



## Agency Feasibility and Completeness Analysis

This guide is intended to facilitate the agency review of rocky habitat site management designation proposals during the Initial Proposal Period of the Territorial Sea Plan – Part Three (TSP3) amendment process. Proposals will be assessed for completeness to determine if all necessary information has been included in the proposal, and that it is sufficient in nature to conduct agency review. Agency representatives (e.g. ODFW, OPRD, DSL, DLCDC, or others based on the details of individual proposals) will then provide analyses of the practical feasibility of implementing the proposal under relevant agency authority and jurisdiction, including alignment with the goals and policies of the Rocky Habitat Management Strategy.<sup>1</sup> Oregon Coastal Management Program staff will also forward proposals to federally-recognized Oregon Tribal Nations with interests in the coastal zone<sup>2</sup>, and may engage in consultation as necessary.

### Questions

Please fill in information and answer the questions below for *each* rocky habitat site designation proposal, and provide a brief summary report at the end. Please provide additional information, interpretation, concerns, or context where necessary. Some of the information may be duplicative with the Working Group evaluation to ensure consistent interpretation, transparency, accountability, and historic preservation.

### Evaluator Information

**Evaluator name(s):** Andy Lanier, Michael Moses, David Fox, Laurel Hillmann, Andrea Celentano, Shawn Stephensen

**Evaluator role/position(s):** Rocky Habitat Working Group Agency Staff

**Evaluator affiliation(s):** DLCDC, ODFW, OPRD, ODSL, USFWS

**Date of evaluation:** January, 2021

<sup>1</sup> TSP3 Sections E. 3. & 4. Step 2 – Agency Feasibility & Completeness Analysis

<sup>2</sup> Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, Coquille Indian Tribe, Confederated Tribes of Siletz Indians, Confederated Tribes of Grand Ronde, and Cow Creek Band of Umpqua Tribe of Indians



## Site Information

**Proposed site location:** Cape Blanco

**Designation category:**

Marine Research Area

Marine Garden/Education Area

Marine Conservation Area

**Is this a proposal to add, delete, or modify a rocky habitat site designation?**

New Site Designation (addition)

Existing Site Removal (deletion)

Alteration to Existing Site

**Name of principal contact:** Brittany Poirson

**Affiliated organization(s):** PISCO

**Date of proposal submission:** December 31, 2020

## Proposal Completeness

*Please answer each of the following questions as it relates to the completeness of the proposal.*

1. *Is the proposal complete? Have sufficient responses been provided for all questions, including indications or explanations for those questions which are not relevant or applicable? If not, please indicate which question(s) are of concern.*

Yes

2. *Have sufficient data, information, and/or other relevant materials been provided in order to facilitate proper review and evaluation of the proposed designation?*

Yes

3. *Is a rationale provided for any incomplete or missing information?*

Rationale was not provided to understand the justification for closure of commercial and recreational fish harvest, as well as restrictions live-fed aquaculture.

4. *Does the proposal consist of one place-based submission? (A small network of designated sites is acceptable, provided they are all the same designation category.)*

Yes

## Feasibility Analyses

*Please provide a brief analysis of the feasibility of proposal implementation as it relates to each of the following areas within the scope of your agency's mission.*

**Agency Jurisdiction.** *Consider broadly how the proposal fits in with factors such as your agency goals, strategic plan, management/regulatory authority, etc.*

The standard harvest prescription for Marine Research Areas is for no commercial or recreational take of invertebrates (excepting certain species), and algae except by scientific or educational permit. The proposal includes no commercial or recreational harvest of fish and no take of non-living resources except by scientific permit. The restrictions on take of fish and non-living resources are inconsistent with the regulatory standards and management practices for Marine Research Areas, and present many challenges to implementation and enforcement. The restriction on souvenir collection ("non-living resources") is unusual and protected in statute (ORS 390.705), and would require statutory changes to be implemented.

The restriction on live-feed aquaculture is also unusual, and it is highly unlikely that any aquaculture operation would ever be proposed or approved at this site. However, insufficient information has been provided to thoroughly analyze this provision.

The restriction on boat anchorage would require coordination with the Oregon State Marine Board (OSMB). Given the close proximity of the site boundaries to the shore, it is unlikely that boats would be anchoring in the proposed area. The primary fishing impact would be to shore anglers, and it is unclear if the boundary choices made to minimize impacts on anglers was done with consideration for shore anglers as well as boat anglers.

**Implementation.** *What are the practical and logistical implications or limitations of your agency implementing the proposed site management?*

The site boundary choices are difficult to understand – there are several gaps in intertidal area not included in the site boundary. Projecting the site on low tide satellite imagery reveals additional small areas of intertidal habitat not included. The designated area also includes some subtidal habitat, but there is no justification provided for why, and there is no mention of intentions to include subtidal area. This may be confounded by assumptions made about depth limits based on the SeaSketch site reports which appear to be inconsistent with on-site depth limits.

While the restriction on live-feed aquaculture appears unusual and unnecessary, it could be implemented via an internal agency policy to not issue permits for live-feed aquaculture at this site.

This portion of the south coast is not as prepared as other coastal areas to provide consistent volunteer support for a rocky habitat managed area such as this one. Given the remoteness of the site, it may be challenging to gather regular volunteers at this location from local communities.

**Programmatic and Budgetary Impacts.** *How will implementing this proposal affect your agency's programmatic work? What are the estimated costs or budgetary impacts as you see them (approximately)?*

Baseline costs will be staff time associated with rulemaking and site implementation activities.

Other costs will include staff time and installation costs for adding/updating signage.

As a Marine Research Area, there may be expectations for site access to conduct research activities during park closure hours. During times of budgetary strain, the park may experience unanticipated closures which could limit ongoing research activities. Opening the park for researcher access would require park staff presence and availability, which may not always occur, and this expectation should be clearly established.

**Landscape Management.** *How would designating this site fit into the broader context of coastwide management, such as the currently designated rocky habitat sites or the Marine Reserves Program?*

The site is well-located to fill gaps in rocky intertidal management on the south coast. It is approximately 50 miles distant, both north and south, from the next nearest protected intertidal rocky areas.

The federal government owns the land associated with the lighthouse (USCG, BLM), and there may be federal land management issues to consider prior to any potential implementation.

**Administrative Rule and Enforcement.** *What are the implications as you see them for any requisite changes to rules and regulations, and the ability of your agency to enforce them at the proposed site?*

Requisite changes to harvest and other proposed rules would need to be adopted through the standard agency rulemaking process if implemented.

The location of the site and the nature of the proposed regulations present many enforcement challenges while potentially increasing enforcement needs. The intertidal areas are difficult and potentially dangerous to access. Not all the intertidal area is visible from the top of the bluff, which would necessitate access by enforcement personnel. The remote location of the site may also delay state or federal law enforcement response in an area that already has limited enforcement presence. It would also be difficult to tell if someone were inside the offshore boundary, and difficult to enforce logistically either way.

**Territorial Sea Plan.** *In what ways does the proposal align with the goals and policies of the Rocky Habitat Management Strategy?*

The goals of the site align with TSP3 conservation and broader TSP goals. However, some of the proposed site restrictions are inconsistent with the Marine Research Area management prescription outlined in Table 1 of Section D, which do not recommend additional site-based closures for recreational or commercial harvest of fish.

The restrictions on souvenir collection (“non-living resources”), and commercial and recreational fish harvest, are inconsistent with the TSP3 goal of focusing on resource protection while allowing for appropriate use. Strong justification for these provisions would be required to rationalize these activities as inappropriate site uses.

**Other Considerations.** *Are there additional site considerations that should be noted? (e.g. size, shape, placement, or designation category of the proposed site; historical or institutional context; established relationships with communities, organizations, the public at large, or Tribal Nations; etc.)*

There is insufficient justification to close the site to commercial and recreational fish harvest. Restrictions on fish harvest and collection of non-living resources would make the site more restrictive

than a Marine Reserve, and be inconsistent with TSP3 intent and standard MRA management prescriptions.

Applying harvest restrictions to subtidal areas is unusual, though not impossible, and would be difficult to enforce given the irregular offshore boundary. Since the bulk of the human use and habitat impact concerns are in the intertidal area, there appears to be no justification to extend the harvest restrictions to the subtidal environment.

The proposed stewardship programs are challenged not only by the remote location, but are also intended to be reliant on programs that would be established in support of potential implementation of the proposed Marine Conservation Area at nearby Blacklock Point. While, if implemented, it would be reasonable for volunteer programs to support both sites, establishment of the programs as well as the site designation at Blacklock Point is presently uncertain.

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## Reviewer Comments and Feedback

*In the space below, please provide a (brief) summary of the feasibility of this proposal, and a rationale for recommendation. If more space is required, please attach additional pages.*

The proposal is complete, and includes sufficient information to facilitate review, with some exceptions. The justifications for restrictions on fish harvest and live-feed aquaculture are insufficient to facilitate full agency review. Concerns remain over these and other proposed provisions that may not be implementable or enforceable, particularly with respect to the restriction on souvenir collection (“non-living resources”), and boat anchoring.

At this time, the state agency representatives agree that this proposal warrants additional, merit-based evaluation by the Rocky Habitat Working Group, with the understanding that any further evaluation and potential recommendation should consider the following:

- Closure of commercial and recreational fish harvest is overly-restrictive, insufficiently justified, and inconsistent with the management prescription for Marine Research Areas. The site would be better served by following the standard provisions for an MRA.
- There is no need for harvest restrictions in the subtidal areas
- Non-living resource collection is protected in statute (ORS 390.705) and should be removed as a management recommendation
- The exact site boundaries would need to be revised to more closely align intertidal habitat distribution with site goals
- The proposed site and associated provisions present an array of enforcement challenges

The agencies participating in the rocky habitat site management designation process (DLCD, OPRD, ODFW, DSL, USFWS), acknowledge the significant effort made by PISCO to develop this proposal, and thank them for their careful efforts to highlight the needs and concerns at this site.