

From: [Foerster, Kevin](#)
To: [Thorson, Robyn](#); [Abrams, Mary M](#); [Trust, Kim KT](#)
Bcc: [BrownScott, Jennifer](#)
Subject: Fwd: Please look into this matter (your staff? SOL?)
Date: Wednesday, October 16, 2019 9:29:52 AM
Importance: High

See Jennifer's brief summary below. This issue will likely not change the mariculture issue at Dungeness NWR as the JST has applied for an individual permit from the Corps.

Kevin

----- Forwarded message -----

From: **BrownScott, Jennifer** <jennifer_brownscoth@fws.gov>
Date: Wed, Oct 16, 2019 at 9:09 AM
Subject: Re: Please look into this matter (your staff? SOL?)
To: Foerster, Kevin <kevin_foerster@fws.gov>
Cc: Charlie Stenvall <charlie_stenvall@fws.gov>

This court decision impacts the Nationwide 48 Permit process. As far as I am aware, the Jamestown S'Klallam Tribe (JST) is applying for an Individual Permit and is not utilizing the Nationwide 48 Permit (NWP48) process. However, Hansi Hals (JST) recently seemed to suggest that JST was still trying to find a way to meet the NWP48 conditions so they could move to that permit process.

After reading the US District Court - Seattle decision, it appears the judge has concluded:

- The ACE NWP48 process does not adequately assess impacts to aquatic vegetation, benthic communities, fish, birds or water quality/chemistry/structures, or substrate characteristics (pg 9)
- NWP48 permit process cannot be used as currently written to permit aquaculture activities in the state of Washington.
 - The Order states, "The Court holds unlawful and sets aside NWP48 insofar as it authorizes activities in Washington." (pg. 22)
- It is unlikely that the NWP48 could be rewritten to correct the issues that the Court has identified.
 - The Order states, "The substantive defects in the agency's analysis when adopting the 2017 NWP are significant...it seems unlikely that the same permit could issue following remand.
- In regards to whether or not current NWP48 permits are invalidated, the Swinomish Indian Tribe (also challenging the NWP48), defendants, and intervenors are provided an opportunity to file a briefing before regarding the appropriate remedy (pg 23 & 24).
 - The Order states, "The motions, if any, shall be filed on or before October 20, 2019 and shall be noted for consideration on November 15, 2019." (pg 24)

Unless the decision is overturned on appeal (do not know if an appeal will be filed), it would appear that the opportunity to utilize the NWP48 process in the State of Washington no longer exists. This would mean that JST would continue forward with the Individual Permit process.

One of the Plaintiffs in this case (The Coalition to Protect Puget Sound Habitat) has submitted comments to ACE regarding JST's current permit application for the commercial aquaculture farm in Dungeness Bay.

Please let me know if I can provide any additional information. Anything more official regarding

the reading of this legal document should probably come from the SOL, if necessary.

-jennifer

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~~Dungeness NWR~Protection Island NWR~San Juan Islands NWR~~
~~Copalis NWR~Flattery Rocks NWR~Quillayute Needles NWR~~

On Tue, Oct 15, 2019 at 10:54 AM Foerster, Kevin <kevin_foerster@fws.gov> wrote:
Charlie and Jennifer

could you look into this and let me know if this changes anything at Dungeness issue.

----- Forwarded message -----

From: **Thorson, Robyn** <robyn_thorson@fws.gov>
Date: Tue, Oct 15, 2019 at 10:15 AM
Subject: Please look into this matter (your staff? SOL?)
To: Kevin Foerster <kevin_foerster@fws.gov>
Cc: Mary Abrams <mary_abrams@fws.gov>

From the Enviro Law news feed:

"A Washington federal judge has said that an Army Corps of Engineers permit allowing shellfish aquaculture is unlawful in the state, finding the agency's determination that the nationwide permit would have a minimal environmental impact is not supported by the evidence presented."

I am interested in knowing if this has particular impact to the Washington Maritime NWR oyster farming issue and (if so) what does it mean for Corps/State/County permits, what does it mean to the Tribe, etc. I don't know if this case is about the nationwide permit application in Washington State, or the entire nationwide permit, or a particular permit in Washington...or (heavens!) was this a ruling by a Federal judge in Washington DC (and not Washington State)?

This is NOT a rush at all: situational awareness.

THANK YOU.
RT

Robyn Thorson
Regional Director, U.S. Fish and Wildlife Service
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"Wild things in wild places for future generations" Sarah Dunham Gray

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