

From: [BrownScott, Jennifer](#)
To: [Stenvall, Charlie](#)
Subject: Aquaculture: DNR Comment
Date: Thursday, July 23, 2020 4:26:19 PM
Attachments: [DNR_011019 .pdf](#)

This is an unfortunate position taken by DNR.

Jennifer Brown-Scott

Project Leader

Washington Maritime National Wildlife Refuge Complex

715 Holgerson Road

Sequim, WA 98382

(360) 457-8451

~~[Dungeness NWR](#)~[Protection Island NWR](#)~[San Juan Islands NWR](#)~[Copalis NWR](#)~[Flattery Rocks NWR](#)~[Quillayute Needles NWR](#)~~



**DEPARTMENT OF
NATURAL RESOURCES**

OLYMPIC REGION
411 TILlicum LANE
FORKS, WA 98331

360-374-2800
OLYMPIC.REGION@DNR.WA.GOV
WWW.DNR.WA.GOV

January 10, 2019

Ms. Pamela Sanguinetti
U.S. Army Corps of Engineers, Regulatory Branch
Seattle, Washington
[delivered via email to pamela.sanguinetti@usace.army.mail]

Subject: NWS-2007-1213; Jamestown S'Klallam Tribe

Dear Ms. Sanguinetti:

The Washington Department of Natural Resources (DNR) respectfully submits this comment regarding application NWS-2007-1213 by the Jamestown S'Klallam Tribe (JST) for a Department of the Army permit to perform work in waters of the United States on tidelands in Dungeness Bay, Clallam County.

The principal objective of this communication is to provide information about Aquatic Lands Lease 20-A13012 between the State of Washington, as lessor, and the Jamestown S'Klallam Tribe, as lessee, for state-owned aquatic lands, managed by DNR under state law, consisting of 50 acres of tidelands located within the Dungeness National Wildlife Refuge. The leased property is described in a record of survey recorded with the Clallam County Auditor under Auditor File Number (AFN) 2008-1217830. Aquatic Lands Lease 20-A13012 is recorded under AFN 2015-1324418 and AFN 2015-1327056 (collectively, "the lease").

The lease commenced on August 1, 2007. Pursuant to subsequent renewal of the lease per the terms therein, the termination date was July 31, 2017, at which time the lease entered into holdover status. Consistent with the terms of the lease, the terms and conditions of the lease continue to apply and the tenancy is considered month-to-month. The parties are in negotiation for a new lease (20-B13012) with a term of not less than five years nor more than ten years, per state law.¹ The applicant must acquire all necessary federal, state, and local permits before DNR may offer a new lease.²

The tidelands associated with the lease are state-owned aquatic lands, conveyed to Washington State at statehood. In 1943, the United States submitted an application to the State of Washington

¹ Revised Code of Washington (RCW) 79.135.130(1)

² Washington Administrative Code 332-30-122(1)(c)

for an easement to use the second class tidelands adjacent to Dungeness Spit for purposes of a wildlife refuge. Under the authority of Section 152, Chapter 255, State of Washington Laws of 1927, the governor may grant an easement to the United States for any public purpose. The governor executed an easement to the United States for the second class tidelands in 1943, with the state retaining fee ownership.

Pursuant to the terms of the 1943 easement, DNR may grant additional authorizations for other uses on these tidelands, so long as those uses are not in conflict with the purposes of the easement. This right to grant additional authorizations on the tidelands in Dungeness Bay, principally commercial aquaculture, has been exercised by DNR since at least 1963. Case records do not include any correspondence from U.S. Fish and Wildlife Service to DNR indicating that past or present commercial aquaculture activities have been or are currently in conflict with the easement.

The subject tidelands have covered status under the multiparty 2007 Settlement Agreement for Subproceeding No. 89-3 (Shellfish)³ filed under the U.S. District Court, Western District of Washington, in relation to United States of America, et al vs. State of Washington, et al, case number C70-9213-RSM. Thus, the lease is one of a finite set of aquatic lands leases that are considered “covered leases” governed under that 2007 Settlement Agreement. The location and extent of covered leases is fixed through the Settlement Agreement. Adjustments to the location and/or extent of a covered lease would presumably require amendment to the Settlement Agreement, which would necessitate concurrence from all settlement parties, including 17 tribes. In short, proposals that involve relocating the leasehold are counter to the terms of the 2007 Settlement Agreement associated with a key federal court case. DNR would consider such proposals involving covered leases as problematic.

DNR has been and continues to prioritize management of covered leases for two main reasons:

1. The Settlement Agreement obligates DNR to take specific steps to reauthorize covered leases upon expiration.
2. The State of Washington invested significant financial resources as part of the Settlement Agreement. Consequently, DNR places a high value on covered leases.

DNR’s preference is to continue working with the Jamestown S’Klallam Tribe toward prospective reauthorization in the current location. DNR understands that regulatory agencies may condition permits to address potential environmental impacts. Any new lease for aquaculture at that location would include applicable habitat stewardship measures, as well.

³ <https://www.wawd.uscourts.gov/special-case-notices>; *Controlling Orders*; 6/21/2007 – Subproceeding 89-3; Joint Motion and Settlement Agreement

Pamela Sanguinetti
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DNR is committed to fulfilling the statutory responsibilities of RCW 79.105.030 by providing a balance of public benefits on all state-owned aquatic land. DNR authorizes more than 70 different kinds of uses on state-owned aquatic land that provide one or more of the following benefits to the public:

- (1) Encouraging direct public use and access;
- (2) Fostering water-dependent uses;
- (3) Ensuring environmental protection;
- (4) Utilizing renewable resources.

Generating revenue in a manner consistent with these benefits is also considered a public benefit. Where appropriate, DNR considers commercial aquaculture to be a benefit to the public.

If you have any questions about DNR Aquatic Lands Lease 20-A13012, please contact Land Manager Sean Carlson at 360-301-0422 or sean.carlson@dnr.wa.gov.

Regards,



Josh D. Peters, District Manager
Aquatic Resources Division, Orca-Straits District

c: File
Jamestown S'Klallam Tribe