

**From:** [BrownScott, Jennifer](#)  
**To:** [Kelly Toy](#)  
**Cc:** [Sylvia Pelizza](#); [Dexter, Nathan L](#)  
**Subject:** Re: Dungeness Bay Lease  
**Date:** Wednesday, August 26, 2015 2:56:15 PM  
**Importance:** High

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Kelly,

I am hoping the explanation below will help clarify which regulations are specific to uses occurring within the jurisdiction of a National Wildlife Refuge.

-jennifer

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

From: **BrownScott, Jennifer** <[jennifer\\_brownscoott@fws.gov](mailto:jennifer_brownscoott@fws.gov)>  
Date: Fri, Jun 12, 2015 at 2:23 PM  
Subject: Refuge planning process  
To: Kelly Toy <[ktoy@jamestowntribe.org](mailto:ktoy@jamestowntribe.org)>  
Cc: Nathan Dexter <[nathan\\_dexter@fws.gov](mailto:nathan_dexter@fws.gov)>, Sylvia Pelizza <[sylvia\\_pelizza@fws.gov](mailto:sylvia_pelizza@fws.gov)>

Kelly,

As requested, here is an explanation of the process used to open new uses and evaluate existing uses as required by the the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd et seq.), as amended by the National Wildlife Refuge System Improvement Act ((Public Law 105-57).

### **Background**

As directed by the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd et seq.), as amended by the National Wildlife Refuge System Improvement Act ((Public Law 105-57) (Administration Act) requires that lands and waters within the National Wildlife Refuge System are closed to all public access and use unless they are specifically and legally opened. The Administration Act also directs that no refuge use may be allowed or continued unless it is determined to be appropriate and compatible. It further defines a compatible use as a use that will not materially interfere with or detract from the fulfillment of the mission of the Refuge System or the purpose of the Refuge. An appropriate use is one that contributes to fulfilling the refuge purpose or the Refuge System mission. In accordance with 16 U.S.C. 715s, we may only authorize public or private economic use of the natural resources of any National Wildlife Refuge, where it is determine d that the use contributes to the achievement of the national wildlife refuge purposes or the National Wildlife Refuge System mission.

The Administration Act also requires an opportunity for public comment during the re-evaluation of existing uses and evaluation of new uses.

Dungeness National Wildlife Refuge was established by Executive Order 2123 on January 20, 1915 with the purpose of "...a refuge, preserve and breeding ground for native birds."

A Comprehensive Conservation Plan was completed for Dungeness National Wildlife Refuge in 2013. Aquaculture was not evaluated during this process.

### **The Path Forward**

In order to evaluate a request to conduct aquaculture on Dungeness National Wildlife Refuge, we first must establish with certainty that the US Fish and Wildlife Service has jurisdiction over the use. We will first request that the US Fish and Wildlife Service Office of the Solicitor read the Use Easement Deed (Deed No. 18251) and confirm the Service's jurisdiction over the proposed use within the Washington State owned tidelands.

If the US Fish and Wildlife Service does have jurisdiction over the proposed use, we would need to follow requirements set forth in various laws and policies including the Administration Act, the Clean Water Act (33 U.S.C. 1251-1376; Chapter 758; P.L. 845, June 30, 1948; 62 Stat. 1155), and the National Environmental Policy Act of 1969 (Public Law 91-190) (NEPA). In order to meet NEPA Clean Water Act and Administration Act requirements we must complete the following:

- Environmental Assessment with an open public process. Due to the potentially controversial nature of the request , the public process would be quite involved;
- Endangered Species Act Section 7 consultation;
- National Historic Preservation Act Section 106 compliance;
- Compatibility Determination;
- Appropriateness Justification

As you can see, this is a complex process with many moving parts and pieces that are fulfilled by several different offices within the US Fish and Wildlife Service. We are currently working on our request to the Solicitor's Office and will let you know whether or not we need to move ahead with the rest of the planning process as soon as we have established jurisdiction.

I hope this explanation is helpful. Please let me know if you have any questions.

Sincerely,  
Jennifer Brown-Scott

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Jennifer Brown-Scott  
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~~Copalis NWR~Flattery Rocks NWR~Quillayute Needles NWR~~

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On Wed, Aug 26, 2015 at 2:48 PM, Kelly Toy <[ktoy@jamestowntribe.org](mailto:ktoy@jamestowntribe.org)> wrote:

There is a description of the oyster culture methods in the NWP48 application which has been at the corp for 6 years. I thought the Army Corp developed programmatic permits, and conducted programmatic consultations with NMFS and USFWS, to ensure all activities comply with ESA and EFH requirements. I'm having a hard time understanding which federal regulations or policies

need to be met that would be specific to Dungeness Bay as opposed to any other farm in Puget Sound. Hope this gets resolved soon.

Kelly

**From:** BrownScott, Jennifer [mailto:[jennifer\\_brownscott@fws.gov](mailto:jennifer_brownscott@fws.gov)]

**Sent:** Wednesday, August 26, 2015 2:10 PM

**To:** Kelly Toy

**Subject:** Re: Dungeness Bay Lease

Kelly,

Great question! We are trying to get a full understanding of our jurisdiction as it pertains to the Use Easement Deed granted by the state so we know which/if any federal regulations and policies we must meet as we discuss/approve the activity.

Do you have a written proposal of the activity you are planning on conducting?

Thanks for your patience,

Jennifer

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Jennifer Brown-Scott

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On Wed, Aug 26, 2015 at 1:44 PM, Kelly Toy <[ktoy@jamestowntribe.org](mailto:ktoy@jamestowntribe.org)> wrote:

In Exhibit B (Plan of Operations) of the lease it states that the size, location and culture methods used to grow oysters, as well as geoduck, will be discussed and approved by DNR and USFW prior to establishment. Does this need further clarification?

Kelly

**From:** BrownScott, Jennifer [mailto:[jennifer\\_brownscott@fws.gov](mailto:jennifer_brownscott@fws.gov)]  
**Sent:** Wednesday, August 26, 2015 1:12 PM  
**To:** Kelly Toy  
**Subject:** Re: Dungeness Bay Lease

Thanks for your email. We are looking for clarification on our jurisdiction as it relates to aquaculture within the DNR Use Easement.

I'll let you know where we stand as soon as I know.

-jennifer

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Jennifer Brown-Scott

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On Wed, Aug 26, 2015 at 11:38 AM, Kelly Toy <[ktoy@jamestowntribe.org](mailto:ktoy@jamestowntribe.org)> wrote:

Jennifer,

Scott Chitwood informed me that you are still waiting for the solicitor's opinion concerning our lease. I'm assuming you have a copy of the lease and was wondering if the solicitor's opinion concerns the legality of the DNR lease? If not, what opinion about the lease are you waiting for? Jamestown would like to move this forward as soon as possible, which as you know involves USFWS as the lead for the ESA consultation. Thanks.

Kelly

Kelly Toy

Shellfish Manager

Jamestown S'Klallam Tribe

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