

**Letter of Agreement
between
Jamestown S’Klallam Tribe and U.S. Fish & Wildlife Service**

February 2, 2022

PURPOSE: The USFWS and Jamestown S’Klallam Tribe seek mutual understanding and agreement regarding the oyster operations that are located on a Washington State aquatic tideland lease. Jamestown S’Klallam Tribe proposes this letter to record points of agreement and to provide guidelines for ongoing management of the operation.

BACKGROUND:

In 1855, the S’Klallam agreed to a treaty with the United States that guaranteed their “right of taking fish at usual and accustomed grounds and stations.” The Treaty of Point No Point (“Treaty”), of which the S’Klallam are signatory, was negotiated on January 26, 1855, ratified March 8, 1859, and proclaimed April 29, 1859 (Treaty, 12 Stat. 933 (1855)). Under settled principles of treaty interpretation, the right of taking fish at usual and accustomed grounds and stations means what it meant to the treaty negotiators and signatories.

The Dungeness spit is part of the Jamestown S’Klallam Tribes ancestral homeland. It contains burial grounds, areas of historical importance and historical events to the Tribe. The Tribe’s villages were located at the shoreline, and the refuge lands were part of their territory. Nevertheless, the Tribe’s rights and cultural interests were not considered when the lands were designated for refuge status. However, under federal law, none of these actions abrogate the Tribe’s rights.

In 1915, Executive Order 2123 proclaimed the creation of the Dungeness National Wildlife Refuge in the portion of the refuge generally considered the Spit, to serve as a preserve and breeding ground for native birds. The EO did not erase nor abrogate Tribal treaty rights related to access or resources, although it failed to acknowledge and properly preserve these reserved rights or respect the unique importance of the area to the S’Klallam. The refuge purpose should have, in 1915, indicated that the lands were ancestral homelands and that the Tribe would always be consulted regarding preservation actions. It should have called out Tribal cultural activities, including aquaculture or fish enhancement, as a reserved right preserved within the refuge. The federal government failed to consult with Tribes regarding their rights, cultural practices, or needs on their historical homelands.

In 1943, the United States wished to expand the Refuge to include aquatic tideland area. An application was submitted to the State of Washington for an easement to use the second-class tidelands adjacent to Dungeness Spit for purposes of a wildlife refuge. The governor executed an easement to the United States for the second-class tidelands in 1943, with the state retaining fee ownership. The easement did not erase or abrogate reserved Tribal treaty rights related to access or resources, or limit Tribal activities, even when it failed to properly acknowledge or protect and preserve these reserved rights or consult with the Tribes regarding this decision.

In 1983, USFWS provided written recognition of the Indian Treaty Right including the right of access to Dungeness National Wildlife Refuge lands, and that the S'Klallam have the right to fish and engage in all cultural and spiritual practices in Dungeness Bay and Harbor by traditional methods, or by modern and improved fishing techniques. A Letter of Agreement was negotiated and signed to expressly include a recognition of the rights to access by the Tribes and use modern fishing techniques.

In 1990, the Tribe initiated its oyster farm at the request of Tribal elders who wished to preserve cultural identity and secure future generations an opportunity to harvest seafood from Dungeness Bay.

Since 1990, Jamestown has accessed its farm per authorization of WA DNR lease, without special conditions or limitations imposed by USFWS.

In 1994, USFWS DNWR conducted compatibility determinations for activities within DNWR. DNWR found that Tribal treaty fishing was compatible and provided as justification that 'Tribal fishing is permitted on the Dungeness National Wildlife Refuge in accordance with the Point No Point Treaty of 1855.' The shellfish operation was not considered separately or as somehow separated and not included within this treaty access and rights.

In 2013, USFWS DNWR conducted compatibility determinations for activities within DNWR. DNWR found that Tribal treaty fishing was compatible and provided as justification that "The USFWS recognizes the Point-No-Point Treaty Tribes retained the right to fish at their usual and accustomed places and that Dungeness NWR is one of those places." The shellfish operation was not considered separately.

In 2021, a Memorandum of Understanding (MOU) is signed by seventeen Federal Agencies, including the US Department of Interior, to clarify US/Tribal Collaboration and fulfillment of Trust Responsibilities. Specifics of this MOU include:

Treaty-protected rights to use of and access to natural and cultural resources are an intrinsic part of Tribal life and are of deep cultural, economic, and subsistence importance to tribes.

Under the U.S. Constitution, treaties are part of the supreme law of the land, with the same legal force and effect as federal statutes.

The Supreme Court has explained that Indian treaties are to be interpreted liberally in favor of tribes, giving effect to the treaty terms as tribes would have understood them, with ambiguous provisions interpreted for their benefit.

Integrating consideration of Tribal treaty and reserved rights into agency decision-making and regulatory processes is consistent with the federal government's trust responsibility to federally recognized tribes and to fundamental principles of good government.

Further, Joint Secretarial Order 3403 and Executive Order 13175 strive to ensure that all decisions by the Departments relating to Federal stewardship of Federal lands, waters, and wildlife under their jurisdiction include consideration of how to safeguard the interests of Indian Tribes; and use consensual mechanisms on issues relating to Tribal self-government, Tribal trust resources, or Indian Tribal treaty and other rights.

GOALS:

This LOA is intended to promote mutual understanding and cooperation to assure Treaty-protected rights to use of and access to natural and cultural resources within the Federally owned – and use-easement boundaries of the Dungeness National Wildlife Refuge.

The goals of the Jamestown S’Klallam Tribe as articulated in their shellfish farm permit materials are:

To maintain a traditional way of life including harvesting, consuming and trading shellfish in Jamestown’s ancestral home. In 1990, Tribal Elders sought to establish the Dungeness oyster farm, so that S’Klallam could continue the practice of their ancestors and earn a living from Dungeness Bay. With the Dungeness oyster farm, the Jamestown S’Klallam Tribe (a sovereign nation) and Jamestown Seafood (a Tribally-owned business) intend to continue to enjoy and share their ancestral resources in a sustainable manner, growing a naturalized species in Dungeness Bay.

The goals of the USFWS DNWR as articulated in its Mission Goals and Purposes policy Comprehensive Conservation Plan, 2013) are:

- Conserve a diversity of fish, wildlife, and plants and their habitats, including species that are endangered or threatened with becoming endangered.
- Develop and maintain a network of habitats for migratory birds, anadromous and interjurisdictional fish, and marine mammal populations that is strategically distributed and carefully managed to meet important life history needs of these species across their ranges.
- Conserve those ecosystems, plant communities, wetlands of national or international significance, and landscapes and seascapes that are unique, rare, declining, or underrepresented in existing protection efforts.
- Provide and enhance opportunities to participate in compatible wildlife-dependent recreation (hunting, fishing, wildlife observation and photography, and environmental education and interpretation).
- Foster understanding and instill appreciation of the diversity and interconnectedness of fish, wildlife, and plants and their habitats.

PRINCIPLES OF AGREEMENT:

1. Jamestown S’Klallam Tribe shall follow the terms and conditions of all issued permits for stocking, maintaining, harvesting and selling product of the farm;
2. Jamestown S’Klallam Tribe shall have access to its leased area;
3. Jamestown S’Klallam Tribe shall share information about the farm operations, permit conditions, and monitoring information regularly, and upon request to DNWR;

4. Jamestown S'Klallam shall have a direct role in the management of their ancestral homelands and be consulted on all decisions impacting the refuge;
5. Jamestown S'Klallam Tribe will be sensitive to the purpose of the Refuge and will strive to reduce bird disturbance from October 1 – May 14; and
6. USFWS will be sensitive to the Tribe's unique relationship to Dungeness Bay and will support continuation of traditional practices, including seafood harvest for commerce.

Parties Agree to the Principles:

W. Ron Allen, Chairman/CEO
Jamestown S'Klallam Tribe

Date

Robyn Thorson
Regional Director, USFWS

Date