

From: [Selbo, Sarena](#)
To: [Ogura, Christine](#); [Stenvall, Charlie](#); [BrownScott, Jennifer](#)
Subject: Fwd: email exchange with Jamestown S'Klallam Tribe
Date: Thursday, March 3, 2022 3:34:17 PM
Attachments: [Outlook-tfdvddzg](#)
[USFWS LOA - Re Dungeness Bay Farm - 2.2.2022.docx](#)
[JST letter USFWS RE Dungeness Bay farm - Feb. 2 2022.pdf](#)

In case you were wondering what they were referencing. Attached.

Sent from my iPhone

Begin forwarded message:

From: "Morrison, Hugh R" <hugh_morrison@fws.gov>
Date: March 3, 2022 at 4:45:17 PM EST
To: "Selbo, Sarena" <Sarena_Selbo@fws.gov>
Subject: Re: email exchange with Jamestown S'Klallam Tribe

Sarena,

Sorry for the slow response - typical nutty day...

Attached is the LOA referenced by Chairman Allen. This document, and associated letter (also attached), was sent by Hansi Hall on 2/2. We have not responded to this proposal (as indicated by the Chairman), as the intent was to respond with Service thoughts on next steps regarding the JST oystering proposal, which as you know are still under development.

Hugh

Hugh Morrison
Deputy Regional Director
Interior Regions 9 & 12
911 NE 11th Ave.
Portland, Oregon 97232-4181
(503) 231-2282
(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: Selbo, Sarena <Sarena_Selbo@fws.gov>
Sent: Thursday, March 3, 2022 6:59 AM

To: Morrison, Hugh R <hugh_morrison@fws.gov>

Subject: Fw: email exchange with Jamestown S'Klallam Tribe

Hi Hugh. Can you please share a copy of the LOA proposal referenced below?

Thank you.

Sarena M Selbo (she/her) · Regional Refuge ARD · Interior Regions 9 & 12 · January 10-
March 19, 2022

Project Leader · Minnesota Valley National Wildlife Refuge & Wetland Management
District Complex · 3815 American Blvd East · Bloomington MN 55425 · cell 612-590-
0198 · sarena_selbo@fws.gov

Find us on [Facebook](#) | On the Web: fws.gov/refuge/minnesota_valley

From: Thorson, Robyn <robyn_thorson@fws.gov>

Sent: Wednesday, March 2, 2022 4:01 PM

To: Selbo, Sarena <Sarena_Selbo@fws.gov>; Ogura, Christine
<christine_ogura@fws.gov>

Cc: Morrison, Hugh R <hugh_morrison@fws.gov>; Martinez, Cynthia T
<cynthia_martinez@fws.gov>; Aikin, Scott L <scott_aikin@fws.gov>

Subject: FYI: email exchange with Jamestown S'Klallam Tribe

I am forwarding three messages in this email:

My short note to Chairman Allen after a large Puget Sound meeting where his remarks
included citation to Dungeness Bay;

Chairman Allen's reply email;

My response to his reply (this most recent email is at the top).

FYI and for situational awareness of the perspectives of the tribe.

Robyn

Robyn Thorson, Regional Director

U.S. Fish and Wildlife Service

Legacy Region One, Interior Regions 9 and 12

Idaho, Oregon, Washington, Hawaii & Pacific Islands

911 NE 11th Avenue, Portland, OR 97232

Office: 503 231 6119 Cell: 503 926 2727

Pronouns: she/her/hers

*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: Thorson, Robyn

Sent: Tuesday, March 1, 2022 4:18 PM

To: W Ron. Allen <rallen@jamestowntribe.org>

Cc: Hansi Hals <hhals@jamestowntribe.org>; Morrison, Hugh R
<hugh_morrison@fws.gov>; Elizabeth Tobin <etobin@jamestowntribe.org>; Sissi Bruch
<sbruch@jamestowntribe.org>

Subject: RE: [EXTERNAL] USF&WS Checking in

Thank you for writing to me to emphasize your concerns. I value seeing that message

below, and messages through your staff, and in writings, and in comments. It has been on my mind (worryingly) that my short update last Friday, written at the close of the day, did not sufficiently recognize the extent of the tribe's interests and criticisms. I know this is of huge import to you and the Jamestown S'Klallam Tribe and did not intend to understate that with a brief note. And I intended to compliment you on the energy you contribute to TRAR (and in other venues); I hope that came through. I have no interest in being contrarian (at all) but I do not believe FWS is taking a step backward. This new undertaking is highly significant: it departs from more narrow considerations of the tribe's interests that had reflected the known procedures and policies. Admittedly the new analysis of the situation is slow but it is stepwise, to address policy and process in ways not previously considered. Absent this effort I fear FWS and the tribe would have very little room to see each other's interests more clearly, with potential resolution of positions, viewpoints, approaches. Thank you again for what you wrote (below). I appreciate your message and am sharing it with FWS and DOI leaders engaged in this, to keep us aware of the high stakes of JST and your high expectations of our work to address that.

Robyn

*Robyn Thorson, Regional Director
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911 NE 11th Avenue, Portland, OR 97232
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From: W Ron. Allen <rallen@jamestowntribe.org>

Sent: Tuesday, March 1, 2022 12:17 PM

To: Thorson, Robyn <robyn_thorson@fws.gov>

Cc: Hansi Hals <hhals@jamestowntribe.org>; Morrison, Hugh R <hugh_morrison@fws.gov>; Elizabeth Tobin <etobin@jamestowntribe.org>; Sissi Bruch <sbruch@jamestowntribe.org>

Subject: [EXTERNAL] USF&WS Checking in

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Robyn, I deeply appreciate your email after the TRAR Tribal/Federal meeting and yes, I knew you were on the Zoom call. I felt compelled to raise our shellfish issue as we were engaged in the subject of protecting and advancing our Treaty rights in the 21st Century. Our Tribe appreciates that USFWS has convened a workgroup 'to look afresh at the situation and identify options', but we are frustrated this workgroup appears

to be another 'step back' at making what we believe should be an easy decision knowing the commitment of the President and his Executive Orders on this subject. The Tribe's seafood business was disrupted for more than 20yrs (including the 13 years to remedy environmental pollution problems that impacted and fallowed our Oyster farm). Our journey to resume farming should not take this long.

I hope you have had time to review the Letter of Agreement (LOA) proposal I sent on Feb 3rd. Please let me know what you think the merits of entering a LOA would be. The LOA is a short-term remedy proposal so that Tribe and USFWS would have mutual understanding/agreement. This short-term solution will provide additional time to develop a long term remedy which assures our Treaty Right for future generations. If the newly convened USFWS workgroup is seeking to identify a permanent solution to assure Jamestown S'Klallam Tribe's treaty rights, we are in favor. But please recognize that the Tribe should participate meaningfully. Having the federal government define and deliver the 'solution' perpetuates wrongs to our Tribe. Jamestown must be an equal voice in identifying, vetting, and selecting the mechanism to assure mutual goals, and protect treaty rights.

This right of our Tribe has drifted into a deep, spiraling USFWS bureaucratic black hole. It defies logic and flies in the face of current policy and direction coming from the White House. We are concerned that this extended workgroup process and lack of tribal involvement undermines confidence in the outcome. As I have noted, we would rather not raise this matter to the DOI Secretarial level, but this very long delay challenges our patience. I have no idea what the March 4th report will say, but we are expecting it to say, the shellfish farm is alignment with the existing Letter of Agreement (LOA) to provide access to Klallam/S'Klallam. Per our joint 1983 LOA "The USFWS recognizes that the Indian treaty fishing rights include the right of

access to National Wildlife Refuge lands. This is a treaty right against land owned by the United States". As you know, Treaty fishing includes modern techniques. How long do you expect our patience and respect to last for this system? This process to not resolve this matter (i.e., get to yes) at the local/regional is another example of why we are raising the "Treaty Rights at Risk" to the highest level as we are not making progress with these Treaty/Trust duties delegated to the Region officials.

Let me know if we need to talk in person to discuss when we will resolve this last issue. Thanks, Ron

W. Ron Allen, Tribal Chair/CEO

Jamestown S'Klallam Tribe

(360) 681-4621 direct#

(206) 369-6699 cell#

From: Thorson, Robyn <robyn_thorson@fws.gov>

Sent: Friday, February 25, 2022 5:26 PM

To: W Ron. Allen <rallen@jamestowntribe.org>

Cc: Hansi Hals <hhals@jamestowntribe.org>; Morrison, Hugh R <hugh_morrison@fws.gov>

Subject: Checking in

Chairman Allen:

Yesterday I attended the Treaty Rights at Risk meeting (virtually, not in person) and heard your remarks, including criticism of the Fish and Wildlife Service over access to the shellfish permit in Dungeness Bay. I also heard your firm comments about the priority for salmon and habitat recovery in Pacific Northwest marine waters, and the need for actions (not just talk). In all your remarks (including "who's in charge?") I noted respect among attendees for your contributions and appreciation for your expressions of good will (including good humor). I extend my compliments, even though the shellfish permit comments (well known to me already) were critical. As update: after much dialogue ("marshaling" is the word I previously used) about the Jamestown S'Klallam Tribe access issue at Dungeness Bay, the Fish and Wildlife Service convened a work group mid-February to examine this matter through application of Joint Secretarial Order 3403. The charge to the workgroup includes this language: *On November 15, 2021 the Secretary of the Interior and the Secretary of Agriculture issued Joint Secretarial Order 3403 (JSO), which reflects the intention to strengthen the consideration of tribal knowledge and interests in decision-making and outlines requirements for interactions with Tribes in the management of Federal lands and waters managed by the two agencies. The JSO was issued concurrent with ongoing deliberations between the U.S. Fish and Wildlife Service (FWS) and the Jamestown S'Klallam Tribe regarding access to the tribe's shellfish farming lease on tidelands in Dungeness National Wildlife Refuge.... This presents opportunity to examine how*

interests of both the tribe and the refuge could be considered with perspectives not previously applied. The analysis...is to look afresh at the situation and identify options. Assessing this matter through the JSO lens has been slow, contrary to your request for expediency; I realize that is a disappointment. However, this reflects firm resolve on our part to step back from conflict and examine this with larger consideration of tribal heritage and interests, as expressed in the JSO. I'll receive a progress report on the analysis on/around March 4 and after that I should have an update for you about the timeline ahead.

Again, I appreciate your TRAR remarks (even though I look forward to not being the target of some of them).

Thank you.

Robyn

*Robyn Thorson, Regional Director
U.S. Fish and Wildlife Service
Legacy Region One, Interior Regions 9 and 12
Idaho, Oregon, Washington, Hawaii & Pacific Islands
911 NE 11th Avenue, Portland, OR 97232
Office: 503 231 6119 Cell: 503 926 2727*

Pronouns: she/her/hers

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.

Attachment Outlook-tfdvddzq (52444 Bytes) cannot be converted to PDF format.

**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



JAMESTOWN S'KLALLAM TRIBE

1033 Old Blyn Highway, Sequim, WA 98382

360/683-1109

FAX 360/681-4643

February 2, 2022

Robyn Thorson
Regional Director
National Wildlife Refuge System, U.S. Fish and Wildlife Service (USFWS)
Interior Region 9 and Interior Region 12 (formerly Region 1)
911 NE 11th Avenue, 4E
Portland, OR 97232

Sent via Email: robyn_thorson@fws.gov

Re: Jamestown S'Klallam Tribe's proposed Letter of Agreement regarding the management of Dungeness Oyster Farm

Director Thorson:

On behalf of our Tribe, I am pleased to submit a proposed Letter of Agreement regarding the management of Dungeness Bay Oyster Farm, operated on Washington State aquatic tidelands, within the boundaries of the Dungeness National Wildlife Refuge. From Jamestown's perspective, this is an essential short-term remedy which can be executed by you right away while we mutually work toward a long-term solution.

The Tribe will continue to seek a permanent resolution which respects treaty reserved rights related to access and resources within the boundaries of Dungeness National Wildlife Refuge. Under the U.S. Constitution, treaties are part of the supreme law of the land, and, as you know, federal statutes do not abrogate treaties, so we are confident there is a way forward for our rights to be respected and our culture to be preserved.

In the meantime, please review our proposed Letter of Agreement. I urge a timely response.

Sincerely,

W. Ron Allen
Tribal Chair/CEO

Cc: Hugh Morrison, Assistant Regional Director, USFWS
Loni Greninger, Jamestown Council Vice-Chair
Lauren P. Rasmussen, Attorney
Hansi Hals, Jamestown Natural Resource Director
Elizabeth (Liz) Tobin, Jamestown Shellfish Program Manager