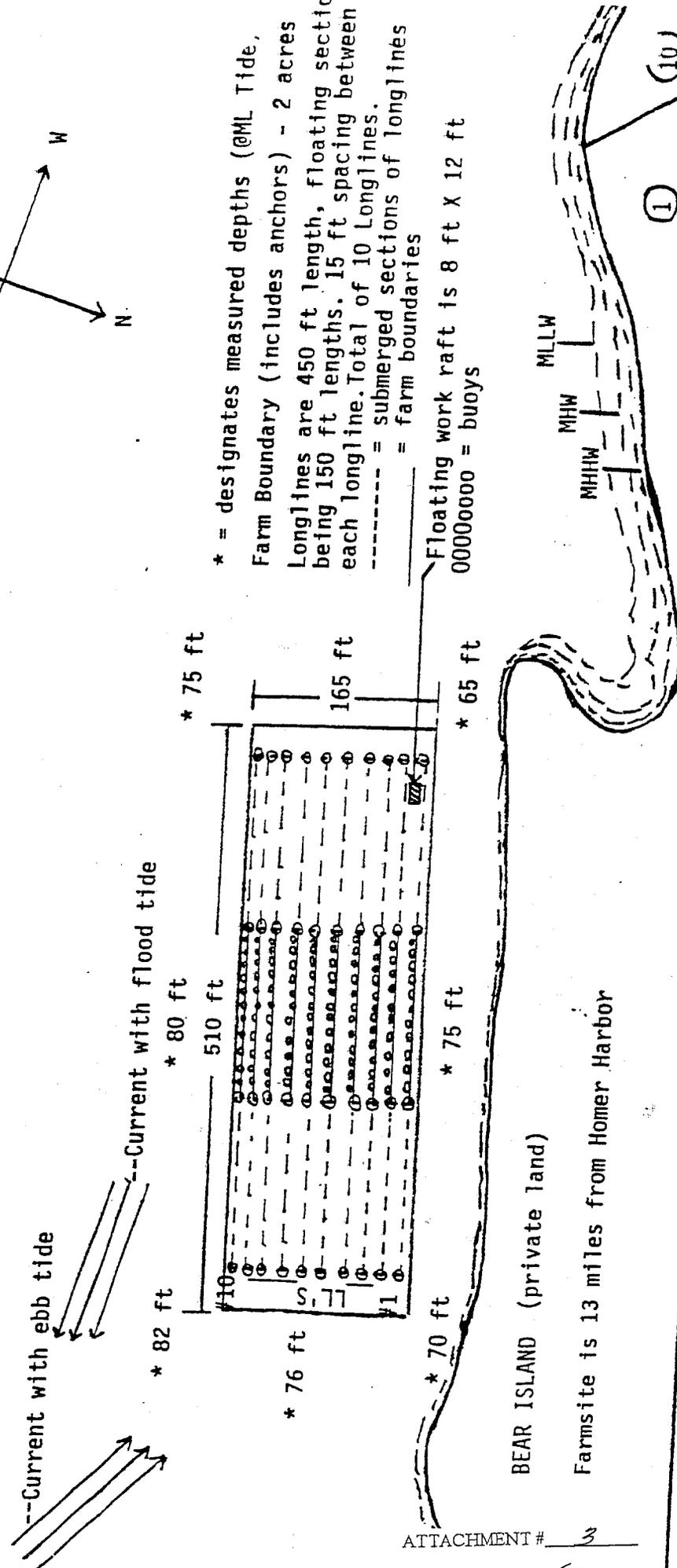
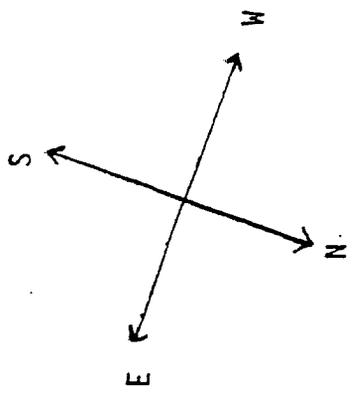
MAP ATTACHMENT #2
AREA DETAILED IN SITE PLAN AND
VICINITY MAP.



ATTACHMENT # 2
ADL No. 226873

SCALE: 1/4 IN EQUALS 33 FEET

Depths measured at Mean Low Tide / Mean Low Water



* = designates measured depths (@ML Tide,
Farm Boundary (includes anchors) - 2 acres
Longlines are 450 ft length, floating septic
being 150 ft lengths, 15 ft spacing between
each longline. Total of 10 Longlines.
----- = submerged sections of longlines
----- = farm boundaries

Floating work raft is 8 ft X 12 ft
00000000 = buoys

BEAR ISLAND (private land)

Farmsite is 13 miles from Homer Harbor

ATTACHMENT # 3
ADL No. 226873

PURPOSE: Commercial Oyster Farm
SPECIES: Pacific Oyster
Datum: 70 ft MLLW

ADJACENT (upland) PROPERTY OWNERS:
① John/Phyllis Cooper
PO Box 562 Homer, AK 99603
② Margaret Pate
Pate Ins., 355 Pioneer Ave.
Homer, AK 99603

SITE PLAN AND VICINITY MAP
BEAR COVE OYSTER COMPANY
John B. Menke
57900 Clover Avenue
Homer, AK 99603
ADL# 226873

PROPOSED AQUATIC FARM
(Bear Cove Oyster Company)
IN: Kachemak Bay, Alaska
AT: Bear Cove
LOCATION: N59°43.476
W151°03.545

BEAR COVE OYSTER COMPANY
 John B. Menke
 57900 Clover Ave.
 Homer, Alaska 99603
 ph# (907) 235 7905

SITE PLAN

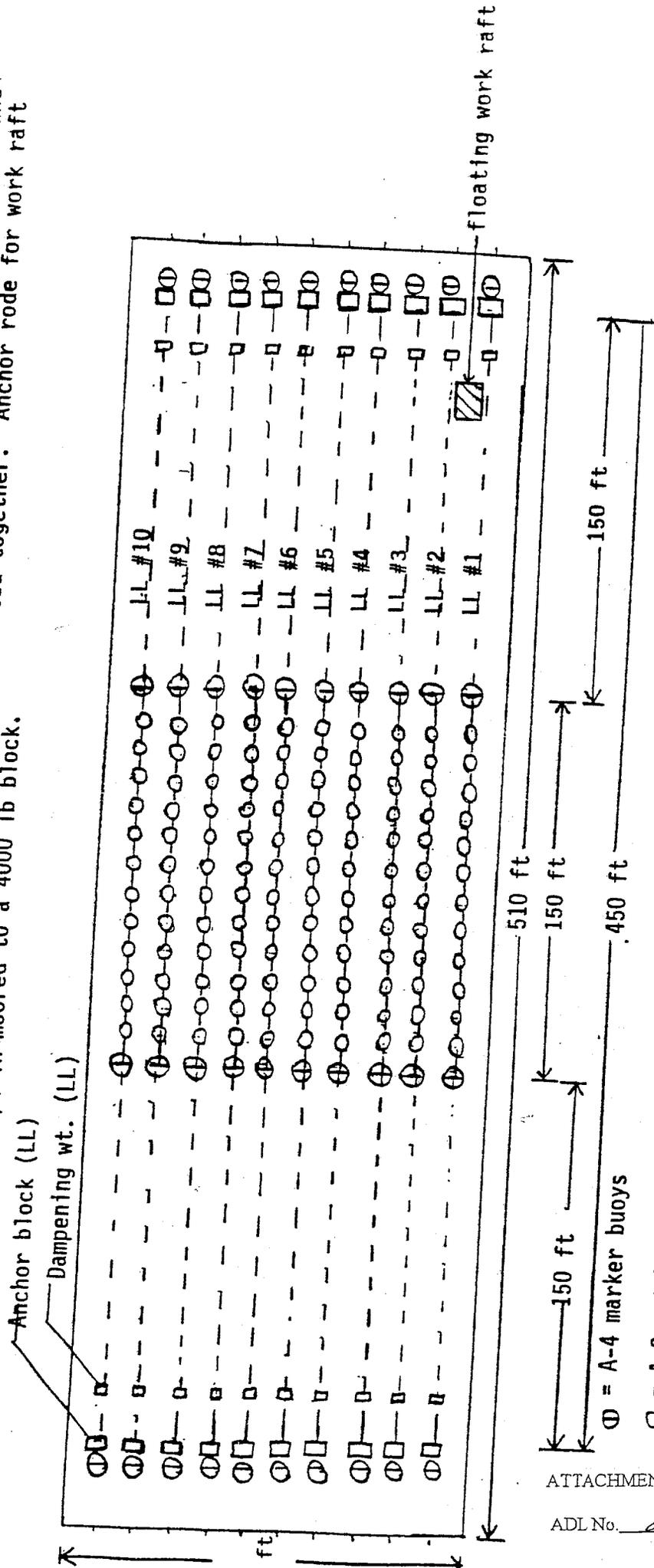
2 ACRES

Bear Cove, Alaska

SCALE: 1/4 inch equals 15 ft

Longline are 150 ft in length. 15 ft spacing between longlines. A-3, and A-4 buoys. Anchor systems for longlines to be 3/4 in rode with 2000 lb anchor blocks. Each longline to have 2 ea 2000 lb anchor blocks with 2 ea 50 lb dampening wts. 12 each A-3 pot buoys per LL. 4 each A-4 marker buoys per LL. 50 each 10 tier Lantern nets suspended from each LL: 1 lantern net per 3 ft.

Workraft to be 8 X 12 ft with floatation cells under. Constructed of 2 X 6 in frame and 2 X 4 joists. Sections to be gusseted and bolted together. Anchor rode for work raft to be 3/4 in moored to a 4000 lb block.



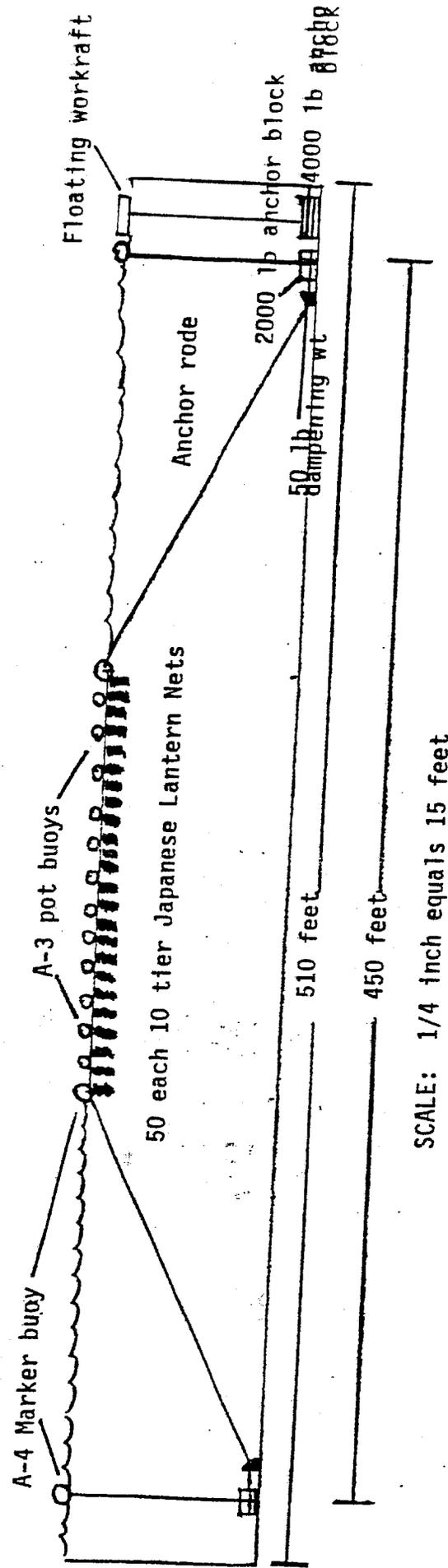
⊕ = A-4 marker buoys
 ○ = A-3 pot buoys
 ▨ = floating workraft

CROSS SECTIONAL VIEW

(Longlines - 10 each, workraft - 1 each)

- 10 Longlines total, each longline 450 ft, with 150 ft floating section. 15 ft spacing between longline
- 50 each, 10 tier Japanese Lantern nets with 3 ft spacing on each longline.
- 4 each A-4 marker buoys per longline
- 12 each A-3 pot buoys per longline (10 foot spacings)
- 2 each 2000 lb anchor blocks with 50 lb. dampening weights on 3/4 inch rode per longline
- 1 each 8ft X 12ft floating work raft (3 each 4ft X 8ft sections on flotation cells bolted together)
Raft to be moored with 3/4 inch rode attached to 1 each 4000 lb anchor block

* 70 feet deep at MLW



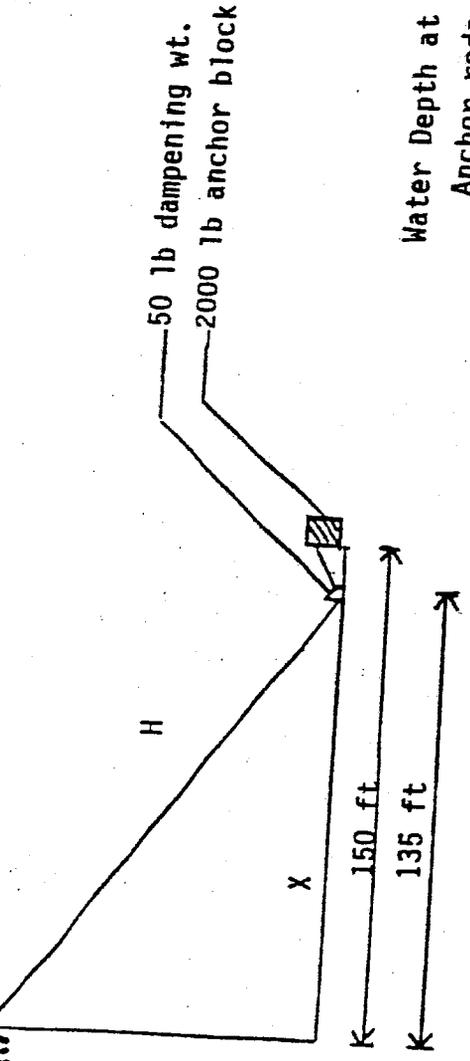
ATTACHMENT # 5
ADL No. 226873

SCALE: 1/4 inch equals 15 feet

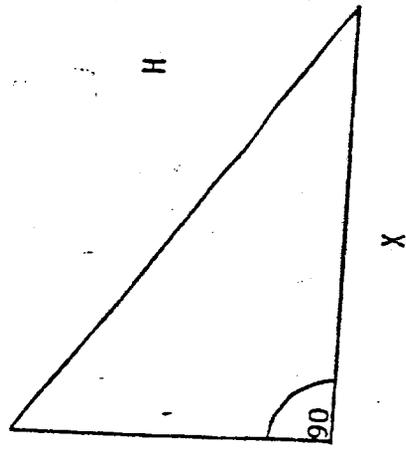


ANCHOR SYSTEM FOR LONGLINES

SCALE: 1/4 inch equals 15 ft.



Water Depth at Extreme High Tide = 90 ft
Anchor rode = 3/4 inch



$$H = \sqrt{Y^2 + X^2}$$

$$H = \sqrt{9025 + 18225}$$

$$H = \sqrt{27250}$$

$$H = 165 \text{ ft}$$

$$Y = 90 \text{ ft}$$

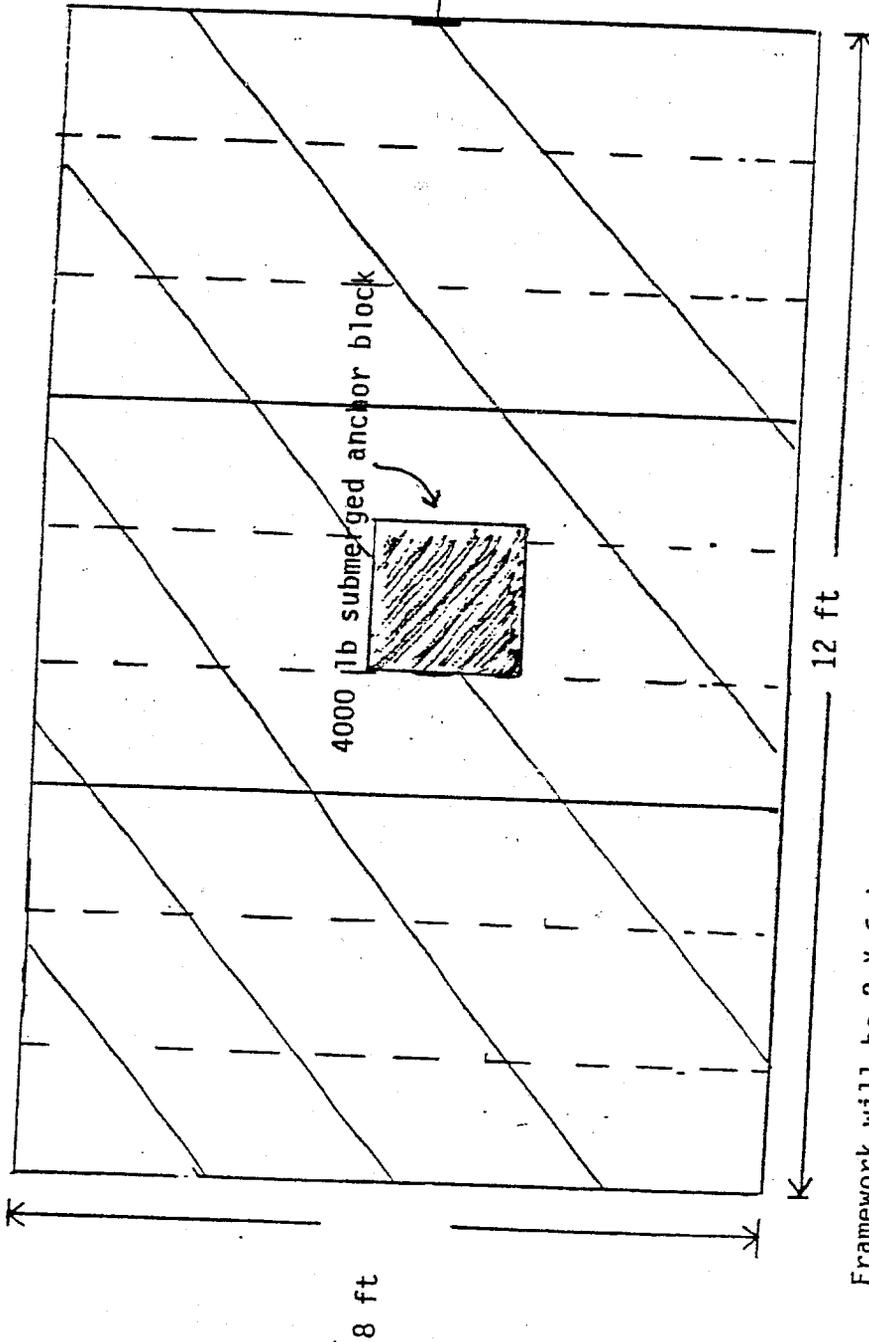
$$X = 135 \text{ ft}$$

ATTACHMENT # 6
ADL No. 226873

RAFT DESIGN

TOP VIEW (looking down)

SCALE: 1 inch equals 2 ft



Raft moored to anchor block with 1/2 inch rode.

4000 lb submerged anchor block

8 ft

12 ft

Framework will be 2 X 6 in construction bolted together with metal gussets. Stringers will be 2 X 4 ft on 16 inch centers. Decking will be 5/8 in plywood. Each 4 X 8 section will have floatation cell under. Kicker mount will be bolted on to allow use of 18 horse outboard to move (if necessary).

- Materials:
- 6 each 2 X 4 by 8 ft
 - 4 each 2 X 6 by 8 ft
 - 2 each 2 X 6 by 12 ft
 - 3 each 4 X 8 ft floatation cells

_____ = 2 X 6 in framework
 - - - - - = 2 X 4 in joists

8 ft beam
AK 4414 N
"HANK"

ADFG # 67758

OWNER: John B. Menke
ADDRESS: 57900 Clover Ave.
Homer, Alaska 99603
ph# 907 235 7905

318922
INEWICVLLV

AK 4414 N
(black)

ADFG #67758 (black)

"HANK"
Visible in Black

BOW LOCKER
(storage for life vests etc., food bailing bucket, anchor, rode, flare, 1st aid kit, safety equip)

FISH TOTE
Secure on stringers
Transport of Shell fish on ice

8 ft beam

CENTER THWART
(utilized for miscellaneous storage)

CENTER CONSOLE
(steering, throttle gauges, compass, gps, etc)

PEDESTAL MT. SWIVEL SEAT

RAILING (inside)

"PORTA POTTY"

PORTABLE FUEL TANKS

DRYWELL

RAILING (inside)

AK 4414 N
(black)

ADFG #67758 (black)

"HANK"
Visible in Black
Letters

Batteries, portable fuel tank, drain plug, and bilge pump are under Drywell.
Interior is Gray, exterior sides are Teal, bottom exterior is Black.
Aft area between railings is open work area. Railings are utilized for tie off of work lines etc.

BATT #1

BATT #2

18 hd

90