



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, DLCD, 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.¹ Oregon Coastal Management Program staff will also forward proposals to federally-recognized Oregon Tribal Nations with interests in the coastal zone², 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): DLCD, ODFW, OPRD, ODSL, USFWS

Date of evaluation: January, 2021

¹ TSP3 Sections E. 3. & 4. Step 2 – Agency Feasibility & Completeness Analysis

² 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: Ecola Point and Sea Lion Rock

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: Margaret Treadwell

Affiliated organization(s): North Coast Rocky Habitat Coalition

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?*

N/A

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.*

Proposed harvest rules are clear and within agency jurisdiction and regulatory authority. However, several of the rules proposed for human use depart from agency enforceability and/or jurisdiction. Namely:

- No climbing on rocks - Agencies cannot restrict north-south access along the Oregon Coast (ORS 390.610), and climbing on rocks would be required for passage of this site.
- No off-leash dogs – Need for this provision lacks sufficient evidence for justification, would be difficult to enforce, and may not be implementable.
- 500 ft. vessel closure around offshore rocks – It is unclear which rocks would have the closure, and whether this would affect the nearby crab fishery. It is also unclear whether/how this would apply to small personal craft such as kayaks and stand-up paddleboards. USFWS already advises, but does not require, that boaters stay more than 500 ft. away from rocks, islands, and cliffs within Oregon Islands NWR to avoid disturbing wildlife and incurring related violations. In addition, implementation of this provision would require rulemaking from Oregon State Marine Board, which is not involved in the rocky habitat site designation process.
- 2000 ft. buffer for airplanes & drones – This would require statutory amendments at the state level, and rulemaking from the Federal Aviation Administration, which is not involved in the rocky habitat site designation process. USFWS already advises, but does not require, that aircraft stay more than 2000 ft. away from rocks, islands, and cliffs within Oregon Islands NWR to avoid disturbing wildlife and incurring related violations.

The proposer's intent is to avoid disturbance of seabirds and other wildlife at the site, but this is already prohibited under ORS 498.006.

The 2000 ft. restriction on kite flying would be implementable, although the agencies question the necessity given the likelihood of the activity occurring at this site. The intent behind this prohibition would also be covered under ORS 498.006.

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

Implementation would require rulemaking by several agency commissions, particularly ODFW and ODSL to adopt administrative rule changes to harvest regulations for invertebrates and algae.

Provisions on human use activities listed above are unlikely to be implementable or enforceable.

The landward boundary of the proposed MCA was requested at the statutory vegetation line (SVL), however, the proposed site abuts Ecola State Park along its entire length. OPRD does not define an SVL for state parks. The request for the site to begin at the SVL would require survey for the correct location of the ocean shore boundary.

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. Additional budgetary impacts would be installation of informational signage at beach access points on the north and south sides of the site. If all the proposed regulations were implemented, staff time for rulemaking would be significant. There would also be a potentially large increase in enforcement-related costs.

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?*

Proposers prefer to manage site with additional designation and volunteer stewardship programs at Chapman Point nearby. The site is near other high-use, high-visibility sites such as Ecola State Park and Haystack Rock, and may benefit from site-specific management given the high degree of visibility and visitation levels.

The site is not near any marine reserves and is not intended to affect recreational fishing opportunities. However, enforcement of the 500 ft. vessel buffer may impact commercial crab fishing near the designation, particularly if the seaward boundaries were adjusted to incorporate the buffer.

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. Rules would be enforced in part by installation of signs and on-site volunteer education programs. Enforcement would be similar to other protected shoreline areas. The site is not readily visible from normal roadway traffic - OSP would need to make designated trips out to the site to observe activities.

Enforcement of the vessel closure area would be difficult, and the need to restrict watercraft has not been sufficiently demonstrated. In addition, it is unclear if non-motorized watercraft are intended to be restricted. If they are, then there could be an additional safety concern about requiring small non-motorized watercraft such as kayaks and stand-up paddleboards to paddle well offshore to get around the point.

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

The proposal aligns well with most TSP3 objectives and policies, as well as broader conservation goals, however there are concerns about the access goals. The proposed restrictions on climbing/walking on intertidal rocks conflicts with statewide beach access policies (ORS 390.610) and TSP3 Objective b), which states that site management, "...allows for enjoyment and use of Oregon's rocky habitats while protecting them from degradation and loss", as well as Policy D. which states, "Public access shall be preserved to the maximum extent practicable and minimize user conflict." Agencies at this time do not see justification for a permanent access restriction to the rocky intertidal habitat. However, Policy E.

may allow for seasonal or temporary restrictions if justified. Climbing on offshore rocks is already prohibited by USFWS.

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.)*

Inclusion of subtidal areas and associated restrictions may not be necessary if offshore rocks in the subtidal zone are not connected at low tide. The 500 ft. vessel buffer is not incorporated into the site boundaries, which presents a potentially misleading view of the extent of site restrictions. If the boat access restriction is implemented, then boundaries could be modified to include the 500 ft. buffer for additional clarity. This would require additional coordination with the Oregon State Marine Board.

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 and rationale to facilitate agency review. However, concerns remain over several of the proposed provisions that may not be implementable or enforceable, particularly with respect to the human use activity restrictions. Additionally, some of the justification for these restrictions incorrectly characterizes rules in place at Haystack Rock - guidance there is the same as it is for all Oregon Islands NWR (offshore rocks) managed by the USFWS along the whole coast (not specific to Haystack Rock).

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:

Provisions addressed by existing rules prohibiting disturbance of wildlife (ORS 498.006):

- Restriction on off-leash dogs
- 500 ft. buffer for boats, unless subtidal restrictions are sufficiently justified and site boundaries modified accordingly
- 2000 ft. buffer for airplanes & drones
- 2000 ft. buffer on kite flying

Problematic for implementation:

- Restriction on climbing/walking on intertidal rocks (ORS 390.610)
- 2000 ft. buffer for airplanes & drones

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