

July 12, 2019

Director Robyn Thorson
Region 1, Pacific
US Fish and Wildlife Service
911 NE 11th Ave.
Portland, OR 97232

Re: Jamestown S'Klallam Tribe's Dungeness Bay Oyster Farm

Dear Ms. Thorson:

Thank you for taking the time to travel to our Tribal center in Blyn to discuss the Tribe's proposed project to resume commercial shellfish operations in Dungeness Bay. We felt it was a productive meeting. We were disappointed, however, that the Dungeness National Wildlife Refuge (DNWR) Manager submitted an updated comment letter which did not adequately address the concerns that we discussed, nor did it withdraw the previous determination of "unacceptable level of impact". We had completely different expectations.

In a follow up conversation with the DNWR Manager, it was made clear to the Tribe, as well as, local, state and federal permitting authorities, that there was no intention of withdrawing the previous determination. Jamestown technical staff prepared a response to the DNWR Update letter (5/19/2019) as a requirement of the Public Notice process. The Tribe's technical response was submitted to USACE with a courtesy copy to the Refuge Manager.

I write to share the Tribe's response directly with you and reiterate our Tribe's urgent request that USFWS withdraw its speculative assessment of negative impacts. I can't describe how disappointed that the USFWS Update letter was submitted without an effort to resolve our concerns and we cause us to spend considerable resources to provide a critical review on record.

In general, the USFWS Update letter misrepresents the Tribe's operational plan, does not recognize the Tribe's proposed site-specific stewardship measures, is grossly speculative, overstates scientific conclusions from several cited papers, omits a large body of scientific literature previously presented to Refuge staff and does not consider actual observational data. I will be blunt, it was exceptionally unprofessional and negligent regarding your trust obligation to advocate for our Tribe's efforts to become self-reliant and self-governing with the aquaculture industry using 21st century methods. We provide further discussion of this in our response letter, as well as detailed comment as an annotated copy of the USFWS attachment.

I am providing for your reference a technical memorandum prepared using DNWR bird survey data (Appendix A), the Monitoring and Mitigation Plan (Appendix B), the General Operations Plan (Appendix C), and the Confluence Report, 2018 Shellfish Aquaculture and Bird Interactions (Appendix D), as further basis for the conclusion that there will be minimal adverse impact from the Tribe’s proposed operations.

As you may already be aware, USACE invited USFWS to work with the Tribe to resolve or rebut the issues raised in the Tribe’s response. We have secured the same respectful relationship and cooperation from our local county government. It is my feeling that you have an opportunity here to signal an important next step in this situation and return to the USFWS earlier position of ‘no objection’.

Here is an excerpt from the USFWS letter when the Tribe assumed the DNR lease (1990):

‘We have no objection at this time to renewing the Tidelands lease. However, we do want to re-emphasize the importance of this area as a wintering and migrating waterfowl refuge. And to this end we recommend that the area designated for commercial oyster culture and harvest be confined to the same area designated in the July 1978 lease #11241, and that the restrictions for confining the oyster culture to areas landward eelgrass beds be kept a part of the new lease. We also want to ensure the special provisions that the oyster operation be conducted in such a manner as to minimize the interference with waterfowl and public use of the Dungeness Spit and Bay, and that the harvest be by hand-picking or shallow dredge be kept in the lease. We do object to any expansion of the lease area in Dungeness Harbor for oyster culture.’ As you know, the Tribe has extended itself to reduce impacts to shorebirds and waterfowl (see attached materials) and the lease area is the same.

I would like to draw your attention to one other matter. Renewing the Tribe’s shellfish operation in Dungeness Bay will be covered by a Programmatic ESA consultation provided we meet the required conservation measures. The Tribe is committed to meeting, and exceeding, these measures. We have communicated with DNWR staff specifically regarding conservation measure #22 – marine debris removal –which stipulates patrols (at least every three months) and retrieval of any lost gear and believed we would work cooperatively to meet this requirement. However, in the Update letter, DNWR presents “Shoreline retrieval of aquaculture gear from August 1 - May 14, and retrieval from growing or standing eelgrass would also cause impacts from human disturbance and/or habitat alteration.”

This current revised (?) USF&WS position is unfounded and clearly undermines our goal of achieving conservation measure #22. Our Tribe requests that you please provide a commitment to conduct monitoring patrols and work cooperatively with Refuge staff to retrieve any lost gear. Without written agreement to meet this conservation measure, the Tribe will be required to complete section 7 consultation,

despite meeting and exceeding the other conservation measure conditions. As you will see in the accompanying materials, our proposed growing methods incur minimal gear loss because the bags have a low profile, no attached flotation and are securely fastened to the bottom. Requiring Section 7 consultation because of an unwillingness of USFWS to collaborate on this measure provides an additional barrier.

To state the obvious, Jamestown Tribe is frustrated. We urge that after you review the attached materials, USFWS will clearly communicate you have no objection to the proposal to USACE and Clallam County and commit to allowing the Tribe to cooperatively achieve conservation measure #22. We want to remind you that you have not provided any evidence that our operation will have a detrimental impact and within and adjacent to existing natural refuges.

Once again, consistent with our government-to-government relationship and commitment to our Self-governing and Self-Reliant goals, the USF&WS will become a respectful partner with our Tribe and constructive and progressive actions. It does amaze me and our Council how much resources we are forced to spend to engage in a fishery activity consistent with our culture and create jobs and revenue for our community programs. We are frustrated your staff continues to find ways for "why not" as opposed to "how to" make something constructive happen.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Ron Allen". The signature is fluid and cursive, with the first name "W." and last name "Allen" clearly distinguishable.

W. Ron Allen, Chairman/CEO

Attachments: JST response letter June 28, 2019

- A - Bird Distribution Patterns in Dungeness Bay
- B - Dungeness Shellfish Monitoring & Mitigation Plan
- C - Dungeness Shellfish Farm Operational Plan
- D – Confluence Report Re: Shellfish Aquaculture & Bird Interactions