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's[1] *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:			
Definitions for ORS 564.100 to 564.135	564.100	1987	1987
Responsibility to protect and conserve native plants; rules	564.105*	2009	2009
Listing threatened or endangered species; rules	564.110*	2011	2011
Protection and conservation programs; action by state agencies; alternatives; findings required if agency fails to adopt alternatives	564.115	1987	1987
Transactions in threatened or endangered species; restrictions; prohibition	564.120	1987	1987
Director of Agriculture authority to acquire plant habitat	564.125*	1987	1987
Confidentiality of information regarding threatened or endangered species; circumstances	564.130*	1987	1987
Effect of law on commercial forestland or private land; effect on other laws	564.135*	1987	1987
Penalties	564.991*	1999	1999
Penalty for violation of ORS 564.120	564.994*	1987	1987