

From: [Stenvall, Charlie](#)
To: [Foerster, Kevin](#); [BrownScott, Jennifer](#)
Cc: [Ogura, Christine](#)
Subject: Re: ACTION:: Please develop general and thematic responses to the JST assertions in the attached document
Date: Monday, December 13, 2021 12:14:11 PM
Attachments: [JST.revised.docx](#)

Here's the revised document that has Jennifer's inputs and she is good with.

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From: Foerster, Kevin <kevin_foerster@fws.gov>
Sent: Friday, December 10, 2021 1:54 PM
To: Stenvall, Charlie <charlie_stenvall@fws.gov>; BrownScott, Jennifer <jennifer_brownScott@fws.gov>
Cc: Ogura, Christine <christine_ogura@fws.gov>
Subject: ACTION:: Please develop general and thematic responses to the JST assertions in the attached document

Charlie,

The RDs office have asked for general and thematic responses to the assertions made by the JST staff during a powerpoint presentation on November 19. I have translated from their slides into a word document. Could you please work with Jennifer to develop "the FWS side of the story" for these. Keep it general it is for internal use only at this point.

Christine and I could add some context to what we heard if needed.

Kevin

Kevin Foerster

Regional Chief, Interior Regions 9 and 12

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National Wildlife Refuge System

971-202-6722 (telework cell)

From the JST Slide Show presented verbally via Zoom call with FWS on November 19, 2021

1. Lack of consultation and unsubstantiated comments on the record

- April 2018 comment letter to Clallam County DCD stating concerns re: operations and impacts without prior consultation
- February 2019 comment letter stating “unacceptable level of impacts”
- May 2019 comment letter that overtly misrepresented scientific literature/conclusions and did not consider DNWR bird monitoring data

Communication with the JST over proposed aquaculture and Refuge concerns go as far back as 1990. At the onset of JST’s interest in reinitiating aquaculture in 2015, 3 separate meetings or letters with JST in which Refuge concerns regarding impacts to Refuge resources were conveyed (including a 11/25 letter from Regional Director Robyn Thorson to JST Chairman Ron Allen stating the Refuge had obligations to protect aquatic resources and migratory birds and their breeding and wintering habitats).

Communication continued throughout the entire permitting process. The Clallam County and Corps permitting process requested Service comments and all official correspondence was shared with JST prior to issuance. The scientific literature and conclusions are appropriate and have been used in previous FWS published documents (1997 Public Use EA, 2012 Dungeness CCP) and formed the basis for the comment letters as well as the current draft compatibility determination which has gone through extensive internal review.

The Refuge position on aquaculture has been consistent. Communications with JST on concerns on their current proposal go back to 2015 with concerns about impacts to migratory birds

2. Inconsistencies in DNWR position and process

- Moving target for windows of at least disturbance to migratory birds and waterfowl, and species of concern.

There have been minor variations over time regarding the window of least disturbance for migratory birds. However Refuge has consistently been on record since 1950 that disturbance between fall through spring should be avoided. The Refuge did reissue the comment letter to Clallam County, correcting a minor mistake on disturbance timing.

- Jurisdictional authority and compatibility determination

There are two separate memos (1/15/2016 and 7/13/2021) from the Office of the Solicitor detailing Service (Refuge) responsibilities for the use deeded tidelands with respect to any oyster operation. Refuge staff have followed those recommendations. Departmental Solicitors have reviewed the draft compatibility determination along with HQ Refuge program staff and have not identified any legal or

policy concerns. The Service has also determined that the proposed aquaculture activities within the lease area is not a Tribal treaty right.

3. Misrepresentations on the record

- JST Operations

JST proposed oyster operations are a matter of record in the Army Corp permit application. The Refuge utilized what the JST provided and during the permitting process have requested clarification or confirmation from the Tribe on their proposed operation.

- Body of scientific literature and context to proposed operations

Given Dungeness NWR was established “as a refuge, preserve, and breeding ground for native birds” (Executive Order 2121, 1915, the long term focus and collection of data at the Refuge has been specific to migratory birds. The long term refuge data, combined with information from other resource entities and the extensive published studies on impacts due to disturbance are matter of record. Much of this information has been used in the 1997 Environmental Assessment for management of Public Uses on Dungeness NWR, the 2012 CCP and the current draft Compatibility Determination, all which have been through a thorough vetting and review process.

- Lack of acknowledgement of longstanding farm activity at exact site
- Terms and Conditions of 2007 DNR ‘Fallow’ Lease

There is a thorough understanding of the history of aquaculture on the Refuge and specifically this site. The administrative record dating back to the 1950’s shows Refuge engagement on this issue and consistency with regards to concerns and protections needed to minimize any impacts to migratory birds. The 1997 Environmental Assessment for management of Public Uses on Dungeness NWR, the 2012 CCP and the current draft Compatibility Determination include the background and history of aquaculture and Tribal involvement within Dungeness NWR.

- Removing or changing JST language in email communications with other agency representatives

At no time was any email communication modified, changed or altered and used it as an authentic document from JST in discussions with others.

4. Lack of faith in Tribal Government/Operations

- Project Sponsor cannot dependably conduct monitoring or assessments

Objections to monitoring proposals have never been based on who conducts the monitoring. All objections have been focused solely on the adequacy of the avian monitoring plan itself. The deficiencies identified in the monitoring plan were expressed by a broad cross section of Service professionals as well as from the U.S. Geological Survey. As an avian monitoring plan is required as part of the Clallam County's shoreline permit to the Tribe, Clallam County is currently contracting with West Ecosystems Technology, an outside entity to evaluate the Tribal monitoring plan.

- Undermining Tribal scientific staff and professionals

Differing viewpoints over potential impacts from oyster farming to migratory birds on Dungeness NWR exist. The Service position on that is based on the concern for the on Refuge migratory bird resource and at every opportunity the Refuge looked to work with Tribal staff and others on points of disagreement. The basis for the Service position is Refuge migratory bird data, pers. communication with WDF&W and the extensive body of published literature.

- Focus on 'long history' of Refuge without due recognition of historic and on-going S'Kallam presence in Dungeness Bay.

Refuge staff since 2015 have been addressing legal requirements, regulatory concerns and potential impacts specific to the JST proposal to farm oysters in Dungeness NWR. The legal and regulatory requirements of the various permitting agencies dictate the terms of the discussion.

- Private communications with DNR regarding the Tribes lease agreement

Communications between the Service and DNR and other regulatory agencies (ACOE, Clallam County) occurred on a regular basis over the oyster farming proposal and is standard practice. There have been 19 calls, emails and discussions between DNR and the Refuge on this lease since 2015. Recent communications with DNR staff over the current issued lease occurred on 9/17/21 with the staff of JST being notified in advance by the acting Regional Refuge Chief on 9/16/21 that a discussion with DNR was going to take place.