

Background: EPA and NOAA propose disapproving Oregon's Coastal Nonpoint Program

Background on CZARA

Section 6217 of the Coastal Zone Act Reauthorization Amendments, known as CZARA, requires states and territories participating in the federal Coastal Program to develop Coastal Nonpoint Pollution Control Programs to reduce polluted runoff into coastal waters. CZARA is jointly administered by the National Oceanic and Atmospheric Administration and the Environmental Protection Agency. Thirty-four states and territories participate in this program. EPA and NOAA must approve a state's non-point pollution control program. If the federal agencies do not approve a state's program, federal funding for coastal land management and pollution control programs is reduced.

According to NOAA and EPA, a state's program is expected to build on existing coastal zone management and water quality programs by applying a consistent set of economically achievable management measures to prevent and mitigate polluted runoff. To obtain approval, a state must describe how it will implement nonpoint source pollution controls, known as management measures, that conform to those described in [Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters](#).

Oregon's Coastal Nonpoint Pollution Control Program

Oregon's Coastal Nonpoint Pollution Control Boundary includes roughly all lands west of the crest of the Coast Range and the entire Rogue and Umpqua River watersheds. At the north end, the area extends up the Columbia River to Puget Island, near the Clatsop-Columbia County line (see Figure 1).

Forestry is the main land use within the Coastal Nonpoint Pollution Control Boundary. Based on 1992 GIS data, it comprises 90 percent of the area. Urban land uses comprise only 1 percent. The remaining land use types are 8 percent agriculture and one percent water and wetlands.

Oregon believes its Coastal Nonpoint Pollution Control Program complies with CZARA requirements. More importantly, water quality in Oregon's coastal areas is high, and it is improving--and has been improving for at least 15 years. Oregon began submitting elements of its plan for approval to NOAA and EPA starting in 1995. As of today, Oregon has received approval from EPA and NOAA on 60 measures, and has not received approval on three.



Figure 1. Map of Oregon’s Coastal Nonpoint Pollution Control Management Area.

NWEA vs. EPA/NOAA

Northwest Environmental Advocates sued EPA and NOAA in 2009, contesting the federal government's conditional approval of Oregon's program. NWEA alleged Oregon's program was not sufficient to meet federal requirements under CZARA, and that EPA and NOAA had to either approve or disapprove Oregon's program rather than continuing to work with the state to iron out any remaining problems.

In September 2010, a federal judge ordered EPA and NOAA to do the following:

- Publish a **Federal Register** notice by Nov. 15, 2013, proposing approval or disapproval of Oregon's Coastal Nonpoint Pollution Control Program plan. [Due to the federal shutdown, EPA and NOAA are planning to publish their proposed decision on Dec. 20, 2013, followed by a 90-day public comment period, through March 20, 2014.]
- EPA and NOAA must issue a final decision by May 15, 2014.

According to the terms of a subsequent settlement agreement between NWEA and NOAA/EPA, NOAA and EPA could only approve Oregon's plan if they find that Oregon has successfully addressed three issues: new development in urban areas, onsite septic systems, and forest management.

How Oregon is addressing the remaining issues

Oregon is committed to gaining approval of its coastal nonpoint source pollution program. It has already submitted materials addressing the remaining issues:

An onsite septic system time-of-transfer inspection program to ensure septic systems are inspected when a property in the coastal zone area changes hands

- Oregon will address onsite septic system issues through a time-of-property transfer inspection program.
 - DEQ worked with the Oregon Association of Realtors during the 2013 legislative session to amend the Sellers Disclosure Statement to include questions about onsite system maintenance and inspections.
 - DEQ is partnering with OAR to educate realtors and inform homeowners and potential homebuyers of the importance of onsite septic system inspections and regular maintenance. DEQ will collect information on onsite system inspections from homebuyers and onsite system evaluators to evaluate the effectiveness of this approach.

- If water quality studies indicate that onsite systems continue to contribute to water quality problems, the state and/or local entities that have responsibility for septic systems will be required to adopt area-specific measures to address the pollution. These entities would need to show how they will meet their responsibilities, which could include implementing technologies, best management practices or other measures to reduce pollution.

Implementing measures for post-construction stormwater runoff from new construction in urban areas

On July 1 and Sept. 20, 2013, Oregon submitted materials to EPA and NOAA describing the state's approach for controlling runoff from new urban development. On Dec. 9, 2013, NOAA and EPA informed DEQ and DLCD about minor deficiencies in their submittal. Oregon is confident it can address their concerns and submit a fully approvable program before the end of the public comment period. Key elements of Oregon's program include the following:

- DEQ will issue its "Guidance to Urban and Rural Residential Designated Management Agencies for Including Post-Construction Elements in TMDL Implementation Plans."
- DEQ and DLCD will train local governments and other stakeholders about the guidance and help them develop effective stormwater management plans.

Additional forestry measures addressing medium, small and non-fish bearing streams, high-risk landslide areas, the impacts of road operation and maintenance, particularly legacy roads

On July 1, 2013, Oregon submitted its plan to address the additional forestry measures. The state's submittal included a description of Oregon's regulatory and policy framework for managing private forestlands to ensure protection of water quality and associated beneficial uses. This framework involves a comprehensive, science-based program of regulatory and voluntary measures that includes periodic evaluation and course correction to ensure environmental outcomes can be achieved. Oregon's Environmental Quality Commission and Board of Forestry work closely together to achieve compliance with water quality standards on forestlands. Also key to Oregon's framework is a strong land-use system that seeks to conserve working forestlands.

Studies show that timber harvest and road building conducted under modern requirements and practices affect streams to an extent that is within the natural variation of conditions.

Other elements of Oregon's approach to addressing forestry measures:

- Current Board of Forestry consideration of additional protections for small- and medium-sized streams where fish are present, based on recent scientific findings that current rules may not sufficiently protect these streams from temperature increases after harvest.
- Ongoing investment in monitoring to determine the effectiveness of rules, with a commitment to making adjustments as necessary to meet standards. Oregon and other partners have invested in long-term evaluations of water quality in several areas containing streams where there are no fish.
- Enhancement of landslide protections, with rules that require leave trees along slide-prone streams, to slow downstream movement and add large wood to streams. Forestland owners must also avoid locating roads, must not build skid roads, and must prevent deep or extensive ground disturbance during log felling and yarding in high-risk landslide areas.
- New rules adopted in 2002-03 addressing forest roads, including avoiding road construction in critical locations, limiting road use in wet weather, and requiring drainage systems that direct runoff away from streams.
- Older roads are addressed through voluntary measures (more than \$93 million in landowner investment), and Forest Practices Act restrictions on delivering sediment to streams still apply.

EPA/NOAA will propose disapproval of Oregon's CNPCP plan on Dec. 20, 2013

In early November 2013, EPA and NOAA informed Oregon that they plan to propose disapproval of Oregon's plan on Dec. 20, 2013, but that Oregon will have the opportunity to submit additional information during the 90-day public comment period for their consideration before issuing their final decision in May 2014.

When EPA and NOAA disapprove Oregon's program, it will set a precedent. Ten other states have conditionally-approved programs, as does Oregon, but EPA and NOAA are not planning to take final action on those plans without first working to resolve issues in a thoughtful, considered way. Oregon would be in the same position if it were not for EPA and NOAA's settlement of litigation.

What disapproval would mean for Oregon

Program disapproval would result in significant reductions in federal grant funds that help Oregon reduce nonpoint (non-industrial) pollution statewide and address growth management and other environmental issues in the coastal region.

- DEQ currently receives about \$2 million a year in Clean Water Act Section 319 grant funds. This funding would drop by 30 percent a year starting in the next federal fiscal year, leading to a complete loss of funding in the next few years.
 - Section 319 funds pay for DEQ staff members who work with landowners and local communities to design and implement water quality improvement projects.
 - Section 319 funds are also passed through as grants to local groups to help pay for important nonpoint source pollution projects.
 - Section 319 funds leverage other sources of funding, such as the Oregon Watershed Enhancement Board and the federal Natural Resources Conservation Service, to accomplish local restoration projects. In one project in Tillamook, each dollar of Section 319 grant funds was matched by four dollars from other funding sources.
 - These grant-funded programs are vitally important to small communities, which often lack resources to address water quality problems.
- DLCD currently receives about \$2 million annually in Coastal Zone Management Act Section 306 grant funds. This funding would drop by 30 percent in the next fiscal year if the program is disapproved.
 - Section 306 funds support approximately 13 staff at DLCD who perform a range of coastal and ocean functions including ocean planning, federal permit consistency review, coastal hazards work with counties, estuary planning, and work on state, regional and national coastal and ocean policy issues.
 - Section 306 funds are also used to provide planning assistance grants to all coastal cities and counties.
 - A 30 percent reduction in 306 funds would significantly impair DLCD's ability to provide funding and technical assistance to local governments, and would reduce state's ability to protect the Oregon coast and promote sustainable coastal communities.

Disapproval of Oregon's program and the resulting loss of federal grant funds is contrary to the very objectives that EPA and NOAA – and Oregonians – want to achieve.

Oregon's track record

Oregon's efforts and investments to address nonpoint pollution in the coastal region are having positive, on-the-ground results.

- EPA has featured on its own website several of these DEQ-associated success stories. Two include:
 - Bear Creek in southwest Oregon (DEQ contact: Bill Meyers, Medford, 541-776-6272). DEQ listed this water body in the Medford area "impaired" due to higher-than-allowed levels of nutrients and other pollutants caused by discharges from a wide range of urban, forestry and agricultural activities. Phosphorus levels have dropped thanks to measures such as upgrading a local wastewater treatment plant, educating landowners in the basin about reducing pollution runoff, and implementing best management practices for agricultural and urban activities. Water quality still needs more improvement in Bear Creek, but the trend is positive.
 - Wilson River in northern Coast Range. (DEQ contact: York Johnson, Tillamook, 503-322-2222, ext. 30.) This river flows through dairy farms and ranches in addition to areas of increased urban activity near Tillamook. For many years it has posted bacteria levels far exceeding allowable water quality standards. Thanks to a program led by DEQ in partnership with multiple natural resource organizations and landowners, bacteria levels have declined significantly as pollution sources have applied "best management practices" designed to curb bacteria discharges into the river. The Wilson has met water quality standards for the past eight years.

Other success stories:

- Tillamook Bay Tidegate Project, (DEQ contact: York Johnson, 503-322-2222, x 302). Funding from Oregon's 319 nonpoint pollution program (funded by EPA) joined other funding sources to propel this \$330,000 estuary improvement project to improve fish access to side channel sloughs previously cut off by levies in Tillamook Bay. Since 2001, this project has vastly improved four acres of tidal marsh habitat.
- Coho Salmon Habitat Research and Monitoring Project along Oregon Coast (Contact: Dave Jepsen, ODFW, Corvallis, 541-757-4263, ext. 235). This long-term, ODFW-led

project, part of the state's Western Oregon Stream Restoration Project, targets improvement of coho salmon and resident cutthroat trout habitat. It involves a collaboration of private and public groups, including the Oregon Forest Industries Council, private timber companies and the Oregon Watershed Enhancement Board. It includes ODFW-led coho salmon habitat surveys and monitoring, continuing assessments of habitat along Oregon's coastal streams, and habitat restoration. Information from this project is used to improve land-use practices among public and private timber operators, farmers and ranchers. While habitat conditions throughout the Coast are relatively stable and the status of salmon and trout are improving, more restoration and refinement of existing land-use practices is needed.

The success of these projects is largely due to collaboration and communication among multiple agencies, including fund-providing agencies such as EPA. DEQ believes this is the right path toward water quality improvement.