

From: [Foerster, Kevin](#)
To: [Stenvall, Charlie](#)
Subject: Fw: Dungeness (update Friday morning 11/5)
Date: Friday, November 5, 2021 9:18:14 AM
Attachments: [JST_FWS_Meeting_102821_Tech_Slides.pdf](#)

for your situational awareness - christine and I have a call with Hugh and Robyn this afternoon about Dungeness

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National Wildlife Refuge System

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From: Thorson, Robyn <robyn_thorson@fws.gov>
Sent: Friday, November 5, 2021 8:48 AM
To: Foerster, Kevin <kevin_foerster@fws.gov>; Ogura, Christine <christine_ogura@fws.gov>; Peterson, Lynn <Lynn.Peterson@sol.doi.gov>; Wilson, Frank S <Frank.Wilson@sol.doi.gov>
Cc: Morrison, Hugh R <hugh_morrison@fws.gov>
Subject: FW: Dungeness (update Friday morning 11/5)

FYI: Sharing my message "up".

Robyn

From: Thorson, Robyn
Sent: Friday, November 5, 2021 8:47 AM
To: Martinez, Cynthia T <Cynthia_Martinez@fws.gov>; Sanchez, Shaun <shaun_sanchez@fws.gov>; Aikin, Scott L <scott_aikin@fws.gov>
Cc: Morrison, Hugh R <hugh_morrison@fws.gov>
Subject: Dungeness (update Friday morning 11/5)

I think you are current on Dungeness issues (generally) but I'll fill you in to make sure I'm passing along/sharing info as this matter nears a decision point:

At last Thursday's (10/28) full discussion between JST (Chair, staff and lawyer) and regional leadership (DOI Reg SOL and FWS RD and DRD), JST presented slides about their shellfish operation plans and the access to their lease (let me know if you don't have that already from me). The region's staff in Refuges is looking at that, and also addressing questions from RegSOL re: factual issues/points raised that merit "fleshing out" (my phrase) because that helps clarify the legal discussion that SOL is addressing. The most recent of those factual questions is forwarded below.

RegSOL (Lynn Peterson and Frank Wilson) are identifying legal issues, ranging from treaty rights to

“land-locked-property access” rights and a lot of points in between those broad (example only) topics. Lynn was firm in explaining to JST (Oct. 28) that DOI does not see a treaty right at issue here; JST’s lawyer strongly disagrees.

JST Chairman Allen had encouraged corrections/improvements in dialogue between FWS and JST, and Liz Tobin of his staff reached out to us for that conversation. That’s scheduled for next Wednesday. No lawyers! (We have outstanding lawyers! The meeting next Wednesday is deliberately about staff communications/consultations).

In informal discussion yesterday, SOL asked if FWS has ever addressed a Compatibility Determination in a situation where tribal trust (“treaty-ish” – my word!) has been prominently at issue; Hugh and I are not aware of any. We aren’t “tasked” with that topic but the question will likely arise again (perhaps from DOI SOL), so heads up for Refuge HQ for system-wide expertise/perspective on that.

FWS regional team meets today to be on the same page, and to map out potential steps ahead. There are no deadlines for products other than the JST Chair’s expectation of a decision “soon” (I believe SOL in region and HQ consider this fast track as well).

Call if questions or comments (very welcome!).

Robyn

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I live and work in the traditional homelands of the Chinook, Clackamas, Cowlitz, Kalapuya, Kathlamet, Molalla, Multnomah, and Wasco people who have made their homes along the lower Columbia River for thousands of years.

From: Morrison, Hugh R <hugh_morrison@fws.gov>
Sent: Thursday, November 4, 2021 5:14 PM
To: Foerster, Kevin <kevin_foerster@fws.gov>; Ogura, Christine <christine_ogura@fws.gov>; Stenvall, Charlie <charlie_stenvall@fws.gov>; BrownScott, Jennifer <jennifer_brownScott@fws.gov>
Cc: Thorson, Robyn <robyn_thorson@fws.gov>
Subject: Follow-up from 10/28 meeting with JST

All,

When we met last Friday to debrief on the 10/28 meeting with the JST and their legal counsel, we discussed the likelihood that there would be questions for us to answer related the PowerPoint provided by Liz Tobin (attached again for easy reference). In preparation for the

next discussion with the Tribe (yet to be scheduled), the SOL office has asked for our assistance in answering the questions below. As mentioned, SOL is also evaluating legal positions offered by the Tribe prior to the next meeting.

Again, the next meeting with the Tribe has yet to be scheduled, so we have some flexibility with the timeline to outline responses to the below questions. How much time would you like to craft responses?

Many thanks in advance for your ongoing efforts on this issue,

Hugh

Questions:

- a. ATV access—provide more information about ATV access to the lighthouse including the extent that staying on the seaward side avoids impacts to brant.
- b. Where is the gun club referred to by the Tribe in the meeting? How close is it to the eelgrass beds used by the brant or to the Refuge's seasonally closed areas? Does noise from the gun club affect brant on the Refuge—can it be heard on the Refuge and if so, what impact does it have on the brant?
- c. Public access along the spit—same with ATV—how much does staying on the seaward side prevent adverse effects to brant.
- d. Tribe's assertions of boating activities during the closed period. Are these all correct and described accurately? Are they within the closed area? How much of a difference in impact to the brant and other wildlife is a boat in the closed area vs. a boat elsewhere in the area?
 - i. Treaty fishing—How do Tribe's assertions of use (commercial/subsistence crabbing from June-March, coho set and drift gillnet fishing from Sept-Nov, steelhead gillnet from Dec.-Feb., with dozens of boats and no restrictions) compare to what is described in the CD for treaty fishing?
 - ii. DOH sampling—water quality sampling 1-2x/month. How is this permitted?
 - iii. Non-treaty fishing with dozens of boats
 1. coho drift gillnet fishery (Sept. to Nov.)
 2. Winter sport crabbing (Oct. to Dec.)
 - iv. Any other boating uses in the closed area that the Refuge is aware of?
Administrative access by FWS?
- e. Tribe's descriptions of brant needs and biology—review slides 3-4 of PowerPoint. Are these all correct?
 - i. What other proposed activities in the Refuge area have been deemed incompatible with brant overwintering? What has Refuge said no to? Is this the first CD that the refuge has done that seems to be leaning toward a conclusion of incompatible since 2013?
 - ii. Has state-permitted hunting of brant been constant for the past two decades or was it only resumed recently (2018?)
- f. What discussions did FWS have with the Tribe before and after submission of the proposed tribal aquaculture operation? Were there any discussions about possible modifications to the intensity of the bag bottom operation or other modifications to

address biological issues?

Hugh Morrison
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(he/him/his)

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