



JAMESTOWN S'KLALLAM TRIBE

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October 1, 2021

Jennifer Brown-Scott
Project Leader
Washington Maritime National Wildlife Refuge Complex
715 Holgerson Road
Sequim, WA 98382

RE: Compatibility Determination for Access to WA DNR lease located in Dungeness Bay, Clallam County

Dear Project Leader of DNWR,

On September 16, 2021, Christine Ogura provided verbal notification to Jamestown S'Klallam Tribe that the Dungeness National Wildlife Refuge elected to conduct a compatibility determination for the Tribe's access to its WA DNR aquatic tidelands lease. She further indicated that prior to making any adverse determination, she was making the Tribe aware of the potential and providing opportunity for the Tribe to modify its commercial operations plan. No specific details explaining why the decision was made to do the compatibility determination for access (and not gear retrieval as previously indicated), nor basis for the potential for a negative outcome was provided.

The Tribe is concerned that the above "notification", though not complete or explained properly or even from the designated person (the Refuge Manager), might trigger the provisions of 25 CFR 25.45 (b) ("Preliminary Procedure"). If this is the case, we are aware that we must object to the potential for both the negative decision and possibly even object to the decision to do a compatibility determination for "access" within 20 days of receiving the verbal notification to the Refuge Manager.

The purpose of this letter is therefore to ensure we properly and timely communicate our opposition to any adverse access compatibility decision and provide our explanations as to why we object. Please do clarify if the above communication by Ms. Ogura was intended to trigger the "Preliminary Procedure." You may know that the Tribe inquired for the Solicitor's name and contact information who advised the access determination was warranted, so that a full list of concerns could be expressed.

As you are aware, the Tribe does not believe a compatibility determination for access is justified. A partial list of the Tribe's reasoning was presented within our June 14, 2021 letter, and a fuller list can be furnished. But as a reminder, several of the issues we would like you to consider as follows:

1. The standard "materially interfere with or detract from fulfillment" of the mission or purpose of the refuge is not met by a very minimal ingress and egress use by the Tribe—a right they already have by virtue of their Treaty. It is not the same calculation as a public use nor is it the same extent or volume. See 602 FW §2.11 (B) (1) which recognizes that material interference by boats is of "little concern" if it is "a few boats" as opposed to "a growing number." Further, access to a priority use (fishing) can be considered compatible and was already found compatible in the DNWR Comprehensive Conservation Plan (i.e., "Fishing, Other, Tribal"). In these examples, the compatibility finding was justified and described (Appendix B, DNWR CCP 2013) that disturbance may occur, but that wildlife will have adequate amounts of undisturbed area for feeding, resting and cover, perfectly describe the Tribe's access use.
2. Property rights not vested in the federal government. Consider that pursuant to 602 FW 2.10 (B)(1) that property rights not vested in the federal government, such as easements, or Treaties, or the DNR lease, are all exempted and not proper for compatibility determinations in the first place. The "access" to a lease, and DNR ownership, is part of the lease and ownership right of the Tribe and DNR, it is not "vested" in the federal government and therefore no compatibility for access is appropriate. The right of access to usual and accustomed grounds is likewise not vested in the federal government.

Jamestown S'Klallam Tribe has held a lease in this location since 1990, which provides for access, and has never had this determination before. The Tribe has a treaty exemption for access, and the USFWS has gone on the record indicating that the only compatibility that is required is for gear retrieval. You also remember our multiple communications about your eventual compatibility determination analysis for gear surveillance and monitoring – activity which may occur on fee status ownership. Never during those communications was the need for an "access" determination brought to our attention. The Tribe remains alarmed that this late notice and pivot was purposeful with the intention to obstruct forthcoming permitted farm activities and cause delay to the known operation start date of October 15, 2021. Further, we have learned that you have also attempted to get DNR to revoke and amend the lease. This, if true, creates an impression that you are finding it difficult, as the Refuge Manager, to review the project with the neutrality required of your position.

The Tribe remembers also that you previously speculated that the farm activities could have 'an unacceptable' level of impact and that the record was eventually corrected to recognize that the science was inconclusive with little site-specific information. We hope that given that past

position, that as the Refuge Manager, you can keep an open mind to considering our points and exercise the sound professional judgement on this issue.

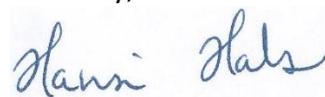
Regardless, the Tribe firmly believes that the permitted activities are in alignment with Refuge purposes. The Tribe was required to secure an Individual Permit under C.W.A. 404b because the project area lies within the boundaries of the Refuge. DNWR provided recommendations for Refuge-specific conservation measures to reduce possible impacts; nearly all of which were incorporated into the final oyster farm operations plan. We explained why limiting cultivation stock exclusively Olympia and triploid Pacific oysters was not feasible and that all other recommendations were acceptable and incorporated into the final operations plan. USACE conducted extra analysis to assure that the special aquatic site (DNWR) would not be materially impacted by their permit authorization.

We are in opposition to an adverse decision regarding access to our rightful lease, and to conduct permitted activities on said lease. A position that the access is incompatible interferes with our lease interest and DNR's property right to lease the tideland and violates both the Shellfish Agreement with the Federal Government and the Letter of Agreement (dated February 22, 1983) regarding tribal access. These are all important considerations.

Thank you for your consideration of our opposition and we hope to hear that the determination is deemed unneeded, or that you agree that wildlife will find sufficient food and resting places outside of the narrow boat access route (See attachment A). If not, please explain verbally (in a separate meeting with stakeholders) exactly what your position is based on and provide all supporting documentation including the legal analysis (if any).

As you know, time is of the essence, and if there is anything that you have decided that could interfere with the projected start date of October 15, 2021, the Tribe needs to see this explained immediately so we can take action to protect our rights and we need to be informed.

Sincerely,

A handwritten signature in blue ink that reads "Hansi Hals". The signature is written in a cursive, flowing style.

Hansi Hals

Natural Resources Director

Attachment A: Boat Access Path

Cc: Christine Ogura, Acting Regional Chief

Attachment A: Boat access path to Tribe's lease area.

