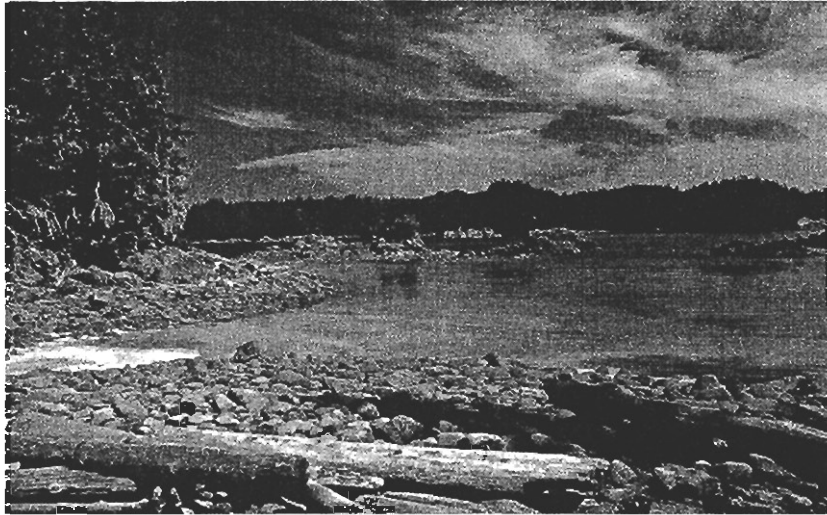


PROTECTING THE BOTTOM LINE:

LEASING WASHINGTON'S SUBMERGED LANDS FOR CONSERVATION



Washington State is testing a new policy that allows submerged nearshore lands to be leased for restoration and conservation.

Much of the country's marine nearshore environment is owned by the states and managed for navigation, commerce, and public access. Many states, in turn, have leased or sold as much as one-third of the country's submerged coastal lands to private interests for activities such as oil exploration and extraction, the development of marinas and docks, and the cultivation of aquaculture.

But what about leasing submerged lands to protect them from degradation? Could this be a new tool in coastal resource managers' limited arsenal of strategies for marine conservation and restoration?

To find out, the Washington State Department of Natural Resources, with help from the Nature Conservancy, has drafted what may be the nation's first

state policy to allow leases of submerged lands for restoration and conservation. In addition, the Nature Conservancy has helped provide outreach and training for Department of Natural Resources staff members to support the policy, and has committed to a pilot lease to test this new conservation approach.

"We know there has been a significant decline in marine resource diversity and productivity, and we know there is a limited toolbox of strategies to address that decline," says Mike Beck, senior scientist with the Nature Conservancy's Global Marine Initiative. "We need to create new strategies, and we think we can apply many of the same lessons that have proven to be successful in the terrestrial environment."

Pricing Submerged Land

Billions of dollars a year are spent by private entities to lease and develop submerged lands in this country.

The Submerged Lands Act, which Congress enacted in 1953, conveys "title and ownership of the lands and natural resources of the three-mile territorial sea to the states," giving states the authority to lease marine plots to private interests.

In Washington State, for instance, the Department of Natural Resources manages 2.4 million acres of aquatic land and has granted close to 3,700 leases, many of which are for commercial purposes. The leases generate \$15 to \$18 million in state revenues per year, and the department processes about 100 new authorizations annually.

Legal Ground

The state's directive for leasing submerged lands calls for such uses to balance five public benefits, says Jay Udelhoven, former assistant division manager for aquatic resources at Washington's Department of Natural Resources.

These benefits include encouraging direct public use and access, fostering water-dependent uses, ensuring environmental protection, and utilizing renewable resources. The directive also calls for the uses to generate revenue when it is consistent with the other public benefits.

“In theory it means if an entity comes in and wants to lease for conservation, and another entity wants to lease the same area for water-dependent commerce, those things can be evaluated equally.”

Jay Udelhoven, The Nature Conservancy

Having a specific policy to lease submerged lands for conservation and restoration “puts conservation on equal footing with the other public benefits the department manages for,” says Udelhoven, who is now a senior policy advisor for the Nature Conservancy.

“In theory it means if an entity comes in and wants to lease for conservation, and another entity wants to lease the same area for water-dependent commerce, those things can be evaluated equally. Based on that evaluation, the one that provides for the greater public benefit is the one that leases the site.”

You Had to Ask

A spark for Washington State’s conservation leasing policy was generated in October 2000 when Udelhoven was approached at a public meeting by a resident who wanted to pick up an expiring lease for an area that was being used for finfish cultivation. “The resident’s idea,” Udelhoven explains, “was to protect the site.”

“At that time, it wasn’t really possible,” Udelhoven says. “We didn’t lease things to protect them; we only approved leases for water-dependent, commercial, recreational,

and extractive uses,” which often impacted the resources.

The resident’s question, however, stoked discussion within the Department of Natural Resources about the value and possibility of leasing submerged lands for conservation under existing state statutes and policies.

Another Angle

The Nature Conservancy’s Mike Beck began pondering the possibility of conservation groups leasing nearshore property in 1999. Instead of commercial production, he envisioned the leases “producing” restored habitat.

In 2002, Beck organized a workshop in New York focusing on conservation leasing—the first conference of its kind—and Udelhoven fortuitously was invited to participate. A partnership between the state agency and nonprofit organization quickly developed.

“Once the Nature Conservancy got involved, it really triggered our efforts,” says Matt Niles, environmental planner for Washington’s Department of Natural Resources. Existing state statutes and policies were examined to see if protective leases could be

allowed, and an internal policy and guidance document was produced.

“What we found when we looked at the statutes,” says Udelhoven, “was clear language authorizing leases for environmental protection purposes.”

The conservancy helped provide a training session about required operations, maintenance, and monitoring of conservation leases for about 50 Department of Natural Resources staff members.

What It Says

Under the state’s conservation leasing policy, submerged land must be actively restored or managed.

An entity taking on such a lease has to prove its staff has the experience, knowledge, and capability to manage a marine resource area. This entails providing the Department of Natural Resources with a conservation management plan for the site, as well as reports on monitoring and research.

The rigorous approval process makes it clear that an entity could not lease a site “just to exclude others from leasing an area,” explains Udelhoven.

Pilot Project

To test the new policy, the Nature Conservancy agreed to undertake a pilot lease.

“The first thing we had to do,” says Betsy Lyons, the conservancy’s marine conservation project manager, “was figure out what kind of project and where to do it.”

The extensive selection and planning process included identifying and matching high-priority conservation areas for both the Nature Conservancy and the Department of Natural Resources

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with habitat that would support target conservation activities, such as oyster restoration. The site also had to be acceptable to other stakeholders.

"We didn't want to compete with the tribes or existing shellfish growers," Lyons explains.

The area selected was a 10-acre site on Woodard Bay in South Puget Sound where the conservancy will restore and enhance the habitat for native Olympia oysters.

The Requirements

Before undertaking the lease, the conservancy was required to conduct an extensive ecological assessment and carry out a legal boundary survey to define the lease area.

In hindsight," Lyons notes, "we should have had the project fully scoped and identified before applying for the lease. Because we hadn't done all the baseline survey work up front, it was difficult to provide the level of detail that was required."

The benefit of signing the lease, she says, is that it gives the conservancy "exclusive access to the site for a set amount of time. We can control what's happening on the

ground until the oyster population becomes sustainable."

The organization will, however, allow low impact public use, such as canoeing and kayaking.

Easier Said than Done

One of the primary challenges for implementing the policy has been resistance among some Department of Natural Resources staff members.

Some of the concerns cited by the staff include the belief that the policy might contradict or undermine traditional department partnerships for restoration projects. Some question the value of requiring conservation organizations to pay for lease agreements, or of requiring an evaluation and implementation process more onerous than that required for commercial leases. Others contend that the job of conservation should be the state's.

"A lot of the obstacles that we have had to overcome have been internal," acknowledges Matt Niles. "We're a big agency with a lot of people who have diverse opinions of how we should be doing things. A lot of the reason for the resistance is not because people are opposed to

conservation; rather, they think we should be doing a lot more."

Udelhoven notes that department staff members were included in the creation and implementation of the policy and that much of the current policy reflects their concerns.

One of the values of the pilot project, he says, is to show the staff "how this fits within the existing program and that it actually complements the existing program."

The Response

Mike Beck is more direct in his response to department staff members' doubts.

"Individuals are concerned that we are paying for what should have been an agency responsibility, or that conservation should be a state role. If we are having a clear and frank discussion, the question is then, 'Are you [the state] fulfilling that role?' The response is, 'Not as much as we would like.' The next question is, 'Couldn't you use assistance in that role?' . . . If you extend semi-exclusive rights to lots of other businesses and organizations, why not extend those rights to us?"

Beck notes that the requirements the Nature Conservancy is being asked to meet for the pilot lease are "far greater than any standard currently being asked of the 3,700 other leaseholders in the State of Washington."

"At one level that's OK with us," he says, "because this is the first conservation lease and we want to make sure it's all going to work. At some point, we would like to have a conversation about the fairness and balance of uses in the marine environment."

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Internet Resources

Washington State Department of Natural Resources Aquatic Resources home page

www.dnr.wa.gov/btdocs/aqr/index.html

Nature Conservancy magazine article on the conservancy's efforts to develop submerged lands leasing and ownership

www.nature.org/magazine/spring2005/misc/index.html

Law and policy report on leasing and owning submerged lands

http://nature.org/initiatives/marine/files/tncrwu_leasing_policy_report.pdf

Leasing and ownership law and policy fact sheet and a strategy report on leasing and restoration of submerged lands

http://nature.org/initiatives/marine/files/tncrwu_leasing_policy_factsheet.pdf

Leasing and ownership fact sheet

http://nature.org/initiatives/marine/files/nearshore_marine_fact.pdf