



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
ADDED:			
Penalties	543.990*	2011	2011
Applicability of chapter to reauthorization of existing hydroelectric project	543.012	1997	1997
Exemption for wave energy project; conditions	543.014	2009	2009
Definition of water right	543.760	2007	2007
Certificate to use water for hydroelectric purposes; expedited application process; fees	543.765	2013	2013
MODIFIED:			
Powers of Water Resources Commission as to permits, licenses, investigations, reports, forms and examination of records	543.050*	1995	1995
Hearings and witnesses	543.055*	2003	2003
Notice of filing of application; waiting period	543.220*	2011	2011
Hearings on application; rules; protest	543.230*	2003	2003
Disposition of moneys collected	543.310*	1991	1991
Effect of amendment or repeal of law	543.320*	1985	1985
Noncompletion of construction within prescribed time; judicial proceedings; sale of property; disposition of proceeds; rights of purchaser	543.420*	1985	1985
Proceedings after completion of project for violation of license terms; authority of court; sale of project	543.430*	1985	1985
Policy	543.015	1985	1985
Minimum standards for development of hydroelectric power; public interest considerations; rules	543.017	2007	2007
Investigations; access to project, maps, books and other project data	543.060	1985	1985

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Appropriation and use of water for power is governed by this chapter	543.110	1931	1931
Water power projects to be in conformity with this chapter	543.120	1931	1931
Projects or developments constructed by federal government excepted from law	543.140	1931	1931
Municipal corporations and utility districts; applicability of laws; powers of commission respecting districts	543.150	1991	1991
Preliminary permits; application; contents; fee	543.210	1991	1991
Hearing on application; notice; policy	543.225	1985	1985
Permit; duration; transfer; cancellation; priority; terms and conditions; denial	543.250	1993	1993
Determination of cumulative impacts of proposed hydroelectric power projects; consolidated review; applicability	543.255	1995	1995
Licenses; duration; terms and conditions; termination; denial of application; preference of municipality or utility district	543.260	1995	1995
Testing of fish protection measures as condition for hydroelectric project permit or license; scope and cost	543.265	1995	1995
Preference in granting permit or license; municipal use	543.270	1985	1985
Fee payments by licensee	543.280	1991	1991
Filing of maps, plans, estimates and other materials; incorporation as part of license; alteration; further statements and data	543.290	1985	1985
Conditions governing license; fees; waiver of conditions	543.300	1999	1999
Construction of project; time for commencement and completion; supply of service; extension of time;	543.410	1985	1985

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nonperformance; termination of license			
Transfer of license, rights or property; effect	543.440	1985	1985
Acquisition of project by state or municipality	543.610	1983	1983
DELETED:			
Definitions for ORS 543.010 to 543.610	543.010	1995	1995
Purpose of issuing permits	543.240	Repealed in 1991	Repealed in 1991
Rules for implementing consolidated review process	543.257	Repealed in 2007	Repealed in 2007
Reserve for amortization of investment	543.510	Repealed in 1995	Repealed in 1995
Complete amortization of investment prior to expiration of license; vesting of property in state; incomplete	543.520	Repealed in 1995	Repealed in 1995
ORS 543.530 to 543.550 not applicable to regulated utilities	543.525	1977	1977
Issuance by licensee of stocks, bonds or other interest without authorization of Water Resources Commission prohibited	543.530	1985	1985
Consideration for bonds, stocks and other securities; restrictions; corporate shares; sale price of securities; discount from face value	543.540	1985	1985
Liens prohibited; exceptions; what may be included by mortgage, trust deed or sale; determination of investment in case of sale of part	543.550	2003	2003
Bond of licensee or letter of credit securing claims of suppliers; enforcement of obligation; action for sums due State Accident Insurance Fund Corporation	543.560	1997	1997
Property acquired by state; disposal	543.620	Repealed in 1995	Repealed in 1995