



USFWS INFORMATION MEMORANDUM



DATE: January 14, 2022

TO: Brian Mercier, Regional Director, Bureau of Indian Affairs

FROM: Robyn Thorson, Regional Director, Interior Regions 9 and 12

SUBJECT: Commercial Oyster Farming Proposal by the Jamestown S’Klallam Tribe within the Boundary of Dungeness National Wildlife Refuge

I. STATEMENT OF ISSUE/KEY FACTS

Since 2015, the Jamestown S’Klallam Tribe (Tribe) has been working to establish commercial oyster farming within the Dungeness National Wildlife Refuge (Refuge). The desired area (50 acres of tidelands) for this commercial operation is closed from October 1 – May 14 for use by tens of thousands of migrating and wintering waterfowl of local, regional, and international importance. The key issue with the Tribe’s proposal is access to the site during the closed period. Current legal advice indicates that Service policy and the provisions of the National Wildlife Refuge Improvement Act require a determination of whether the proposed operations are compatible with the purposes of the Refuge. The Service, in consultation with the Office of the Solicitor, is evaluating how joint Secretarial Order 3403 applies in this circumstance.

II. BACKGROUND AND FWS POSITION

The Service has been working closely with the Tribe to structure the proposed operations to minimize wildlife impacts (e.g., different times of the year, different methods that require less intensive management, different locations, etc.). During this period, the Tribe has secured a permit from the US Army Corps of Engineers (ACOE) and a lease from the Washington Department of Natural Resources (WDNR) for use of the 50 acres, consistent with state ownership of the tidelands.

The WDNR lease does not specifically provide access to the leased area. The Solicitor’s Office has advised the Service that it needs to determine what approvals or conditions are necessary for that access. The governing provisions for the National Wildlife Refuge System provide that the Refuge Manager determines if access to the leased area is consistent with the refuge’s purposes (through a Compatibility Determination). The Tribe asserts their treaty right provides for access to the shellfish leased area and is exempt from a Compatibility Determination. The Office of the Solicitor analyzed the shellfish Settlement Agreement in *U.S. v. Washington* (2007) and does not find a treaty right for the Tribe in these waters.

III. POSITION OF AFFECTED PARTIES/PUBLIC LANDS AFFECTED

Jamestown S’Klallam Tribe has been involved in the permitting process for this commercial operation since 2015. The Tribe believes they have a treaty right for the proposed cultivation and harvest of shellfish, that no compatibility determination is necessary, and that wildlife impacts associated with access to their lease will be limited.

The Tribe has received authorization (permit/lease) from the US Army Corps of Engineers (USACE), Clallam County, WA Department of Ecology (WADOE), and WA Department of Natural Resources. The U.S. Geological Survey has expressed concern over how the Tribe would monitor for bird impacts.

Clallam and Jefferson County residents and multiple non-governmental organizations (NGO) provided comment to USACE, Clallam County and WADOE permit processes. The vast majority of comments were in opposition to the commercial oyster farm with many stating concern over its location in a National Wildlife Refuge and an important migration and wintering area for migratory birds. USACE has fulfilled a FOIA request from an environmental organization for their administrative file.

IV. POTENTIAL ISSUES

Environmental non-profit organizations have indicated they will seek a legal remedy if the Tribe is permitted to conduct oyster farming operations within the boundary of Dungeness NWR. A local NGO recently organized a 5-hour protest at the Refuge entrance that received media attention and featured a speaker formerly with the Smithsonian Institution.

V. NEXT STEPS

Continue seeking a solution that addresses the interest of the Tribe and addresses the wildlife conservation purposes for which the refuge was established.

Prepared by: *Sarena Selbo, Acting Regional Chief, IR 9 and 12 National Wildlife Refuge System*

FYI or **Requested by:** *[name]*

Prepared for a meeting: *January 14, 202, Commercial Oyster Farming Proposal by the Jamestown S’Klallam Tribe within the Boundary of Dungeness NWR*

Does this involve, directly or tangentially, any Director’s Office recusals? **Yes** **No**

If yes, please identify: