

From: [Ogura, Christine](#)
To: [BrownScott, Jennifer](#)
Subject: HQ TP for Dungeness
Date: Thursday, October 27, 2022 11:28:20 AM
Attachments: [Outlook-0hfqfh2o.png](#)

Hi Jennifer,

Jenny shared some TP they put together for Cynthia and Shaun on this issue. Thought you might find it of interest. I shared with Hugh as well.

- We remain steadfast in our commitment to partner with tribes to co-steward our nation's extraordinary wildlife and wildlands for current and future generations. But we cannot achieve this goal by circumventing the existing law that guides our management of the National Wildlife Refuge System.
- We are required to uphold the National Wildlife Refuge System Improvement Act, safeguard the lands and waters we were congressionally charged with protecting, and be transparent with the Jamestown S'Klallam Tribe about these requirements in the context of the Dungeness Refuge situation—even if it is difficult and even if we may wish it otherwise. We need to recognize and own the missteps of the past dealings with the Tribe and take steps to reconcile our government-to-government relationship.
- The Improvement Act was enacted to protect refuges from political pressure and commercial interests seeking to conduct harmful, incompatible uses on refuges that undermine wildlife conservation. Forgoing a compatibility determination in order to facilitate incompatible commercial activities by *any* entity would be a subversion of the fundamental requirements in the Improvement Act.
- Subscribing to the Krakoff Memorandum and questionable legal theories on pre-existing property rights would be a misguided decision. If we intend to select an option that could wind up in litigation and cause more upheaval for the Tribe, the Solicitor's proposal achieves that. Moreover, if such a decision stands, it would set multiple dangerous precedents despite the claim to the contrary.
- For example, the location of Dungeness Refuge within tribal ancestral homelands is not unique. Many national wildlife refuges are similarly sited, where tribes may wish to pursue incompatible economic development. In fact, there may even be stronger claims in some of those situations where tribes have treaty rights to conduct traditional activities, in contrast to the Jamestown S'Klallam who no longer hold treaty-reserved shellfishing rights on their lease in the Dungeness Refuge due to a recent court settlement agreement. If we allow this aquaculture project to go forward under the theories described in the Krakoff memo, other tribes with similarly limited property interests in other refuges within their aboriginal territories (of which there are many) could similarly claim a pre-existing right to conduct incompatible uses related to traditional practices or treaty rights.
- Equally concerning, replacing the compatibility analysis under the Improvement Act with a state property rights analysis could set a precedent that provides the playbook for circumventing refuge law on State-issued refuge easements nationwide.
- There is no easy solution for the Dungeness Refuge dilemma. While we appreciate the significance of the Refuge to the Tribe and their frustration regarding their aquaculture

proposal, we are bound to comply with the Improvement Act as Congress directed. We remain supportive of alternative project proposals that recognize the Jamestown S’Klallam’s cultural and historic connection to this treasured place.

- We should continue to work with the Tribe’s leadership to achieve a mutually supportive compromise.

Thanks and please take care,
Christine

Christine Ogura

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