

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

**PRELIMINARY BEST INTEREST FINDING
AQUATIC FARMSITE LEASE**

**APPLICANT: MIKE FITZGERALD & GARY AUSEC
ADL #108093**

LOCATION: SOUTHEAST SAN ISLAND

The Department of Natural Resources is accepting public comment on the following preliminary decision document for a new aquatic farm site. **Written comments must be received on or before 5:00 p.m., Thursday, September 15, 2011.**

PROPOSED ACTION: The applicant is requesting the approval of a 1.5 acre aquatic farm proposed near the southeast shore of San Island, east of El Capitan Passage, approximately 6.5 miles northwest of Naukati Bay. The applicant is proposing a 205 ft. x 315 ft growing area for oyster culture using a raft and cage system. The parcel will eventually include six (6) 16 ft. x 20 ft. oyster grow-out rafts for hanging trays. In the center portion of the parcel the applicant will place a 20 ft x 30 ft. work-raft with a 16 ft. x 16 ft. covered processing building for cleaning, sorting and packing product. The anchor system for all rafts will consist of sinking poly/Dacron anchor lines with 1500 lb. concrete anchors at a depth of approximately 36 ft. deep. All rafts are to be constructed of untreated local wood with floatation made of poly barrels or encased Styrofoam billets.

The total combined acreage of the sites is 1.5 acres, more or less.

The proposed 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.

ADMINISTRATIVE RECORD: The administrative record for this renewal application is ADL 108093.

LOCATION:

USGS MAP COVERAGE: Craig (D-5) Quadrangle

NAUTICAL CHART: 17403

LEGAL DESCRIPTION:

Those tide and submerged lands located in southeast Alaska lying within:

Township 68 South, Range 78 East, Copper River Meridian,

NE ¼ of Section 33 – between two un-named islets just south of San Island, encompassing an area measuring 205 feet by 315 feet for oyster grow-out, according to the site drawings attached to this decision, containing 1.5 acres.

1 Parcel equaling 1.5 acres - Oyster Culture Area - 205 feet x 315 feet = 1.5 acres

NE Corner: Latitude 55 56.089 N Longitude 133 21.036 W

SE Corner: Latitude 55 56.038 N Longitude 133 21.019 W

SW Corner: Latitude 55 56.082 N Longitude 133 21.095 W

SE Corner: Latitude 55 56.031 N Longitude 133 21.078 W

Parcels are located in the Ketchikan Recording District.

GEOGRAPHIC: The proposed farm site is located on state-owned tide and submerged lands east of Orr Island, east of El Capitan Passage, off the southeast shore of San Island and just north of two un-named islands.

POLITICAL INFORMATION:

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

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 7, Sea Otter Sound, Subunit 7a – Marble/Orr Islands. Unit 7a receives dispersed recreation use by residents of Sea Otter Sound and by boaters accessing the Sound through Naukati from the Prince of Wales Island road system. Tenass Pass, Marble Passage, and Upper Tokeen Bay are particularly important recreation areas. Anchorages are located in bays and coves throughout the subunit. The area in this unit surrounding the proposed aquatic farm site is designated dispersed recreation (r). This designation provides for dispersed recreation uses which require no developed facilities and are not necessarily concentrated at a specific site, such as wildlife viewing or berry picking.

Aquatic Farming Resource Information: Aquatic farming has occurred in south Tokeen Bay, north of the proposed new site. The Sea Otter Sound marine waters have characteristics favorable for aquatic farming. Local residents in 1998, when the area plan was updated, were concerned that traditional uses may be displaced by uncontrolled development of this new industry. Local residents preferred that aquatic farming develop in larger bays with protected waters, rather than in isolated small coves popular for anchorage, recreation, or personal-use harvest.

MANAGEMENT INTENT AND GUIDELINES: State tidelands and submerged lands are to be managed for multiple use.

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

CULTURAL RESOURCES: Many historic and prehistoric cultural sites have been identified. Several sites are clustered in the southeast part of Tokeen Bay approximately 4 miles from the proposed aquatic farm site.

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 August 17, 2011 and will end at 5:00 p.m. on Thursday, September 15, 2011.**

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 October 10, 2011. 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.

Evaluation by the Alaska Department of Fish and Game

I. Physical and Biological Characteristics: Based on the information provided by the applicant on the site physical and biological characteristics, the proposed site parcel area appears capable of supporting the farm activities proposed. Details are below:

Protection from Oceanographic and Atmospheric Extremes: The physical exposure notes from Alaska ShoreZone imagery mapped data¹ shows the area as "semi-protected" defined as a maximum effective fetch of 1 to 50 km. The proposed structures and farm gear have a sound configuration and anchoring system and are comparable to existing farm gear used in Prince of Wales Island, Southeastern Alaska that can withstand ocean and atmospheric conditions. Extra monitoring must be conducted, if approved in this area, to ensure that structures do not break loose and become derelict, potentially harming fish and wildlife and their habitat.

Sufficient Environmental Conditions: The proposed aquatic farm operation project is in an area that appears to have sufficient water exchange, water temperatures, currents, salinity, and primary

¹ NOAA (National Oceanic and Atmospheric Administration), Fisheries, National Marine Fisheries Service. Alaska ShoreZone: Coastal Mapping and Imagery. <http://akr-mapping.fakr.noaa.gov/szflex/> (Accessed July 2011).

production to support an aquatic farm and maintain healthy environment for other marine organisms.

Sufficient Water Depth: Based on information provided by the applicant (site plan drawing), the water depth at the aquatic farm site parcel is approximately 36 ft average at mean low tide and is sufficient to prevent gear from grounding and impacting the benthos under floating structures.

As a note to the applicant, under circumstances where water temperatures may reach 63 degrees, culture gear used in Parcel 1 would not be able to be lowered into deeper recommended depths of 60 ft where cooler temperatures are found. This is an accepted ADEC corrective action practice to eliminate or decrease the possible occurrence of pathogenic stage of *Vibrio parahaemolyticus*, known to cause gastroenteritis in humans. As of yet, there have been no reports or any outbreaks in Southeast Alaska.

Eelgrass and Kelp Beds Maintained: Based on the information provided by the applicant, there does not appear to be any eelgrass in the proposed project area. The exact locations and extent of kelp beds is not well documented in the area. If health and the abundance of kelp beds in the area are not properly maintained within the proposed aquatic farm site parcel, project modifications to the aquatic farm operations permit will be made to correct the condition.

Anadromous Fish Streams: The proposed project site parcel is not located within 300 feet of the mouth of an anadromous fish stream catalogued by ADF&G for various salmon species². The proposed farm gear structures will not significantly affect fish rearing habitats for salmonids and other marine fishes in the area and will allow adequate fish passage for salmonid adults (chum, coho, and pinks) that may be milling or migrating through the area.

II. Existing Uses not Significantly Altered: The proposed aquatic farm site will not significantly alter an established use defined in regulations as a commercial fishery, sport fishery, personal use fishery, or subsistence fishery.

Commercial Fisheries: The proposed aquatic farm is located in ADF&G Commercial Fisheries Division statistical area sub-district 103-90. The proposed aquatic farm site project is not expected to cause any significant alterations to the existing commercial fishery uses in the area. Details on each commercial fishery is listed below.

Geoducks: Harvest data shows commercial geoduck fishery took place in 2009, but not in 2008 and 2010 for this area.

Sea cucumber: Harvest data shows commercial sea cucumber fishery took place in 2008 and 2010, but not in 2009 for this area.

Red Sea Urchins: No commercial red sea urchin dive fishery took place for this statistical area.

Salmon: Harvest data shows commercial salmon fisheries using purse seining (Chinook, coho, sockeye, pink, and chum salmon), hand trolling (Chinook, sockeye, coho, and pink salmon), and power trolling (Chinook, coho, pink, and chum) in this area in 2010. No salmon set netting or gillnet salmon fisheries occurred for this area in 2010.

Herring: No commercial herring fishery landings were reported for this area in 2010.

²Johnson, J. and K. Klein. 2009. Catalog of waters important for spawning, rearing, or migration of anadromous fishes – Southcentral Region, Effective June 1, 2009. Alaska Department of Fish and Game, Special Publication No. 09-03, Anchorage.

Shrimp: Spot shrimp fishery landings were reported in 2010 for this statistical area.

Dungeness crab: Harvest data from statistical area 103-90 show consistent commercial Dungeness harvest. Dungeness harvest in pounds, permits fished, and landings made from statistical area 103-90 for the past ten seasons are shown in Table 1 below:

SEASON	HARVEST	PERMITS FISHED	LANDINGS
2001/02	26,144	6	28
2002/03	10,700	5	19
2003/04	31,594	4	23
2004/05	22,392	8	19
2005/06	*	*	*
2006/07	21,802	3	10
2007/08	33,665	5	18
2008/09	*	*	*
2009/10	*	*	*
2010/11	0	0	0
TOTALS	168,069	17	146

* Confidential data, fewer than three permits fished.

Aerial surveys of the Dungeness grounds in central and northern Southeast are conducted every June after the commercial fishery opens. Statistical area 103-90 is not part of the annual aerial survey so effort data can only be described for the statistical area itself, and not for any of the bays or inlets that are part of statistical area 103-90.

It is likely that this proposed farm site will have a negligible impact on commercial Dungeness fisheries or on Dungeness habitat in the project area. The project footprint is small, the growing area is subtidal and suspended, and the bottom type is listed as bedrock in the application.

Sport Recreational Fishery: Since no permit system is in place for the personal use fishery, the amount of effort and harvest in the area would be difficult to gauge. The Statewide Harvest Survey does tally personal use harvest in Southeast but summarizes these data on a wider scale than district or statistical area. The area is likely used by personal use Dungeness fishermen. Due to their design, oyster farms have not seemed to have significant negative impact on anglers. It is likely that the project area is also used by personal use Dungeness fishermen. The proposed aquatic farm site project is not expected to cause any significant alterations to the existing sport recreational fishery use.

Subsistence Use: Statistical area 103-90 lies within Section 3-C and there is no customary and traditional use of Dungeness in this section.

Anchorage: 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 wildlife resources in the area.

Predator and Pest Control Methods: Predator exclusion devices to be used at the proposed site

project are expected to be utilized in a manner that minimizes impacts on non-targeted fish and wildlife resources in the area.

Sensitive Wildlife: The proposed aquatic farm site project 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 site parcel.³

Eagle Nest: There are no eagle nests within 330 ft of the proposed project site parcel⁴

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 parcel and the center point of the nearest known marine mammal haulout⁵. During the survey of 2007, no counts were recorded for harbor seals at this haulout. This proposed aquatic farm project is not expected to adversely impact sea mammals and their habitats.

Endangered species: The proposed aquatic farm site project will not 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. Approved methods include 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.

The operation and development plan is very optimistic for the years 3 through 10 with an expected 90% survival rate for Pacific oysters.

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 be 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 area. Based on information provided by the applicant, the proposed site is capable of supporting the activities proposed. The proposed parcel for

³ 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.

⁴ U.S. Fish and Wildlife Service, Migratory Bird Management. Alaska Bald Eagle Nest Atlas-computer database. 2008.

⁵ Data provided by NOAA Fisheries Service, Alaska Region, Protected Resources Division with aerial surveys completed by researchers from NOAA Fisheries Service, Alaska Fisheries Science Center, and National Marine Mammal Laboratory.

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: 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 proposed aquatic farm would not appear to cause 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.

Upland Owner/Management Intent: The U.S. Forest Service (Tongass National Forest) is the upland owner of the lands adjacent to the aquatic farm proposal.

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 Prince of Wales Island 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 will not disrupt 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

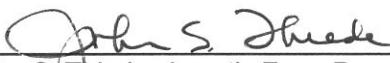
Social, Economic, and Environmental Concerns: There are no known significant social, economic, and environmental effects from the existing lease.

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).

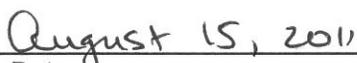
Aquatic farm sites have the opportunity to increase income and diversify the state's economy by utilizing state tide and submerged lands for this purpose. The advantage of issuing this lease on state owned tide and submerged lands is the continued employment opportunities as well as any secondary jobs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

After researching this proposal there seems to be no obvious disadvantages in issuing 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 issue a 10-year aquatic farm lease for approximately 1.5 acres for oyster 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.

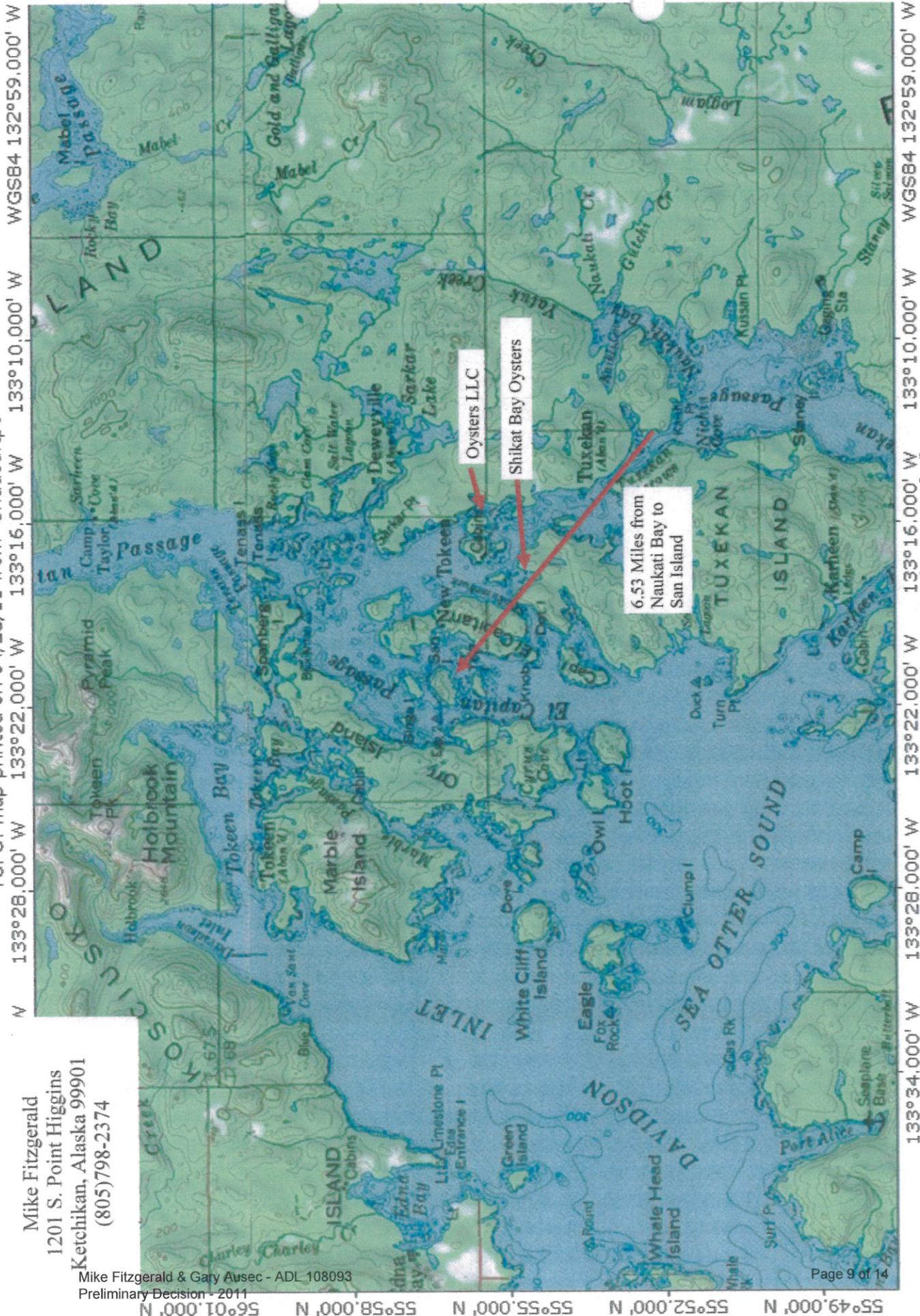


John S. Thiede, Aquatic Farm Program Manager



Date

TOPOI map printed on 04/28/11 from "Untitled.tpo"



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 Preliminary Decision - 2011



Map created with TOPOI from National Geographic (www.nationalgeographic.com/topo)

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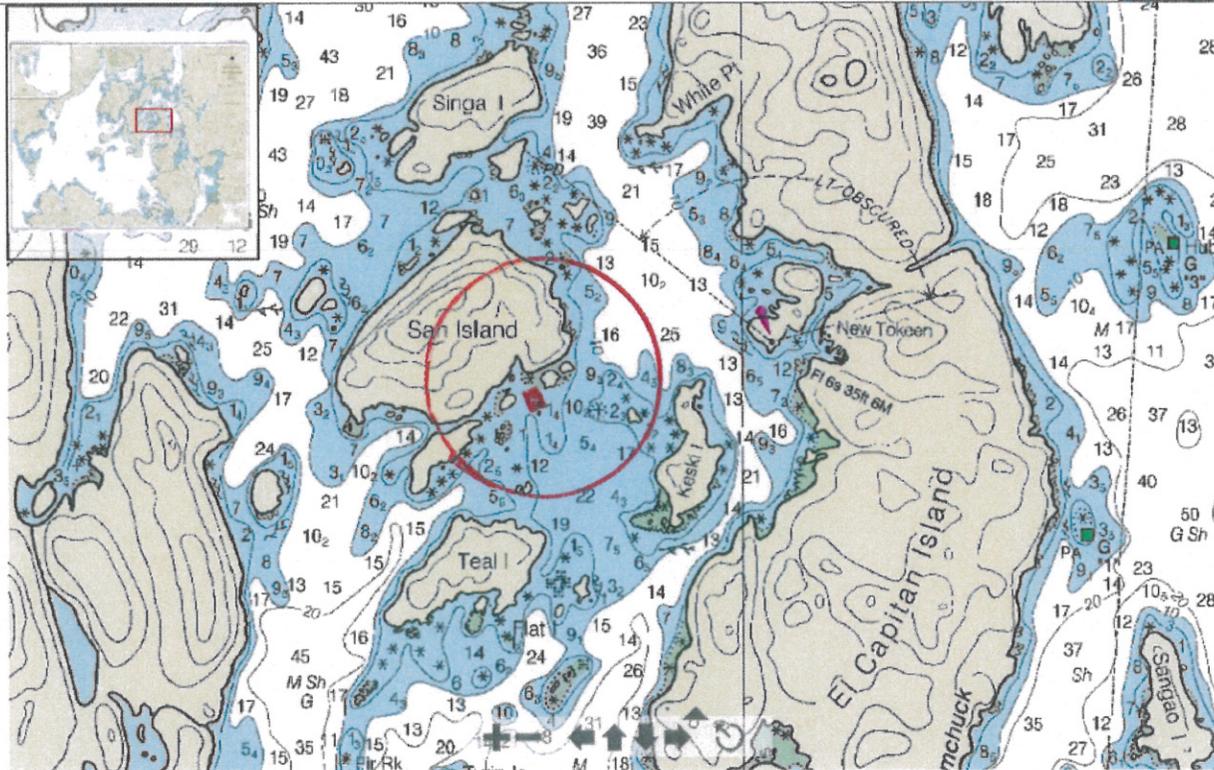
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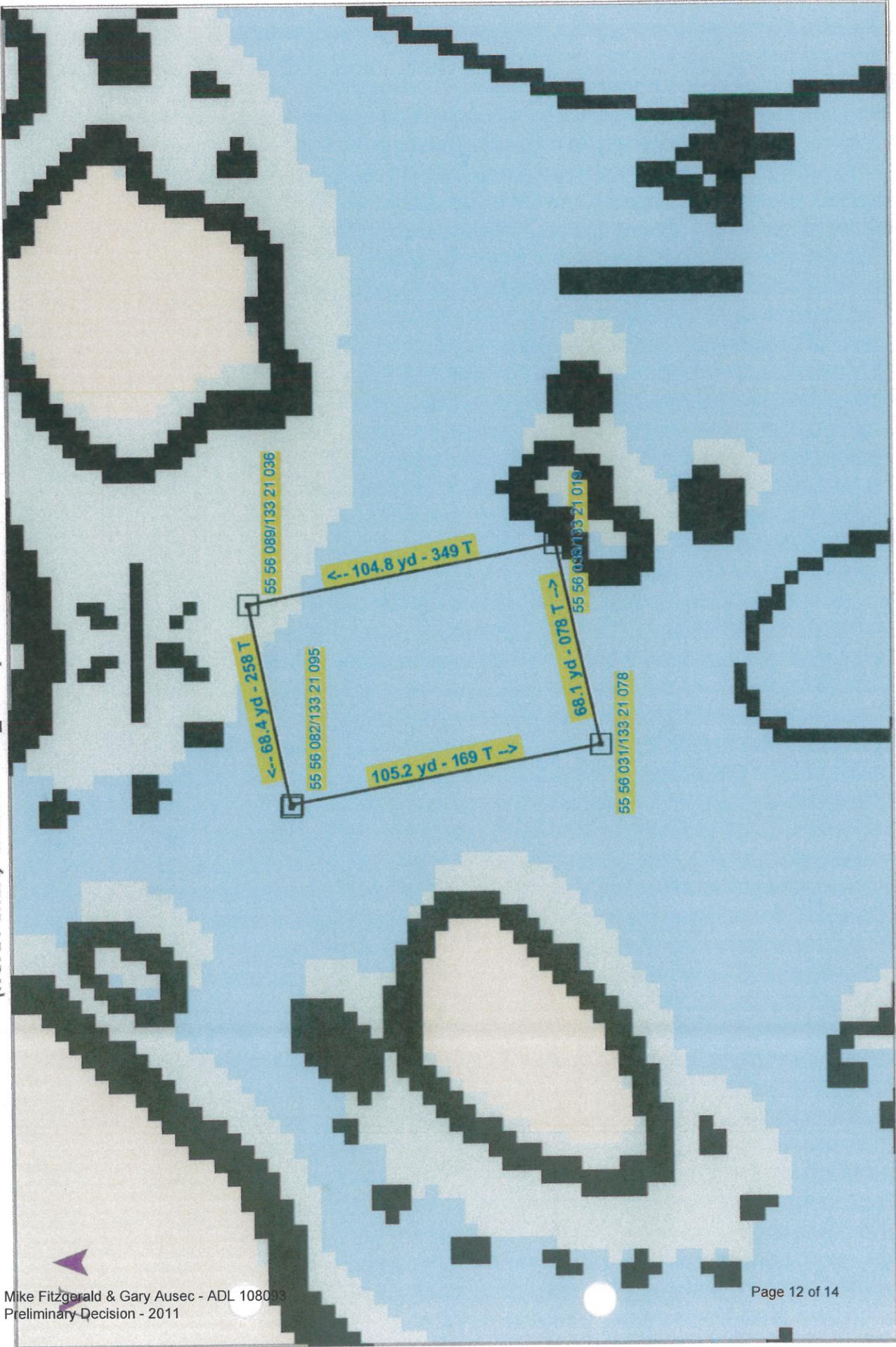
NOTE: Use the official, full scale NOAA nautical chart for real navigation whenever possible. These are available from authorized NOAA nautical chart sales agents. Screen captures of the on-line viewable charts available here do NOT fulfill chart carriage requirements for regulated commercial vessels under Titles 33 and 46 of the Code of Federal Regulations.

[Adobe Flash Player](#) is required to view the chart image.
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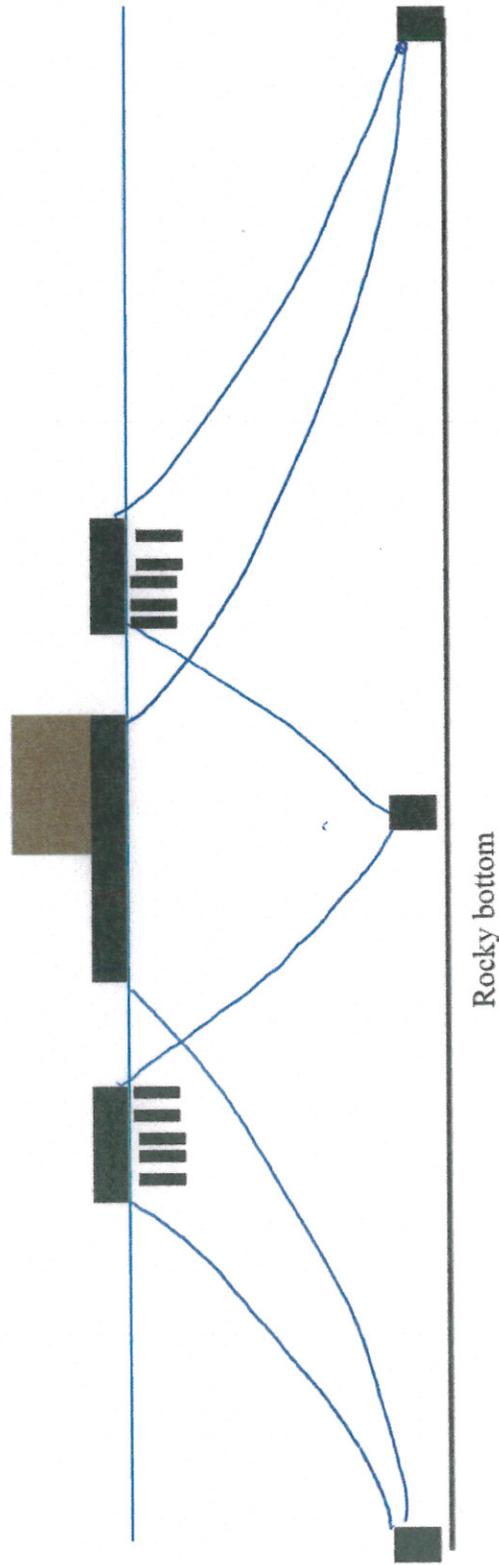
DAVIDSON INLET AND SEA OTTER SOUND - 1 : 7,300
(NOAA Chart) Chart #17403_1 - Depth Units: FATHOMS AND FEET

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1/16" = 1'

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