



BrownScott, Jennifer <jennifer_brownscoott@fws.gov>

a quick review

3 messages

Stenvall, Charlie <charlie_stenvall@fws.gov>

Mon, Jul 15, 2019 at 7:49 AM

To: "McDowell, Michelle" <michelle_mcdowell@fws.gov>, Michael Green <michael_green@fws.gov>, Jennifer BrownScott <jennifer_brownscoott@fws.gov>

We have an issue up at Dungeness NWR where we have tribal interest in establishing an oyster farm in the middle of the bay which is the key sanctuary for migrating and wintering waterfowl (including brant) and shorebirds. We don't own the land but is use deeded to the Refuge by the State of Washington. We have provided our comments to the County and to the Corps as they are reviewing the permit application by the Tribe to reestablish a commercial oyster farm. We have a briefing with Robyn and Mary tomorrow and the Tribe is asserting we are basically misrepresenting the science with regards to impacts.

Could I ask if you could do a quick review of our comment letter and the Tribes response to our letter. Jennifer and her staff spent a lot of time going over the literature and I'd like to know from your perspective if the studies we cite and summarize are applied accurately and appropriately to this situation. I know this is a quick ask but this just came up and we have to brief tomorrow (Tuesday 7/16). Thanks

I will forward the Tribal comments in a following email.

Charlie

2 attachments

 **FWS Cmt Ltr and Attach_SEP 2017-00027_052119.pdf**
469K

 **Attachment A. FWS Comments & Attachmetns_JSKT Shoreline Permit_Final040418.pdf**
490K

Stenvall, Charlie <charlie_stenvall@fws.gov>

Tue, Jul 16, 2019 at 6:39 AM

To: "Green, Michael" <michael_green@fws.gov>, Kevin Foerster <kevin_foerster@fws.gov>, Jennifer BrownScott <jennifer_brownscoott@fws.gov>

Cc: Vanessa Loverti <vanessa_loverti@fws.gov>, Joseph Sands <joseph_sands@fws.gov>, Nanette Seto <nanette_seto@fws.gov>

Mike, Vanessa, Joseph,

Thank you for taking the time to review this material in such a compressed timeframe and give us some thoughtful feedback. Very helpful. We'll let you know how it goes.

Charlie

On Mon, Jul 15, 2019 at 5:45 PM Green, Michael <michael_green@fws.gov> wrote:

Hey Charlie,

We've looked over the materials. I didn't give my colleagues a lot of time for this, but they nonetheless evaluated the FWS letter and rebuttal by the tribe.

The service letter tends to cite a variety of sources of literature whereas the tribal rebuttal tries to take a local approach. Both approaches could have their flaws. We're not convinced the tribal analysis is coming to the correct conclusion given the inference you can gain based on Midwinter Waterfowl Survey and shoreline surveys. On the other hand, the broad approach the Service took could also draw inaccurate conclusions about site level impacts. This is true for both Brant and shorebird impacts.

Re: Brant, we conclude that there will likely be some negative impacts to from site-level disturbance, but would not wish to quantify how negative. Studies cited re: shorebird disturbance to human activity are equivocal. While it is clear that shorebirds will take flight when people approach (increasing energetic demands), they also settle back in once people are at work and not paying attention to them. Thus, there will likely be disturbances to both shorebirds and Brant, but difficult to quantify in terms of overall impact in degree and severity (i.e., will there be overall decreases in fitness to these individuals as a consequence?).

In the end, we evaluate this project in the larger context for both Brant and shorebirds, and with respect to compatible wildlife uses. As cited, this is an important wintering location for Brant, and increasing the extent of the eelgrass beds upon which they depend is a goal of DNR and the Puget Sound Partnership in the Puget Sound, and will lead to robust populations of Brant. This project would run counter to this goal because eelgrass beds could continue to expand into the project area were it not developed. Worldwide, shorebirds are decreasing in abundance because of climate change effects; habitat loss in breeding, wintering, and staging areas; disturbance due to human activities; and other factors. Individual projects of a small scale, such as this proposed oyster farm, by itself do not have a large impact. But it is the cumulative effect of many projects such as these, that incrementally put pressure on individual birds and the populations to which they belong.

For these reasons, we support the fundamental position of the refuge, that if there were other sites, farther from this location which is known to be of high use and importance for Brant (and other waterfowl) and shorebirds, then those sites should be considered first.

Thanks for the opportunity to comment on this proposal.

Michael Green
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Stenvall, Charlie <charlie_stenvall@fws.gov>
To: Jennifer BrownScott <jennifer_brownscoott@fws.gov>

Tue, Jul 16, 2019 at 9:07 AM

----- Forwarded message -----

From: **Kilbride, Kevin** <kevin_kilbride@fws.gov>
Date: Tue, Jul 16, 2019 at 8:25 AM
Subject: Re: a quick review
To: Stenvall, Charlie <charlie_stenvall@fws.gov>

Hi, Charlie:

As we discussed, the refuge staff utilized/applied the process for compatibility determinations in evaluating the potential direct and indirect effects of the proposed shellfish farming. The basis for the arguments from the tribe in the response letter focuses on the best available science and professional judgment about the resources. Therefore, it is important to keep in mind the following principles from the [compatibility chapter](#)

2.11 What are considerations when applying compatibility?

A. Sound professional judgment.

(1) In determining what is a compatible use, the Refuge Administration Act relies on the "sound professional judgment" of the Director. The Director delegates authority to make compatibility determinations through the Regional Director to the refuge manager. Therefore, it is the refuge manager who is required and authorized to exercise sound professional

judgment. Compatibility determinations are inherently complex and require the refuge manager to consider their field experiences and knowledge of a refuge's resources, particularly its biological resources, and make conclusions that are consistent with principles of sound fish and wildlife management and administration, available scientific information, and applicable laws. When a refuge manager is exercising sound professional judgment, the refuge manager will use available information that may include consulting with others both inside and outside the Service.

B. Materially interfere with or detract from.

(1) When completing compatibility determinations, refuge managers use sound professional judgment to determine if a use will materially interfere with or detract from the fulfillment of the System mission or the purpose(s) of the refuge. Inherent in fulfilling the System mission is not degrading the ecological integrity of the refuge. Compatibility, therefore, is a threshold issue, and the proponent(s) of any use or combination of uses must demonstrate to the satisfaction of the refuge manager that the proposed use(s) pass this threshold test. The burden of proof is on the proponent to show that they pass; not on the refuge manager to show that they surpass. Some uses, like a proposed construction project on or across a refuge that affects the flow of water through a refuge, may exceed the threshold immediately, while other uses, such as boat fishing in a small lake with a colonial nesting bird rookery may be of little concern if it involves few boats, but of increasing concern with growing numbers of boats. Likewise, when considered separately, a use may not exceed the compatibility threshold, but when considered cumulatively in conjunction with other existing or planned uses, a use may exceed the compatibility threshold.

Because a refuge is closed until open to a use through an administrative process (AUF, CD, and other compliance, as necessary), a refuge manager shall be conservative in terms protecting the resource. This is consistent with the Mission of the Refuge System and House Report 105-106 associated with the Refuge Improvement Act that conveys "wildlife first". In my opinion, the refuge staff objectively and systematically reviewed and utilized best available science and exercised sound professional judgment in the evaluation of possible effects. Moreover, the refuge staff indicated that the impacts were unacceptable (exceeded the threshold) at the proposed location of the shellfish farm, where an alternative site could have acceptable effects.

Kevin Kilbride
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On Mon, Jul 15, 2019 at 9:05 AM Stenvall, Charlie <charlie_stenvall@fws.gov> wrote:

Here's our two comment letters

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