

From: [BrownScott, Jennifer](#)
To: [Stenvall, Charlie](#)
Subject: Fw: Aquaculture Issues - Not Resolved
Date: Wednesday, February 24, 2021 10:20:24 AM

Just to clarify for any discussions you may have...

Yes, the current lawsuits are related to the Nationwide 48 Permit process and JST is using the individual permit process. It is true that the current litigation will not have any impact on the JST permit process, and we have never made that assertion. These cases do offer evidence that Center for Food Safety and Coalition to Protect Puget Sound have a history of developing successful arguments based on scientific credibility of ACE decisions and the process used. Coalition to Protect Puget Sound and Center for Food Safety both commented on the JST application, with Center for Food Safety specifically addressing the lack of Compatibility review by USFWS (Friends of the Earth was a co-signatory).

I don't understand why they want to downplay the obvious potential for lawsuits. A commercial aquaculture farm in the middle of the highest use migratory bird area of the Refuge seems like a good battleground for organizations litigating environmental impacts from shellfish farms.

-jennifer

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](#)~~

From: McReynolds, Ryan <ryan_mcreynolds@fws.gov>
Sent: Wednesday, February 24, 2021 9:42 AM
To: Teachout, Emily <emily_teachout@fws.gov>; BrownScott, Jennifer <jennifer_brownScott@fws.gov>
Cc: Stenvall, Charlie <charlie_stenvall@fws.gov>; McReynolds, Ryan <ryan_mcreynolds@fws.gov>
Subject: Re: Aquaculture Issues - Not Resolved

Hi Everyone,

Regarding the commercial aquaculture lawsuits ... I will only share/remind everyone, ACE has been implementing a contingency plan to address invalidation of Nationwide Permit 48 for a

year going on two years. I believe, last fall, ACE took procedural steps that allowed individual permits or authorizations to be issued to all/nearly all existing commercial operations; also, I believe their current procedures call for the issuance of individual CWA permits to 'new' proposals, which is a process that involves public notice/comment and therefore a longer timeline.

I won't say that ACE's direction over the last two years isn't subject to challenge; it could be ... Only that ACE has/is already taking a course that they believe addresses the court mandates regarding invalidation of Nationwide Permit 48.

Regarding the DNR lease, 'disturbance monitoring', compatibility, and changes to the proposal/farm operations to reduce impacts to the highest migratory bird use area(s) of the refuge ... I do want to be clear about my understanding of the roles WA-ES accepted, and/or the issues WA-ES was charged with addressing and negotiating; and, conversely, the issues WA-ES was not asked to address or negotiate.

We are available as a resource to Refuges/the refuge; but, WA-ES does not expect to serve as the point-of-contact or lead for conversations with DNR, and WA-ES does not expect to serve as the lead for negotiations with DNR or other parties (including ACE) about avoidance or minimization of impacts to migratory bird use areas on the refuge. My understanding is that Refuges is the lead for those issues/negotiations.

I'm available if we want to huddle at some point, and further discuss these matters.

Thank You, Stay Well,

--Ryan--

Ryan McReynolds
U.S. Fish and Wildlife Service, Lacey WA
Consultation & Conservation Planning Division
Federal Activities / Coastal, Lowland Aquatics, and Marine
ryan_mcreynolds@fws.gov
360.753.6047

*Working with others to conserve, protect, and enhance
fish, wildlife, plants, and their habitats for the continuing
benefit of the American people.*

From: Teachout, Emily <emily_teachout@fws.gov>
Sent: Wednesday, February 24, 2021 8:51 AM
To: BrownScott, Jennifer <jennifer_brownScott@fws.gov>
Cc: Stenvall, Charlie <charlie_stenvall@fws.gov>
Subject: Re: Aquaculture Issues - Not Resolved

Thank you for this detailed update Jennifer. As I had an inquiry about status from RO leadership, I'll route this to them. It is certainly good for us to have an update on the current context and potential for litigation.

Best,
Emily

From: BrownScott, Jennifer <jennifer_brownScott@fws.gov>
Sent: Wednesday, February 24, 2021 8:37 AM
To: Teachout, Emily <emily_teachout@fws.gov>
Cc: Stenvall, Charlie <charlie_stenvall@fws.gov>
Subject: Aquaculture Issues - Not Resolved

ACE has not yet issued a FONSI, or decided if they will issue a permit. **If** a permit is issued, it is highly likely that Center for Food Safety (and others) will sue ACE related to process and the substance of the Environmental Assessment and sue FWS on our decision to forgo Compatibility. ACE has lost multiple aquaculture related lawsuits brought by this organization, with the most recent decision coming a little over a week ago
<https://www.centerforfoodsafety.org/press-releases/6264/court-of-appeals-backs-environmentalists-federal-greenlight-of-industrial-shellfish-aquaculture-unlawful>

If ACE proffers a permit for this proposed commercial farm, then JST would still need to work through the DNR lease process, which will again look at impacts to the Refuge, and create a disturbance monitoring protocol that is acceptable to Audubon and the Refuge.

It appears ACE has the Section 7 information needed for their EA. However, we have not seen any changes to the proposed farm reducing impacts to the highest migratory bird use area of the Refuge. These impacts should be considered the primary issue related to this proposed commercial aquaculture farm - and they have not been resolved.

-jennifer

Jennifer Brown-Scott

Project Leader
Washington Maritime National Wildlife Refuge Complex
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