

**CONSERVATION LEASING AND OWNERSHIP OF MARINE LANDS:  
NEW STRATEGIES FOR HISTORICAL CHALLENGES**

J. Udelhoven, The Nature Conservancy  
M. Beck, The Nature Conservancy  
K. Fletcher, Roger Williams University

**Introduction**

Private leasing and ownership of marine lands is a new strategy that can be added to the coastal conservation toolbox. Government regulations, marine protected areas, and shoreline zoning are often presumed to be the primary means to protect marine lands. This presumption has relegated private marine conservation organizations to advocacy, watchdog, and public education roles. The presumption has also slowed organizations focused solely on the coastline from assuming in-water marine projects. However, private organizations can and should lease and acquire ownership of marine lands from public and private entities to gain more active roles in marine land stewardship.

Over the past four years, The Nature Conservancy (TNC) and Roger Williams University (RWU) have explored the legal, philosophical, and practical issues related to conservation leasing and ownership of marine lands (Marsh et al. 2002; Beck et al. 2005). We have discovered there is significant marine land available for lease and ownership in the United States. Despite common misconceptions that governments own all marine lands, and that the lands cannot be leased or sold, research shows that private leasing and ownership of marine lands is possible. This leasing and ownership can conserve habitats such as kelp forests, marshes, seagrass meadows, oyster reefs, tidal flats, clam beds, scallop beds, and coral gardens (Beck et al. 2004).

**The Role of Private Organizations**

Private organizations interested in conserving marine lands through proprietary mechanisms, such as leasing and ownership, must understand that this will require active stewardship in the marine environment. Conservation leasing and ownership requires time, expertise, funding, and patience that often exceeds what many private conservation organizations have committed, historically (J. White, pers. com., 2005). However, instead of being on the sidelines, conservation leasing and ownership offers private organizations an opportunity to get into the water and achieve tangible conservation success. This desire for success has led organizations to acquire conservation leases and ownership of marine lands in isolated locations around the country and possibly abroad.

In the United States, TNC has identified submerged land conservation leasing and ownership projects in California, Florida, New York, Texas, North Carolina,

Palmyra, Virginia, and Washington State. While TNC will continue to look for opportunities to expand its portfolio of marine land sites, it is essential that other entities engage in marine land conservation in similar ways. Working together to increase the areas, diversity, and protective schemes of marine lands, private organizations can help balance the use of marine lands.

As part of this effort, TNC is reaching out to private conservation organizations, such as land trusts, to get leasing and ownership tools into their hands and engage them in conversations about becoming actively involved with marine land stewardship. The key messages to interested organizations is that being successful in securing a conservation lease or acquiring fee-title ownership of marine lands requires knowledge of the process, policies, and laws, as well as persistence. In most encounters thus far with private organizations we have encountered cautious curiosity, but little in the way of active involvement.

TNC, Land Trust Alliance, and the National Oceanic and Atmospheric Administration's (NOAA's) Coastal Services Center are also initiating a Coastal Conservation Network. The Network will provide resource information, policy assistance, and a forum to exchange information. The Network will also aid TNC in identifying existing conservation leasing and ownership activities. Establishing a baseline of projects will help inform the process and establish private leasing and ownership as a legitimate approach to marine land conservation.

Beyond site-based projects, conservation leasing and ownership are also vehicles for private organizations to get a seat at the negotiating table with state agencies. Instead of serving in advocacy, watchdog, or education roles, organizations that lease or own marine lands have legitimate proprietary stakes involved when agencies are making decisions regarding marine lands. Indeed, state agencies often hold stakeholder meetings with lessees and landowners, but often exclude environmental organizations.

### **The Need for Academic Research**

TNC and RWU have undertaken initial research regarding conservation leasing and ownership. This and other work have produced numerous publications and presentations (Beck et al. 2005; Beck et al. 2004; Crevar 2005; Marsh et al. 2002; NOAA 2005; TNC 2003; Udelhoven et al. 2005; Washington Department of Natural Resources 2004). Several important conclusions were made as a result of the research.

Private leases and fee-title ownership of marine lands can be obtained from public and private entities that currently own submerged marine lands. Most often, private ownership, and consequently leasing and acquisition opportunities, is limited to tidally influenced areas. In limited circumstances, such as in the Northeast, private entities may also own subtidal areas. However,

public entities commonly own both tidally influenced and subtidal areas. We found that every coastal state leases public land (both tidally influenced and subtidal) to private entities for some purpose, typically to commercial entities for aquaculture activities (Marsh et al. 2002). Acquiring fee-title ownership of marine lands from public entities may not be possible though as many states are restricted from selling marine lands. However, state agencies can often exchange fee-title ownership of marine lands for other marine lands and, in limited circumstances, can sell tidally influenced marine lands.

Our research has also concluded that conservation leasing and ownership is a productive use of marine lands that is consistent with the Public Trust Doctrine (PTD) and contributes to multiple-use mandates of most proprietary agencies (Beck et al. 2005). Concerns are often expressed by state agencies that conservation leasing and ownership will infringe upon PTD interests such as public access, navigation, and fishing. However, in many states, private leasing of public marine lands is used for numerous purposes, including marinas, shipping terminals, utility lines, bridges, and mooring fields. Many of these leases exclude the public from project sites, while conservation leasing and ownership may or may not exclude the public depending on site goals. As such, the rationale that conservation leasing and ownership is inconsistent with the PTD while other private, exclusive uses are consistent with the PTD is at best contradictory. Additionally, in many states, environmental quality is considered a PTD interest. As a result, the protection and improvement of environmental quality through a conservation lease or sale is in itself supported by the PTD and may additionally contribute to and improve opportunities for public access and fishing on the project site and in surrounding areas.

TNC and RWU are interested in furthering the legal and policy research regarding the proprietary management of marine lands and academic institutions can play a key role. It is our goal to have legal and policy assessments regarding conservation leasing and ownership undertaken in all marine coast states, but we will not likely be able to complete this alone. As such, we are trying to inspire academic institutions to identify marine land proprietary issues within their curriculums and guide students towards assessing proprietary marine land conservation issues.

### **The Quest for Agency Engagement**

Private conservation organizations can help state agencies conserve marine lands by bringing expertise, staffing, funding, and focus to areas that would otherwise not receive it. Public-private partnerships have already played an important role in marine stewardship. Private groups have helped agencies reach their stewardship goals by contributing money and volunteer hours to restoration efforts for many habitats such as wetlands, seagrasses, salt marshes, oyster reefs, clam beds, and coral reefs. Up until this point, these groups have invested in marine stewardship much like many other private organization

investments (i.e., aquaculture businesses), but had no opportunity to protect their investment. Ironically, they seek to protect the ecosystem services generated by their efforts, such as habitat for fish and birds, water filtration from marshes and oysters, and enhanced recreational opportunities. These private organizations should have the same opportunity to protect their investments through leasing and ownership as any other private entity.

In areas that have already been leased or acquired by TNC and others, initial resistance on behalf of state proprietary managers has given way to acceptance and, finally, collaboration. Consistent with this finding, during many programmatic discussions, state coastal zone managers were more willing than proprietary managers to investigate conservation leasing and ownership. We are trying to understand this dichotomy of perspectives and engage both coastal zone managers and proprietary managers at the same time. We are hoping this simultaneous engagement will provide a full discussion of differing perspectives and will encourage the proprietary managers to think openly about potential benefits of private conservation leasing and ownership of marine lands.

TNC, RWU, and NOAA are working with Oregon's and Massachusetts's state agencies to assess the ownership of marine lands and determine whether conservation leasing and ownership are options that can contribute to existing conservation activities. During the assessments, state coastal zone and proprietary managers are asked to think proactively about marine land conservation and to be receptive to private organization involvement. Cooperative efforts on ownership and policy assessments will hopefully improve agency receptivity and provide a vision for how agencies can facilitate conservation leasing and ownership in coastal areas.

Unsurprisingly, we have found that many of the obstacles to conservation leasing and ownership are more perception than legal or policy realities. Since agencies have not historically contemplated conservation leasing or sales, they often believe law or policy must prohibit it. In actuality, many state marine laws and policies provide for broad interpretations and applications that may include conservation leasing or sales. As such, the fundamental issue of overcoming real and perceived institutional roadblocks to conservation leasing and ownership continues to exist.

### **Conclusion**

Several important bodies (e.g., Pew Oceans Commission 2003; U.S. Ocean Commissions 2004) have recommended movement towards Ecosystem-based Management (EBM) in the marine environment. While there is confusion regarding the defining parameters of EBM, at the very least it will require the marine environment to be managed for multiple objectives (e.g., biodiversity conservation, fisheries sustainability, hazard mitigation). Multiple-objective management necessitates an understanding of uses in the marine environment

(e.g., lands currently leased and owned), but few states have this information. Getting to EBM will also require a balance of uses, which has not been done to date. State and federal governments have used leasing and ownership to meet many of their management requirements, and they can do the same for stewardship requirements. By adding conservation interests to this mix, public and private organizations can actively work together to balance uses and add to the productive, holistic stewardship of the marine environment.

### References

- Beck, M.W., K.M. Fletcher, and L.Z. Hale. 2005. Towards Conservation of Submerged Lands: The Law and Policy of Conservation Leasing and Ownership. Rhode Island Sea Grant, Narragansett, RI. 45 pp.
- Beck, M. W., T. D. Marsh, S. E. Reisewitz, and M. L. Bortman. 2004. New Tools for Marine Conservation: The Leasing and Ownership of Submerged Lands, *Conservation Biology*, 18:1214-1223.
- Crevar, A. 2005. Getting to the Bottom of Marine Conservation, *Nature Conservancy Magazine*, Spring 2005: 20-29.
- Marsh, T.D., M.W. Beck, and S.E. Reisewitz. 2002 Leasing and Restoration of Submerged Lands: Strategies for Community-based, Watershed-scale Conservation. The Nature Conservancy, Arlington, VA. 33 pp.
- National Oceanic and Atmospheric Administration. 2005. Protecting the Bottom Line: Leasing Washington's Submerged Lands for Conservation, *Coastal Connections*. Volume 8, Issue 6: 4-9.
- Pew Oceans Commission. 2003. America's Living Oceans, Charting a Course for Sea Change. Arlington, Virginia. 144 pp.
- The Nature Conservancy. 2003. Exploring a New Strategy for Marine Protection: An Analysis of Alaska's Tidal and Submerged Land Leasing Laws, Policy, and Conservation Potential. Juneau, Alaska. 31 pp.
- Udelhoven, J.L., J. White, and B. Lyons. 2005. Conservation Leasing in Washington State – Partnerships for Improving and Protecting State-owned Aquatic Lands. Proceedings of the 2005 Puget Sound Georgia Basin Research Conference. Puget Sound Action Team, Olympia, WA.
- U.S. Commission on Ocean Policy. 2004. An Ocean Blueprint for the 21<sup>st</sup> Century. Final Report. Washington DC. 460 pp.
- Washington State Department of Natural Resources. 2004. GL09-20.3 Guidelines for Authorizing Voluntary Conservation Activities on State-owned Aquatic Lands, Olympia, Washington.

Jay Udelhoven  
The Nature Conservancy – Global Marine Initiative  
217 Pine Street, Suite 1100  
Seattle, Washington 98101, USA  
Ph (206) 343-4345 ext. 339  
Fax (206) 233-1628  
[judelhoven@tnc.org](mailto:judelhoven@tnc.org)