

**A CONSERVATION PRACTITIONER'S TOOLKIT:  
LEASING AND OWNERSHIP WITHIN  
OCEAN AND COASTAL WATERS**

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**The Need for a Toolkit**

Leasing and ownership of lands and resources within ocean and coastal waters are conservation strategies with great potential, but little global recognition or application. To address this, The Nature Conservancy developed an on-line practitioner's toolkit ([www.leaseown.org](http://www.leaseown.org)) to help non-profit organizations determine:

- What conservation leasing and ownership is,
- When leasing and ownership can help abate threats to ocean and coastal species and habitats,
- How leasing and ownership processes work, and
- How to plan and proceed with leasing and ownership projects.

The toolkit identifies the necessary steps and resources needed to assess, develop, and implement projects within the United States and abroad. The toolkit is available through the Internet, CD, and hardcopy manuals developed for specific workshops.

**The Need for Conservation Leasing and Ownership**

Lands and resources lying within ocean and coastal waters are biologically important and diverse. Despite global and national reports identifying their importance, many of these lands and resources continue to be degraded as traditional marine conservation strategies have not been effective. As such, new strategies must be assessed, developed, and implemented where possible.

Private conservation organizations have traditionally taken educational, watchdog, research, and advocacy roles in regards to ocean and coastal conservation. Assuming a proprietary role, through leasing or ownership, allows conservation organizations to get off of the sidelines and onto the front lines of ocean and coastal conservation. Instead of identifying what government agencies and private landowners should be doing in the name of conservation, as lead proprietary entities, conservation organizations can assume the responsibility for conservation success. By assuming this responsibility, conservation organizations can protect their conservation investments in ocean and coastal lands and resources through proprietary means (similar to how private, for-profit businesses protect their development investments in marinas, shipping terminals, and other waterfront enterprises).

Wall-to-wall conservation leasing and ownership projects along every ocean coast in the world is not a realistic or desirable goal. However, acquiring the ability to protect and restore specific ocean and coastal lands and resources through leasing and ownership often gets conservation organizations seats at negotiation tables when agencies are determining the laws, rules, policies, and plans that may degrade or conserve ocean and coastal lands and resources at much larger scales. Also, while marine protected areas are an important mechanism for conservation, the role of privately managed ocean and coastal sites and activities in conjunction with government laws and regulations has not been fully appreciated. As such, conservation organizations should consider using leasing and ownership to achieve three goals:

1. To protect and restore specific lands and resources,
2. To get seats at negotiation tables, and
3. To establish integrated networks that conserve marine biodiversity.

### **Step 1: Understanding the Strategy**

The toolkit recommends that organizations take a methodical approach to conservation leasing and ownership by first answering fundamental questions, dispelling common myths, and defining important terms. Twenty-eight questions, myths, and terms are addressed in the toolkit. After understanding the basics, organizations can make decisions whether or not to proceed.

### **Step 2: Deciding to Proceed**

The toolkit's decision checklist is designed to assist organizations in determining if leasing or ownership can help meet the organization's conservation priorities and goals. The criteria within the checklist can augment existing decision-making criteria organizations may already have or can stand alone when other criteria are absent. In general, if projects do not meet all or most of the criteria, then other conservation strategies may be more effective.

<b>Step 2: Decision Checklist</b>
2.1 Conservation Priorities
2.2 Threats and Strategies
2.3 Organization Capacity
2.4 Ownership and Use
2.5 Laws and Policies
2.6 Owners and Agencies
2.7 Partners and Funders

Given this, all available tools should be considered when organizations are planning conservation goals in specific areas as leasing and ownership are only two tools in the marine conservation toolbox. Leasing and ownership strategies are not applicable under every situation or in every geographic area, so it is essential to understand and apply decision-making criteria.

### **Step 3: Making an Acquisition**

The acquisition checklist provided in the toolkit is designed to guide conservation organizations through the leasing and ownership process when organizations do not already have acquisition processes in place. If organizations have established acquisition processes, the toolkit checklist may be used to augment, not supersede, existing procedural guidance.

The acquisition checklist is similar to many well-established processes used for terrestrial acquisitions. Traditional terrestrial acquisition processes can often be adapted for acquisition of areas within ocean and coastal waters as well. However, there are often issues that relate specifically to ocean and coastal lands and resources – these are identified in the toolkit’s acquisition checklist.



Step 3: Acquisition Checklist
3.1 Project Initiation
3.2 Title Report
3.3 Owner Contact
3.4 Proposal Completion
3.5 Terms
3.6 Funding
3.7 Documentation
3.8 Due Diligence
3.9 Regulatory Permits
3.10 Final Actions
3.11 Site Plan

#### **Step 4: Implementing Site Protection**

The most crucial step in the leasing and ownership process is implementation. The shortcoming of many conservation projects (terrestrial and marine) is that little thought is given towards necessary actions after an acquisition is made. Often times the majority of planning and funding is dedicated towards the acquisition itself with the belief that after the acquisition is completed, the lands and resources will be protected. However, once an acquisition is made, the work related to conservation just begins.

The focus on acquisition rather than implementation is even more prominent in projects lying within ocean and coastal waters. Since there is a perception that these areas are fallow and require little active management, project managers may assume there will be little time, effort, and resources needed for sites after the acquisition. Unfortunately, this is generally not the case.

Lands and resources lying within ocean and coastal waters frequently require similar types of post-acquisition management to terrestrial lands and resources. Due to the fluid nature of the environment, ill-defined boundaries, public rights to water, and several other factors, strict attention and necessary resources should be dedicated to post-acquisition management. Site-specific focus is, in fact, one of the important and tangible benefits private organizations can bring to ocean and coastal management that public agencies can ill afford.

The project implementation topics presented in the toolkit include science, habitat, maintenance, public use, enforcement, and outreach. The information is designed to stimulate thinking about several primary long-term management responsibilities. The topics do not represent the full range or the minimum

viable set of all needed management activities for specific sites — this must be determined on a case-by-case basis. Some sites will require high levels of long-term management activities while other sites will require little if any.

### **Legal and Management Summaries**

Legal and management summaries that explain the ocean and coastal management frameworks for nine countries and 24 U.S. states are provided in the toolkit. At the present time, very few countries and U.S. states have explicit information or programs that enable private organizations to acquire proprietary rights to lands and resources lying within ocean and coastal waters. However, each country and U.S. state has a management framework within which organizations can investigate and propose in-water projects.

Each country and U.S. state manages its ocean and coastal resources differently, with some having highly centralized and others highly de-centralized forms of government and control. Some countries and U.S. states have strong private land and sea tenure systems while others do not. Organizations interested in obtaining proprietary rights can use this information as a place to start when planning in-water leasing or ownership projects.

### **Helpful Resources**

Assessments – Legal assessments and spatial data assessments help determine if leasing and ownership are viable strategies for ocean and coastal conservation. Legal assessments identify and evaluate the legal and policy frameworks for management and conservation of lands and resources lying within ocean and coastal waters for specific countries and states. Under ideal circumstances, legal assessments help determine how private acquisition of fee-title or less-than fee-title rights can supplement existing ocean and coastal conservation mechanisms. Spatial data (depicting the ownership and use of lands and resources lying below the high tide line) are assessed to identify and evaluate what types of spatial data is available, where it is located, how available it is, and what it illustrates. Before a leasing and ownership project can move forward, the owners and users of the lands or resources targeted for acquisition must be known. Thirteen in-depth assessments are provided in the toolkit.

Case Studies – Fifteen case studies representing different types of leasing and ownership projects and programs are presented in the toolkit. Some projects and programs consist of leasing only, some consist of ownership only, and some are a combination of leasing and ownership. The case studies serve as examples of how and where in-water projects can be undertaken through acquisitions.

Contact Information - Thousands of agencies and organizations are involved with coastal, ocean, and marine management and conservation throughout the world. The sheer number makes it difficult to obtain consistent contact

information for relevant entities in any specific geography or field of expertise. Tables that list contact information of all U.S. state agencies and organizations identified in the toolkit are available by topic or by state.

Funding – Finding sources of funds that specifically identify assessments or acquisitions as funding priorities can be difficult. Given this challenge, project proponents must be creative when linking their projects to the priorities of grantors, which are often associated with marine protected areas, critical habitats, restoration, or listed species. However, securing the protection of lands and resources lying below the high tide line through proprietary mechanisms will often positively affect the ocean and coastal-related priorities of funders. Tips and resources for doing so are provided in the toolkit.

Maps and Data - The maps and data section of the toolkit provides directories of digital data relating to ownership and leasing within ocean and coastal waters for U.S. states. While data for all ocean coast states was assessed, not all states were assessed at the same level. Future iterations of the toolkit will provide additional information for the U.S. coastal states in which limited data was identified as well as similar information for other countries and areas within U.S. federal jurisdiction. For each state, organizations will find listings of maps and data available over the Internet, including: GIS portals; submerged lands; ownership; leases and other use authorizations; and local parcel information.

Publications and Presentations – A compilation of 81 publications, documents, and presentations related to leasing and ownership of lands and resources lying within ocean and coastal waters are provide in the toolkit. Whenever possible, links to pdf and web-based documents are given.

Related Tools – The toolkit offers a collection of 12 Internet-based tools related to ocean and coastal conservation. These tools are supplementary resources that can help organizations plan and implement leasing and ownership projects.

Sample Documents – When contemplating or developing projects related to acquiring fee-title or less-than fee-title to lands and resources within ocean and coastal waters it is helpful to have examples of authorizing documents from other projects and locations. The toolkit offers a compilation of sample documents that may serve as templates or frameworks for other transactions.

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