

From: [Foerster, Kevin](#)
To: [Stenvall, Charlie](#); [BrownScott, Jennifer](#); [Wilson, Frank S](#)
Subject: Fw: [EXTERNAL] Dungeness Bay Oyster Farm
Date: Monday, June 7, 2021 8:45:35 AM

charlie - please review and prep for our discussion with the RD

Kevin Foerster

Regional Chief, Interior Regions 9 and 12

(Idaho, Oregon, Washington, Hawaii, Western Montana, American Samoa, Guam, CNMI, and remote territories)

National Wildlife Refuge System

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From: Thorson, Robyn <robyn_thorson@fws.gov>
Sent: Monday, June 7, 2021 8:02 AM
To: Ogura, Christine <christine_ogura@fws.gov>; Foerster, Kevin <kevin_foerster@fws.gov>
Cc: Morrison, Hugh R <hugh_morrison@fws.gov>
Subject: Fwd: [EXTERNAL] Dungeness Bay Oyster Farm

Latest from the tribe.

Robyn Thorson, Regional Director
U.S. Fish and Wildlife Service
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Sent from my iPhone

Begin forwarded message:

From: "W Ron. Allen" <rallen@jamestowntribe.org>
Date: June 7, 2021 at 7:49:29 AM PDT
To: "Thorson, Robyn" <robyn_thorson@fws.gov>
Cc: Hansi Hals <hhals@jamestowntribe.org>, Elizabeth Tobin <etobin@jamestowntribe.org>
Subject: [EXTERNAL] Dungeness Bay Oyster Farm

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Robyn,

It's good to know that your team has a meeting today, and I'll look forward to your update. Right now, I thought it may be useful for a refresher from Jamestown's point of view. As a reminder, what prompted our initial correspondence was DNWR had originally stated that Jamestown's proposal to return to its oyster farm in Dungeness Bay would 'cause an unacceptable level of impact'(communication to USACE 2/27/19). In response, Jamestown requested substantiation and clarification of this conclusion. Follow up DNWR communication (5/22/19) clarified that the USFWS role was not as a permitting authority and provided a limited literature review of aquaculture and avian interactions. Jamestown submitted to you an official letter of objection and point-by-point response to the DNWR 5/22/19 communication finding that it misrepresented the Tribe's operational plan, was highly speculative, overstated and misrepresented scientific conclusions from several papers, omitted a large body of scientific literature, and did not consider actual DNWR observational data for which Jamestown staff took the initiative to compile, review and provide back to DNWR for consideration. On August 6, 2019 you penned a letter to replace the two previous letters of record. Your August 6th letter acknowledged that the scientific literature is inconclusive and that there is little site-specific information to understand possible impacts from on-bottom bag aquaculture to bird species found on the Refuge.

Following your August 2019 letter, you directed Jamestown staff to work with Emily Teachout for Sect 7 consultation. Jamestown staff followed Emily's guidance to develop, in coordination with DNWR, an

adapted gear surveillance and retrieval plan and that would otherwise be covered by the *Programmatic Biological Opinion for Shellfish Activities in Washington State Inland Marine Waters* (Programmatic Opinion) (Ref. No. 01EWF00-2016-F-0121). Jamestown coordinated with DNWR, and following submittal of the plan, received Sect 7 consultation concurrence (Oct 20, 2020).

You also directed Jamestown staff to work with Jennifer Brown-Scott to conduct a compatibility determination. Ms. Brown-Scott indicated that the compatibility determination could not be initiated until a USACE 404 permit was signed to authorize the activity. USACE accepted that timeframe, and further clarified with DNWR that the compatibility determination would be limited to any off-lease activities. However, to complete the administrative record prior to permit authorization, USACE asked for a statement of no objection related to the gear surveillance and retrieval plan; as well as a statement of no objection for the bird monitoring plan.

Jamestown staff reached out to Jennifer Brown-Scott, DNWR to fulfill this request. She has not yet provided clear affirmation that there is no objection to the gear surveillance and retrieval plan; and/or the bird monitoring plan. We are unfortunately in a chicken and egg situation with USACE asking for no objection before granting a permit; and DNWR maintaining that they cannot make that statement until completion of the Compatibility Determination AFTER the permit is signed. We also understand that the Compatibility Determination will take up to several months, and at a minimum 90 days.

We have expressed this intractable issue to USACE who agreed to provide explicitly what they require for a complete administrative record to USFWS directly. Our understanding is that USACE will send a letter to

USFWS attention on the matter shortly.

As far as the particulars of the wildlife/bird monitoring plan, Jamestown worked with several of your staff including representatives of the DNWR, Migratory Bird and Habitat Program, and Inventory and Monitoring Program as we developed the monitoring plan.

Jamestown's staff also consulted resident birder/Audubon member Bob Boekelheide - who is locally recognized as Dungeness Bay's bird expert, and Susan De La Cruz of USGS - an expert wildlife researcher with a focus on nearshore avian species. Based on the combined USFWS comments received, the initial bird monitoring will be conducted on-lease exclusively with no associated off-lease monitoring to be included in the Tribe's monitoring plan. We understand that the bird monitoring program can be improved/refined as it is implemented, with the approval of USACE.

As you know, Jamestown's bird monitoring is ancillary to the commercial activity and it is necessarily limited in scope. While we understand the DNWR Project Lead has reservations whether the Tribe's proposed monitoring plan would provide the information necessary to understand comprehensive wildlife and habitat impacts and inform adaptive management of farm activities; we hope that we can provide a meaningful dataset and will share it with both USACE and DNWR. Jamestown has and continues to encourage DNWR to undertake any companion monitoring off-lease of particular interest.

To date, the Tribe has secured all of the requisite local and state permits which approve Phase 1 operations of the Dungeness Bay oyster farm and the DNR lease is nearly finalized. The expected timeline for completion of the DNR lease is brief (up to ~2 weeks) once the USACE permit is issued. The impasse is receiving the statement of no objection from USFWS to the gear surveillance and retrieval plan and the bird monitoring

plan that is holding up completion of the USACE permit.

Since the Tribe was unable to demonstrate no objection from DNWR, the USACE is expected to follow up directly with USFWS.

Thanks, Ron

W. Ron Allen, Tribal Chair/CEO

Jamestown S'Klallam Tribe

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