

From: [Morrison, Hugh R](#)
To: [Thorson, Robyn](#)
Subject: Fw: ACE EA-Jamestown S'Klallam Tribe Commercial Oyster operation in Dungeness Bay
Date: Sunday, April 17, 2022 9:33:29 AM

Hugh Morrison
Deputy Regional Director
Interior Regions 9 & 12
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(he/him/his)

I live and work in the traditional homelands of the Chinook, Clackamas, Cowlitz, Kalapuya, Kathlamet, Molalla, Multnomah, and Wasco people who have made their homes along the lower Columbia River for thousands of years.

From: Gaboriault, Holly T <holly_t_gaboriault@fws.gov>
Sent: Friday, April 15, 2022 11:10 AM
To: Morrison, Hugh R <hugh_morrison@fws.gov>
Cc: Ogura, Christine <christine_ogura@fws.gov>
Subject: ACE EA-Jamestown S'Klallam Tribe Commercial Oyster operation in Dungeness Bay

Good morning Hugh,
Following up on your question regarding the Army Corps of Engineers Environmental Assessment and Statement of Findings for the Jamestown S'Klallam Tribe commercial oyster culture farm in Dungeness Bay and whether or not the Service could adopt these findings as our NEPA compliance, Jennifer provided a lengthy overview for your awareness below. A quick answer is simply the the EA does not describe FWS laws and regulations or Refuge purposes or analyze the impacts of the use in relation to them. There are many other nuances as she describes below that would not make it appropriate for the Service to adopt the EA and/or develop a FONSI based on the EA.

Thanks,
Holly

Holly T. Gaboriault (pronounced "Gaboreo")
On Detail as Acting Regional Chief (March 21-May 20, 2022)
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From: BrownScott, Jennifer <jennifer_brownScott@fws.gov>

Sent: Wednesday, April 13, 2022 2:40 PM

To: Ogura, Christine <christine_ogura@fws.gov>; Stenvall, Charlie <charlie_stenvall@fws.gov>

Cc: Gaboriault, Holly T <holly_t_gaboriault@fws.gov>

Subject: Re: ACE EA

Because FWS was not a cooperating agency the ACE NEPA document does not meet FWS NEPA standards, lacks necessary analysis, and uses mitigations that are not valid:

- The EA does not describe FWS laws and regulations or Refuge purposes, or analyze the impacts of the use in relation to them. The ACE EA states, “USFWS has the responsibility of completing the evaluation of whether siting a commercial shellfish aquaculture within the NWR is compatible with Refuge management, and consistent with their federal laws and executive orders, Service policies and treaties.”
- It is our understanding that the draft EA was not provided for public comment. A public hearing was requested, but not held. The agreement was signed on July 27, 2021, and a local citizen filed a FOIA request for the document on August 17, 2021. This process does not meet our normal public involvement standard for EAs.
- Based on draft CD analysis, the preferred alternative is a non-Compatible alternative. All non-preferred alternatives were designated as “not reasonable”, therefore their impacts were not assessed. If the proposal is changed to meet compatibility, the analysis would change – requiring a new EA. Additionally, the joint public notice of permit review of applicable ACE and State regulations (404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, Section 401 of the CWA, State water pollution control laws, and the Coastal Zone Management Act) - it did not include analysis of the permit proposal in relation to FWS regulations.
- This EA allows use counter to the Refuge’s existing EA, without discussion of why this change of direction is taken or what impacts it may have on regulating other uses in the closed area.
- They state that Fish and Wildlife Values are “neutral (mitigated)”, which is counter to our record of fish and wildlife impacts from the use. They make this determination, but state that “the effect of this action on the Refuge’s function with respect to wildlife it manages will be assessed by USFWS as the responsible and knowledgeable agency. Work windows to avoid or minimize effects to Refuge wildlife, particularly migratory shorebirds and brant, could be assessed by USFWS.” They do not provide supporting scientific information or justification for the determination, which runs contrary to our draft CD analysis and concerns raised throughout the County and ACE planning processes.
- ACE includes implementation of an avian monitoring plan as an approach to mitigate impacts.

Monitoring should not be described as mitigation as it does not reduce impacts - it simply identifies impacts once they have already occurred. We have stated in writing, that the monitoring protocol would actually increase human caused disturbance during the closed period, would not provide statistically valid information for decision making purposes, and would likely be unattainable during night operations.

- The analysis is also predicated on USFWS staff observing changes in shoreline sediment transport, wildlife disturbance, and public use and working with JSKT to cease or modify the work (pg 35 & 36). No baseline data exists to allow for impacts analysis and we do not have the staff necessary to monitor the project area and identify issues. In addition, no baseline data has been collected the avian monitoring protocol does not meet basic requirements to identify impacts and no baseline data has been collected. This requirement seems to push us into a permit enforcement position.

Given the departure from FWS NEPA standards, the lack of scientific justification, and the departure from our own scientific analysis; we would likely incur high legal risk from use of this EA. Therefore, it would not seem advisable to use the ACE NEPA documentation.

-jennifer

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