

## Ballard, Greg

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**From:** Elizabeth Tobin <etobin@jamestowntribe.org>  
**Sent:** Friday, March 01, 2019 12:19 PM  
**To:** Ballard, Greg  
**Subject:** RE: Hearing for JST Oyster Proposal (External Email: USE Caution)  
**Attachments:** JST Dungeness Shellfish Farm\_Monitoring and Mitigation Plan\_Final\_update.pdf

Hi Greg,

Attached please find the updated monitoring/mitigation plan which includes conservation measure #10.

Have a nice weekend,  
Liz

Elizabeth Tobin  
Shellfish Biologist  
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Office: 360-681-4656  
Cell: 360-912-2961  
[etobin@jamestowntribe.org](mailto:etobin@jamestowntribe.org)

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**From:** Ballard, Greg [mailto:[gballard@co.clallam.wa.us](mailto:gballard@co.clallam.wa.us)]  
**Sent:** Friday, March 01, 2019 10:21 AM  
**To:** Elizabeth Tobin <etobin@jamestowntribe.org>  
**Subject:** RE: Hearing for JST Oyster Proposal

Working on SEPA.

You might modify your mitigation/monitoring plan to include 10 (just so your plan is up to date)

Here is the draft notice to the paper.

**Greg Ballard**  
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**From:** Elizabeth Tobin [mailto:[etobin@jamestowntribe.org](mailto:etobin@jamestowntribe.org)]  
**Sent:** Friday, March 01, 2019 10:01 AM  
**To:** Ballard, Greg  
**Subject:** RE: Hearing for JST Oyster Proposal (External Email: USE Caution) (External Email: USE Caution)

Hi Greg,

I think that was just an oversight on our part as we definitely intend to meet conservation measure #10. Our commitment to meeting that conservation measure is stated in the [JARPA section 8c](#). Jamestown has a WDFW "approved biologist" for forage fish surveys already on staff. Please note that shellfish activities will not occur above the +3 ft. MLLW tidal elevation, so we are not proposing any activities within the spawning habitat of those species.

Do you need me to update the monitoring plan to explicitly include conservation measure #10 or does our reference to meeting that conservation measure in the JARPA suffice?

Thanks,  
Liz

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**From:** Ballard, Greg [<mailto:gballard@co.clallam.wa.us>]  
**Sent:** Thursday, February 28, 2019 4:29 PM  
**To:** Elizabeth Tobin <[etobin@jamestowntribe.org](mailto:etobin@jamestowntribe.org)>  
**Subject:** FW: Hearing for JST Oyster Proposal (External Email: USE Caution)

Why isn't sand lance and surf smelt Conservation Measure #10 referenced?

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**From:** Elizabeth Tobin [<mailto:etobin@jamestowntribe.org>]  
**Sent:** Tuesday, February 19, 2019 4:56 PM  
**To:** Ballard, Greg  
**Subject:** RE: Hearing for JST Oyster Proposal (External Email: USE Caution)

Hi Greg,

Thank you for the follow up email. Per our phone discussion on Friday, February 15<sup>th</sup> your request to push back the public hearing to April 4<sup>th</sup> needed to be considered by tribal leadership. After passing along your request, I received notification that the Tribe would prefer to stay with the scheduled date of March 21<sup>st</sup>, but is willing to accommodate the change if necessary.

Please note that the Tribe already announced the March 21<sup>st</sup> public hearing date in the Peninsula Daily News on January 20<sup>th</sup> and during the community forum that we held at the Dungeness River Center on January 31<sup>st</sup>.

Regarding your information requests much of this information has already been submitted to the County or has only recently been requested from us. A couple of your outstanding requests will be submitted tomorrow. Please see details for each request below.

Thank you,  
Liz

A monitoring plan/plan for eelgrass (with adaptive management)

- Attached as part of our Monitoring and Mitigation Plan. A draft version of this plan was provided to the County on January 30<sup>th</sup> prior to our conversation with Ecology to discuss the proposal. Minimal edits to this section have been made.

A monitoring plan/program for bird (with adaptive management)

- Attached as part of our Monitoring and Mitigation Plan. A draft version of this plan was provided to the County on January 30<sup>th</sup> prior to our conversation with Ecology to discuss the proposal. No edits to this section were suggested and none have been made.

An operation plan on what activities would occur when and how to limit human activities during critical fish and wildlife times (such as equipment to limit noise from boats)

- Attached as part of our Monitoring and Mitigation Plan. A draft version of this plan was provided to the County on January 30<sup>th</sup> prior to our conversation with Ecology to discuss the proposal. No edits to this section have been made. I will also follow up with this information provided in table format for your convenience.

A visual analysis of the proposal from key viewing areas

- This type of visual analysis was only recently requested during our discussion with Ecology on February 1<sup>st</sup>. It is not possible to provide such images from the Dungeness project site given access restrictions this time of year. Hence, the Tribe will provide some representative images from our Sequim Bay growing operations. As discussed previously, such images are difficult to acquire this time of year since negative tides that expose oyster cultivation gear only occur in the late evening or at night. The Tribe is working on preparing some materials to help meet this request which will be submitted to the County tomorrow.

Information on Pacific Oysters being a species of importance/naturally occurring

- This was discussed at our January 18<sup>th</sup> meeting and identified in our JARPA applicator (section 9m) submitted on Dec. 11, 2018. You can link to WDFW's priority habitat and species list here: <https://wdfw.wa.gov/publications/00165/wdfw00165.pdf>. In this document, WDFW identifies fish and wildlife resources that are a priority for management and conservation. Five non-native species of importance are listed which includes the naturalized Pacific oyster (pg. 248).

Information on your other oyster proposal in Sequim Bay (such as operation methods and Corp Permit)

- We do not have an "oyster proposal" for Sequim Bay. Rather, the Tribe has a permitted 34 acre shellfish farm in Sequim Bay for geoduck, manila clams and oysters, including the use of on-bottom bags for Pacific oyster cultivation. I will follow up with more on this tomorrow. I am still waiting to receive a copy of our NWP 48 to send to you.

The specific measures from the Programmatic BE that would be applicable to your proposal.

- This was already identified in our JARPA submitted on Dec. 11, 2018 – see section 8c. Applicable conservation measures are also identified in the attached Monitoring and Mitigation Plan.

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**From:** Ballard, Greg [<mailto:gballard@co.clallam.wa.us>]

**Sent:** Friday, February 15, 2019 1:39 PM

**To:** Elizabeth Tobin <[etobin@jamestowntribe.org](mailto:etobin@jamestowntribe.org)>

**Subject:** Hearing for JST Oyster Proposal

Hi Liz, thanks for meeting with Steve Gray and I on January 18, 2019 to discuss your proposal.

You and I also had a phone conference with Rick Mraz, with Ecology to discuss your proposal on February 1, 2019.

The Hearing Examiner has tentatively schedule your hearing for March 21, 2019, which would be required to get the notice out for your proposal on February 21, 2019.

From these meeting we believe that the following information would be beneficial to be submitted before we issue our SEPA Threshold Determination, and the processing of the permit application.

- A monitoring plan/plan for eelgrass (with adaptive management)
- A monitoring plan/program for bird (with adaptive management)
- An operation plan on what activities would occur when and how to limit human activities during critical fish and wildlife times (such as equipment to limit noise from boats)
- A visual analysis of the proposal from key viewing areas
- Information on Pacific Oysters being a species of importance/naturally occurring
- Information on your other oyster proposal in Sequim Bay (such as operation methods and Cora Permit)
- The specific measures from the Programmatic BE that would be applicable to your proposal.

Based on recent weather and the above requested information we request that this matter be scheduled for a Hearing for April 4, 2019 at 1 p.m.

This would provide two additional week for you to provide the above information and for us to address it in our SEPA Threshold Determination and Notice of Application.

Thanks for your consideration.

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## Monitoring and Mitigation Plan for the Jamestown S’Klallam Tribe’s Dungeness Shellfish Farm

This plan outlines established conservation measures, site-specific stewardship measures and monitoring activities as part of a mitigation<sup>1</sup> strategy for the Jamestown S’Klallam Tribe’s Dungeness Shellfish Farm operations associated with the DNR aquatic lease parcel (#20-A013012) in Dungeness Bay. Based on comments provided by the USFWS Dungeness Wildlife Refuge staff and local citizens, as well as environmental reports prepared by Confluence Environmental Inc., it is the understanding of the Tribe that the most pressing concerns are to Refuge wildlife, particularly migratory birds, and the surrounding habitat as follows:

- 1) Potential disturbance to black Brant foraging and loafing habitat
- 2) Potential disturbance to shorebirds – namely Dunlin.
- 3) Potential impact to eelgrass habitat.
- 4) Potential impact to forage fish spawning habitat.
- 5) Plastic debris from farming activities.

### 1. Established Conservation Measures

Several conservation measures, and terms and conditions, from the Programmatic Biological Opinions for Shellfish Activities in Washington State Inland Marine Waters (USFWS reference number 01EWF00-2016-F-0121, NMFS reference number WCR-2014-1502) directly address the above concerns. The Tribe’s proposed project satisfies these conservation measures and terms and conditions, and the Federal Individual Permit, to be issued by the USACE, will be contingent upon fulfillment of all relevant measures. Specific measures that address identified concerns are listed as follows:

Measure #6. “Shellfish activities shall not occur within 16 horizontal feet of native eelgrass (*Zostera marina*) or Kelp (order *Laminariales*). **Addresses concerns #1, 3 & 4.** *Eelgrass has been delineated and mapped within and adjacent to the lease parcel over several years (see Jamestown Eelgrass Survey Report 2017 & Confluence Field Report 2018). A more conservative buffer will be implemented so shellfish activities will not occur within 25 horizontal feet of native eelgrass (Z. marina).*

Measure #7. “Activities shall not occur above the tidal elevation of +7 ft (MLLW) if the area is listed as documented surf smelt (*Hypomesus pretiosus*) spawning habitat by WDFW.”

Measure #8. “Activities shall not occur above the tidal elevation of +5 ft (MLLW) if the area is listed as documented Pacific sand lance (*Ammodytes hexapterus*) spawning habitat by WDFW.” **Addresses concern #4.** *The proposed upper tidal elevation of Pacific oyster cultivation is +3 ft. (MLLW). All activity will occur at or below a tidal elevation of +3 ft. MLLW.*

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<sup>1</sup> Mitigation as it applies here are measures taken to avoid and reduce potential impacts to wildlife and the environment of Dungeness Bay.

Measure #9. “If conducting [on-bottom bag removal] within a documented spawning area of Pacific herring (*Clupea pallasii*) outside of the approved work window<sup>2</sup>, the work area shall be surveyed for the presence of herring spawn prior to the activity occurring. Vegetation, substrate and materials (bags) shall be inspected. If herring spawn is present, [bag removal] is prohibited in the areas where the spawning has occurred until such time as the eggs have hatched and herring spawn is no longer present.” **Addresses concern #4.** *This egg incubation time period will be avoided in general. If bag removal must occur from January 16 – April 30, all conditions will be met as described above (see forage fish survey details under monitoring plan below).*

Measure #10. “Activities occurring in or adjacent to potential spawning habitat for sand lance or surf smelt shall have a spawn survey completed in the work area by an approved biologist prior to undertaking bed preparation, maintenance and harvest activities if work will occur outside approved work windows for these species<sup>2</sup>. If eggs are present, these activities are prohibited in the area where spawning has occurred until such time as the eggs have hatched and spawn is no longer present.” **Addresses concern #4.** *If on-bottom bag removal or maintenance activities must occur outside the approved work window, all conditions will be met as described above (see forage fish survey details under monitoring plan below).*

Measure #11. “All shellfish gear that is not immediately needed or is not firmly attached to the substrate will be moved to a storage area...” **Addresses concern #5.** *The storage area for shellfish farming gear will be offsite. All gear will be brought in by boat and will be in active use and firmly secured to the substrate once onsite.*

Measure #18. “All [gear] shall be clearly, indelibly and permanently marked to identify the permittee name and contact information.”

Measure #19. “All gear shall be tightly secured to prevent them from breaking free.”

Measure #22. “... beaches within the project vicinity will be patrolled by crews who will retrieve debris that escape from the project area. Within the project vicinity, location will be identified where debris (if any) tends to accumulate to wave, current or wind action.... A record shall be maintained with the following information and made available upon request to Corps, NMFS and USFWS: date of patrol, location of areas patrolled, description of and amount of debris.” **Addresses concern #5.** *All labeling, securing, patrolling and reporting requirements as outlined by the above conservation measures will be met. Retrieval of any identified debris will occur in close communication and coordination with Dungeness Wildlife Refuge staff.*

Measure #26. “Vessels shall not ground or anchor in native eelgrass (*Zostera marina*) or Kelp (order *Laminariales*), and paths through native eelgrass shall not be established. If

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<sup>2</sup> The approved work window for the project lease site, tidal reference area 10 which includes Dungeness Bay, is May 1 – January 15 for herring and April 1 – July 31 for surf smelt (WAC 220-660-330).

there is no other access to the site or the special condition cannot be met due to human safety considerations, a site-specific plan shall be developed describing specific measures and/or best management practices that will be undertaken to minimize negative effects to eelgrass and kelp from vessel operations and accessing shellfish areas." **Addresses concerns #1, 3 & 4.** *The applicant has identified site access routes and locations that will avoid paths through, grounding or anchoring vessels in native eelgrass.*

## 2. Site-specific Stewardship Measures

Site-specific stewardship measures have been identified to avoid and reduce potential impacts in addition to those covered by the Corps' conservation measures listed above.

Stewardship measure #1: Limited gear use in starting operations. On-bottom bag cultivation of oysters will not exceed 5 acres (only 10 % of the lease area) within the first two years of operation. Outcomes from monitoring activities will inform the potential for phased expansion as outline in the shoreline permit application. **Addresses concerns #1–5**

Stewardship measure #2: Limit activity during sensitive periods. USFWS has recommended timeframes: March 15 – April 15; June; July; October 15 – November 15, that would be **least sensitive** to Refuge habitat and wildlife (USFWS April 4, 2018 letter - Attachment C). Farm activities such as gear placement/removal and 'out planting' (i.e., transfer of oysters from bag to beach) that require larger groups of farm worker (7-15 people) will generally align with these timeframes. Such activities would occur infrequently (i.e., over a single low tide cycle every few months). Outside of the above timeframes, farm activity would mostly involve basic on-bottom bag maintenance or oyster harvest which require fewer workers (typically 3-6 people) accessing the site by boat during negative low tides, at a frequency of about 2-3 site visits per low tide cycle (i.e., approximately 4-6 site visits per month). Oyster bags stacked for harvest are retrieved from the site during high tide using a mechanized lift; there is no corresponding onsite activity. **Addresses concerns #1 & 2.**

Stewardship measure #3: Minimize noise. Noise levels associated with farm activities will be low. The project site will only be accessed by low profile marine vessels from designated locations (see JARPA Project Drawings) through deep tidal channels. Vessels will maintain slow ( $\leq 5$  mph), no-wake speeds when approaching the project site and/or within 200 ft. of the shoreline of Inner Dungeness Bay. Boxes constructed with noise insulation will house the hydraulic winch motor to further reduce noise levels ( $< 50$  dB) associated with oyster harvest activities. **Addresses concerns #1 & #2.**

Stewardship measure #3: Minimize light and glare. For periodic nighttime farm activity (4-6 site visits per month restricted to negative tides), farm workers will only use

personal headlamps (500 - 1000 lumens) with down-casted light. No other light source or glare will be emitted from the project site. **Addresses concerns #1 & #2**

### **3. Monitoring Plans**

Monitoring activities will be used to evaluate potential impacts associated with farming activities which may be adjusted (e.g., area, bag density, frequency and timing of site visits, etc...) as necessary through the proposed phased operations. If “more than minimal” adverse impacts are not identified based on statistically-supported evaluation, then the applicant reserves the right to expand activities to “Phase 2” (in years 3 – 5) and “Phase 3” (beyond year 5) operations as outlined in the JARPA.

#### *Eelgrass Surveys*

Following established Tier 1 eelgrass survey protocols by the Corps’ Seattle District, eelgrass surveys will be conducted with the 50-acre lease parcel every 2-3 years by Tribal biologists to: 1) update the delineation of the eelgrass area with the lease parcel, 2) assess any changes in the distribution and area of eelgrass beds/patches and 3) adjust farm activities, as needed, to ensure the eelgrass conservation area is maintained. Eelgrass surveys will extend 200 ft. from the boundary of the lease parcel to serve as a reference site. If survey data identifies that eelgrass within the lease parcel retreats by more than 50% buffer distance (i.e., >37.5 ft. from the edge of the oyster farm), but equivalent retreat is not observed in the reference site (of similar density, tidal elevation and substrate), then the distance will be increased by the measured distance of the eelgrass retreat. Such eelgrass buffer expansion will occur until eelgrass retreat is no longer identified in the survey data. Survey records and eelgrass delineation maps will be available upon request to Clallam County, USACE, USFWS and NOAA.

#### *Forage Fish Surveys*

Per the conditions specified in conservation measures #9 and #10 (see above), forage fish spawn survey will be conducted by a WDFW-certified tribal forage fish biologist before removal or maintenance of on-bottom bags outside of the approved work windows<sup>2</sup>. If any forage fish spawn is present no farm activity will occur in the area where spawning has occurred until the eggs have hatched. A record will be maintained of all spawn surveys, including date and time; the survey area and gear surveyed; and results of the survey. If spawn is detected, USACE and USFWS will be notified. Survey records will be available upon request to Clallam County, USACE, USFWS and NOAA.

#### *Brant-Farm Interactions*

Monthly observations will be recorded by a shellfish farm worker, Tribal biologists and/or an Audubon volunteer on brant and shellfish farm interactions. A log will be kept that includes the date and time of observation, tidal height, number of brants observed and a description of interactions observed (i.e., type of activity occurring and brant response behaviors). If observation logs indicate any persistent (e.g., recurring over the length of the migration season) negative behavioral responses from brant to specific farm activities, those activities will be evaluated and mitigation measures will be put into place to minimize or eliminate the adverse

impact. Observation logs will be available upon request to Clallam County, USACE, USFWS and NOAA

*Shorebird counts*

Monthly shorebird counts will be conducted within and adjacent to the lease parcel by a shellfish farm worker, Tribal biologists and/or an Audubon volunteer. A log will be kept that includes the date and time, tidal height and number and species of shorebirds observed within and adjacent to the lease parcel. Observation logs will be available upon request to Clallam County, USACE, USFWS and NOAA