

**From:** [OHara, Kevin](#)  
**To:** [BrownScott, Jennifer](#)  
**Subject:** Re: Response to Tribe's Project Proposal  
**Date:** Thursday, June 2, 2016 10:13:34 AM  
**Importance:** High

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Oops. I forgot to include General Condition 5

5.Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27

Kevin O'Hara  
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On Thu, Jun 2, 2016 at 10:11 AM, BrownScott, Jennifer <[jennifer\\_brownscoff@fws.gov](mailto:jennifer_brownscoff@fws.gov)> wrote:

Thanks for the information.

-jennifer

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Jennifer Brown-Scott  
Refuge Manager  
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On Thu, Jun 2, 2016 at 10:07 AM, OHara, Kevin <[kevin\\_ohara@fws.gov](mailto:kevin_ohara@fws.gov)> wrote:

It does. It does not require that pre-construction notifications include surveys for eelgrass, microalgae, or forage fishes

Here is some justification text from the NWP.

"Compliance with general conditions 3 and 5 will ensure that the authorized activity has minimal adverse effects on spawning areas and shellfish beds, respectively."

"The authorized activity cannot have more than minimal adverse effects on breeding areas for migratory birds, due to the requirements of general condition 4."

Here is the text of the General Conditions:

3.Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to

the maximum extent practicable.  
Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity)  
of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

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On Thu, Jun 2, 2016 at 9:56 AM, BrownScott, Jennifer <[jennifer\\_brownscott@fws.gov](mailto:jennifer_brownscott@fws.gov)> wrote:  
Did the nationwide permit criteria mention anything about forage fish spawning areas?

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On Thu, Jun 2, 2016 at 9:50 AM, OHara, Kevin <[kevin\\_ohara@fws.gov](mailto:kevin_ohara@fws.gov)> wrote:

Jennifer- I think your response is appropriate. It demonstrates a willingness to work with them, but also lets them know we need additional information before we can make any decision. It's good that you point out that you'll be participating in the SEPA process. In case you don't have it, I'm attaching the SEPA checklist. It will be interesting to see how they respond to question 8a "What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe."

Do you know if the area impacted is considered a "new project area" by the Corps? If so, the Corps shouldn't permit the action until there is a lease or permit from the State. The nationwide permit cannot be used for projects that directly impact more than 1/2-acre of submerged aquatic vegetation beds – which the July 1 survey should answer.

Thanks -Kevin

Kevin O'Hara  
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On Wed, Jun 1, 2016 at 4:09 PM, BrownScott, Jennifer <[jennifer\\_brownscott@fws.gov](mailto:jennifer_brownscott@fws.gov)> wrote:  
Would you mind taking a look at this response and let me know if you see any red flags? I want to make sure that I am getting the correct information to the Tribe at each step in the process. After a quick look at their proposal, I have noticed that they still have not provided all of the information that we would need to complete the CD process (e.g., annual timing of seeding and harvest, complete descriptions of harvest techniques, information on the total acreage of netting at any given time). Sue and I are going to take a closer look at the proposal on Monday.

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Ralph,

It is really hard (if not impossible) for me to tell you what would or would not work at the Refuge without going through an analysis of the proposal. Since a permit from ACE and the County are necessary for DNR to issue the lease, it makes sense for us to begin our Compatibility Determination process after those permits have been granted (so we know the project description will not change). We may also be able to use some of their SEPA and NEPA documentation to inform our process and reduce some of the overlap of efforts.

We will be looking at the proposal to see if it will negatively impact the purpose of the Refuge. We do that through a Compatibility Determination that is backed up by NEPA documentation. We will then let DNR know if there are any negative impacts so they can use that information in developing the lease. We will also provide information for the ACE and County permitting processes as needed.

-jennifer

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On Wed, Jun 1, 2016 at 3:40 PM, Ralph Riccio <[rriccio@jamestowntribe.org](mailto:rriccio@jamestowntribe.org)> wrote:

Thanks for the quick reply. Yes, this is the same one that will be submitted to the ACE and County. But first I would like for you to have an initial look at the proposal and let us know if there are any portions of it that will definitely not work for the Refuge. I would really like to adapt this document to something that will have the best chance for moving forward before submitting to other agencies. I am available to meet with you to discuss in person or by phone.

Great to hear that an eelgrass survey is scheduled! At least myself if not more folks would love to join you and volunteers to do a survey on July 1<sup>st</sup>. How many people would be helpful? When you have a chance, please send me the methods for conducting the survey so I can be familiar with them. Also, any progress on the cultural survey?

Please let me know if I can be of assistance.

Thanks again.

Ralph

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

**Sent:** Wednesday, June 01, 2016 12:03 PM

**To:** Ralph Riccio

**Subject:** Re: Project Proposal

Ralph,

Sorry I missed your call earlier. Is this the same project description that will be submitted to ACE and the County for their permitting?

Battelle wanted to charge \$22,000 for a complete survey of the area, so we are now planning to do a presence absence survey with staff and volunteers and then go from there. We are trying to schedule July 1st as our survey day. There is a super low tide very early that morning. Let us know if you or anyone else would like to join us.

-jennifer

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Jennifer Brown-Scott

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On Wed, Jun 1, 2016 at 11:41 AM, Ralph Riccio <[riccio@jamestowntribe.org](mailto:riccio@jamestowntribe.org)> wrote:

Hello Jennifer,

Here is the project details form you asked for in April. Please let me know if you have any questions. I look forward to getting your feedback and finding a path that works well for both parties.

Thank you.

Ralph

Ralph Riccio

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