



Oregon

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June 15, 2012

TO: National Oceanic and Atmospheric Administration
Office of Ocean and Coastal Resource Management

FROM: Patty Snow, Oregon Coastal Program Manager

SUBJECT: Routine Program Change Request

**Routine Program Change
Seeking to Incorporate Oregon Administrative Rules
Chapter 660, Division 35 (Federal Consistency Review)
Into the Oregon Coastal Management Program**

I. Introduction

The Oregon Department of Land Conservation and Development (DLCD) seeks to incorporate Oregon Administrative Rules Chapter 660, Division 35 into the Oregon Coastal Management Program (OCMP). Division 35 governs state review of federal actions in the coastal zone pursuant to the Coastal Zone Management Act of 1972. Division 35 is procedural rather than substantive in nature, and aligns the state administrative rules with the governing federal regulations. DLCD requests the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management's (OCRM) concurrence that this incorporation is a Routine Program Change to the OCMP.

Oregon's Land Conservation and Development Commission (LCDC) initially adopted division 35 in 1988. DLCD submitted division 35 to OCRM for approval and integration into the OCMP on December 21, 1988. OCRM denied DLCD's request on January 17, 1989, over concerns that division 35's rules went beyond the federal rules. Since that time DLCD has intermittently discussed rule revisions with OCRM, but never moved forward with the amendments. Over the past year DLCD has renewed efforts to update and amend the rules, and has revised division 35 to address OCRM's concerns and to ensure that the revised rules conform to the controlling federal regulations at 15 CFR Part 930. The revisions reflect amendments to 15 CFR Part 930 since division 35's adoption, and clarify that the department will conform to the requirements and procedures of 15 CFR Part 930 when conducting consistency reviews. After two hearings, at which one person spoke in support of the amendments and no parties spoke against or submitted written comments in opposition to the amendments, LCDC adopted the rule amendments on May 11, 2012.

II. Analysis of Incorporation

II.A. Summary of Current Text and Amendments to OAR Chapter 660, Division 35

Amendments refer to changes that DLCD made (and LCDC adopted) to the administrative rules previously in effect (the rules that DLCD previously submitted for approval in 1988).

660-035-0000 Purpose

The purpose statement indicates that division 35 establishes state procedures for implementing the CZMA's federal consistency requirements.

660-035-0005 Conformance With Federal Consistency Review Rules

LCDC adopted this new rule, which serves as a guiding statement, to clarify that when administering federal consistency reviews, DLCD will follow the federal requirements and procedures provided in 15 CFR Part 930.

660-035-0010 Definitions

LCDC adopted a simplified and streamlined definitions section by applying the definitions contained in CZMA section 304, 15 CFR Part 930, ORS 196.405, and ORS 197.015, and deleting duplicative definitions. The amendments also clarify the definitions of "coastal zone" and "OCMP."

660-035-0015 Activities Subject to Review

This is a new section, which provides a clear list of the types of federal activities the department will review for consistency with the OCMP. 15 CFR Part 930 guides the list of activities, which include:

- Proposed federal agency activities, including proposed federal development projects, which affect any coastal use or resource;
- Activities that affect any coastal use or resource and that require one or more federal licenses or permits identified on the approved OCMP license and permit list, or unlisted licenses or permits that the department identifies through an alternative process set forth in 15 CFR §930.54;
- Outer continental shelf exploration, development, and production activities that affect any coastal use or resource; and
- Federal assistance to state and local governments for activities that affect any coastal use or resource.

660-035-0020 Federal Consistency with the OCMP

LCDC amended section (1) of this rule to clarify how an applicant initiates federal consistency review. Section (2) specifies that DLCD will review all projects against the enforceable policies contained in the OCMP, and outlines that those enforceable policies fall generally into three categories: (1) the statewide planning goals, (2) acknowledged comprehensive plans and implementing regulations, and (3) selected state agency statutory and regulatory authorities governing coastal uses or resources. This rule previously contained a list of federal activities

DLCD will review. DLCD updated the language and moved the list to its own section, above (Activities Subject to Review).

660-035-0030 Consistency for Federal Agency Activities

LCDC amended this rule to clarify that when reviewing federal agency activities, DLCD will conform to the requirements and procedures provided in 15 CFR Part 930, Subpart C. By referencing the requirements of Subpart C and directing applicants to the federal regulations, the department hopes to alleviate the possible confusion and uncertainty that comes from having duplicative state and federal provisions that are very similar, yet not always identically worded.

Proposed changes in section (2) clarify the use of National Environmental Policy Act (NEPA) documents in federal consistency review, while the proposed section (3) ensures an opportunity for public participation consistent with the provisions of 15 CFR §930.42. Finally, section (4) clarifies that while federal agencies are not required to file applications for state and local permits and other authorizations unless required to do so by provisions of federal law other than the CZMA, they are required to demonstrate that the proposed activity is consistent to the maximum extent practicable with the applicable state and local enforceable policies underlying the permits.

DLCD originally proposed language in Section (4) encouraging federal agencies to obtain state and local permits, when applicable, as evidence that a proposed activity is consistent with the underlying enforceable policy captured by the permit. OCRM indicated the original language was not approvable, so DLCD has revised the language to state that where federal law authorizes a federal agency to apply for state and local permits and other authorizations otherwise required by enforceable policies, the department will consider such applications when determining whether the federal activity or development project is consistent with the underlying enforceable policies.

660-035-0040 DLCD Review of Federal Activities and Development Projects

LCDC repealed this rule because it is duplicative of OAR 660-035-0030, above. As detailed in that rule, the department will continue to follow the requirements and procedures of 15 CFR Part 930 when reviewing federal activities and development projects.

660-035-0050 Consistency for Activities Requiring a Federal license or Permit

As with OAR 660-035-0030, above, LCDC amended this rule to clarify that when reviewing activities requiring a federal license or permit, DLCD will conform to the requirements and procedures provided in 15 CFR Part 930, Subpart D.

Proposed changes in sections (2) and (4) clarify the department's requirements regarding state and local permits required by the enforceable policies of the OCMP, as well as the use of NEPA documents in federal consistency review. The proposed section (3) ensures an opportunity for public participation consistent with the provisions of 15 CFR 930.61.

660-035-0060 Consistency for Outer Continental Shelf Activities

LCDC amended this rule to clarify that when reviewing outer continental shelf activities, DLCD will conform to the requirements and procedures provided in 15 Part CFR 930, Subpart E. The

proposed section (3) ensures an opportunity for public participation consistent with the provisions of 15 CFR §930.77.

660-035-0070 Consistency for Federal Assistance to State and Local Governments

LCDC amended this rule to clarify that when reviewing federal assistance to local governments, the department will conform to the requirements and procedures provided in 15 CFR Part 930, Subpart F.

660-035-0080 Commission Review

LCDC repealed this rule. DLCD will rely on 15 CFR Part 930, Subpart H, which details the procedures and standards that govern appeal of federal consistency decisions to the U.S. Secretary of the Interior.

II.B. This Action is a Routine Program Change

The incorporation of division 35, administrative rules governing DLCD's federal consistency review, into the OCMP does not substantially alter any of the five program areas detailed in 15 CFR 923:

Uses subject to management (Subpart B)

This action does not change the uses subject to management that are set forth in the OCMP (navigation and transportation; residential/urban/industrial, including energy production; agriculture and forestry; recreation; fish and wildlife production and utilization; public facilities; mining and minerals; and restoration).

Special management areas (Subpart C)

This action does not change the criteria for designating areas of particular concern, or areas for preservation or restoration.

Boundaries (Subpart D)

This action does not affect Oregon's inland or seaward coastal zone boundary, nor does it change the status of excluded lands.

Authorities and organization (Subpart E)

This action does not change Oregon's authority or organization.

Coordination, public involvement and national interest (Subpart F)

This action does not substantially alter any coordination, public involvement, or national interest provisions of the OCMP. The rule amendments clarify and codify public participation processes, consistent with the requirements of 15 CFR Part 930.

III. Attachments

- A. Table identifying policies for incorporation into the OCMP
- B. Text of OAR chapter 660, Division 35, as adopted by LCDC on May 11, 2012
- C. Underline-Strikethrough Text of OAR chapter 660, Division 35, showing changes to the previously-submitted version
- D. DLCD Public Notice

Attachment A. Enforceable Policies Table

Changes to the OREGON COASTAL MANAGEMENT PROGRAM			
The OREGON COASTAL MANAGEMENT PROGRAM (OCMP) seeks to incorporate Oregon Administrative Rules (OAR) Chapter 660, Division 35, into the Oregon Coastal Management Program (OCMP). The following table identifies provisions that DLCD seeks to incorporate.			
Name/Description of State or Local Law/ Regulation/Policy/ Program Authority or Change	State/Local Legal Citation	Date Adopted by State	Date Effective in State
ADDED:		mm/dd/yyyy	mm/dd/yyyy
Purpose	OAR 660-035-0000	May 11, 2012	June 15, 2012
Conformance with Federal Consistency Review Rules	OAR 660-035-0005	May 11, 2012	June 15, 2012
Definitions	OAR 660-035-0010	May 11, 2012	June 15, 2012
Activities Subject to Review	OAR 660-035-0015	May 11, 2012	June 15, 2012
Federal Consistency with the OCMP	OAR 660-035-0020	May 11, 2012	June 15, 2012
Consistency for Federal Agency Activities	OAR 660-035-0030	May 11, 2012	June 15, 2012
Consistency for Activities Requiring a Federal License or Permit	OAR 660-035-0050	May 11, 2012	June 15, 2012
Consistency for Outer Continental Shelf Activities	OAR 660-035-0060	May 11, 2012	June 15, 2012
Consistency for Federal Assistance to State and Local Governments	OAR 660-035-0070	May 11, 2012	June 15, 2012

1 (c) The Columbia River basin, where the coastal zone extends to the downstream end of
2 Puget Island; and

3 (d) Land the use of which is by law subject solely to the discretion of or which is held in
4 trust by the Federal Government, its officers, or agents, which federal law excludes from the
5 coastal zone.

6 [NOTE: A map depicting the boundaries of Oregon's coastal zone, but not depicting the
7 excluded federal lands, is available from the department and on the coastal program
8 website.]

9 (2) "OCMP" means the Oregon Coastal Management Program described in ORS
10 196.425(1), which the federal Office of Ocean and Coastal Resource Management approved
11 in 1977 and all federally approved amendments thereto.

12 [Publications: The publication(s) referred to or incorporated by reference in this rule are
13 available from the agency.]

14 660-035-0015

15 Activities Subject to Review

16 The following types of federal actions are subject to federal consistency review:

17 (1) Proposed federal agency activities, including proposed federal development projects,
18 which affect any coastal use or resource, pursuant to 15 CFR Part 930, Subpart C;

19 (2) Activities that affect any coastal use or resource and that require one or more federal
20 licenses or permits identified on the federally-approved OCMP license and permit list
21 developed pursuant to 15 CFR §930.53, or unlisted licenses or permits the department
22 identifies through the process set forth in 15 CFR §930.54, pursuant to 15 CFR Part 930,
23 Subpart D;

24 (3) Federal license or permit activities described in detail in outer continental shelf plans that
25 affect any coastal use or resource, pursuant to 15 CFR Part 930, Subpart E; and

26 (4) Federal assistance to state and local governments, including special purpose districts and
27 related public entities, for activities that affect any coastal use or resource, pursuant to 15
28 CFR Part 930, Subpart F.

29 660-035-0020

30 Federal Consistency with the OCMP

31 (1) To initiate consistency review, the responsible party identified in 15 CFR Part 930 shall
32 submit all required consistency determinations, consistency certifications, or applications for

1 federal financial assistance to the department along with supporting information or
2 necessary data and information required by 15 CFR Part 930 and, for 15 CFR Part 930,
3 Subparts D, E and F, as augmented by OAR 660-035-0030 through 660-035-0070.

4 (2) The department will review activities for consistency with the federally-approved
5 enforceable policies of the OCMP. The enforceable policies can be found generally within:

6 (a) The statewide planning goals;

7 (b) The applicable acknowledged city or county comprehensive plan and implementing land
8 use regulations; and

9 (c) Selected state agency statutory and regulatory authorities governing any coastal use or
10 resource.

11 (3) A person may contact the department for a list of federally-approved enforceable
12 policies.

13 660-035-0030

14 Consistency for Federal Agency Activities

15 (1) When reviewing a federal agency activity or development project for consistency to the
16 maximum extent practicable with the enforceable policies of the OCMP, the department
17 shall conform to the requirements and procedures provided in 15 CFR Part 930, Subpart C.

18 (2) For review of a consistency determination submitted by a federal agency for a federal
19 agency activity or federal development project, the federal agency must submit to the
20 department the information described in 15 CFR §930.39(a).

21 (a) Although 15 CFR §930.37 limits state authority to require National Environmental
22 Policy Act (NEPA) documents for federal consistency review purposes, a federal agency
23 may mutually agree with the department to rely on information contained in NEPA
24 documents or other project documents to provide some of the comprehensive data and
25 information sufficient to support the federal agency's consistency statement under 15 CFR
26 §930.39(a).

27 (b) A federal agency may elect to rely on information contained in NEPA documents or
28 other project documents to demonstrate consistency to the maximum extent practicable with
29 the enforceable policies of the OCMP. If relying on NEPA documents or other project
30 documentation, the federal agency must clearly demonstrate how the materials support a
31 finding of consistency with OCMP enforceable policies.

32 (3) The department shall provide for public participation consistent with the provisions of
33 15 CFR §930.42. The department will:

- 1 (a) Maintain a mailing list of interested parties;
- 2 (b) Notify interested parties when the department is reviewing federal agency activities or
3 development projects for consistency with the OCMP; and
- 4 (c) Solicit comments that address the consistency of the proposed federal activity or
5 development project with applicable elements of the OCMP.

6 (4) Evidence supporting consistency for a federal agency activity or development project:
7 Federal agencies are not required to file applications for state and local permits and other
8 authorizations unless required to do so by provisions of federal law other than the CZMA.
9 However, federal agencies are required to demonstrate that the proposed activity is
10 consistent to the maximum extent practicable with the applicable state and local enforceable
11 policies underlying the permits. While federal agencies are not required to apply for state
12 and local permits and other authorizations otherwise required by enforceable policies, where
13 federal law authorizes a federal agency to do so the department will consider such
14 applications when determining whether the federal activity or development project is
15 consistent with the enforceable policies underlying the permit or authorization.

16 660-035-0050

17 Consistency for Activities Requiring a Federal License or Permit

18 (1) When reviewing any consistency certification submitted by an applicant for a federal
19 license or permit activity affecting any coastal use or resource for consistency with the
20 enforceable policies of the OCMP, the department shall conform to the requirements and
21 procedures provided in 15 CFR Part 930, Subpart D.

22 (2) For review of a federal license or permit application, an applicant must submit to the
23 department a consistency certification and the necessary data and information described in
24 15 CFR §930.58(a).

25 (a) Copies of complete applications for permits that state and local governments require for
26 the proposed activity are required as necessary data and information to begin the CZMA six-
27 month review period. The department does not require issued state or local permits as
28 necessary data or information to begin the six-month review. If at the end of the six-month
29 review period the applicant has not obtained all required state and local permits:

30 (A) The department may object to the consistency certification as provided in 15 CFR
31 §930.63, or

32 (B) The department and the applicant may enter into a written agreement to stay the CZMA
33 review period to permit resolution of the remaining issues as provided in 15 CFR
34 §930.60(b).

1 (b) To expedite the federal consistency review process, the department encourages
2 applicants to obtain state and local permits and other authorizations required by enforceable
3 policies before beginning the federal consistency review process.

4 (c) Draft NEPA documents are necessary data and information to begin the CZMA six-
5 month review period except when a federal statute requires a federal agency to initiate
6 CZMA consistency review prior to its completion of NEPA compliance.

7 (d) In cases where an applicant relies on draft NEPA documents to satisfy some of the
8 necessary data and information requirements for federal consistency review under
9 subsection (c), the department will not begin the federal consistency review period until the
10 applicant submits the draft NEPA documents, together with all other required necessary data
11 and information, to the department.

12 (e) An applicant must clearly demonstrate how draft NEPA or other project documentation
13 materials support a finding of consistency with OCMP enforceable policies.

14 (3) The department shall provide for public participation consistent with the provisions of 15
15 CFR §930.61. The department will:

16 (a) Maintain a mailing list of interested parties;

17 (b) Notify interested parties when the department is reviewing a federally licensed or
18 permitted activity for consistency with the OCMP. The department may issue joint public
19 notices with the federal permitting or licensing agency; and

20 (c) Solicit comments that address the consistency of the proposed activity with applicable
21 elements of the OCMP.

22 (4) Evidence supporting consistency for federal license or permit activities: For activities
23 located within the state's jurisdiction that require state or local permits or authorizations, the
24 issued permit or authorization is the only acceptable evidence demonstrating consistency
25 with the enforceable policies that the permit or authorization covers.

26 660-035-0060

27 Consistency for Outer Continental Shelf (OCS) Activities

28 (1) When reviewing an outer continental shelf activity that requires an authorization from
29 the U.S. Department of the Interior pursuant to the Outer Continental Shelf Lands Act (43
30 USC §§ 1331-1356(a) for consistency with the enforceable policies of the OCMP, the
31 department shall conform to the requirements and procedures provided in 15 CFR Part 930,
32 Subpart E.

33 (2) For review of an outer continental shelf activity, an applicant must submit to the
34 Secretary of the Interior or designee a consistency certification and materials described in

1 15 CFR §930.76. The Secretary of the Interior or designee will furnish the department with
2 a copy of the information.

3 (3) The department shall provide for public participation consistent with the provisions of 15
4 CFR §930.77. To do so, the department will follow the procedure set forth in OAR 660-
5 035-0050(3).

6 660-035-0070

7 Consistency for Federal Assistance to State and Local Governments

8 (1) When reviewing applications for federal assistance to state and local governments for
9 consistency with the enforceable policies of the OCMP, the department shall conform to the
10 requirements and procedures provided in 15 CFR Part 930, Subpart F.

11 (2) For review of federal assistance to state and local governments, the applicant agency
12 must submit to the department the materials described in 15 CFR §930.94.

13 (3) The department's review period for consistency certifications for federal assistance to
14 state and local governments shall be 60 days.

1 ~~[(4) "Assistant Administrator" means the Assistant Administrator for Ocean Services and~~
2 ~~Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S.~~
3 ~~Department of Commerce.]~~

4 ~~[(5) "Associated Facilities" includes all forms of development:~~

5 ~~(a) Which are specifically designed, located, constructed, operated, adapted, or otherwise~~
6 ~~used, in full or major part, to meet the needs of a federal action or federally permitted action;~~
7 ~~and~~

8 ~~(b) Without which the federal action, as proposed, could not be conducted (15 CFR~~
9 ~~930.21).]~~

10 ~~[(6) "Certification of Consistency" means a declaration which is supported by the necessary~~
11 ~~data and information by an applicant or an OCS applicant that a proposed activity or~~
12 ~~development complies with the Oregon Coastal Management Program and that such activity~~
13 ~~shall be conducted in a manner consistent with the program.]~~

14 ~~[7](1) "Coastal Zone," as defined in CZMA §304(1) and 15 CFR §930.11(e), specifically~~
15 ~~means the area lying between the State of Oregon border with the State of Washington~~
16 ~~[border] on the north, to the State of Oregon border with the State of California [border]~~
17 ~~on the south, [bounded on the west by] seaward to [by] the extent of the state's jurisdiction~~
18 ~~as recognized by federal law, and [the east by] inland to the crest of the [coastal mountain~~
19 ~~range] Coast Range Mountains, excepting:~~

20 (a) The Umpqua River basin, where the coastal zone extends to Scottsburg;

21 (b) The Rogue River basin, where the coastal zone extends to Agness; ~~[and]~~

22 (c) The Columbia River basin, where the coastal zone extends to the downstream end of
23 Puget Island; **and**

24 **(d) Land the use of which is by law subject solely to the discretion of or which is held in**
25 **trust by the Federal Government, its officers, or agents, which federal law excludes**
26 **from the coastal zone.**

27 **[NOTE: A map depicting the boundaries of Oregon's coastal zone, but not depicting**
28 **the excluded federal lands, is available from the department and on the coastal**
29 **program website.]**

30 ~~[(8) "CZMA" means the federal Coastal Zone Management Act of 1972, as amended.]~~

31 ~~[(9) "Commission" means the Land Conservation and Development Commission.]~~

32 ~~[(10) "Consistency Determination" means a decision by a federal agency, supported with~~
33 ~~findings, that a proposed project will be conducted in a manner consistent to the maximum~~

1 extent practicable with the OCMP unless compliance is prohibited based on existing law
2 applicable to the federal agency.]

3 [(11) "Director" means the Director of the Department of Land Conservation and
4 Development.]

5 [(12) "Department" means the Department of Land Conservation and Development.]

6 [(13) "Excluded federal land" means lands in federal ownership within the boundaries of the
7 Oregon coastal zone. All lands owned, leased, held in trust or whose use is otherwise by law
8 subject solely to the discretion of the federal government are excluded from the definition of
9 coastal zone. The exclusion of federal lands from the definition of coastal zone does not
10 remove the requirement that actions on such lands be consistent with the Oregon Coastal
11 Management Program if such actions directly affect the Oregon coastal zone.]

12 [(14) "Federal Activity" means any function performed by or on behalf of a federal agency
13 in the exercise of its statutory responsibilities. The term federal activity does not include the
14 issuance of a federal license or permit to an applicant or OCS applicant or the granting of
15 federal assistance to an applicant agency (~~15 CFR 930.31~~).]

16 [(15) "Federal Agency" means any department, agency, or other organization within the
17 executive branch of the federal government, or any wholly owned federal government
18 corporation.]

19 [(16) "Federal Assistance" means assistance provided under a federal program to an
20 applicant agency through a grant, contract, loan, subsidy, guarantee, insurance or other form
21 of financial aid (~~15 CFR 930.91~~).]

22 [(17) "Federal Development Project" means a federal activity involving the planning,
23 construction, modification, or removal of public works, facilities, or other structures, and the
24 acquisition, utilization, or disposal of land or water resources (~~15 CFR 930.31~~).]

25 [(18) "IRD" means the Oregon Intergovernmental Relations Division in the Executive
26 Department. IRD operates the State Clearinghouse process which provides for the
27 evaluation, review and coordination of federally assisted programs.]

28 [49](2) "OCMP" means the Oregon Coastal Management Program [which was] **described**
29 **in ORS 196.425(1), which the federal Office of Ocean and Coastal Resource**
30 **Management** approved [by OCRM] in 1977 and all federally approved amendments
31 thereto.

32 [(20) "OCRM" means the federal Office of Ocean and Coastal Resource Management,
33 National Oceanic and Atmospheric Administration, U.S. Department of Commerce.]

34 [(21) "OCS Plan" means any plan for the exploration or development of, or production from,
35 any area which has been leased under the Outer Continental Shelf Lands Act, and the

1 regulations under that Act, and which describes in detail activities requiring federal licenses
2 or permits (~~15 CFR 930.73~~).

3 [(22) "OCS Applicant" means any individual, organization, or government entity who
4 submits to the Secretary of the Interior an OCS plan which describes in detail federal license
5 or permit activities.]

6 [Publications: The [Publication[s]] publication(s) [refereneed] referred to or incorporated
7 by reference in this rule are available from the agency.]

8 **660-035-0015**

9 **Activities Subject to Review**

10 **The following types of federal actions are subject to federal consistency review:**

11 **(1) Proposed federal agency activities, including proposed federal development**
12 **projects, which affect any coastal use or resource, pursuant to 15 CFR Part 930,**
13 **Subpart C;**

14 **(2) Activities that affect any coastal use or resource and that require one or more**
15 **federal licenses or permits identified on the federally-approved OCMP license and**
16 **permit list developed pursuant to 15 CFR §930.53, or unlisted licenses or permits the**
17 **department identifies through the process set forth in 15 CFR §930.54, pursuant to 15**
18 **CFR Part 930, Subpart D;**

19 **(3) Federal license or permit activities described in detail in outer continental shelf**
20 **plans that affect any coastal use or resource, pursuant to 15 CFR Part 930, Subpart E;**
21 **and**

22 **(4) Federal assistance to state and local governments, including special purpose**
23 **districts and related public entities, for activities that affect any coastal use or resource,**
24 **pursuant to 15 CFR Part 930, Subpart F.**

25 **660-035-0020**

26 **Federal Consistency [iH] with the OCMP**

27 [(1) Designation of the Department of Land Conservation and Development as the Lead
28 Agency for Coastal Zone Management. The Department is the designated coastal zone
29 management agency in Oregon pursuant to Section 306(c)(5) of the CZMA and ORS
30 196.435. All consistency determinations, consistency certifications and proposals for
31 federal assistance shall be sent to and reviewed by the Department for consistency with the
32 approved Coastal Management Program (OCMP).]

1 **(1) To initiate consistency review, the responsible party identified in 15 CFR Part 930**
2 **shall submit all required consistency determinations, consistency certifications, or**
3 **applications for federal financial assistance to the department along with supporting**
4 **information or necessary data and information required by 15 CFR Part 930 and, for**
5 **15 CFR Part 930, Subparts D, E and F, as augmented by OAR 660-035-0030 through**
6 **660-035-0070.**

7 [~~(2) Federal Actions Reviewed. The Department is responsible for review of the following~~
8 ~~actions subject to federal consistency requirements.]~~

9 [~~(a) Federal agency activities directly affecting the coastal zone;]~~

10 [~~(b) Federal development projects within the coastal zone;]~~

11 [~~(c) Federal licenses or permits for activities affecting the coastal zone;]~~

12 [~~(d) Outer continental shelf exploration, development and production activities affecting the~~
13 ~~coastal zone; and]~~

14 [~~(e) Applicant agency requests for federal financial assistance for activities affecting the~~
15 ~~coastal zone.]~~

16 **(2) The department will review activities for consistency with the federally-approved**
17 **enforceable policies of the OCMP. The enforceable policies can be found generally**
18 **within:**

19 **(a) The statewide planning goals;**

20 **(b) The applicable acknowledged city or county comprehensive plan and**
21 **implementing land use regulations; and**

22 **(c) Selected state agency statutory and regulatory authorities governing any coastal**
23 **use or resource.**

24 [~~(3) Review Standard. The OCMP is the review standard for all activities subject to federal~~
25 ~~consistency requirements.]~~

26 **(3) A person may contact the department for a list of federally-approved enforceable**
27 **policies.**

28 **660-035-0030**

29 **Consistency for Federal Agency Activities [Affecting the Coastal Zone and Federal**
30 **Development Projects]**

1 [~~(1) Federal Requirements. Pursuant to Section 307(c)(1) and (2) of the CZMA and **15 CFR**~~
2 ~~**930.30 et seq.**, all federally conducted or supported activities, including development~~
3 ~~projects, which directly affect the coastal zone must be undertaken in a manner consistent to~~
4 ~~the maximum extent practicable with the OCMP.]~~

5 [~~(2) Activities Subject to Consistency Review. Federal agencies shall determine which of~~
6 ~~their activities either in or outside of the coastal zone directly affect the Oregon coastal zone.~~
7 ~~Federal agencies shall consider all development projects within the Oregon coastal zone to~~
8 ~~be activities directly affecting the coastal zone. (See the OCMP for further guidance.)]~~

9 [~~(3) Federal Activities Where Consistency Determinations are Not Required. When either of~~
10 ~~the following situations exists, a consistency determination is not required:]~~

11 [~~(a) The activity is the same or substantially similar to a past activity for which the~~
12 ~~Department agreed with a consistency determination; or]~~

13 [~~(b) A thorough consistency assessment has established that there would be no direct effects~~
14 ~~upon the coastal zone. In either case, the federal agency shall submit a statement to the~~
15 ~~Department saying that no consistency determination is needed at least 90 days before final~~
16 ~~approval of the activity. The statement shall include adequate information to support the~~
17 ~~agency's conclusion including findings on the effects of the activity on the coastal zone. If~~
18 ~~the Department disagrees with the federal agency's conclusion that a consistency~~
19 ~~determination is not required for a federal activity, either party may request mediation by the~~
20 ~~Secretary of Commerce as provided by the CZMA and as described in **15 CFR 930 Subpart**~~
21 ~~**G** and in OAR 660-035-0040(10).]~~

22 [~~(4) Notification by Federal Agency. When a federal agency proposes to undertake a federal~~
23 ~~activity likely to directly affect the coastal zone, including a development project, it shall~~
24 ~~notify the Department of the proposal in writing. Notification may be provided through the~~
25 ~~Clearinghouse Review process at IRD, Division of State Lands Waterway Project Permit~~
26 ~~Review process, National Environmental Policy Act environmental impact statements, or~~
27 ~~other method. The Department must be notified as early as possible in the planning or~~
28 ~~reassessment of the action. At a minimum, notification must be provided to the Department~~
29 ~~at least 90 days before final approval of the federal action, unless both the federal agency~~
30 ~~and the Department agree on a different schedule.]~~

31 [~~(5) Preliminary Consultation. It is recommended that federal agencies consult with the~~
32 ~~Department, affected local governments, and other agencies listed in the OCMP when~~
33 ~~assessing whether a federal activity will be consistent with the OCMP.]~~

34 [~~(a) Coastal cities and counties shall provide the federal agency with applicable~~
35 ~~comprehensive plan standards upon request.]~~

36 [~~(b) Federal agencies are not required to obtain state or local permits, unless specified in~~
37 ~~federal statute. Nonetheless, obtaining relevant state and local permits is recommended~~

1 before making a consistency determination to reduce the time necessary for the Department
2 to conduct its review.]

3 ~~[(6) Content of Consistency Determination. A consistency determination shall include a~~
4 ~~brief statement indicating whether the project is consistent to the maximum extent~~
5 ~~practicable, plus:]~~

6 ~~[(a) A detailed description of the proposed activity, and all associated facilities and services,~~
7 ~~and the effects of both the activity and associated facilities and services on the coastal zone;]~~

8 ~~[(b) Environmental assessments, or environmental impact statements if applicable;]~~

9 ~~[(c) A statement indicating how the proposed activity will be undertaken in a manner~~
10 ~~consistent to the maximum extent practicable with the OCMP; and]~~

11 ~~[(d) A justification of the agency's determination of consistency, in light of all relevant~~
12 ~~provisions of the OCMP.]~~

13 ~~[(7) Activities Where Federal Consistency is Prohibited By Law. Federal activities directly~~
14 ~~affecting the coastal zone shall be consistent with the OCMP to the maximum extent~~
15 ~~practicable unless federal law prohibits such compliance. If a federal agency asserts that~~
16 ~~compliance with the OCMP is prohibited, it shall clearly describe in its consistency~~
17 ~~determination the legal authority which it believes limits the federal agency's ability to be~~
18 ~~fully consistent with the provisions of the OCMP.]~~

19 ~~[(8) General Consistency Determinations. In cases where federal agencies will be~~
20 ~~performing repeated activities, other than development projects, which cumulatively have~~
21 ~~direct effects on the coastal zone, the federal agency may develop a general consistency~~
22 ~~determination. A general consistency determination may be used only in situations where~~
23 ~~the activities are repetitive or periodic, substantially similar, and do not significantly affect~~
24 ~~the coastal zone when performed separately. If a federal agency issues a general consistency~~
25 ~~determination, it shall thereafter periodically consult with the Department concerning the~~
26 ~~manner in which the incremental actions are being undertaken. Such consultation process~~
27 ~~shall be established in the general consistency determination.]~~

28 ~~[[Publications: Publications referenced are available from the agency.]]~~

29 **(1) When reviewing a federal agency activity or development project for consistency to**
30 **the maximum extent practicable with the enforceable policies of the OCMP, the**
31 **department shall conform to the requirements and procedures provided in 15 CFR**
32 **Part 930, Subpart C.**

33 **(2) For review of a consistency determination submitted by a federal agency for a**
34 **federal agency activity or federal development project, the federal agency must submit**
35 **to the department the information described in 15 CFR §930.39(a).**

1 (a) Although 15 CFR §930.37 limits state authority to require National Environmental
2 Policy Act (NEPA) documents for federal consistency review purposes, a federal
3 agency may mutually agree with the department to rely on information contained in
4 NEPA documents or other project documents to provide some of the comprehensive
5 data and information sufficient to support the federal agency's consistency statement
6 under 15 CFR §930.39(a).

7 (b) A federal agency may elect to rely on information contained in NEPA documents or
8 other project documents to demonstrate consistency to the maximum extent
9 practicable with the enforceable policies of the OCMP. If relying on NEPA documents
10 or other project documentation, the federal agency must clearly demonstrate how the
11 materials support a finding of consistency with OCMP enforceable policies.

12 (3) The department shall provide for public participation consistent with the
13 provisions of 15 CFR §930.42. The department will:

14 (a) Maintain a mailing list of interested parties;

15 (b) Notify interested parties when the department is reviewing federal agency activities
16 or development projects for consistency with the OCMP; and

17 (c) Solicit comments that address the consistency of the proposed federal activity or
18 development project with applicable elements of the OCMP.

19 (4) Evidence supporting consistency for a federal agency activity or development
20 project: Federal agencies are not required to file applications for state and local
21 permits and other authorizations unless required to do so by provisions of federal law
22 other than the CZMA. However, federal agencies are required to demonstrate that the
23 proposed activity is consistent to the maximum extent practicable with the applicable
24 state and local enforceable policies underlying the permits. While federal agencies are
25 not required to apply for state and local permits and other authorizations otherwise
26 required by enforceable policies, where federal law authorizes a federal agency to do so
27 the department will consider such applications when determining whether the federal
28 activity or development project is consistent with the enforceable policies underlying
29 the permit or authorization.

30 {660-035-0040

31 ~~DLCD Review of Federal Activities and Development Projects]~~

32 ~~[(1) Review Schedule. Each consistency determination shall be reviewed by the Department.~~
33 ~~The Department shall promptly notify the federal agency and affected local government in~~
34 ~~writing of the Department's agreement or disagreement. If the Department's agreement or~~
35 ~~disagreement has not been issued within 45 days of receipt of the federal agency's~~
36 ~~notification, the federal agency may presume the Department agrees, unless the Department,~~
37 ~~within the 45-day period, has requested an extension of time for review. Federal agencies~~

1 shall approve one request for an extension of up to 15 days. Approval of longer or additional
2 requests is at the federal agency's discretion.]

3 ~~[(2) Time of Review for Federal Activities Which Require EIS's. The Department shall~~
4 ~~review federal activities which require a National Environmental Policy Act (NEPA)~~
5 ~~environmental impact statement for consistency with the OCMP at the time of the final~~
6 ~~environmental impact statement (FEIS), unless an alternative schedule is agreed to by the~~
7 ~~Department and the federal agency. This shall not preclude the Department from~~
8 ~~coordinating with the federal agency prior to the FEIS submittal.]~~

9 ~~[(3) Monitoring of Federal Activities. The Department shall monitor federal activities by use~~
10 ~~of the Clearinghouse Review process, review of National Environmental Policy Act~~
11 ~~environmental impact statements, and other available sources, including comments from~~
12 ~~interested persons, and shall notify federal agencies of federal activities which have not been~~
13 ~~subject to a consistency review but which, in the opinion of the Department, directly affect~~
14 ~~the coastal zone and require a federal agency consistency determination.]~~

15 ~~[(4) Voluntary Withdrawal. If the Department determines that the federal agency's~~
16 ~~consistency determination does not contain the necessary information described in OAR~~
17 ~~660-035-0030(6), it may request the federal agency to withdraw its consistency~~
18 ~~determination in order to avoid a disagreement based on a finding that the federal agency~~
19 ~~failed to supply sufficient information.]~~

20 ~~[(5) Public Notice. The Department will rely on federal notification procedures to provide~~
21 ~~public notice of federal consistency determinations to interested persons other than the~~
22 ~~Department. The Department may request the federal agency to undertake additional public~~
23 ~~notice as part of the consistency review process.]~~

24 ~~[(6) Review by Local Government and State Agencies. The Department shall consult with~~
25 ~~relevant state and local agencies in making its decision whether a proposed federal activity~~
26 ~~is consistent with the OCMP. The Department shall circulate federal consistency~~
27 ~~determinations and supporting documentation to affected local governments and state~~
28 ~~agencies within a reasonable time of receipt of such determinations at the Department's~~
29 ~~Salem office. Affected local governments and state agencies shall provide their comments to~~
30 ~~the Department within 21 working days of receiving the consistency determination. If no~~
31 ~~comments are received within the 21-day period, the Department will presume that the local~~
32 ~~and state agencies concur with the federal agency's consistency determination.]~~

33 ~~[(7) Review of Comments. The Department shall review the consider relevant written~~
34 ~~comments and objections from local governments, state agencies, and other interested~~
35 ~~persons in carrying out its consistency review. Local governments, state agencies, or~~
36 ~~interested persons may appeal the Department's decision to the Commission pursuant to~~
37 ~~section (11) of this rule.]~~

38 ~~[(8) Notice of Disagreement. In the event the Department disagrees with the federal agency's~~
39 ~~consistency determination, the Department shall provide the federal agency with its reasons~~

1 in writing. The Department's response shall describe how the proposed activity is
2 inconsistent with the OCMP, and shall describe any alternative measures which would allow
3 the activity to proceed in a manner consistent to the maximum extent practicable with the
4 OCMP. If the Department's disagreement is based on a finding that the federal agency has
5 failed to supply sufficient information, the Department's response shall describe the
6 information needed. The Department shall send a copy of any such notice of disagreement
7 with a federal agency's consistency determination to the Assistant Administrator and
8 affected state and local government.]

9 [(9) Monitoring of Approved Activities. The Department shall monitor approved federal
10 activities to ensure that the activities continue to be undertaken in a manner consistent to the
11 maximum extent practicable with the OCMP. A schedule for monitoring may be established
12 through the Department's agreement statement for the original activity. Interested members
13 of the public also may identify compliance problems with ongoing federal activities to the
14 Department. The Department will evaluate all comments to determine if the activity is being
15 conducted in a manner consistent with the original approval. When the Department
16 determines that a previously authorized activity is not being conducted in conformance with
17 the original approval it may request that the federal agency take appropriate remedial action.
18 If a serious disagreement persists, the Department or the federal agency may request the
19 Secretary's mediation services described in section (10) of this rule.]

20 [(10) Secretary of Commerce's Mediation. When a disagreement between the Department
21 and a federal agency regarding a consistency issue occurs, the Department shall first attempt
22 to resolve the conflict through information discussions. The federal agency, the Department,
23 or the Governor may request mediation by the Secretary of Commerce pursuant to **15 CFR**
24 **930.110**. If mediation efforts are unsuccessful or are not utilized, the Department may seek
25 judicial review. Nothing in this section shall preclude the Department from seeking judicial
26 review while utilizing mediation or in lieu of mediation.]

27 [(11) Appeal of Department Determination: Commission Review. Any party, as defined in
28 [ORS 183.310\(6\)](#), who objects to the Department's agreement or disagreement with a federal
29 agency's consistency determination may petition to have the action reviewed by the
30 Commission. The petition shall include the information required in 660-035-0080(2). This
31 does not preclude the federal agency involved from directly seeking mediation of a
32 disagreement with the Department under **15 CFR 930.110**.]

33 **660-035-0050**

34 **Consistency for Activities Requiring a Federal License or Permit**

35 [(1) Federal Requirements. Pursuant to Section 307(c)(3)(A) of the CZMA and **15 CFR**
36 **930.50** et seq., all federally licensed or permitted activities affecting the coastal zone shall be
37 conducted in a manner consistent with the OCMP.]

1 [~~(2) Listed Permits. The OCMP lists certain federal license and permit activities which~~
2 ~~affect the coastal zone and which the Department shall review for consistency with the~~
3 ~~OCMP. (See Appendix A.)~~]

4 [~~(3) Unlisted Licenses and Permits. The Department shall monitor proposed federal licenses~~
5 ~~and permits which are not listed in the OCMP, through the Clearinghouse Review~~
6 ~~procedures, NEPA environmental impact statements, and other available sources including~~
7 ~~comments from interested persons. When the Department determines that a proposed license~~
8 ~~or permit which is not listed would affect the coastal zone, it shall so notify the affected~~
9 ~~federal agency, applicants, and the Assistant Administrator and request the Assistant~~
10 ~~Administrator's permission to review the license or permit. The Department shall notify the~~
11 ~~federal agency and applicant within 30 days of receiving notice of the unlisted license or~~
12 ~~permit application. In cases where the Department does not receive notice of the federal~~
13 ~~license or permit activity, this time limit shall not apply. Upon approval by OCRM of a~~
14 ~~Department request to review an unlisted license or permit activity, the federal agency and~~
15 ~~applicant shall comply with the consistency certification procedures of this rule.]~~]

16 [~~(4) Consistency Certifications. When an applicant believes that the proposed activity is~~
17 ~~consistent with the provisions of the OCMP, the applicant shall provide a statement of~~
18 ~~consistency in its permit or license application to the federal agency. The statement shall be~~
19 ~~in the following form: "**The proposed activity complies with the Oregon Coastal**~~
20 ~~**Management Program and will be conducted in a manner consistent with such**~~
21 ~~**program**". A copy of the statement shall also be provided to the Department along with~~
22 ~~supporting information.]~~]

23 [~~(5) Supporting Information. Supporting information shall include a detailed description of~~
24 ~~the proposal, a brief assessment of likely effects on the coastal zone, and findings indicating~~
25 ~~that the proposed activity, its associated facilities, and their combined effects are all~~
26 ~~consistent with the provisions of the OCMP. Any draft and final environmental impact~~
27 ~~statements and supplements shall also be included in the supporting information. The~~
28 ~~applicant may use the information it has provided for local, state and/or federal permits if~~
29 ~~such information also meets the requirements of this section.]~~]

30 [~~(6) Request for Additional Information. The Department may request additional~~
31 ~~information from the applicant. The information request shall be in writing. Failure to~~
32 ~~submit the requested information may result in an objection to the applicant's consistency~~
33 ~~certification. The applicant shall comply with such request within ten days of receipt of such~~
34 ~~request or shall explain in writing within ten days why the request cannot be complied with.]~~]

35 [~~(7) Department Review. The Department shall begin its review when it receives from the~~
36 ~~applicant a complete consistency certification and all necessary supporting information~~
37 ~~identified in section (5) of this rule. The Department shall review the application and~~
38 ~~determine:]~~]

39 [~~(a) Whether the supporting information is adequate to assess coastal effects; and if so,]~~]

1 ~~[(b) Whether the activity is consistent with the OCMP. Following receipt of the application,~~
2 ~~the Department shall provide public notice of the proposed activity as provided in section~~
3 ~~(8) of this rule. Certifications for federally licensed or permitted activities which require~~
4 ~~environmental impact statements shall not be considered complete until the final~~
5 ~~environmental impact statement (FEIS) is submitted unless an alternative arrangement is~~
6 ~~agreed to by the Department, the applicant, and the federal agency. This shall not preclude~~
7 ~~the Department from coordinating with the applicant and federal agency prior to FEIS~~
8 ~~submittal.]~~

9 ~~[(8) Public Notice. Public notice shall include a summary of the proposal, an announcement~~
10 ~~that public information submitted by the applicant is available for inspection, and a~~
11 ~~statement that comments may be submitted. Whenever possible, the Department shall jointly~~
12 ~~issue public notice with the federal license or permit issuing agency or with the state~~
13 ~~permit issuing agency if a state permit is required.]~~

14 ~~[(9) Review of Comments. The Department shall review and consider relevant written~~
15 ~~comments and objections from local governments, state agencies, and other interested~~
16 ~~persons in carrying out its consistency review. Local governments, state agencies, or~~
17 ~~interested persons may petition to have the Director's decision reviewed by the Commission~~
18 ~~pursuant to OAR 660-035-0080.]~~

19 ~~[(10) Review Schedule. The Department shall promptly notify the applicant, affected local~~
20 ~~government, and federal agency of its objection to or concurrence with the applicant's~~
21 ~~certification. If the Department fails to object or concur within 180 days following~~
22 ~~commencement of Department review, the Department's concurrence shall be presumed. If~~
23 ~~the Department has not issued a decision within three months, it shall notify the applicant~~
24 ~~and the federal agency of the status of the review and the basis for further delay.]~~

25 ~~[(11) Effect of Department Concurrence. If the Department concurs or is conclusively~~
26 ~~presumed to concur with the applicant's consistency certification, the federal agency may~~
27 ~~approve the federal license or permit application.]~~

28 ~~[(12) Notice of Objection. If the Department objects to the applicant's consistency~~
29 ~~certification, it shall so notify the applicant, federal agency, affected state and local~~
30 ~~government, and Assistant Administrator. The Department shall describe how the proposed~~
31 ~~activity is inconsistent with the OCMP, as well as any alternative measures which, if~~
32 ~~adopted by the applicant, would permit the proposed activity to be conducted in a manner~~
33 ~~consistent with the OCMP. If the Department objects on the grounds of insufficient~~
34 ~~information, it shall describe the nature of the information requested and the necessity of~~
35 ~~having such information. The Department's objection shall include a statement informing the~~
36 ~~applicant of a right of appeal to the Secretary of Commerce as described in **15 CFR 930.120**~~
37 ~~et seq.]~~

38 ~~[(13) Effect of Department Objection. Following receipt of a Department objection to a~~
39 ~~consistency certification, the federal permitting agency shall not issue the license or permit~~
40 ~~unless the Secretary of Commerce approves the activity on appeal.]~~

1 ~~[[ED. NOTE: The Exhibits referenced are available from the agency.]]~~
2 ~~{Publications: Publications referenced are available from the agency.}~~

3 **(1) When reviewing any consistency certification submitted by an applicant for a**
4 **federal license or permit activity affecting any coastal use or resource for consistency**
5 **with the enforceable policies of the OCMP, the department shall conform to the**
6 **requirements and procedures provided in 15 CFR Part 930, Subpart D.**

7 **(2) For review of a federal license or permit application, an applicant must submit to**
8 **the department a consistency certification and the necessary data and information**
9 **described in 15 CFR §930.58(a).**

10 **(a) Copies of complete applications for permits that state and local governments**
11 **require for the proposed activity are required as necessary data and information to**
12 **begin the CZMA six-month review period. The department does not require issued**
13 **state or local permits as necessary data or information to begin the six-month review.**
14 **If at the end of the six-month review period the applicant has not obtained all required**
15 **state and local permits:**

16 **(A) The department may object to the consistency certification as provided in 15 CFR**
17 **§930.63, or**

18 **(B) The department and the applicant may enter into a written agreement to stay the**
19 **CZMA review period to permit resolution of the remaining issues as provided in 15**
20 **CFR §930.60(b).**

21 **(b) To expedite the federal consistency review process, the department encourages**
22 **applicants to obtain state and local permits and other authorizations required by**
23 **enforceable policies before beginning the federal consistency review process.**

24 **(c) Draft NEPA documents are necessary data and information to begin the CZMA six-**
25 **month review period except when a federal statute requires a federal agency to initiate**
26 **CZMA consistency review prior to its completion of NEPA compliance.**

27 **(d) In cases where an applicant relies on draft NEPA documents to satisfy some of the**
28 **necessary data and information requirements for federal consistency review under**
29 **subsection (c), the department will not begin the federal consistency review period until**
30 **the applicant submits the draft NEPA documents, together with all other required**
31 **necessary data and information, to the department.**

32 **(e) An applicant must clearly demonstrate how draft NEPA or other project**
33 **documentation materials support a finding of consistency with OCMP enforceable**
34 **policies.**

35 **(3) The department shall provide for public participation consistent with the provisions**
36 **of 15 CFR §930.61. The department will:**

1 (a) Maintain a mailing list of interested parties;

2 (b) Notify interested parties when the department is reviewing a federally licensed or
3 permitted activity for consistency with the OCMP. The department may issue joint
4 public notices with the federal permitting or licensing agency; and

5 (c) Solicit comments that address the consistency of the proposed activity with
6 applicable elements of the OCMP.

7 (4) Evidence supporting consistency for federal license or permit activities: For
8 activities located within the state's jurisdiction that require state or local permits or
9 authorizations, the issued permit or authorization is the only acceptable evidence
10 demonstrating consistency with the enforceable policies that the permit or
11 authorization covers.

12 **660-035-0060**

13 **Consistency for Outer Continental Shelf (OCS) Activities**

14 [~~(1) Federal Requirements. Pursuant to Section 307(C)(3)(b) of the CZMA and **15 CFR**~~
15 ~~**930.70** et seq., all federal license and permit activities described in OCS plans and which~~
16 ~~affect the coastal zone shall be conducted in a manner consistent with the OCMP. No federal~~
17 ~~license or permit activity described in an OCS plan may be approved by a federal agency~~
18 ~~until the requirements set forth in this rule are satisfied.]~~

19 [~~(2) Permits Not Included in OCS Plans. The OCS applicant and the Department shall~~
20 ~~comply with OAR 660-35-050 in processing permit activities which have not been included~~
21 ~~with OCS plans.]~~

22 [~~(3) Consistency Certifications. Any applicant submitting to the U.S. Department of Interior~~
23 ~~(DOI) a plan for the OCS offshore Oregon shall provide DOI with a consistency~~
24 ~~certification attached to the OCS plan. DOI shall provide the Department with a copy of the~~
25 ~~OCS plan and the consistency certification. The certification shall be in the following form:~~
26 ~~**"The proposed activities described in detail in this plan comply with the Oregon**~~
27 ~~**Coastal Management Program and will be conducted in a manner consistent with such**~~
28 ~~**program."** The certification shall be accompanied by the supporting information described~~
29 ~~in section (4) of this rule.]~~

30 [~~(4) Supporting Information. Supporting information to accompany the certification shall~~
31 ~~include:]~~

32 [~~(a) All comprehensive offshore, nearshore, and onshore data and material required by DOI's~~
33 ~~operating regulations governing exploration, development and production operations on the~~
34 ~~OCS (see **30 CFR Section 250.34**) and regulations pertaining to the DOI OCS information~~
35 ~~program (see **30 CFR Part 252**);]~~

1 ~~[(b) An assessment of probable coastal zone effects, and an analysis of how the proposed~~
2 ~~activities, their associated facilities, and their combined effects will be consistent with the~~
3 ~~OCMP; and]~~

4 ~~[(c) Draft and final environmental assessments, and draft and final impact statements and~~
5 ~~any supplements when the federal agency determines that an EIS is required.]~~

6 ~~[(5) Department review. The Department's review shall commence when the Department~~
7 ~~receives the applicant's consistency certification and all supporting information specified in~~
8 ~~OAR 660-035-0060(4). The Department shall review the application and determine:]~~

9 ~~[(a) Whether the supporting information is adequate to assess coastal effects; and if so;]~~

10 ~~[(b) Whether the activity is consistent with the OCMP. Additional information may be~~
11 ~~requested by the Department pursuant to OAR 660-035-0050(6). After receiving this~~
12 ~~material, the Department shall provide public notice of the proposed activity as provided in~~
13 ~~OAR 660-035-0050(8). The Department will review comments pursuant to OAR 660-035-~~
14 ~~0050(9). Consistency certifications for OCS activities which require an environmental~~
15 ~~impact statement shall not be considered complete until the final environmental impact~~
16 ~~statement (FEIS) is submitted unless an alternative arrangement is agreed to by the~~
17 ~~Department, the applicant and DOI.]~~

18 ~~[(6) Review Schedule. The Department shall promptly notify the OCS applicant, the~~
19 ~~Secretary of the Interior, affected local government and the Assistant Administrator of its~~
20 ~~objection to or concurrence with the OCS applicant's certification. If the Department fails to~~
21 ~~object or concur within 180 days following commencement of Department review, the~~
22 ~~Department's concurrence shall be presumed. If the Department has not issued a decision~~
23 ~~within three months, it shall notify, in writing, the Department of the Interior, the applicant,~~
24 ~~and the Assistant Administrator of the status of the review and the basis for further delay.]~~

25 ~~[(7) Effect of Department Concurrence. If the Department concurs or is conclusively~~
26 ~~presumed to concur with the OCS applicant's consistency certification, the OCS applicant~~
27 ~~shall not be required to submit additional consistency certifications and supporting~~
28 ~~information for Department review when the federal licenses and permits are actually~~
29 ~~applied for. The OCS applicant shall, however, supply the Department with copies of permit~~
30 ~~applications to allow the Department to monitor the approved OCS activities. Further, if~~
31 ~~regulatory actions by any other agency result in modification of the OCS plan, renewed~~
32 ~~consistency review of the modified plan shall be required.]~~

33 ~~[(8) Notice of Objection. If the Department objects to the OCS applicant's consistency~~
34 ~~certification, it shall notify the OCS applicant, federal agency, affected state and local~~
35 ~~government, and Assistance Administrator of its objection. The Department's objection shall~~
36 ~~include a description of how the proposed activity is inconsistent with the OCMP. Such an~~
37 ~~objection shall also specify any alternatives which, if adopted by the OCS applicant, would~~
38 ~~enable the proposed activity to be conducted in a manner consistent with the OCMP. If an~~
39 ~~objection is based, in whole or in part, upon failure to provide information requested by the~~

1 Department, the information requested shall be described. A Department objection shall
2 include a statement informing the OCS applicant of the right of appeal to the Secretary of
3 Commerce on the grounds described in ~~15 CFR 930.120~~ et seq.]

4 [(9) Effects of Department Objection. If a federal agency receives a Department objection to
5 a consistency certification related to one or more of the federal license or permit activities
6 described in an OCS plan, the agency shall not issue any of the licenses or permits unless the
7 Secretary of Commerce approves the activity on appeal.]

8 **(1) When reviewing an outer continental shelf activity that requires an authorization**
9 **from the U.S. Department of the Interior pursuant to the Outer Continental Shelf**
10 **Lands Act (43 USC §§ 1331-1356(a) for consistency with the enforceable policies of the**
11 **OCMP, the department shall conform to the requirements and procedures provided in**
12 **15 CFR Part 930, Subpart E.**

13 **(2) For review of an outer continental shelf activity, an applicant must submit to the**
14 **Secretary of the Interior or designee a consistency certification and materials described**
15 **in 15 CFR §930.76. The Secretary of the Interior or designee will furnish the**
16 **department with a copy of the information.**

17 **(3) The department shall provide for public participation consistent with the provisions**
18 **of 15 CFR §930.77. To do so, the department will follow the procedure set forth in**
19 **OAR 660-035-0050(3).**

20 **660-035-0070**

21 **Consistency for Federal Assistance to [Applicant Agencies] State and Local**
22 **Governments**

23 [(1) Federal Requirements. Pursuant to Section 307(d) of the CZMA and ~~15 CFR 930.90~~ et
24 seq., federal assistance to applicant agencies for activities affecting the Oregon coastal zone
25 shall be granted only when the activities are consistent with the OCMP.]

26 [(2) Notification by Applicant. An applicant agency shall notify the Intergovernmental
27 Relations Division (IRD) Clearinghouse in writing of its intent to apply for federal
28 assistance for an activity affecting the coastal zone.]

29 [(3) Clearinghouse Notification. The Clearinghouse shall give the Department an
30 opportunity to review any notification for an activity affecting the coastal zone to determine
31 whether the activity is consistent with the OCMP.]

32 [(4) Review Schedule. IRD shall provide a 45-day period for review of applications except
33 those which are specifically limited by federal regulation to a 30-day review cycle. The
34 review period begins at the time the Department receives the application. A 15-day
35 extension may be requested by the Department, state and local agencies, and other
36 reviewers.]

1 ~~[(5) IRD Conflict Resolution. If any comments are received by IRD stating that a federal~~
2 ~~grant in or affecting Oregon's coastal zone is inconsistent with the OCMP, IRD will convene~~
3 ~~a conflict resolution meeting with interested reviewers and the Department for the purpose~~
4 ~~of modifying the proposal to remove any inconsistencies. If the conflict cannot be resolved~~
5 ~~to the satisfaction of all reviewers, the Department shall review all comments and make the~~
6 ~~consistency determination on behalf of the state.]~~

7 ~~[(6) Effect of Department Approval. If the Department does not object to the proposed~~
8 ~~activity, the federal agency may grant the federal assistance to the applicant agency.~~
9 ~~Notwithstanding the Department's consistency approval for the proposed project, the federal~~
10 ~~agency may deny assistance to the applicant agency based on its own statutory requirements.~~
11 ~~The Department's approval of an assistance grant shall not preclude future Department~~
12 ~~consistency review if federal permits are required.]~~

13 ~~[(7) Notice of Objection. If, during the Clearinghouse process, the Department objects to the~~
14 ~~proposed assistance application, it shall notify the applicant agency, affected local~~
15 ~~government, the federal agency, and the Assistant Administrator of the objection. The~~
16 ~~Department's objections shall describe how the proposed project is inconsistent with the~~
17 ~~OCMP and any alternative measures which, if adopted by the applicant agency, would~~
18 ~~permit the proposed project to be conducted in a manner consistent with the OCMP. If the~~
19 ~~Department objects on the grounds of insufficient information, it shall describe the nature of~~
20 ~~the information requested and the necessity of having such information. The Department's~~
21 ~~objection shall include a statement informing the applicant of its right of appeal to the~~
22 ~~Secretary of Commerce on the grounds described in 15 CFR 930.120 et seq.]~~

23 ~~[(8) Effect of an Objection on Federal Agency. Following receipt of a Department objection~~
24 ~~to a consistency certification, the federal agency shall not grant the federal assistance unless~~
25 ~~the Secretary of Commerce approves the federal assistance activity on appeal.]~~

26 ~~[[Publications: Publications referenced are available from the agency.]]~~

27 **(1) When reviewing applications for federal assistance to state and local governments**
28 **for consistency with the enforceable policies of the OCMP, the department shall**
29 **conform to the requirements and procedures provided in 15 CFR Part 930, Subpart F.**

30 **(2) For review of federal assistance to state and local governments, the applicant**
31 **agency must submit to the department the materials described in 15 CFR §930.94.**

32 **(3) The department's review period for consistency certifications for federal assistance**
33 **to state and local governments shall be 60 days.**

34 **[660-035-0080]**

35 **[Commission Review]**

1 ~~[(1) Actions Reviewed. There are two methods by which the Commission may review~~
2 ~~actions under this division:]~~

3 ~~[(a) Any action of the Director pursuant to this division shall be reviewed by the~~
4 ~~Commission upon petition filed by any "party" as defined in ORS 183.310(6) or upon the~~
5 ~~Commission's initiative.]~~

6 ~~[(b) The Director may refer to the Commission any action taken under this division. The~~
7 ~~Commission shall act in accordance with the provisions of section (3) of this rule on matters~~
8 ~~referred to the Commission;]~~

9 ~~[(c) Review by the Commission does not preclude the federal agency involved from directly~~
10 ~~seeking mediation of a disagreement with the Department under **15 CFR 930.110.**]~~

11 ~~[(2) Content of Petition. Any petition filed pursuant to this division shall:]~~

12 ~~[(a) Contain the name, address, and telephone number of the petitioner and, if the petitioner~~
13 ~~is other than the governmental body directly affected by the action, a brief statement of the~~
14 ~~petitioner's interest in the outcome of the action sought to be reviewed or of the public~~
15 ~~interest represented by the petitioner;]~~

16 ~~[(b) Specify the action of the Director to be reviewed, when that action was taken, the~~
17 ~~Commission action sought by the petitioner, and the reason why the Commission should so~~
18 ~~act in this matter;]~~

19 ~~[(c) Be filed with the Director or the Director's designee within 15 days of the date of the~~
20 ~~taking of the action sought to be reviewed.]~~

21 ~~[(3) Commission Response to Petition. The Commission shall, by order, either affirm,~~
22 ~~reverse, or modify the action of the Director. Such order shall be issued within 60 days of~~
23 ~~the filing of the request, or within 120 days if good cause for the longer time is shown. The~~
24 ~~Director shall provide to all parties reasonable notice of the date, time, and place that the~~
25 ~~Commission will take action on the petition, and the manner in which such parties may~~
26 ~~express their views.]~~

27 ~~[(4) Report to the Commission. The Department shall provide the Commission with a~~
28 ~~monthly report summarizing Department actions taken during the preceding month pursuant~~
29 ~~to this division and any written public comments received by the Department which pertain~~
30 ~~to those actions.]~~



Oregon

John A. Kitzhaber, MD, Governor

Oregon Coastal Management Program
Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, Oregon 97301-2540
Phone (503) 373-0050
FAX (503) 378-6033
<http://www.oregon.gov/LCD/OCMP>

Notice of Routine Program Change

From the OREGON COASTAL MANAGEMENT PROGRAM
of the OREGON DEPARTMENT OF LAND CONSERVATION & DEVELOPMENT

DATE: June 15, 2012

NOTICE: Pursuant to 15 CFR Section 923.84 (federal Coastal Zone Management Act regulations), notice is hereby given that the Oregon Department of Land Conservation & Development (DLCD) has submitted a routine program change request to the federal Office of Ocean and Coastal Resources Management (OCRM). The request seeks to incorporate OAR Chapter 660, Division 35 into the federally-approved Oregon Coastal Management Program (OCMP).

As Oregon's designated lead agency for purposes of carrying out and responding to the Coastal Zone Management Act of 1972, DLCD reviews federal actions in the coastal zone to ensure that they are consistent with the enforceable policies of the OCMP. Division 35 governs those reviews.

DLCD has determined that this action constitutes a routine program change to DLCD's federally-approved coastal management program because the action does not make any substantial change to any enforceable policies or authorities related to: (1) uses subject to management; (2) special management areas; (3) boundaries; (4) authorities and organization; or (5) coordination, public involvement and national interest. DLCD has requested that OCRM concur with this determination.

ADDITIONAL INFORMATION: Additional information and related documents are available on the OCMP website at: http://www.oregon.gov/LCD/OCMP/PublicNotice_Intro.shtml

COMMENTS: Comments regarding whether this program modification does or does not constitute a routine program change may be submitted to OCRM within three weeks of the date of this notice. Please send all notices to:

Ms. Joelle Gore
Coastal Programs Division
NOAA/OCRM/CPD
N/ORM3
1305 East-West Highway
Silver Spring, MD 20910

If you have questions regarding this notice, please contact Juna Hickner, Coastal State-Federal Relations Coordinator, at juna.hickner@state.or.us or (503) 373-0050 ext. 253.