EPA/NOAA Comment Period for Washington Coastal Nonpoint Program 2020
Agenda

• Overview of the proposed federal action
• How did we get here?
• How does CZARA work?
• How to write comments
• Your questions!
What is the federal government proposing?

• “CZARA” or the Coastal Zone Act Reauthorization Amendments calls for two federal agencies—the EPA and NOAA’s National Ocean Service—to approve or disapprove Washington’s Coastal Nonpoint Pollution Control Program (“CNPCP”).

• Twenty-two years after giving Washington’s CNPCP “conditional approval,” EPA/NOAA are proposing to fully approve Washington’s program.
What’s the purpose of CZARA?

Congress passed CZARA because coastal watersheds . . .

• Suffer from uncontrolled nonpoint source pollution

• Are particularly important and sensitive environments to protect

• Are under increasing population pressures
Link Between CZARA and Clean Water Act

• CZARA requires states to use their Clean Water Act § 319 Nonpoint Plan (updated every five years) to meet CZARA following EPA/NOAA approval of the state’s coastal nonpoint program.

• The Clean Water Act requires states to develop nonpoint programs at the state level.
How did we get here?

- 1998 EPA/NOAA “conditional approval” of Washington coastal program
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- 2013 EPA/NOAA letter to Washington Ecology on treaty issues
- 2016 NWEA files CZARA lawsuit
- 2020 EPA/NOAA propose full approval of Washington’s coastal program
Questions?
Thoughts?
So far so good?
How CZARA Works & How to Write Your Comments
CZARA is a program of federal carrots and sticks using federal grant funding as inducement to state action.

• The carrot: Federal grant funding comes from two existing funding streams.

• The stick: CZARA acts like a “gate” to cut off these two funding streams.
The carrot: Two federal funding streams

• Clean Water Act § 319 Nonpoint Source Program

• Coastal Zone Management Act § 306
The stick: Funding cuts

- by dates certain (starting in 1996)

- by amounts certain (percentage cuts increase each year)
What is being approved (or disapproved)?

• Think of CZARA as a checklist of 50-odd boxes.

• Most of the boxes are adoption and implementation of basic management measures (BMPs).

• Some of the boxes are very broad, such as the need to control nonpoint source pollution to meet water quality standards and protect designated uses.
The “boxes” – required for CZARA approval

- Agriculture
- Logging
- Urban Areas
- Roads, Highways & Bridges
- Marinas and Recreational Boating
- Monitoring and Tracking Techniques
- Hydromodification: Channelization, Channel Modification, Dams, and Streambank & Shoreline Erosion

- Wetlands, Riparian Areas, and Vegetated Treatment Systems
- 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
• Since the 1998 “conditional approval,” EPA/NOAA have been working to check off the remaining boxes.

• Ecology sends material to EPA/NOAA to demonstrate that it has a program to control nonpoint pollution, protect habitat and species.

• In the 2020 proposed approval, EPA/NOAA are not revisiting the pre-1998 boxes it determined were adequate 22 years ago.

• Look at 1998 approval to see how those were resolved.

How have Washington’s boxes been checked?
(1) Basic solutions are federal, generic Best Management Practices (BMPs) that apply to most of the “boxes”

(2) Additional BMPs may be needed to meet water quality standards
The basic best management practices (BMPs) are called “management measures” in CZARA.

Also called “(g)” measures.

These are basic federal minimum, similar to technology-based BMPs.
• CZARA also requires BMPs to meet water quality standards.

• These are called “additional management measures” in CZARA.

• These are beyond the basic federal minimum and are water quality-based BMPs.
Additional Management Measures

• Required by CZARA if the basic management measures (BMPs) are not sufficient to meet water quality standards.

• For example: the basic federal management measures do not

  • Address steep slopes where logging takes place in Washington
  • Address temperature needs of cold-water species such as salmonids
  • Require control of pesticides used in agriculture with buffers
  • Require protection of drinking water from logging and farming
  • Address temperature impacts from farming
What is covered under “water quality standard”? 

The legal definition of a water quality standard is:

- Designated uses
- Antidegradation policy
- Numeric and narrative criteria to protect the uses
What is covered under “water quality standard”? 

The legal definition of a water quality standard is:

- Designated uses
  - Fresh and marine water aquatic life
  - Swimming, fishing, and harvesting
  - Wildlife habitat
  - Aesthetics

- Antidegradation policy
- Numeric and narrative criteria to protect the uses
Designated Uses in Washington

- Salmon, steelhead, bull trout
- Threatened & Endangered Species
- Southern resident killer whales
- Frogs and salamanders
- Aquatic-dependent birds and mammals (e.g., mink, otter, eagles)
What is covered under “water quality standard”? 

The legal definition of a water quality standard is:

- Designated uses

- Antidegradation policy – “existing uses”
  
  Protects “existing uses” that have been in place any time since November 1975 even if they have been extirpated since then.

- Numeric and narrative criteria to protect the uses
Questions?
Thoughts?
So far so good?
So... CZARA decision-making logic path
Is the concern in a Washington coastal watershed?

- Puget Sound watersheds
- Pacific coast watersheds
Is the concern related to Washington water quality, habitat, or species?

• Only addresses nonpoint pollution, generally defined as everything that does not come out of a pipe.

• Temperature, pesticides, polluted run-off of all kinds.

• Aquatic habitats including salmon habitat, riparian areas, shellfish beds, in-stream complexity

• Aquatic or aquatic-dependent species such as salmon, orcas, amphibians, mammals, birds
Does Washington’s program provide for the implementation of the basic federal management measures?

- CZARA requires a program, not just a plan.
- It does not require that all protections are in place.
- It does require that Washington have a program to make sure that the basic federal BMPs will be implemented for sources such as agriculture.
- Some of the federal BMPs are vague.
Are the basic federal management measures sufficient to meet Washington’s water quality standards and protect Washington’s species?

- In 1998, EPA/NOAA determined that Washington had no process to develop *additional* management measures to meet water quality standards.

- In 1998, EPA/NOAA determined that Washington did not have *additional* management measures needed to address logging impacts.
Does Washington’s coastal nonpoint program ensure the implementation of the additional management measures?

In 2020, EPA/NOAA say “yes” and cite to Washington’s:

• TMDL program
• Puget Sound Partnership Action Agenda
• Forest Practices Adaptive Management Program
• Comprehensive Monitoring Strategy and Action Plan for Watershed Health and Salmon Recovery
Hints on CZARA Commenting

- Voluntary vs. regulatory programs
- Lack of a program vs. lack of enforcement
- How low is the bar for EPA/NOAA?
Voluntary vs. Regulatory Program

Voluntary programs are acceptable to meet CZARA provided that:

• Washington has regulatory back-up (existing legal authority).

• Washington demonstrates a commitment to use regulatory backup where necessary.

• Washington describes how it tracks and evaluates voluntary and incentive programs.
• EPA/NOAA will distinguish between evidence that Washington does not have a program and evidence that enforcement action is needed.

• Include specific examples and explain how they are evidence of a programmatic failure of both voluntary and regulatory programs.
How low is the EPA/NOAA bar?

Pretty damn low

• On one hand, Washington must have a “program” that works, not just a plan.

• On the other hand, EPA/NOAA are easily satisfied with appearances.
Don’t forget!

• Deadline is August 14 at midnight

• Submission is through the Regulations.gov portal

• Submit full copies of all documents you cite, not just urls.
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https://www.northwestenvironmentaladvocates.org/project/washington-salmon-threaten/