



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 policies 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
MODIFIED:			
Contents of commercial fishing laws	506.001*	1977	1977
Effect of wildlife laws on commercial fishing laws	506.031*	2002	2002
Jurisdiction of commission; duty to protect and propagate fish	506.036*	1987	1987
Fishing rights of treaty Indians not affected	506.045*	2013	2013
Fish cultural operations and scientific investigations; commission to propagate fish and to stock waters	506.050*	1977	1977
General duties and powers of commission; rulemaking authority	506.119*	1977	1977
Duty to establish seasons, amounts and manner of taking food fish; rules	506.129*	1977	1977
Commission to study and classify food fish and fishing gear	506.136*	1977	1977
Authority of Fish Division	506.142*	1977	1977
Duties of director	506.154*	1977	1977
Powers of commission in regard to real property	506.201*	1977	1977
Acquisition of fish, eggs and larvae for certain purposes; returning salmon to Rogue River	506.211*	1977	1977
Coho and chinook salmon hatchery on Oregon coast	506.213*	1977	1977
Maintaining hatcheries in adjoining states	506.215*	1977	1977
Collecting moneys under commercial fishing laws; deposit into Commercial Fisheries Fund	506.306*	2011	2011
Payment of commission expenditures	506.316*	1977	1977
Acceptance and use of gifts of money and property to commission	506.321*	1977	1977
Powers of commission regarding federal aid for fish and fisheries	506.405*	1977	1977

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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
Developmental fishery species harvest programs; biological surveys; permits; fees	506.460*	2002	2002
Developmental Fisheries Board; members; qualifications; expenses	506.465*	2002	2002
Jurisdiction and authority to enforce commercial fishing laws	506.501*	1977	1977
Intent of ORS 506.511 and 506.516	506.506*	1977	1977
State police to enforce commercial fishing laws; appointment of federal agents	506.511*	2003	2003
Employment of deputy fish wardens by commission	506.516*	1977	1977
Appointment of special deputy fish wardens	506.518*	1977	1977
Duty to enforce commercial fishing laws; enforcement officers subject to control of commission or director	506.521*	2013	2013
Peace officer powers of director, inspectors and deputies; reporting arrests	506.526*	1977	1977
Arrests, searches and seizures made on Sunday	506.531*	1977	1977
Jurisdiction of courts over commercial fishing law violations; commencement of prosecutions	506.535*	1977	1977
Payment of rewards	506.540*	1977	1977
Search by peace officers to enforce commercial fishing laws	506.550*	1977	1977
Issuance of search warrants	506.555*	1977	1977
Nonliability of peace officers enforcing commercial fishing laws	506.560*	1977	1977
Naming place of offense in complaint, information or indictment	506.605*	1977	1977
Inspections by director or agent	506.620*	1977	1977
Compelling testimony in commercial fishing law enforcement proceedings	506.625*	1977	1977

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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
Execution for payment of fines and costs	506.635*	1977	1977
Seizure, forfeiture and disposition of fish unlawfully taken	506.690*	1999	1999
Seizure, forfeiture and disposition of fishing gear and vehicles used unlawfully; removal of unlawful piling	506.695*	2009	2009
Policy for ORS 506.755	506.750*	1987	1987
Criminal penalties	506.991*	2013	2013
General definitions	506.006	2003	2003
Types of marine life defined	506.011	2003	2003
"Salmon" defined	506.016	2002	2002
"Unlawful to buy" defined	506.025	2002	2002
"Conservation" defined	506.028	2002	2002
Food fish management policy	506.109	1987	1987
Erecting markers of closed waters; interference with markers	506.220	1977	1977
Definitions for ORS 506.450 to 506.465; rules	506.450	2002	2002
Policy	506.455	2002	2002
When possession prima facie evidence of taking fish unlawfully	506.610	1977	1977
DELETED:			
Commencement of proceeding to confiscate, condemn and sell unlawful fishing gear or equipment; petition	506.655	Repealed in 1993	Repealed in 1993
Parties	506.660	Repealed in 1993	Repealed in 1993
Summons and answer	506.665	Repealed in 1993	Repealed in 1993
Matter to be determined; judgment and execution	506.670	Repealed in 1993	Repealed in 1993
Nonliability of officers instituting proceeding	506.675	Repealed in 1993	Repealed in 1993
Appeal by state	506.680	Repealed in	Repealed in

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		1993	1993