

Re: ACE EA

Gaboriault, Holly T <holly_t_gaboriault@fws.gov>

Wed 4/13/2022 3:02 PM

To: BrownScott, Jennifer <jennifer_brownScott@fws.gov>; Ogura, Christine <christine_ogura@fws.gov>; Stenvall, Charlie <charlie_stenvall@fws.gov>

Jennifer,

Thank you very much for these bullets and explanation. This helps clarify the question thoroughly.

Much appreciated!

holly

Holly T. Gaboriault (pronounced "Gaboreo")

On Detail as Acting Regional Chief (March 21-May 20, 2022)

National Wildlife Refuge System

U.S. Fish and Wildlife Service

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From: BrownScott, Jennifer <jennifer_brownScott@fws.gov>

Sent: Wednesday, April 13, 2022 2:40 PM

To: Ogura, Christine <christine_ogura@fws.gov>; Stenvall, Charlie <charlie_stenvall@fws.gov>

Cc: Gaboriault, Holly T <holly_t_gaboriault@fws.gov>

Subject: Re: ACE EA

Because FWS was not a cooperating agency the ACE NEPA document does not meet FWS NEPA standards, lacks necessary analysis, and uses mitigations that are not valid:

- The EA does not describe FWS laws and regulations or Refuge purposes, or analyze the impacts of the use in relation to them. The ACE EA states, "USFWS has the responsibility of completing the evaluation of whether siting a commercial shellfish aquaculture within the NWR is compatible with Refuge management, and consistent with their federal laws and executive orders, Service policies and treaties."
- It is our understanding that the draft EA was not provided for public comment. A public hearing was requested, but not held. The agreement was signed on July 27, 2021, and a local citizen filed a FOIA request for the document on August 17, 2021. This process does not meet our normal public involvement standard for EAs.
- Based on draft CD analysis, the preferred alternative is a non-Compatible alternative. All non-preferred alternatives were designated as "not reasonable", therefore their impacts were not assessed. If the proposal is changed to meet compatibility, the analysis would change – requiring a new EA. Additionally, the joint public notice of permit review of applicable ACE and State regulations (404 of the Clean Water Act and

Section 10 of the Rivers and Harbors Act, Section 401 of the CWA, State water pollution control laws, and the Coastal Zone Management Act) - it did not include analysis of the permit proposal in relation to FWS regulations.

- This EA allows use counter to the Refuge's existing EA, without discussion of why this change of direction is taken or what impacts it may have on regulating other uses in the closed area.
- They state that Fish and Wildlife Values are "neutral (mitigated)", which is counter to our record of fish and wildlife impacts from the use. They make this determination, but state that "the effect of this action on the Refuge's function with respect to wildlife it manages will be assessed by USFWS as the responsible and knowledgeable agency. Work windows to avoid or minimize effects to Refuge wildlife, particularly migratory shorebirds and brant, could be assessed by USFWS." They do not provide supporting scientific information or justification for the determination, which runs contrary to our draft CD analysis and concerns raised throughout the County and ACE planning processes.
- ACE includes implementation of an avian monitoring plan as an approach to mitigate impacts. Monitoring should not be described as mitigation as it does not reduce impacts - it simply identifies impacts once they have already occurred. We have stated in writing, that the monitoring protocol would actually increase human caused disturbance during the closed period, would not provide statistically valid information for decision making purposes, and would likely be unattainable during night operations.
- The analysis is also predicated on USFWS staff observing changes in shoreline sediment transport, wildlife disturbance, and public use and working with JSKT to cease or modify the work (pg 35 & 36). No baseline data exists to allow for impacts analysis and we do not have the staff necessary to monitor the project area and identify issues. In addition, no baseline data has been collected the avian monitoring protocol does not meet basic requirements to identify impacts and no baseline data has been collected. This requirement seems to push us into a permit enforcement position.

Given the departure from FWS NEPA standards, the lack of scientific justification, and the departure from our own scientific analysis; we would likely incur high legal risk from use of this EA. Therefore, it would not seem advisable to use the ACE NEPA documentation.

-jennifer

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Needles NWR~~

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From: Ogura, Christine <christine_ogura@fws.gov>

Sent: Wednesday, April 13, 2022 9:06 AM

To: Stenvall, Charlie <charlie_stenvall@fws.gov>

Cc: BrownScott, Jennifer <jennifer_brownScott@fws.gov>; Gaboriault, Holly T <holly_t_gaboriault@fws.gov>

Subject: Re: ACE EA

Hi Charlie and Jennifer,

Thanks for providing and yes, it was worthwhile to read, very helpful.

IF we go down the road of needing to evaluate the economic use of oyster farming and we are trying to answer the question posed by Hugh on if the ACOE EA addresses NEPA (e.g., the Tribe needing to do another EA) in reading the document, it seems like they would have to do one as in several parts of the ACOE EA they defer to the refuge to analyze certain actions and/or did not analyze certain actions based on the assumption of state lease stipulations.

Thoughts?

Thanks and please take care,
Christine

Christine Ogura

Deputy Regional Chief, National Wildlife Refuge System

U.S. Fish and Wildlife Service

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[A Beginner's Guide to the National Wildlife Refuge System](#)

[Why Visit National Wildlife Refuges?](#)

From: Stenvall, Charlie <charlie_stenvall@fws.gov>

Sent: Monday, April 11, 2022 9:41 AM

To: Gaboriault, Holly T <holly_t_gaboriault@fws.gov>; Ogura, Christine <christine_ogura@fws.gov>

Cc: BrownScott, Jennifer <jennifer_brownScott@fws.gov>

Subject: Fw: ACE EA

Holly / Christine

The Corps documentation of the EA is encapsulated in this Memorandum of Record. It's worth reading as they clearly talk about the impacts that this would have, the almost total opposition to the proposal

by the public, and FWS responsibility and our abstaining from taking a stand in a couple of situations. None of this strengthens the position of moving forward with allowing the proposed activity. Some of the more succinct verbiage from the MoR is as follows;

"The District Engineer determined the adverse environmental effects of the proposed activity were more than minimal due to the proposed project being sited entirely within the Dungeness National Wildlife Refuge creates more than minimal impacts to the refuge. Activities authorized under a Nationwide Permit must be minimally impacting individually and cumulatively. Therefore, the activity did not qualify for authorization under the Nationwide Permit and would be evaluated under a standard individual permit."

"Almost every comment (190+) stated they opposed siting a commercial oyster aquaculture operation within an NWR. Many stated they supported the JSKT's treaty rights but opposed a 'commercial' shellfish operation cultivating non-native species as described in the project description within the NWR. A couple of commenters believed the JSKT would operate with sensitivity for the environment. Many requested the JSKT consider other culturally appropriate. alternative commercial sites outside the Refuge."

"The Corps also asked USFWS to take the position of federal lead on this project, which was declined. It is the Corps understanding that USFWS, as the responsible and knowledgeable federal agency for the NWR, has the responsibility of completing the evaluation of whether siting a commercial shellfish aquaculture within the NWR is compatible with the Refuge management, and consistent with their related federal laws and executive orders, Service policies, and treaties, While the Corps has analyzed the Impacts of the project generally, it cannot assess further what impact the project will have on refuge management."

"Corps Response: The Corps agrees the project site is an area of both national and regional significance for migratory shorebirds and waterfowl, including Brant geese. The Corps believes the aquaculture work activities will alter the behavior and availability of feeding, resting/rooting and grit collection habitat necessary for these species at the project site. To prevent human disturbance to Refuge Wildlife species, USFWS currently manages public access and activities within the project site (tideland) to preclude public access within the migratory and wintering time periods of shorebirds and waterfowl."

Charlie

From: BrownScott, Jennifer <jennifer_brownScott@fws.gov>

Sent: Monday, April 11, 2022 9:23 AM

To: Stenvall, Charlie <charlie_stenvall@fws.gov>

Subject: ACE EA

Find attached the USACE Environmental Assessment and Statement of Findings for the Jamestown S'Klallam Tribe commercial oyster culture farm in Dungeness Bay.

The Corps assessment discusses the USFWS responsibility to evaluate the project for compatibility with Refuge management and regulations multiple times throughout the document (pg. 10, 14, 15, 19, 28, 30, 31, and 34). They also state the impacts from the project will be more than minimal due to the proposed project being sited entirely within the Dungeness National Wildlife Refuge, creating more than minimal impacts to the Refuge (pg. 5).

I apologize for the low resolution of the attached file. If a higher resolution copy is needed, the memo will need to be split into parts and sent as separate files, or shared over OneDrive.

-jennifer

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