

From: [Stenvall, Charlie](#)
To: [BrownScott, Jennifer](#)
Subject: Fw: 50 CFR 25.45
Date: Friday, April 15, 2022 11:05:45 AM

From: Gaboriault, Holly T <holly_t_gaboriault@fws.gov>
Sent: Friday, April 15, 2022 10:55 AM
To: Stenvall, Charlie <charlie_stenvall@fws.gov>
Subject: Re: 50 CFR 25.45

Thanks Charlie. Yes, I'd love to see the documents from the Sheldon/Hart issue.

For Dungeness, I only think this will apply if I play thing out like this:
Refuge Manager meets with the Tribe and discusses a CD for access as non-compatible.
Tribe isn't interested in adjusting access details so they look for steps to elevate the denial above the RM level. RM finalized the CD decision.

Since the only reason we did a CD for access was because they were going to be seeking an access permit next, technically we are also denying them a SUP. So, if someone is savvy enough within the Tribe to want to look for "appeal" options, they could ask for options to appeal and find this. In my opinion, the Refuge manager could either then a) ask them to complete the permit application in order to officially deny the permit or b) document this denial without an official application on the basis that we have enough information to assume they were asking for a permit next. I would choose option "b" if forced to do so. In support of the S.O., I would assume their permit application has been acquired orally vs. in writing.

Again, this is only worse case scenario in the event of a challenge so you and the Refuge Manager are prepared and ready for an answer. It may not even come to needing this, but if so, you don't want to have anyone say they were denied their appeal rights. I don't think the appeals regs apply to just competitive permit applications or ones where we limit the numbers issued...it's just that those are usually the ones where we see appeals the most.

I hope this helps.

Holly T. Gaboriault (pronounced "Gaboreo")
On Detail as Acting Regional Chief (March 21-May 20, 2022)
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From: Stenvall, Charlie <charlie_stenvall@fws.gov>
Sent: Friday, April 15, 2022 1:39 PM
To: Gaboriault, Holly T <holly_t_gaboriault@fws.gov>
Subject: Re: 50 CFR 25.45

Thanks, this is helpful. Do you think it applies in the Dungeness situation though? Theoretically we have a CD covering any action that SUPs are issued for. It seems that this would essentially be an empty appeal process in cases where we refuse to issue an SUP because of appropriate / compatibility finding. In cases where we limit issuance of SUPs such as research, guided hunts etc (something that has already found to be compatible) our SUP process could be challenged, and the RD could override the program decision. This happened just within the past two years at Sheldon /Hart over a guided hunting permit. I'll send you the two documents on that. You might find it illuminating.

C

From: Gaboriault, Holly T <holly_t_gaboriault@fws.gov>
Sent: Friday, April 15, 2022 10:22 AM
To: Stenvall, Charlie <charlie_stenvall@fws.gov>
Subject: 50 CFR 25.45

Found it finally. 50 CFR 25.45 is for appealing SUPs in the lower 48. Good to keep this in mind in the event you need it and need to ensure you are following the process. Don't get caught in a challenge for not following the process. The appeal goes first to the Refuge Manager, then the Area Manager (I would say this is either Area Sup or Chief) and then their final appeal goes to the RD level. That final appeal decision is due from the RD in 30 days.

[eCFR :: 50 CFR 25.45 -- Appeals procedure.](#)

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We dealt with appeals in Alaska a lot due to the competitive nature of guiding activity permits on Refuges and those appeals went straight to the RD.

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