



USFWS INFORMATION MEMORANDUM



DATE: October 5, 2021

TO: Martha Williams, Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service

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

SUBJECT: BP036328: 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 the request to conduct year-round commercial shellfish operations. It would require management of the commercial oyster farm in a way that would negatively impact these birds for which the Refuge was established.

II. BACKGROUND AND FWS POSITION

The Service has been working with the Tribe since 2015 to identify how to make this use compatible (e.g., different times of the year, different methods that require less intensive management, different locations, etc.). The Office of the Solicitor has weighed in twice (2016 and 2021) and outlined the circumstances under which the Service must provide approvals tied to refuge purposes. Within the lease area, if actions under the lease are consistent with Refuge purposes, then no further action by the Service is necessary; if not, the Service should determine what approvals, if any, would normally be required for the use (e.g., compatibility determination). The lease itself specifically does not provide access to the lease area, so the Service will need to determine what approvals are necessary for that access. The Service also determined that aquacultural activities within the lease area is not a Tribal treaty right per the 2007 *United States v Washington* litigation.

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. Despite multiple meetings and communications where the Service has consistently outlined our concern for year-round access, the Tribe continues to insist they require regular recurring year-round access to these tidelands.

The Tribe has also received authorization (permit/lease) from the US Army Corps of Engineers (ACOE), 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 the ACOE, 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. Comments included NGOs that had previously won aquaculture lawsuits against ACOE. ACOE has fulfilled a FOIA request from an environmental organization for their administrative file. Most recently, a local NGO organized a

5-hour protest at the Refuge entrance that received media attention and featured a speaker formerly with the Smithsonian Institution.

IV. STATUS UPDATE

October 1, 2021, letters from Jamestown S’Klallam Tribal Chair expressed concern over Service conclusion that a compatibility determination for access is required. They request the Tribe be allowed to initiate farming operations starting October 15, 2021.

V. POTENTIAL ISSUES

Environmental non-profit organizations have indicated they will seek a legal remedy if the Tribe is allowed access to the area during the closed season.

VI. NEXT STEPS

A meeting will be held with the Tribal Chair to address concerns raised in their letters and identify a way forward that can meet the Tribe’s interest and in line with refuge purposes.

ATTACHMENTS

- Incoming letter from Jamestown S’Klallam Tribe to Dungeness NWR (dated 10/1/2021)
- Incoming letter from Jamestown S’Klallam Tribe to Deputy Regional Director (dated 10/1/2021)

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

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

Prepared for a meeting: *[meeting date] [meeting invite title]*

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

If yes, please identify: