

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: Fogarty Creek

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: Fran Recht

Affiliated organization(s): Citizen, Depoe Bay, Oregon

Date of proposal submission: December 29, 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 intent behind the boundary overlap with Boiler Bay MRA. There doesn't seem to be justification for closing the site to fishing.

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 proposed closure of commercial and recreational fish harvest is unnecessary, and difficult to rationalize from the information presented. Other than kayaks, there is unlikely to be any fishing from boats. The primary impact of restricting fish harvest at this site would be to shore anglers, rather than boaters. Closure of invertebrate harvest is also not completely necessary in the subtidal portion of the proposed site, and there is unlikely to be watercraft-based invertebrate harvest in the offshore area.

The overlap with Boiler Bay Marine Research Area is difficult to understand, and unclear as to the necessity of impacting that portion of the MRA. The proposer was contacted by researchers at PISCO to request boundary adjustments to exclude the portion around Rabbit Rock, south of Fogarty Creek Beach. The proposer was also contacted by DLCD to clarify the intent of the remaining boundary overlap and the proposer indicated amenability to moving the proposed boundary to abut, but not overlap, the MRA.

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

Implementation would require the standard agency rulemaking process. In this instance, this may also involve any requisite changes to Boiler Bay MRA.

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, and staff time costs related to enforcement of the harvest closures. At this time however, OPRD does not have the budget for new or replacement signage.

Relatively little stakeholder outreach and engagement were conducted in development of the proposal. Agencies would want to conduct this outreach with local communities and stakeholders to ensure their feedback has been appropriately considered in the implementation of the proposed site. Agencies would incur staff time costs, and potentially travel costs, to conduct this work.

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?*

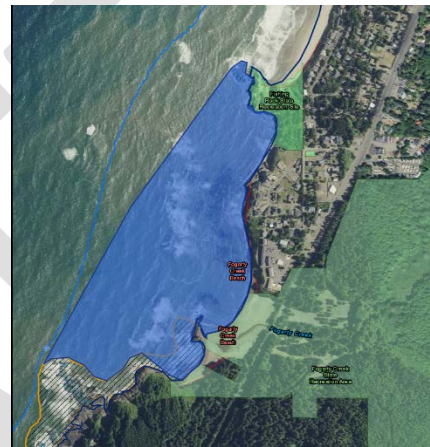
Implementation of a new designation raises concerns regarding public confusion of variable site management on a section of the coast which already has many different designations and limitations nearby. This may also present potential issues with equity of access to harvest along this portion of the coast for recreational opportunities focused on those species which would be restricted from harvest.

Most nearby areas are either closed to harvest, or if they allow sport invertebrate or algae harvest, are difficult or dangerous to access. Harvest closures at this location would necessarily redirect harvesters to other locations nearby, resulting in an increase in pressure on those sites which may be less safe to access.

The proposer has indicated they are amenable to modification of the southern boundary overlapping Boiler Bay MRA, and request that evaluators consider the boundary modification below to accommodate a request made by researchers at the PISCO consortium to ensure no impacts to their long-term site research and monitoring. The adjusted site boundary still overlaps with a small portion of the Boiler Bay MRA. If the Boiler Bay MRA were to require modification, it would change site management for the area annexed into the new MCA.



Original proposed site boundaries



Modified site boundaries

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 boundaries selected align with natural landmarks, which aids in visual understanding of where site rules apply, potentially aiding in regulatory compliance and enforcement. Enforcement of harvest regulations would be relatively straightforward. However, the broad harvest closures may increase enforcement needs at this site, and local capacity to respond is already constrained. In addition, several areas within site boundaries are not readily visible from publicly accessible upland areas, and would increase enforcement difficulty.

The fish harvest closures would redirect shore anglers and other harvesters to less accessible or safe areas nearby to continue harvest activities, potentially also increasing enforcement needs and safety concerns at other sites in the area.

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, the proposed restrictions on 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.

Limited public input was gathered to inform the development of this proposal, which is viewed as a key component of a successful proposal, and to remain consistent with the TSP3. Without additional public input for this site, the proposal is inconsistent with several TSP3 components, potentially including Objectives c. & e., Management Principles iv.a. & e., and the principles outlined in Section A.5.b. Education & Public Awareness.

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.)*

While the extent of the subtidal area is limited, closure of commercial and recreational fishing at this site raises concerns about it being perceived as a Marine Reserve. While the subtidal habitat is very shallow and essentially inaccessible to most boats, there may be a low likelihood that this would be considered a Marine Reserve. At this time, there is insufficient justification to impose no-take restrictions on fish harvest.

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 justification for closure of commercial and recreational fish harvest is insufficient. Additionally, further public input is needed to ensure that site management appropriately reflect community concerns and desires.

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 and insufficiently justified
- Additional public outreach and stakeholder engagement efforts would need to be conducted at agency cost and capacity
- The need to annex the northern portion of Boiler Bay MRA is unclear, but the proposer is amenable to modifying site boundaries to accommodate the concern
- Broad harvest closures at this site could reduce equity of access to harvest on this portion of the coast
- Enforcement needs will necessarily change, and could be problematic with respect to local response capacity and on-site safety

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