

Rocky Habitat Site Proposal Initial Recommendation

The Rocky Habitat Management Strategy Initial Proposal Process (2020-2021)

Proposed Site

Site Name: Fogarty Creek Marine Conservation Area

Site Map: http://seasket.ch/y0uvvr4X_7

Proposal Materials: <https://bit.ly/2NMOnj7>



Initial Recommendation

This document is a draft summary of the site proposal evaluations conducted by the Rocky Habitat Working Group. The final drafts will be included in a recommendation packet that will be forwarded to the Ocean Policy Advisory Council (OPAC). The summary below represents an initial draft of the recommendations made by the Working Group for Fogarty Creek Marine Conservation Area. Proposal recommendations will be made available for a 30-day public comment period, during which proposers and other members of the public are invited to submit their feedback. The Working Group will review the feedback for consideration prior to making their final recommendation determinations.

Initial recommendations were crafted using a ranking system whereby the members of the Working Group entered a vote for each proposal where 1 = *Recommend*, 2 = *Recommend, with considerations*, 3 = *Reservations, even with considerations*, and 4 = *Do not recommend*. Consideration are those components of a proposal, identified through the evaluation process, which must be addressed to facilitate its implementation. A vote of modified consensus was agreed upon where no more than 20% of the voting Working Group members could vote *Do not recommend* (4) in order for a proposal to receive a recommendation to move forward for consideration by OPAC.

Average Vote Ranking: 3.6

Initial Recommendation: Do not recommend

Summary of Considerations

The Rocky Habitat Working Group identified the implementation considerations listed below for the proposed Fogarty Creek Marine Conservation Area. Any potential recommendation from OPAC should address these considerations as outlined in the following summary to ensure that implementation of the proposed site is a) consistent with state agency authority and coastal policy, b) appropriately inclusive and representative of stakeholder interests, c) reasonably achievable within the existing framework of rocky habitat site management, and d) in balance with the merits and goals of the proposed site.

Any potential recommendation for implementation of this site should address the following considerations:

- Site management with respect to goals, harvest restrictions, and use
- Concerns about enforcement, equity of access to harvest, marine reserves perceptions
- Additional needs for stakeholder engagement
- Site boundary change and overlap with Boiler Bay MRA

The Fogarty Creek area is the northern portion of an extensive section of diverse rocky habitat on the central coast that stretches south to the Otter Rock area. It is a high visibility, high use area popular for activities such as sightseeing, beachcombing, dog walking, and occasionally, some harvest and fishing. The rocky areas are home to nesting seabird colonies and pinniped haulout areas, as well as diverse submerged aquatic vegetation (SAV) including several species of seagrasses and shallow water kelp beds.

The site is adjacent to Boiler Bay Marine Research Area which has been used by scientists at Oregon State University for many years for intertidal monitoring and marine ecology research. Fogarty Creek is also a long-term monitoring site for studies by the Partnership for Interdisciplinary Studies of Coastal Oceans (PISCO) research consortium. This has led to some recognition that ocean acidifications (OA) is causing impacts in the nearshore in general, and that protection of submerged aquatic vegetation may not have all the intended consequences of ameliorating the impacts of OA. The proposal suggests that this site could be used to test this hypothesis.

The concerns expressed in the proposal are primarily focused on protecting seabird colonies, pinniped haulouts, and SAVs. The primary goal is to preserve site biodiversity in its natural state by designating the site as a no-take marine conservation area. The proposal emphasizes preservation of SAVs for scientific research and monitoring, as well as general habitat protection. Key natural resources at the site are well-described, as well as other unique features such as shallow-water kelp beds. Typical site uses are also clearly described, with a focus on continued allowance of non-consumptive activities while limiting harvest to scientific and education permits only. The proposal is for a unique site that has some important qualities, but it is adjacent to other well-known, high use areas. It is unclear whether the proposed new designation would aid existing site management in the area.

The goals of the site align with TSP-3 conservation and broader TSP goals. However, the proposed restrictions on commercial and recreational fish harvest are inconsistent with the TSP-3 goal of focusing

on resource protection while allowing for appropriate use. As a high-use area for recreation as well as harvest, strong justification for these provisions would be required to rationalize these activities as inappropriate site uses. The primary impact of restricting fish harvest at this site would be to shore anglers, rather than boaters. Other than kayaks, there is unlikely to be any fishing from boats. Closure of invertebrate harvest is also not completely necessary given the offshore extent of the proposed area. There is unlikely to be watercraft-based invertebrate harvest in the offshore area, calling into question the need for the subtidal harvest restrictions.

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 likely to already be constrained. In addition, several areas within site boundaries are not readily visible from the upland, and would increase enforcement difficulty.

The proposed harvest restrictions also present potential issues with equity of access to harvest along this portion of the coast for those species which would be restricted from harvest. Most nearby areas that allow sport invertebrate or algae harvest are either closed to harvest or are difficult or dangerous to access. Harvest closures at this location would necessarily redirect harvesters to other locations nearby, which may be less safe to access and will increase pressure on those sites. Displacement of harvesters would also increase enforcement needs at other sites, and potentially increase conflicts with private landowners. Implementation of a new site designation also raises concerns regarding potential confusion with variable site management on a section of the coast which already has many different designations and limitations nearby.

While the extent of the subtidal area is limited, closure of commercial and recreational fishing at this site is insufficiently justified. Since the subtidal habitat is very shallow and essentially inaccessible to boats (except non-motorized vessels such as kayaks), offshore fishing pressures are relatively low. However, shore angling does occur at the site and would necessarily be eliminated. There is also a great deal of local controversy about Marine Reserves, so it is conceivable that some may perceive any area closed to fishing as equivalent to a Marine Reserve. At this time, there is insufficient justification to impose no-take restrictions on fish harvest.

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 TSP-3. Without additional public input for this site, the proposal is inconsistent with several TSP-3 components, including Objectives c. & e., Management Principles iv.a. & e., and the principles outlined in Section A.5.b. Education & Public Awareness. Public input is needed to ensure that site management appropriately reflect community concerns and desires.

The southern portion of the proposed designation overlaps with the northern portion of the Boiler Bay Marine Research Area. This overlap is difficult to understand, and unclear as to the necessity of annexing that portion of the MRA. The proposer was contacted by researchers at the PISCO research consortium to request boundary adjustments to exclude the portion around Rabbit Rock, south of Fogarty Creek Beach where PISCO has conducted regular research and monitoring activities for over 20 years. The proposer has indicated they are amenable to modification of the southern boundary to reduce or eliminate the overlap with Boiler Bay MRA, and request that evaluators consider the boundary

modification below to accommodate the PISCO request to ensure no impacts to their long-term site research and monitoring. If the Boiler Bay MRA were to require modification, it would change site management for the area annexed into the proposed MCA, however, the border of the MRA would still need to change.

Site boundary adjustments:



Original proposed site boundaries



Modified site boundaries

At this time, the Rocky Habitat Working Group does not recommend Fogarty Creek Marine Conservation Area for potential recommendation to LCDC, with an understanding of the merits, perspectives, and considerations described above and in the full packet of evaluation materials.

4/20/2021

Dear Rocky Shore Working Group members:

Thank you for reviewing my proposal for Fogarty Creek State Park Marine Conservation Area.

I am disappointed that you did not recommend the proposal to move forward. I think the low ranking is due, at least in part, to a misunderstanding of the existing uses on the site, the threats to the resources, ease of enforcement, and other things. I'm sorry if it wasn't clear from my proposal.

I would appreciate your review of this information and a reconsideration. As someone who has visited the site usually multiple times a week for over 30 years, I intimately know the site and its uses.

A. Site management with respect to goals, harvest restrictions and use.

1. The goal to the proposal is to avoid threats to living resources while assuring the site remains attractive, diverse and healthy for people to enjoy despite increasing use (more and more use each year and with the proposed development of a camp site there).
2. Because of the research reserve to the south, having a very small control area to the north would be helpful to advance PISCO research goals (related to larval settlement and other things) and allow for specific non-invasive study (with instrumentation) within the MCA of ocean acidification and hypoxia buffering.
3. Right now, there is very little harvest—occasionally there is a surf fisherman, but surf fishing is common and productive on the sandy beach to the north of Fishing Rock.
4. Mussels and barnacles are very sparse and sporadic. It is not a place that people go to harvest. It would be very easy to deplete these small existing beds by a few campers.
5. There is occasional harvest of seaweed at the site. There is no enforcement of limits and such use could frustrate study of the potential buffering capacity of algae.
6. There are fishing kayaks that launch from the beach occasionally. They have tended to go out past Rabbit Rock and turn south towards Boiler Bay, but I think it a matter of time before they fish around the offshore rocks at Fogarty, as our seas are getting increasingly calm on many days.
7. Since there is almost no extractive use at the site, and no closures to fishing anywhere else for miles (the small MCA at Whale Cove) the idea that there is "insufficient justification" to impose no-take restrictions on fish harvest seems un-reasonable. Why wait until there is pressure and when we'd be taking "something away" from people, rather than being pro-active about protecting a very small area and allowing it to be a control site and a research site?

B. Concerns about enforcement, equity of access to harvest, marine reserve perceptions

8. The site is fully visible for enforcement purposes from just 2 locations (from the beach or Surfriider Motel) for the south portion of the site and from Fishing Rock Headlands for the N portion of the site.

9. Boiler Bay Research Reserve does NOT restrict fishing opportunities, provides fishing opportunities from the rocks and from the intertidal area around the “boiler” of Boiler Bay.
10. Surf-fishing is popular to the N. of Fishing Rock headlands. It is quite occasional at Fogarty Creek State Park
11. The site is so small that any marine reserve perceptions would be minor—people use the beach mostly for agate hunting and beach walking and playing. As noted harvest is very limited now and people appreciate the beauty and biodiversity of the site. It is easy to provide and explain a protected status of a site, when there ISN'T existing uses, rather than “taking things away” when there is.
12. The site isn't one that day-use fishermen or the charter boats from Depoe Bay use. The kelp is a nursery though for those very fish they depend on.

C. Additional needs for stakeholder engagement

13. Public input from the community of interest was collected. The community of interest is the people who use the site. In addition to reviewing state park information about the site uses and observing every time I go to the site, what people do, I talked to users of the site about Fogarty Creek and why they come there and what they appreciate. Residents of Depoe Bay and Gleneden Beach use the site for dog walking and agate hunting. They take their grandkids here because the stream is safer for kids to play in then the ocean. Visitors like the agates, they also like the stream for kids play, older youth like climbing on the rocks. Many just use the picnic areas and go to the beach for a short while. Not one person I talked to said they came there to harvest anything. How else would public input be gathered in order to interview people in the time of Covid. Perhaps tabling to interview people?
14. There are only 3 site access points, so that interpretive signage such as the one that was stolen about the value of kelps would make it easy to help people appreciate the biodiversity value of the site and the rules.

D. Site boundary change and overlap with Boiler Bay MRA

15. The modified boundaries were discussed and mapped directly with Dr. Bruce Menge's assistance. The only reason I suggested the boundary changes was to make the rules clearer and enforcement easier, but these could be dropped and just have the MCA and the Boiler Bay MRA abut each other, if that is a major consideration.

Thanks for considering this information.

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