

Ocean Policy Advisory Council Meeting

Public Comment Summary

April 3, 2019

During the April 3, 2019 meeting of OPAC, 3 members of the public offered oral comment pertaining to the ongoing Rocky Shores Management Strategy update. See the notes and full comment letters below for more detail.

1. **Fran Recht** – Comments pertaining to the protection of submerged aquatic vegetation (SAV)
 - Inclusion of management principle for the protection of SAV.
 - Inclusion of policy prohibiting the harvest of SAV.
2. **Joe Liebezeit**– repetition of comments mentioned in Portland Audubon comment letter
 - Inclusion of agency process for site designation
 - Inclusion of a management principle and policy deferring all action to the precautionary principle.
3. **Tara Brock** - repetition of comments mentioned in PEW Charitable Trusts comment letter
 - Removal of limitations on community based proposals
 - Inclusion of agency process for site designation
 - Inclusion of a management principle and policy deferring all action to the precautionary principle.

Learn more about the Territorial Sea Plan and the update to Part 3 (Rocky Shores) at www.OregonOcean.info

Comment letter presented to OPAC from Fran Recht

Dear OPAC members:

Good morning. My name is Fran Recht and I'm the habitat program manager for the Pacific States Marine Fisheries Commission. I serve on the Pacific Fishery Management Council's habitat committee and I also serve, at your behest, as the conservation representative on the Ocean Acidification and Hypoxia Council.

With the information gained from all these hats, I am here to ask you to protect kelps, algae and sea grasses (SAVs) as a default measure that benefits many fish and wildlife species and that will perhaps help buffer for local impacts of ocean acidification and hypoxia to minimize the stress to our fish and shellfish resources. Similar public comments have been received earlier in your process

The policy document is good and has some good language, and I thank everyone for the extremely hard work they put into it. I am concerned though that your goals are not likely to be met if you do not extend a protective designation for SAVs seaward to wherever these habitats occur sub-tidally and around offshore islands and add or amend a policy that makes this clear.

Kelp forests which depend on rocky substrates are an essential fish habitat as designated by the NMFS and the Pacific Fishery Management Council, and also a habitat of particular concern. Because of the drag created by the plants, current speed inside a kelp forest is greatly reduced. The calmer environment within the forest coupled with the habitat complexity provide a refuge for many fish as well as invertebrates and marine mammals. Because kelps are primary producers that modify the environment to create suitable habitat for a great diversity of species, they are known as foundational species.

Many larval fish such as eulachon, an important prey species for salmon and many other fish can survive in this shelter. A single kelp plant has many hundreds of crabs, and other invertebrates living on it and hundreds of fish swimming around it in search of prey. Some of the fish known to make extensive use of this habitat are juvenile coho and chinook salmon, surf smelt, cabezon and many juvenile rockfish including black rockfish, blue rockfish, olive rockfish, and kelp rockfish.

I would like to see a policy that makes clear the prohibition of SAV harvest or disruption of rocky shores with SAVS. Of course no such designation would affect fishing, it just relates to plants. The default should be protection of these habitats, with any impacts fully avoided (or minimized or mitigated where not possible).

The OAH Council had a presentation from Dr. Frances Chan about the scientific panel he co-chairs called the West Coast Ocean Acidification and Hypoxia Science Panel. That Panel is sponsored by Oregon State University's Institute of Natural Resources and the California Ocean Science Trust. And, in addition to Dr. Chan has many eminent scientists from Oregon State University who you are familiar with, including Dr. Jack Barth, Dr. George Dr. Burk Hales, Waldbusser, and Dr. Waldo Wakefield. In regards to the protection of kelps and submerged aquatic vegetation, the science panel took a "no regrets" approach. Essentially saying that there were so many benefits to protecting kelps and SAVs that while the jury was still out about the potential mitigation benefit of kelps for OA and Hypoxia, that there wasn't a down side to that protection.

Similarly, one of the priority Action recommendations of our Oregon's OAH Council, co-chaired by Dr. Caren Braby and Dr. Dr. Jack Barth is Action item 3.2a which is to "Promote SAV conservation and restoration strategies and opportunities to achieve short term buffering, carbon sequestration and ecosystem services benefits.

Indeed, the group noted the importance of working with OPAC and OPAC's STAC in this Rocky Shores Strategy to "ensure that OAH adaptation and resilience strategies are incorporated into long-term planning outcomes for Oregon's Rocky Shores management".

So, my suggestion would be to make things clearer by putting SAV conservation in a separate policy; striking the marine plants reference in policy I.

Comment letter presented to OPAC from Fran Recht

I. Harvesting, gathering, or scientific collection of marine animals in rocky habitat areas shall be conducted in a manner that minimizes impacts and disturbance to habitats or other organisms.

insert a new policy or add to the end of “K’ related to ocean acidification (though the benefits to fish and wildlife and the ecosystem would not be acknowledged):

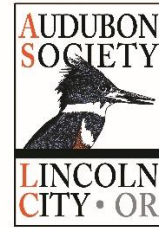
“The commercial harvesting or gathering of marine plants or damage to the rocky habitat supporting these species is prohibited. “

Thank you.

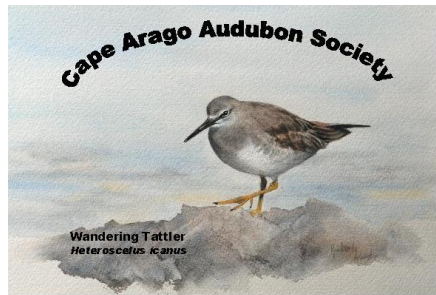
Fran Recht

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Re: Territorial Sea Plan (TSP) - Rocky Shores Amendment – phase 1

March 25, 2019

Dear Department of Land Conservation and Development,

On behalf of nine Oregon's Audubon Chapters and our more than 16,000 members across the state, we appreciate the opportunity to submit comments regarding the TSP Rocky Shores Amendment. We are encouraged to see Oregon Department of Land Conservation and

Development (DLCD) is moving ahead with this process and providing multiple opportunities for public comment.

Oregon's rocky shorelines are iconic and are important ecologically and recreationally. Many Audubon members across the state care deeply about these places and are concerned about their management and protection. These dynamic ocean shoreline habitats are home to a diversity of creatures living on the edge of their ecological threshold, including sensitive species of fish, birds, mammals, plants and invertebrates. The ODFW Nearshore Strategy lists a wealth of strategy species that reside or depend on rocky shores habitat¹. These habitats also offer important nursery grounds for economically important species (e.g. rockfish). At the same time threats from increasing human population and visitation², ocean acidification³, and other environmental and anthropogenic factors are placing new challenges on Oregon's rocky shore habitats and the species that occupy them. We look forward to a strong rocky shore management strategy that will prioritize protecting habitats in balance with human use.

Oregon Audubon Council Recommendations:

Included below we offer specific recommendations to the DLCD regarding the text in the first full draft of the general strategy:

Highest priority recommendations:

1. DLCD should provide more clarity and justification on why the community proposals to redesignate sites only will be allowed in the rocky shoreline zone (and not the subtidal/offshore rocky reefs). We strongly urge DLCD to consider adjacent subtidal areas as part of community-led proposal designations if there is ecological justification for it. Under the Management Principles section ii "Ecological Units" (Page 4) it states "the interconnected relationship between rocky shoreline areas, offshore sites, and associated rocky features *warrants areas to be managed as an ecological unit*". We agree with this management principle, yet the decision to only relegate community proposal site designations to rocky shoreline areas is incompatible with this management principle
2. We urge DLCD to include a Management Principle to defer to a *precautionary approach* for site management if current scientific information is inadequate (i.e. clear data gaps are present) inhibiting the ability to develop clear and effective management guidelines. The precautionary approach should support site designations with stronger protections until such a time where adequate science allows for a more cogent assessment of viable site management options. This precautionary approach language should also be included in section b. Policies (page 7).

¹ <http://oregonconservationstrategy.org/oregon-nearshore-strategy/>

² <http://www.oregonconservationstrategy.org/oregon-nearshore-strategy/coastal-communities/>

³ <https://www.oregonocean.info/index.php/ocean-acidification/85-oa-coord-council>

3. Although we are pleased that there is a mechanism for community members to submit site designation proposals it is unclear as to why relevant agencies (i.e. Oregon Department of Fish and Wildlife [ODFW], Oregon Parks and Recreation Department, etc.) are not formally invited to propose site designations. In particular, the mission of ODFW is "... to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by present and future generations". Clearly, ODFW and other relevant agencies that have a mandate for protecting and effectively managing Oregon's wildlife and habitats should employ their in-house expertise and play a key role in the rocky shores process including proposing site designations at sites that are in need of protection based on best available science. A public comment period could easily be incorporated into any agency-led designation proposal.

Currently the community-led process for site designations, as it reads in Appendix I, places a lot of responsibility on the "nominating entity" (i.e. the community individual or group) to develop a proposal including "gather ecological and social site data, provide maps of the site, surveys and reports of stakeholder support and opposition, etc." (see figure on page. 18 in the Appendices document). Our coastal member groups have indicated this is a heavy lift in small rural communities where volunteers are already overtaxed with many needed community projects. The way this "community-led" process is currently framed we fear it will dissuade a lot of community members from submitting proposals due to the complex and time-consuming steps involved.

Moving forward in the rocky shores process ODFW (and perhaps an interagency group) should lead a review of the new DLCD rocky shore inventory and conduct a formal analysis to identify locations of conservation concern and propose site designations. This proposal then should be made available for public comment.

4. We urge DLCD to broaden the designation proposal process to all Oregonians. Oregon's rocky shoreline habitats are a resource for all Oregonians and even for ocean users that come from beyond our state's borders. Why should the proposal process be limited only to coastal communities?
5. We recommend that proposal nominations for new site designation (or re-designation) not have a limitation of five per year. There are many sites on the coast which had previously been labeled as "not yet designated" or "marine shore". Many of these sites may be worthy of designation based on the new inventory. At least in the first phase of site proposal review, there should be no limitation on site nominations and we also recommend allowing multiple sites be designated in one proposal.
6. We are concerned that sites that are designated (but not actively managed) are now no longer included in the chapter draft. In the original plan there were 8 marine gardens (current chapter draft includes 7), there were 7 Research Reserves in the original plan (current draft includes 6), the original chapter included 10 designated Habitat Refuges (only 1 included in the current draft) (See page 101 of original 1994 Rocky Shores Plan). At some time in the past those sites were designated and that information should not be

discarded. We do agree that those sites could perhaps be reevaluated and, if warranted for continued designation, should move to the next step of implementation to active management. For the time being those sites should remain in the chapter with their current designations or be sure to be included in subsequent parts of the rocky shore plan. It would be fine to list these in a table and indicate that they are not currently enforced by ODFW but had previously been designated.

7. We appreciate that DLCD will provide an interactive mapping tool that will facilitate the designation process. We ask that the agency provides all known relevant and up-to-date data layers for ecological, human use, climate change and other vital information that will be important for making designation decisions. The tool should be easy for members of the public to navigate.

Additional comments:

- We recommend providing more detail on the creation of a “coast-wide network and communications strategy” mentioned on page 6 and throughout the document. What agency, organization or group will take the lead on developing the communications strategy? What is the timeline?
- We recommend replacing the term “citizen science” with “community science” throughout the document. Many of us in the conservation field have made the important switch from "citizen science" to the more inclusive term "community science". Please read this: <http://debspark.audubon.org/news/why-were-changing-citizen-science-community-science>
- We recommend additional select literature citations be included in the plan to back-up key statements. In particular, it would be helpful to include citation(s) for the increasing human visitation on the coast since 1994 (see pages 2 and 14 of chapter). A citation regarding hypoxic and ocean acidification would also be helpful where these issues are mentioned on page 12.
- On page 18 Three Arch Rocks NWR is incorrectly lumped in with other sites as having a mainland portion. As far as we know, that NWR includes only islands. This needs to be corrected.
- The first sentence on page 10 of the Appendix document is incomplete.

We appreciate this opportunity to provide comments on the first full draft of the general strategy of the Rocky Shores update. We look forward to reviewing an improved draft as well as the first draft of Section D (rocky shore site inventory and site recommendations).

Sincerely,

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March 22, 2019

Re: Comments on the Draft Rocky Shores Management Strategy

Dear Chair Carter and members of the Council:

We write to support the Ocean Policy Advisory Council's (OPAC) efforts to update the management of rocky habitats within Oregon's territorial sea and amend the Rocky Shores Management Strategy (Strategy). Oregon has long recognized the ecological, economic and social value of rocky habitats. These areas belong to the public and should be managed to ensure they continue to provide benefits for future generations.

Specifically, we make the following recommendations:

1. Adopt goals, objectives and policies that require agencies to avoid impacts to rocky habitats and apply a precautionary approach;
2. Consider how rocky habitat protections can help lessen the impacts of climate change;
3. Establish a process through which managing agencies can bring forward recommended changes to site-specific designations;
4. Create an open and inclusive designation process by:
 - a. allowing anyone to bring forward a site designation proposal,
 - b. including all rocky areas in the designation process including offshore rocks, submerged reefs and rocky subtidal habitat, and
 - c. not limiting the number of proposals that may be considered annually; and
5. Rename the Strategy to better reflect the habitat types that it covers.

We appreciate the opportunity to comment on the draft Strategy and commend the Working Group on their efforts. We provide further detail and context for our recommendations below.

1. Adopt goals, objectives and policies that require agencies to avoid impacts to rocky habitat using a precautionary approach

We are encouraged by the inclusion of goals, objectives and policies that prioritize the long-term protection of rocky habitats for the benefit of future generations consistent with Statewide Planning Goal 19.¹ However, we encourage OPAC to strengthen these policies by requiring managing agencies avoid potential impacts on rocky habitats and not merely consider impacts to these areas resulting from actions they permit or regulate.

Specifically, we request that this language be added to Policy G and K.² Under the draft strategy, Policy K requires that “[m]anagement actions shall consider adaptation and resilience to climate change, ocean acidification, and hypoxia effects on the rocky shores.”³ We recommend OPAC expand the policy to require managing agencies not only consider climate change but also take action to avoid, minimize and mitigate the impacts of climate change. Similarly, Policy G should require agencies to avoid long-term impacts to rocky habitats that may result from the administration of regulations, permits and other agreements under their authority.

Further, we recommend the addition of a Management Principle (Section A.5.a.) and a Policy (Section A.6.b.) that require state agencies to implement a precautionary approach to the management of rocky shores and the regulation of their use. In areas where data is lacking, the Strategy should require managing agencies to prioritize conservation.

2. Consider how rocky habitat protections can help lessen the impacts of climate change

We recommend that OPAC take a comprehensive approach in thinking about how protection of rocky substrate can benefit kelp and other submerged aquatic vegetation (SAV). This includes prioritizing preservation of existing kelp and seagrass habitat and identifying sites where conditions are favorable for restoration. Oregonians are witnessing the effects of climate change firsthand including fishery closures, stronger storm surges and acidifying waters. The Strategy should include consideration of how rocky habitat protections can help guard against these impacts.

¹ Oregon’s Statewide Planning Goals & Guidelines, Goal 19: Ocean Resources, OAR 660-015-0010(4) (“To carry out this goal, all actions by local, state, and federal agencies that are likely to affect the ocean resources and uses of Oregon’s territorial sea shall be developed and conducted to conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social values and benefits and to give higher priority to the protection of renewable marine resources—i.e., living marine organisms—than to the development of non-renewable ocean resources.”).

² Draft Rocky Shores Management Strategy, Last Edited 2/21/2019, p. 7-8.

³ *Id.* at 8.

In 2017, the passage of Oregon Senate Bill 1039 declared that “ocean acidification and hypoxia severely endanger the state’s commercially and culturally significant ocean resources”⁴ and created the Oregon Coordinating Council on Ocean Acidification and Hypoxia (OAH Council) to provide recommendations and guidance for the state of Oregon on how to respond to these issues. The OAH Council’s first biennial report released last September identifies recommended actions including working with OPAC in the revision process for this Strategy to “ensure that OAH adaptation and resilience strategies are incorporated into long-term planning outcomes for Oregon’s Rocky Shores management.”⁵

Mature kelp forests have the potential to absorb carbon and buffer against ocean acidification.⁶ They also mitigate against coastal erosion and flooding by dampening the effects of waves before they reach our shorelines and provide important habitat for many commercially and recreationally important species. Consideration of how protecting rocky substrate can benefit SAV is consistent with the OAH Council’s recommendation to “support new OAH resilience initiatives to sustain Oregon’s habitats, species and human communities”⁷ and should be incorporated into the Strategy.

3. Establish a process through which managing agencies can bring forward recommended changes to site specific designations

It is unclear from the current draft Strategy that managing agencies can propose changes to site designations. We recommend this be clarified to allow agencies to put forward recommended changes based on the best available science and, where data is lacking, use a precautionary approach to conserving rocky marine habitats. The agencies responsible for managing our rocky shores hold these areas in trust for the public and must ensure they continue to provide long-term ecological, economic and social value and benefits to future generations as required by Goal 19.⁸ The draft Strategy places the burden on the public to propose changes to site designations and to justify those designations with an extensive proposal application. While we strongly support the public proposal process, our state agencies have a responsibility to ensure management in these areas is adequate and are highly qualified to endorse changes at specific sites based on the data presented.

⁴ Senate Bill 1039, Section 1, 79th Oregon Legislative Assembly, 2017 Regular Session.

⁵ Barth, J.A., C.E. Braby, F. Barcellos, K. Tarnow, A. Lanier, J. Sumrich, S. Walker, F. Recht, A. Pazar, L. Xin, A. Galloway, J. Schaefer, K. Sheeran, C.M. Regula-Whitefield. The Oregon Coordinating Council on Ocean Acidification and Hypoxia. First Biennial Report. September 2018, p. 32.

⁶ Nielsen, K., Stachowicz, J., Carter, H., Boyer, K., Bracken, M., Chan, F., Chavez, F., Hovel, K., Kent, M., Nickols, K., Ruesink, J., Tyburczy, J., and Wheeler, S. *Emerging understanding of the potential role of seagrass and kelp as an ocean acidification management tool in California*. California Ocean Science Trust, Oakland, California, USA. January 2018.

⁷ Barth, J.A. et al., p.32 (citing Senate Bill 1039, Sec. 3(1)(b)).

⁸ Oregon’s Statewide Planning Goals & Guidelines, Goal 19: Ocean Resources, OAR 660-015-0010(4).

4. Create an open and inclusive site designation process

We appreciate the opportunity for members of the public to nominate sites for designation. However, we note that the draft Strategy preemptively confines the designation process by limiting the scope of designations to the rocky shoreline area, limiting who may submit a proposal, and limiting the number of proposals that may be considered each year. We recommend the following changes to the Strategy and Appendices to ensure a more open and inclusive process.

a. Allow anyone to bring forward a site designation proposal

The Strategy should provide the opportunity for anyone to bring forward a proposal and define a process to review the justification for such proposals. The draft Strategy limits who may bring forward a proposal to “Oregon community members.”⁹ Although the draft Appendix A provides a glossary of terms, it does not define “Oregon community member” and it is not clear what the threshold for this standard would be. Oregon’s marine resources belong to the public at large, held in trust by the state of Oregon, and all members of the public should be eligible to make recommendations on their management.

Restricting who may bring forward a proposal undermines the public process. If the Strategy ultimately limits who may bring forward proposals, it must clearly define how that standard will be applied and should provide justification for why proposals that do not meet this criterion are not worthy of consideration.

b. Include all rocky areas in the designation process including offshore rocks, submerged reefs and subtidal habitat

The draft Strategy limits the scope of designations to the area from the shoreline out to extreme low water (ELW). There is no scientific justification for limiting designations to above ELW and it is not consistent with the Strategy’s Management Principles which dictate that rocky habitats be managed as an ecological unit¹⁰ using ecosystem-based management¹¹ and that planning be based on the best available science.¹²

⁹ Draft Rocky Shores Management Strategy, p. 3.

¹⁰ Draft Rocky Shores Management Strategy, Management Principles, p. 4 (“Ecological Units. The interconnected relationship between rocky shoreline areas, offshore sites, and associated rocky features warrants related areas to be managed as an ecological unit”).

¹¹ *Id.* (“Ecosystem Based Management. Management recommendations and prescriptions should follow ecosystem based management and adaptive management principles”).

¹² Draft Rocky Shores Management Strategy, p. 5 (“Planning or recommended management actions by [OPAC] or any agency with respect to rocky shoreline areas should be based on the best available scientific information”).

By excluding areas beyond ELW, the Strategy would limit potential protections for offshore rocks and islands and submerged rocky habitats, which provide important ecosystem services. Rocky substrate is essential for kelp, which, as discussed above, can help mitigate the impacts of climate change.¹³ Conserving and restoring SAV is one of the priority actions recommended by the OAH Council.¹⁴ Oregon's offshore rocks and islands provide important habitat for seabirds and marine mammals. Although most of these areas are included in the federally managed Oregon Islands National Wildlife Refuge,¹⁵ that does not preclude the state from incorporating these areas into the Strategy and expanding their protections below the mean high-water line. The Strategy should include all rocky areas in the designation process so that OPAC may consider additional protections for these special places.

c. Do not limit the number of proposals that may be considered annually

We recommend that proposals not be limited, at least in this first round of updates to site designations. The current draft of Appendix I limits OPAC's review of designations to five proposals annually.¹⁶ However, new designations or changes to existing designations may not require a lengthy review process. For instance, the current Strategy designates 39 sites, nine of which are "Not Yet Designated." It seems likely that these sites, already recognized in the Strategy, would be prime candidates for re-designation in the initial review of site-specific designations.

Since 1994, we have gained significant understanding of Oregon's rocky marine habitats and our impacts on them. Limiting the number of proposed designations that are eligible for review undermines OPAC's effort to fully evaluate and update the Strategy and bring it in line with the best available science. Therefore, we recommend that in the initial review of site-specific designations, the Strategy not limit the number of proposed changes and outline an annual process for review of additional proposals in the future.

5. Rename the Strategy to better reflect the habitat types that it covers

We recommend renaming the Strategy to more accurately describe its contents. "Rocky Shores" suggests the goals, policies and objectives laid out in the Strategy apply only to the rocky shoreline and not to the diverse and complex habitats covered by the Strategy including all rocky substrate, submerged reefs and offshore islands. This can lead to confusion among

¹³ Nielsen, K. et al., California Ocean Science Trust, January 2018.

¹⁴ Barth, J.A. et al., p. 33 ("Action 3.2.a Promote SAV conservation and restoration strategies and opportunities to achieve short-term buffering, carbon sequestration and ecosystem services benefits").

¹⁵ Oregon Islands, Three Arch Rocks, and Cape Meares National Wildlife Refuge Comprehensive Conservation Plan and Wilderness Stewardship Plan, U.S. Fish and Wildlife Service, Oregon Coast National Wildlife Refuge Complex, Newport, Oregon.

¹⁶ Draft Territorial Sea Plan Part 3 – Update Process, Appendices, p. 17.

members of the public and managers. We suggest that “Rocky Marine Resource Management Strategy” or “Rocky Habitat Management Strategy” might better reflect the intent for the Strategy to cover all rocky habitat and the marine life that depend on those habitats within Oregon’s territorial sea.

Conclusion

Oregon’s rocky marine habitats are a treasure, accounting for millions of visits to the coast each year. By making the above changes, OPAC can ensure this process results in better protections of our rocky habitats, which can increase our scientific understanding of these areas, benefit coastal communities, support wildlife, and reduce the impacts of climate change.

Thank you for considering these comments. We look forward to working with OPAC and other stakeholders to improve the management of our marine resources.

Sincerely,



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