How to Comment on the EPA/NOAA Proposed Disapproval of Oregon's Coastal Nonpoint Pollution Control Program

Two federal agencies have asked for public comment on their proposal to disapprove Oregon's Coastal Nonpoint Pollution Control Program under the federal law known as "CZARA." This is your opportunity to comment on how well Oregon controls nonpoint source pollution – basically everything that does not come from the end of a pipe – and how well it protects riparian and wetlands habitats. Comments are due by March 20, 2014.

What is CZARA?

CZARA is the Coastal Zone Act Reauthorization Amendments, passed by Congress to induce states to reduce nonpoint source pollution in coastal watersheds. Nonpoint source pollution is essentially all run-off that does not come out of a pipe and is therefore not covered by a Clean Water Act discharge permit. CZARA applies to all watersheds in Oregon's North Coast, Mid-Coast, and South Coast Basins and the entirety of the Rogue and Umpqua River Basins.

How does CZARA work and why is the federal government proposing disapproval?

CZARA requires states to obtain full approval of their Coastal Nonpoint Pollution Control Program by 1996 – 17 years ago – to avoid penalties. Oregon has never been fully approved. Northwest Environmental Advocates (NWEA) sued the U.S. Environmental Protection Agency (EPA) and National Ocean and Atmospheric Administration (NOAA) and the case was settled on the basis of commitments by the Oregon Department of Environmental Quality (DEQ) to control major sources of nonpoint pollution in coastal watersheds. However, Oregon DEQ has reneged on those commitments. The federal agencies must take a *final action* on Oregon's nonpoint program by May 15, 2014, after taking public comment on their proposed disapproval of Oregon's Coastal Nonpoint Pollution Control Program.

What does CZARA require?

CZARA has two general requirements. First, Oregon must make sure it has in place *basic* nonpoint source controls – called "management measures" – set out in a big book. Second, if the basic management measures are not adequate to meet water quality standards and protect designated uses, Oregon must have what are called "*additional* management measures." *Designated uses* include fish and aquatic life, public and private drinking water, wildlife and hunting, fishing and shellfish harvesting. Except for their review of logging impacts, EPA/NOAA never asked whether their basic management measures were sufficient to protect Oregon's designated uses.

What is the basis for the EPA/NOAA proposed disapproval action?

EPA/NOAA have concluded that Oregon needs to adopt *additional* management measures to control polluted runoff from logging in the following areas:

- protection of riparian areas for small and medium streams (fish and non-fish);
- protection of high-risk landslide areas;
- impacts of forest roads including specifically so-called "legacy" roads; and
- adequate buffers for the application of pesticides to non-fish bearing streams.

EPA/NOAA have also concluded that Oregon does not have the following *basic* management measures in place to control nonpoint runoff from:

- new development in urban areas
- operation of on-site septic systems

What have EPA/NOAA asked the public to comment on?

Since 1998, EPA/NOAA have informally approved most of the 50-odd categories of basic management measures that Oregon is required to have in place. In this request for public comments EPA/NOAA have not explained their rationale for all those informal approvals nor are they asking the public to comment on them. Instead, EPA/NOAA have only asked for public comment on the issues the agencies have proposed to disapprove (listed above) as well as on the issue of agriculture which they have *not* proposed to disapprove. We encourage public comment on all of Oregon's failures to control nonpoint source pollution in coastal watersheds.

What else can the public comment on?

The public can comment on the following required components of Oregon's CNPCP:

- Agriculture
- Logging
- Urban Areas
- Roads, Highways & Bridges
- Marinas and Recreational Boating
- Hydromodification: Channelization, Channel Modification, Dams, and Streambank & Shoreline Erosion
- Wetlands, Riparian Areas, and Vegetated Treatment Systems
- Monitoring and Tracking Techniques
- Administrative Coordination
- Public Participation
- Critical Coastal Areas
- Strategy and Evaluation for Backup Legal Authorities
- Need for *Additional* Management Measures to Meet Water Quality Standards and Protect Designated Uses

What's important to know when writing CZARA comments?

In preparing your comments, remember the following important points:

- CZARA requires a program, not just a plan. While on one hand, CZARA does not require Oregon to have already controlled all nonpoint source pollution, on the other hand, CZARA approval does require that Oregon have a program in place to do so. The mere passage of time since EPA/NOAA informally approved many of Oregon's program areas, with no demonstrated improvements to water quality, habitat, or species protection, demonstrates the programs exist only on paper.

- Oregon may use voluntary measures to achieve nonpoint source controls but it must also demonstrate the state has both enforceable mechanisms and policies to back-up its voluntary approach. In addition, the state must provide:

  - a complete description of the voluntary or incentive-based programs;
  - how it will track and evaluate voluntary and incentive programs to encourage implementation of the required management measures;

- a description of the mechanism or process that links the implementing agency with the enforcement agency; and
- a commitment to use existing enforcement authorities where necessary.

Because Oregon relies almost entirely on voluntary actions for much of its coastal nonpoint program, explain in your comments how in the absence of voluntary actions by land owners, Oregon is failing to use its regulatory backup authorities.

- EPA/NOAA will distinguish between (1) evidence that Oregon does not have a program and (2) evidence they think just demonstrates that enforcement action is needed. For example, given a photograph of cows grazing in a coastal stream, federal staff are likely to conclude there is simply a need for enforcement action. Your comments need to explain how any examples you give are evidence of a lack of Oregon's programs, both voluntary and regulatory.

- CZARA requires Oregon to demonstrate it has a program to meet all the basic management measures and it must also demonstrate that it has any such *additional* management measures as are needed to meet water quality standards and protect designated uses such as Oregon coast coho, amphibians, and drinking water.

What did EPA/NOAA conclude about the sufficiency of Oregon's agricultural practices?

EPA/NOAA informally approved Oregon's agricultural program in 2004 as sufficient based on the Oregon Department of Agriculture's having inserted the basic management measures into Oregon's *all-voluntary* Agriculture Water Quality Management Area plans. However, in response to concerns raised by Northwest Environmental Advocates, the federal agencies are asking for public comment on the adequacy of Oregon's agricultural management measures. In particular, EPA/NOAA cite the following concerns:

- Enforcement is limited and may not produce water quality improvements;
- ODA's area plans are general and do not include specific riparian buffer requirements;
- ODA's area plans focus on impaired areas rather than also focusing on protection;
- ODA does not track implementation and effectiveness of ODA area plans; and
- ODA area plans do not address "legacy" issues created wholly in the past.

EPA/NOAA are specifically asking for public comment on whether (1) the basic management measures are in place and (2) there are sufficient measures to achieve and maintain water quality standards and protect designated uses (i.e., whether *additional* management measures are needed and in place).

Is the application of pesticides in Oregon still an outstanding issue under CZARA?

In 2004, EPA/NOAA informally approved Oregon's pesticide use in logging based on a court injunction that established spray buffers near streams, an injunction that largely no longer exists. EPA/NOAA now cite favorably the Oregon Department of Forestry's buffer zones for pesticide applications near fish-bearing streams. With regard to non-fish bearing streams, EPA/NOAA "invite public comment." The federal agencies praise Oregon's Water Quality Pesticide Management Plan, which purportedly uses water monitoring data to drive so-called adaptive management actions, but they note the limited pesticide data in the state, concluding "the State should develop and maintain more robust and targeted studies of the effectiveness of its pesticide monitoring and best management practices." They also laud the Oregon's Pesticide Stewardship Partnership Program, despite its complete absence from coastal watersheds.

EPA/NOAA also rely on pesticide labels to provide protection to salmon. However, despite the National Marine Fisheries Service's (NMFS) having made the following effects findings for two "threatened" species of salmon that live in Oregon's coastal watersheds, EPA has not revised its pesticide labels to reflect the restrictions NMFS said were necessary to protect them:

	Oregon coast coho	**Southern Oregon/Northern California coho**
chlorpyrifos	Jeopardy & Adverse Modification	Jeopardy & Adverse Modification
diazinon	Jeopardy & Adverse Modification	Jeopardy & Adverse Modification
malathion	Jeopardy & Adverse Modification	Jeopardy & Adverse Modification
carbaryl	--	Jeopardy & Adverse Modification
carbofuran	--	Jeopardy & Adverse Modification
methomyl	--	Jeopardy & Adverse Modification
naled	--	Jeopardy & Adverse Modification
phosmet	--	Jeopardy & Adverse Modification
2,4-D	Jeopardy	--

What are some of the issues facing coastal water quality and species in Oregon?

- impacts of logging and logging roads on drinking water (turbidity and pesticides);
- effects of beaver eradication on restoring low land stream habitat for coho & lamprey;
- lack of adequate buffers to protect fish-bearing small and medium streams from logging;
- no forested riparian buffers required in agricultural areas to provide shade, reduce sedimentation, and prevent pollution from entering water;
- lack of nonpoint source controls contributes to ocean acidification;
- no riparian buffers required to protect non-fish bearing streams (up to 70 percent of coastal stream miles) from impacts of logging on amphibian habitat and downstream fish;
- manure spraying on pastures, contaminating water and shellfish;
- livestock in streams and trampling riparian areas with no enforcement;
- forest practices that allow logging in high risk landslide areas above fish habitat;
- loss of wetlands;
- extensive logging roads that increase erosion, sedimentation, and cause landslides;
- widespread clear-cutting;
- nutrient run-off from logging (clear-cuts) and farming (excess manure and fertilizers) leading to toxic algal blooms, groundwater contamination, and ocean acidification;
- lack of large woody debris in streams to create healthy habitat for fish and aquatic life;
- insufficient water quality monitoring;
- inadequate controls on pesticide use.

To whom do I address my comments and what's the deadline?

Joelle Gore, Acting Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, email: joelle.gore@noaa.gov **DUE**: March 20, 2014

Where can I obtain more information?

Many documents are available on NWEA's website: http://northwestenvironmentaladvocates.org/nwea-news/oregon-coast-polluted-runoff/czara-documents/ and EPA/NOAA's website: http://coastalmanagement.noaa.gov/nonpoint/oregonDocket/default.html.

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