**INFORMATION/BRIEFING MEMORANDUM FOR THE REGIONAL DIRECTOR**

DATE: May 18, 2018

FROM: Kevin Foerster, R1 Refuge Chief

SUBJECT: Jamestown S’Klallam Tribe Aquaculture Project at Dungeness NWR

Jamestown S’Klallam Tribe’s (Tribe) Federal, County and State applications for commercial oyster cultivation on within the boundary of Dungeness National Wildlife Refuge (Refuge).

**BACKGROUND**

In March 2015, the Tribe informed the Refuge of their intent to begin commercial shellfish cultivation on 34 acres within the Refuge’s highest use area for migratory birds. The area also provides habitat for Federally Threatened salmon species. The site is considered “covered tidelands” by the U.S. v. Washington 2007 Settlement Agreement for shellfish (C70-9213 SP:89-3). Due to water quality issues, this site not been farmed since 2005.

In January 2016, the U.S. Fish and Wildlife (Service) Solicitor counselled that authority for permit/lease approval of aquaculture on this site is held by the US Army Corps of Engineers (Corps), Clallam County (County) and the State of Washington, because Service ownership interest is provided by a 1943 Use Easement Deed from WA Department of Natural Resources. The Solicitor further counselled, “The 1943 deed allows the Service to assert reasonable limitations on aquaculture leases-including limitations that may make aquaculture unprofitable or impractical-so long as those limitations are tied to refuge purposes.”

Between March 2015 and January 2018, the Refuge worked with the Tribe to identify information that would be necessary to assess impacts from this type of project, and conducted eelgrass surveys to assist with application requirements. Beginning in February 2016, the Tribe submitted several applications to the Corps that were either incomplete, or were replaced with a new application prior to complete evaluation. During this time the requested activities changed significantly and many impactful practices (e.g. netting, geoduck, fencing) were removed.

In January 2018, an application for commercial aquaculture was submitted to the County with subsequent submittal to the Corps (February 2018). The application includes 150,000 on-bottom bags and on-beach oysters on 34 acres within the boundary of the Refuge and is estimated to require up to 34 people to access the site between 12-30 days/month for up to 6 hours/day, year round. The County issued Determination of Non-Significance in February 2018.

In March 2018, the Corps informed the Tribe that the project will be evaluated as a Standard Individual Permit because it is likely to have more than minimal effects due to its location entirely within the Refuge. In May 2018, the Tribe requested a 6 month continuance from the County, to provide time to complete a site specific biological evaluation. The County granted this request and withdrew its Determination of Non-Significance.

**DISCUSSION**

The Refuge has fulfilled its role in the permit process and has assisted the Tribe during this process by conducting an eelgrass survey, discussing potential impacts and information needed to assess those impacts with the Tribe in advance of application submittal, and providing information in a timely manner as requested by the Tribe, County and Corps.

**NEXT STEPS**

At the Tribe’s request, a meeting to discuss lease history, the Refuge’s written comments to the County, and opportunities to reduce impacts, is scheduled for Thursday, May 24, 2018.

**ATTACHMENTS**

United States v. Washington, *Joint Motion for Order and Consent Decree Approving Settlement Agreement,* Case No. C70-9213 Subproceeding No. 89-3 (Shellfish). June 20, 2007.

Solicitor’s Memo, Tidelands Management at Dungeness NWR, January 15, 2016.

Washington Maritime NWRC comments to Clallam County re: Shoreline Permit SHR2017-0001, April 4, 2018.

Army Corps of Engineers NW 48 Permit decision, March 2018.