

From: [BrownScott, Jennifer](#)
To: [Stenvall, Charlie](#)
Subject: Fw: Follow-up/Recap: Special Conditions of USACE Initial Proffered Permit
Date: Tuesday, March 30, 2021 11:14:05 AM
Attachments: [JST Dungeness Shellfish Farm Monitoring and Mitigation Plan_Final.pdf](#)
[JST GearSurveillance RetrievalPlan Revised_082820.pdf](#)
[Dungeness Bay Oyster Farm General Operation Plan_corrected.pdf](#)

Liz is pushing for a concrete timeline for CD development/approval. This is difficult without knowing the breadth of activities, but I think I could safely respond as follows:

"If there is minimal impact to refuge wildlife, habitat and resources from activities described in the monitoring plan, it is likely that a Compatibility Determination could be written, public comment completed, and approved within 60 days of completion of the monitoring plan."

This should allow time for a comment period anywhere between 15 and 30 days. The potential for an increased timeline if impacts are more than minimal may give further incentive to find the least impactful approach.

Thoughts?

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

From: Elizabeth Tobin <etobin@jamestowntribe.org>
Sent: Monday, March 29, 2021 4:45 PM
To: BrownScott, Jennifer <jennifer_brownScott@fws.gov>
Cc: Sissi Bruch <sbruch@jamestowntribe.org>; Hansi Hals <hhals@jamestowntribe.org>
Subject: [EXTERNAL] Follow-up/Recap: Special Conditions of USACE Initial Proffered Permit

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Hi Jennifer,

Thanks again for taking the time to discuss further USFWS coordination on the special conditions as part of the USACE initial proffered permit. I would like to start by summarizing our conversation for the benefit of Hansi and the Tribe's new Environmental Planning Biologist, Sissi Bruch, who will be taking the lead on tracking/overseeing the terms and conditions of the Tribe's oyster farm permits.

- Regarding the compatibility determination (CD), USFWS has been waiting for the signed permit so that the entirety of the project, including monitoring activities, can be considered.

Hence, while the Operational Plan, Monitoring and Mitigation Plan and the Gear Retrieval Plan (attached) have not changed, any additional monitoring activities need to be finalized before you can initiate that process. *Could you provide clarification on the timeline for completing the CD once the additional monitoring plan(s) are final?*

- Regarding the Monitoring Plan as a special condition of the USACE proffered permit, you are happy to begin working with us immediately on development of a monitoring plan (acknowledging that you are going into your busy field season) but would like to involve a representative from USFWS Migratory Bird Program who has more experience/expertise with monitoring behavior. Given the requisite MOU for the Shoreline Permit, Olympic Peninsula Audubon should also be involved in coordination of the monitoring plan.

As a next step, I will have you coordinate with Sissi (cc'd) to set up a conference call with USFWS staff, Audubon and Tribal staff to initiate the conversation on co-development of a monitoring plan. As we discussed, there is a need to initiate these conversations quickly - over the next couple of weeks – as the special conditions state that project activities cannot commence until the agreed to monitoring plan and CD have been submitted to USACE. As you know, the Tribe has been working towards re-establishing it's oyster farm in Dungeness Bay for well over a decade, and is eager and ready to begin activities on the DNR lease area as early as June.

Please feel free to add or clarify anything that I may have unintentionally omitted.

Best,

Liz

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Monitoring and Mitigation Plan for the Jamestown S’Klallam Tribe’s Dungeness Shellfish Farm

This plan outlines established conservation measures, site-specific stewardship measures and monitoring activities as part of a mitigation¹ strategy for the Jamestown S’Klallam Tribe’s Dungeness Shellfish Farm operations associated with the DNR aquatic lease parcel (#20-A013012) in Dungeness Bay. Based on comments provided by the USFWS Dungeness Wildlife Refuge staff and local citizens, as well as environmental reports prepared by Confluence Environmental Inc., it is the understanding of the Tribe that the most pressing concerns are to Refuge wildlife, particularly migratory birds, and the surrounding habitat as follows:

- 1) Potential disturbance to black Brant foraging and lofting habitat
- 2) Potential disturbance to shorebirds – namely Dunlin.
- 3) Potential impact to eelgrass habitat.
- 4) Potential impact to forage fish spawning habitat.
- 5) Plastic debris from farming activities.

1. Established Conservation Measures

Several conservation measures, and terms and conditions, from the Programmatic Biological Opinions for Shellfish Activities in Washington State Inland Marine Waters (USFWS reference number 01EWF00-2016-F-0121, NMFS reference number WCR-2014-1502) directly address the above concerns. The Tribe’s proposed project satisfies these conservation measures and terms and conditions, and the Federal Individual Permit, to be issued by the USACE, will be contingent upon fulfillment of all relevant measures. Specific measures that address identified concerns are listed as follows:

Measure #6. “Shellfish activities shall not occur within 16 horizontal feet of native eelgrass (*Zostera marina*) or Kelp (order *Laminariales*). **Addresses concerns #1, 3 & 4.** *Eelgrass has been delineated and mapped within and adjacent to the lease parcel over several years (see Jamestown Eelgrass Survey Report 2017 & Confluence Field Report 2018). A more conservative buffer will be implemented so shellfish activities will not occur within 25 horizontal feet of native eelgrass (*Z. marina*).*

Measure #7. “Activities shall not occur above the tidal elevation of +7 ft (MLLW) if the area is listed as documented surf smelt (*Hypomesus pretiosus*) spawning habitat by WDFW.”

Measure #8. “Activities shall not occur above the tidal elevation of +5 ft (MLLW) if the area is listed as documented Pacific sand lance (*Ammodytes hexapterus*) spawning habitat by WDFW.” **Addresses concern #4.** *The proposed upper tidal elevation of Pacific oyster cultivation is +3 ft. (MLLW). All activity will occur at or below a tidal elevation of +3 ft. MLLW.*

¹ Mitigation as it applies here are measures taken to avoid and reduce potential impacts to wildlife and the environment of Dungeness Bay.

Measure #9. “If conducting [on-bottom bag removal] within a documented spawning area of Pacific herring (*Clupea pallasii*) outside of the approved work window², the work area shall be surveyed for the presence of herring spawn prior to the activity occurring. Vegetation, substrate and materials (bags) shall be inspected. If herring spawn is present, [bag removal] is prohibited in the areas where the spawning has occurred until such time as the eggs have hatched and herring spawn is no longer present.” **Addresses concern #4.** *This egg incubation time period will be avoided in general. If bag removal must occur from January 16 – April 30, all conditions will be met as described above (see herring spawn survey details under monitoring plan below).*

Measure #11. “All shellfish gear that is not immediately needed or is not firmly attached to the substrate will be moved to a storage area...” **Addresses concern #5.** *The storage area for shellfish farming gear will be offsite. All gear will be brought in by boat and will be in active use and firmly secured to the substrate once onsite.*

Measure #18. “All [gear] shall be clearly, indelibly and permanently marked to identify the permittee name and contact information.”

Measure #19. “All gear shall be tightly secured to prevent them from breaking free.”

Measure #22. “... beaches within the project vicinity will be patrolled by crews who will retrieve debris that escape from the project area. Within the project vicinity, location will be identified where debris (if any) tends to accumulate to wave, current or wind action.... A record shall be maintained with the following information and made available upon request to Corps, NMFS and USFWS: date of patrol, location of areas patrolled, description of and amount of debris.” **Addresses concern #5.** *All labeling, securing, patrolling and reporting requirements as outlined by the above conservation measures will be met. Retrieval of any identified debris will occur in close communication and coordination with Dungeness Wildlife Refuge staff.*

Measure #26. “Vessels shall not ground or anchor in native eelgrass (*Zostera marina*) or Kelp (order *Laminariales*), and paths through native eelgrass shall not be established. If there is no other access to the site or the special condition cannot be met due to human safety considerations, a site-specific plan shall be developed describing specific measures and/or best management practices that will be undertaken to minimize negative effects to eelgrass and kelp from vessel operations and accessing shellfish areas.” **Addresses concerns #1, 3 & 4.** *The applicant has identified site access routes and locations that will avoid paths through, grounding or anchoring vessels in native eelgrass.*

² The approved work window for the project lease site, tidal reference area 10 which includes Dungeness Bay, is May 1 – January 15 (WAC 220-660-330).

2. Site-specific Stewardship Measures

Site-specific stewardship measures have been identified to avoid and reduce potential impacts in addition to those covered by the Corps' conservation measures listed above.

Stewardship measure #1: Limited gear use in starting operations. On-bottom bag cultivation of oysters will not exceed 5 acres (only 10 % of the lease area) within the first two years of operation. Outcomes from monitoring activities will inform the potential for phased expansion as outline in the shoreline permit application. **Addresses concerns #1–5**

Stewardship measure #2: Limit activity during sensitive periods. USFWS has recommended timeframes: March 15 – April 15; June; July; October 15 – November 15, that would be **least sensitive** to Refuge habitat and wildlife (USFWS April 4, 2018 letter - Attachment C). Farm activities such as gear placement/removal and 'out planting' (i.e., transfer of oysters from bag to beach) that require larger groups of farm worker (7-15 people) will generally align with these timeframes. Such activities would occur infrequently (i.e., over a single low tide cycle every few months). Outside of the above timeframes, farm activity would mostly involve basic on-bottom bag maintenance or oyster harvest which require fewer workers (typically 3-6 people) accessing the site by boat during negative low tides, at a frequency of about 2-3 site visits per low tide cycle (i.e., approximately 4-6 site visits per month). Oyster bags stacked for harvest are retrieved from the site during high tide using a mechanized lift; there is no corresponding onsite activity. **Addresses concerns #1 & 2.**

Stewardship measure #3: Minimize noise. Noise levels associated with farm activities will be low. The project site will only be accessed by low profile marine vessels from designated locations (see JARPA Project Drawings) through deep tidal channels. Vessels will maintain slow (≤ 5 mph), no-wake speeds when approaching the project site and/or within 200 ft. of the shoreline of Inner Dungeness Bay. Boxes constructed with noise insulation will house the hydraulic winch motor to further reduce noise levels (< 50 dB) associated with oyster harvest activities. **Addresses concerns #1 & #2.**

Stewardship measure #3: Minimize light and glare. For periodic nighttime farm activity (4-6 site visits per month restricted to negative tides), farm workers will only use personal headlamps (500 - 1000 lumens) with down-casted light. No other light source or glare will be emitted from the project site. **Addresses concerns #1 & #2**

3. Monitoring Plans

Monitoring activities will be used to evaluate potential impacts associated with farming activities which may adjusted (e.g., area, bag density, frequency and timing of site visits, etc...) as necessary through the proposed phased operations. If "more than minimal" adverse impacts are not identified based on statistically-supported evaluation, then the applicant reserves the

right to expand activities to “Phase 2” (in years 2 – 5) and “Phase 3” (beyond year 5) operations as outlined in the JARPA.

Eelgrass Surveys

Following established Tier 1 eelgrass survey protocols by the Corps’ Seattle District, eelgrass surveys will be conducted with the 50-acre lease parcel every 2-3 years by Tribal biologists to: 1) update the delineation of the eelgrass area with the lease parcel, 2) assess any changes in the distribution and area of eelgrass beds/patches and 3) adjust farm activities, as needed, to ensure the eelgrass conservation area is maintained. Eelgrass surveys will extend 200 ft. from the boundary of the lease parcel to serve as a reference site. If survey data identifies that eelgrass within the lease parcel retreats by more than 50% buffer distance (i.e., >37.5 ft. from the edge of the oyster farm), but equivalent retreat is not observed in the reference site (of similar density, tidal elevation and substrate), then the distance will be increased by the measured distance of the eelgrass retreat. Such eelgrass buffer expansion will occur until eelgrass retreat is no longer identified in the survey data. Survey records and eelgrass delineation maps will be available upon request to Clallam County, USACE, USFWS and NOAA.

Forage Fish Surveys

Per the conditions specified in conservation measure #9 (see above), a herring spawn survey will be conducted by a certified tribal forage fish biologist before removal of any on-bottom bags outside of the approved work window (May 1 – January 15). If any herring spawn is present no farm activity will occur in the area where spawning has occurred until the eggs have hatched. A record will be maintained of all spawn surveys, including date and time; the survey area and gear surveyed; and results of the survey. Survey records will be available upon request Clallam County, USACE, USFWS and NOAA.

Brant-Farm Interactions

Monthly observations will be recorded by a shellfish farm worker, Tribal biologists and/or an Audubon volunteer on brant and shellfish farm interactions. A log will be kept that includes the date and time of observation, tidal height, number of brants observed and a description of interactions observed (i.e., type of activity occurring and brant response behaviors). If observation logs indicate any persistent (e.g., recurring over the length of the migration season) negative behavioral responses from brant to specific farm activities, those activities will be evaluated and mitigation measures will be put into place to minimize or eliminate the adverse impact. Observation logs will be available upon request Clallam County, USACE, USFWS and NOAA

Shorebird counts

Monthly shorebird counts will be conducted within and adjacent to the lease parcel by a shellfish farm worker, Tribal biologists and/or an Audubon volunteer. A log will be kept that includes the date and time, tidal height and number and species of shorebirds observed within and adjacent to the lease parcel. Observation logs will be available upon request Clallam County, USACE, USFWS and NOAA

Jamestown S'Klallam Tribe's Gear Monitoring and Retrieval Plan to Satisfy Conservation Measure #22

1. Inventory all gear that is placed on the leased parcel. The location and number of bags will be documented during farm set up activities.
2. On a monthly basis, the farm crew (3-6 workers) will identify if there is any lost gear during routine bag maintenance. Lost gear is expected to be minimal with on-bottom bag cultivation due to its low vertical relief, no use of floats and secure attachment. While unlikely, any on-bottom bag loss will be obvious visually and verified by the gear inventory log.
 - a. If there is no lost gear: a record will be made of inspection date and shared with the Refuge;
 - b. If there is lost gear: a record will be made of the inspection date and the amount and type of gear that is missing from the lease area. The farm manager will communicate with the Dungeness National Wildlife Refuge to report any gear loss. As recommended by Refuge staff, surveillance and gear retrieval activities will occur as follows:
 - i. Boat-based surveillance outside of the lease area and removal of gear from tidelands open to public use will occur May 15 to September 30. Boats will maintain slow, no-wake speeds
 - ii. Onshore surveillance and/or retrieval of gear within closed areas will occur May 15 – July 31. The Refuge will be notified prior to access so that appropriate site access protocols can be determined (i.e., timing related to tides and weather, avoidance of nesting areas) to minimize disturbance.
3. Retrieved gear will be the responsibility of the Tribe to dispose of at an appropriate facility; or to mend for reuse. If gear is retrieved from documented European green crab infested shoreline, that gear will either not be reused or will be appropriately treated to eliminate any possible transference prior to reuse.
4. A record shall be maintained of:
 - a. Gear inventory onsite (i.e., within the lease area);
 - b. Onsite gear inspections, date and verification that all gear remains onsite or identification of type and amount of gear missing;
 - c. Dates of visual surveys and foot patrols for gear retrieval with the following information:
 - i. locations of escaped gear; types, amount and overall weight of retrieved debris; associated mortalities (species and counts - if any); habitat damage (area and vegetation effected - if any); identification of invasive species (if any); disposal methods; and amount of reused gear in the lease area (if applicable).
 - d. The record will be shared at least annually with the Dungeness National Wildlife Refuge and available to National Marine Fisheries Service, US Fish and Wildlife Service and US Army Corps of Engineers.

Dungeness Bay Oyster Farm General Operation Plan

	Timing	Site Visit Duration (hrs.)	# Visits per month	# people on site per day	Tidal Range for visit (MLLW)	Activity
*Gear placement /removal	Late March. – April & Mid Oct. – Mid Nov.	4 - 6	5 - 6	7 - 15	+1 to -2.5	Set up &/or removal of on-bottom bags
Bag Maintenance	Year Round	4 - 6	2 - 6	~3 - 6	+1 to -2.5	Manually flip bags, remove biofouling
Harvest	Year Round	4 - 6	2 - 6	~4 - 6	+1 to -2.5	Manually harvest beach oysters or oyster bags

The USFWS recommended annual time periods where shellfish farm activities would be least disruptive to Refuge wildlife and habit: March 15 – April 15, June, July and October 15 – November 15 (See USFWS April 4, 2018 letter, Attachment C). All higher intensity farm activities, such as gear placement and removal, will generally align with these time periods. Year-round shellfish farm activities, which include on-bottom bag maintenance and oyster harvest, involves few workers (~ 3-6 individuals) and infrequent site access. It is anticipated that farm maintenance and harvest activities will require no more than 4-6 site visits per month (an average of 1 site visit per week) during low tides. During spring/summer months (March – September) workable low tides will occur primarily during daylight hours and in fall/winter months (October – February) workable low tides will occur almost exclusively at night. Oyster bags stacked for harvest are retrieved from the site during high tide using a mechanized lift; there is no corresponding onsite activity.