



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office for Coastal Management
Silver Spring Metro Center, Building 4
1305 East-West Highway
Silver Spring, Maryland 20910

Ms. Patricia L. Snow, Manager
Oregon Coastal Management Program
Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, Oregon 97301-2540

Dear Ms. Snow:

Thank you for the Department of Land Conservation and Development's (DLCD) July 24, 2014, request to incorporate updates to statutory provisions into the Oregon Coastal Management Program. You requested that the changes described below be incorporated as routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and the National Oceanic and Atmospheric Administration's (NOAA's) Office for Coastal Management's¹ *Program Change Guidance (July 1996)*. The Office for Coastal Management's decision deadline for the request received on July 28, 2014, was extended to November 26, 2014 (the 120-day deadline).

Based on our review of your submission, we concur, with the exceptions described below, that the changes are RPCs and we approve the incorporation of the changes as enforceable and non-enforceable policies of the Oregon Coastal Management Program. Federal Consistency will apply to the approved changes to enforceable policies only after you publish notice of this approval pursuant to 15 C.F.R. § 923.84(b)(4) and the Office for Coastal Management's *Addendum to the July 1996 Program Change Guidance (November 2013)*. Please include in the public notice the list of changes provided in this letter, and please send a copy of the notice to the Office for Coastal Management.

CHANGES APPROVED

See enclosed list of the changes incorporated into the Oregon Coastal Management Program.

¹ NOAA's Office for Coastal Management was formerly the Office of Ocean and Coastal Resource Management and the Coastal Services Center; these two offices were integrated in September 2014 into the Office for Coastal Management.

QUALIFICATIONS

States may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another statute, regulation, policy, standard, guidance, or other such requirement or document (hereinafter “referenced policy”), the referenced policy itself must be submitted to and approved by the Office for Coastal Management as an enforceable policy in order to be applied under the federal consistency review provisions of the CZMA. Therefore, no referenced policy in these approved enforceable policies may be applied for federal consistency unless that referenced policy been separately approved by the Office for Coastal Management.

Multiple statutory provisions, as noted below, defined terms to include the federal government or federal agencies. Unless Congress has expressly conferred upon states the authority to regulate federal agencies in certain matters, states have no power to do so and the CZMA makes no exception to this. Therefore, our approval of the following sections does not confer upon the State authority to regulate federal agencies.

- ORS 196.800: definition of “person” includes the “federal government”
- ORS 273.563: definition of “agency” includes a “federal agency”
- ORS 537.515: definition of “public agency” includes “the United States or any agency thereof”

CHANGES NOT APPROVED

The Office for Coastal Management has not approved section 506.755, described below, because this section would impose policies on federal agencies, lands or waters. The CZMA does not authorize states to establish regulatory standards for federal lands or waters and, in fact, excludes federally controlled lands and waters from the state’s coastal zone. *See* 16 U.S.C. § 1453(1). Moreover, a state policy that purports to regulate or otherwise establish standards for federal agencies or federal lands or waters would not meet the CZMA’s definition of “enforceable policy,” which requires that state polices be legally binding under state law. *See* 16 U.S.C. § 1453(6a). Since Oregon has no regulatory authority over federal agencies, lands or waters under the CZMA, section 506.755 could not be legally binding under state law, as required by CZMA section 304(6a).

Section 506.755 purports to adopt a Fisheries Conservation Zone “for the maintenance, preservation and protection of all coastal species of fish and other marine fisheries resources between the mean high water mark of the state and a straight line extension of the lateral boundaries of the state drawn seaward to a distance of 50 statute miles.” Within this area, the state says that commercial fishing activities shall be under the jurisdiction and regulation of the State Fish and Wildlife Commission. Among other things, this provision says the commission has jurisdiction to:

- Adopt, amend or repeal all rules, according to the provisions of ORS 506.119 and 506.129 necessary for the maintenance, preservation and protection of all coastal species of fish and other marine fisheries resources;
- Establish rules for inspection of catch, particularly regarding anadromous fish; rules relating to methods of fishing, size and kind of gear and nets; and rules designating seasons, closures and restricted areas; and
- Convict violators and punish them with a fine, not to exceed \$10,000.

For the reasons stated above, the Office for Coastal Management cannot approve section 506.755 for incorporation into the Oregon Coastal Management Program.

PUBLIC AND FEDERAL AGENCY COMMENTS

The Office for Coastal Management received no comments on this RPC submission.

Thank you for your cooperation in this review. Please contact Kris Wall at (503) 231-2221, if you have any questions.

Sincerely,

Joelle Gore, Acting Chief
Stewardship Division

Enclosure(s): Policies Approved and Incorporated into the Oregon Coastal Management Program

Enclosure to the Office for Coastal Management's November 26, 2014, Approval of the
Incorporation of Changes to the Oregon Coastal Management Program

Changes marked with an asterisk (*) are incorporated into the Oregon Coastal Management
Program, but do not contain enforceable policies that can be used for Federal Consistency.

Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
ADDED:			
Natural areas advisory committee.	273.573*	2011	2011
Release and transfer of mineral or geothermal resources; rules; fee.	273.787*	2003	2003
MODIFIED:			
South Slough National Estuarine Research Reserve Management Account.	273.556*	2005	2005
Appeal to State Land Board.	273.557*	1987	1987
Penalties; enforcement; injunctive relief.	273.558*	2003	2003
Definitions for ORS 273.563 to 273.591.	273.563*	2011	2011
Legislative findings.	273.566*	2011	2011
State Parks and Recreation Department duties; Oregon Natural Areas Plan; contents.	273.576*	2011	2011
Plan approval; review of modifications by commission.	273.578*	2011	2011
Natural areas register; contents; agreements between department and landowners.	273.581*	2011	2011
Dedication of land as state natural area; notice and hearing; termination of dedication.	273.586*	2011	2011
Natural Areas Program Account.	273.591*	2011	2011
Registry of rights under state board	273.790*	1987	1987
Mining and drilling leases on state lands; fee	273.551	2003	2003
South Slough National Estuarine Research Reserve; agreement between Oregon and federal government; rules.	273.553	2003	2003
South Slough National Estuarine Research Reserve Management Commission; powers; rules; fees; membership; procedures; expenses.	273.554	2013	2013

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Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
Definitions for ORS 273.775 to 273.790.	273.775	1987	1987
Retention of mineral and geothermal resource rights by state; exploration permit or lease; sale or exchange; exception.	273.780	2013	2013
Application of ORS 273.551 and 273.775 to 273.790; rules	273.785	2013	2013
DELETED:			
Natural Heritage Advisory Council; members; terms; qualifications; compensation; duties; rules	273.571	Repealed in 2011	Repealed in 2011
Permits and conditions for excavation or removal of archaeological or historical material from state lands.	273.705	Moved to 390.235	Moved to 390.235
Removal without permit.	273.711	Moved to 390.237	Moved to 390.237