

From: [Dexter, Nathan L](#)
To: [Pelizza, Sylvia](#); [BrownScott, Jennifer](#)
Subject: Re: Dungeness Bay Lease: Discussion with the Tribe
Date: Thursday, August 27, 2015 3:09:27 PM
Attachments: [whitepaper628finalpdf.pdf](#)
Importance: High

The Tribe is going to request a G2G meeting very soon. Scott Chitwood placed a call with me earlier and I will call him back to learn more. The basic sentiment is that they appreciate all that you're doing but it's just taking too long. They're frustrated and indicated that they believe this will have to be elevated. The Tribe very clearly states that they indeed see this as a treaty rights at risk issue.

I have attached a copy of the treaty rights at risk white paper for your review. You can save time by reading the executive summary as it very accurately encapsulates the essence of the white paper.

Nathan

Nathan L. Dexter
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US Fish & Wildlife Service, Pacific Region
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On Thu, Aug 27, 2015 at 3:04 PM, Pelizza, Sylvia <sylvia_pelizza@fws.gov> wrote:
Thank you for keeping us in the loop. I don't think there is a need to answer the email either. We are working on the solution and will provide it as soon as we can.

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**Sylvia R. Pelizza**  
Refuge Supervisor - Oregon, Washington, Idaho  
911 NE 11th Avenue  
Portland, OR 97232  
  
Desk: 503-231-6175  
Cell: 503-201-9040

On Wed, Aug 26, 2015 at 3:59 PM, BrownScott, Jennifer <[jennifer\\_brownscott@fws.gov](mailto:jennifer_brownscott@fws.gov)> wrote:  
FYI. I am not responding to this email, but wanted to let you know that she is correct - we did not include aquaculture in the CCP. Although, we also did not have a proposal for aquaculture at the time. Water quality precluded commercial shellfish production at that time.

I have asked Kelly to provide me with a detailed description of what the Tribe plans to do (including aquaculture techniques, a map showing the area to be used,

and proposed dates for deployment/harvest/equipment removal).

Sorry for all of the emails, just wanted to keep you all in the loop.

-jennifer

On Wed, Aug 26, 2015 at 3:20 PM, Kelly Toy <[ktoy@jamestowntribe.org](mailto:ktoy@jamestowntribe.org)> wrote:

Oyster culture has operated in the bay since the 1950's and only stopped commercial operations because of water quality issues. The Tribe kept the aquaculture lease in hopes that water quality would improve and it has. It looks like the delay in moving forward is because aquaculture was neglected to be included in the Refuge's comprehensive planning process.

Kelly

**From:** BrownScott, Jennifer [mailto:[jennifer\\_brownscott@fws.gov](mailto:jennifer_brownscott@fws.gov)]  
**Sent:** Wednesday, August 26, 2015 2:56 PM  
**To:** Kelly Toy  
**Cc:** Sylvia Pelizza; Nathan Dexter  
**Subject:** Re: Dungeness Bay Lease

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\\_brownscott@fws.gov](mailto:jennifer_brownscott@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

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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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~~Dungeness NWR~Protection Island NWR~San Juan Islands NWR~~  
~~Copalis NWR~Flattery Rocks NWR~Quillayute Needles NWR~~

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