

Clatsop County, Oregon

OR-2013-1

Environmental Assessment

For the Approval of a Routine Program Change to Incorporate the Revised Clatsop County Comprehensive Plan, the Clatsop County Land and Water Development and Use Ordinance, and the Clatsop County Development Standards Document into the Oregon Coastal Management Program

Contact: Jackie Rolleri, National Interest Team
NOAA Office of Ocean and Coastal Resource Management
jackie.rolleri@noaa.gov; (301) 563-1179

TABLE OF CONTENTS

I. Introduction

- A. Coastal Zone Management Act
 - 1. Program Changes
 - 2. Federal Consistency
- B. Oregon Coastal Management Program & Clatsop County Routine Program Change

II. Purpose and Need

III. Description of Proposed Action and Alternatives

IV. Affected Environment and Environmental Consequences

- A. Affected Environment
- B. Environmental Consequences
 - 1. Known, Direct Consequences of the Preferred Alternative
 - 2. Potential, Indirect Consequences of the Preferred Alternative
 - 3. Consequences of Other Alternatives
 - 4. Conclusion

V. Other Environmental and Administrative Review Requirements

- Anadromous Fish Conservation Act
- Clean Air Act
- Clean Water Act
- Coastal Zone Management Act
- The Coastal Barrier Resources Act
- Endangered Species Act
- Estuaries Protection Act
- Fish and Wildlife Conservation Act
- Magnuson-Stevens Fishery Conservation and Management Act
- Marine Mammal Protection Act
- Migratory Bird Treaty Act
- National Historic Preservation Act
- Rivers and Harbors Act
- Executive Order 11990 Protection of Wetlands
- Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; Executive Order 12948; and Amendment to Executive Order No. 12898
- Executive Order Number 13112 Invasive Species

Appendices

- A. List of Preparers and Persons Consulted
- B. Response to Comments

I. Introduction

A. Coastal Zone Management Act

Recognizing the need for a coordinated effort in managing the nation's coastal uses and resources, in 1972, Congress passed the Coastal Zone Management Act (CZMA).¹ The Act encourages states to exercise more fully their authorities and responsibilities over coastal resources and uses through the voluntary development of comprehensive coastal management programs ("management programs") that balance resource protection, use, and development. The primary incentives for states to develop management programs are the receipt of federal funds to develop and implement the programs and the requirement that federal actions must be consistent with the enforceable policies of approved programs (referred to as "federal consistency").

The Office of Ocean and Coastal Resource Management (OCRM) within the National Oceanic and Atmospheric Administration (NOAA) administers the CZMA and is responsible for approving management programs and changes to those programs.

To receive federal approval, a management program must satisfy the program approval criteria in 16 U.S.C. § 1455(d) and the requirements in the implementing regulations at 15 C.F.R. part 923, subparts A-F. In general, management programs must address five program areas: 1) uses subject to management, 2) special management areas, 3) boundaries of the state's coastal zone, 4) authorities and organization, and 5) coordination, public involvement and national interest.²

1. Program Changes

The CZMA recognizes that states may need to modify their approved management programs.³ Any change to one of an approved management program's five program areas listed in 15 C.F.R. part 923 is a "program change." Program changes must be submitted to and approved by OCRM if: 1) the change pertains to an element of the management program upon which the approval findings for the program are based; or 2) the state intends to use the change for federal consistency.⁴ Program changes must be submitted either as a routine program change (RPC) or an amendment.⁵ A routine program change is a further detailing of the state management program while an amendment is a substantial change to one of the five program areas.⁶

OCRM's review of program changes is limited to two elements. First, OCRM determines whether the change would cause the management program to no longer satisfy the program approval criteria and requirements in 16 U.S.C. § 1455(d) and 15 C.F.R. part 923, subparts B-F.

¹ 16 U.S.C. §§ 1451-1466.

² See 15 C.F.R. part 923, subparts B-F.

³ See 16 U.S.C. § 1455(e).

⁴ NOAA OCRM, *Program Change Guidance: The Coastal Zone Management Act and Changes to State and Territory Coastal Management Programs 2* (July 1996) [hereinafter *Program Change Guidance*], available at <http://coastalmanagement.noaa.gov/consistency/media/guidanceappendices.pdf>.

⁵ See 15 C.F.R. part 923, subpart H.

⁶ See 15 C.F.R. part 923, subpart H.

Second, OCRM evaluates whether the change raises other approvability issues such as the enforceability of policies for federal consistency review purposes. OCRM must approve the program change, whether an RPC or an amendment, unless the change 1) causes the management program to no longer satisfy the program approval criteria and requirements, or 2) raises other approvability issues.

OCRM's approval or denial of a program change does not affect the implementation or enforceability of the state policies as a matter of state law. Changes to statutes, regulations, and other requirements that are legally binding under state law are effective regardless of whether they are approved by OCRM. OCRM's approval only supplements the state's existing authority by giving the changes effect for federal consistency purposes.

2. Federal Consistency

Federal consistency is a CZMA requirement that federal actions that have reasonably foreseeable effects on any coastal uses or resources be consistent with the enforceable policies of a state's federally-approved management program.⁷ If a state chooses to develop a comprehensive management program that meets the requirements of the CZMA, federal actions are required to be consistent with the policies of the management program.

Although a state may have authority over most activities independent of the federal consistency review process, states ordinarily do not have authority over federal actions except under those circumstances where Congress has acceded to state review. The federal consistency provisions of the CZMA extend the reach of states by giving them the ability to review federal agency activities, authorizations, and financial assistance that have reasonably foreseeable effects on coastal resources or uses.

Under the requirements of the CZMA, Federal agency activities, such as federal construction projects, must be consistent to the maximum extent practicable with a state's enforceable policies.⁸ Activities that require a federal authorization, such as a license or permit, must be fully consistent with a state's enforceable policies in order for a federal agency to approve the activity.⁹ Federal financial assistance to state and local governments must also be fully consistent with a state's enforceable policies.¹⁰

If a state finds that an activity is not consistent with its federally-approved enforceable policies, the state may object to the activity. In the case of activities that require a federal authorization, such as a license or permit, a state objection means that the federal agency cannot authorize the activity, unless the activity is modified to meet the requirements of the state's enforceable policy, or the state's objection is overridden on appeal to the U.S. Secretary of Commerce.¹¹ One of the limitations on states' federal consistency authority is that state reviews and objections can only

⁷ See 16 U.S.C. § 1456 and 15 C.F.R. part 930.

⁸ See 16 U.S.C. § 1456 (c)(1).

⁹ See 16 U.S.C. § 1456(c)(3).

¹⁰ See 16 U.S.C. § 1456(d).

¹¹ See 16 U.S.C. § 1456(c)(3).

be based on federally-approved enforceable policies. Any new or substantially revised enforceable policy must be submitted to and approved by OCRM as a program change before the state can use the policy for CZMA reviews.

B. Oregon Coastal Management Program & Clatsop County Local Coastal Program

In 1977, Oregon became the second state to have a CZMA management program approved. The Oregon Coastal Management Program (OCMP) is administered by the Oregon Department of Land Conservation and Development (DLCD) as part of the overall land use management regime established under the Land Use Act of 1973 as amended. The Act, codified as ORS Chapter 197 *et seq.*, established the Land Conservation and Development Commission (LCDC) with authority to adopt goals and guidelines which local comprehensive plans would be required to meet.

As approved by NOAA in 1977, the OCMP authorities are comprised of:

1. The Statewide Planning Goals adopted by the LCDC;
2. Local comprehensive plans which have been acknowledged by the State as meeting the requirements of the LCDC goals and guidelines, along with the zoning and other development regulations which are in compliance with the acknowledged plans; and
3. Other State-wide statutes and regulations.¹²

The State of Oregon is one of a few states that has federally approved local coastal programs. The local coastal programs contain enforceable policies which are applied by the State as State enforceable policies for the purposes of CZMA federal consistency reviews.

In 1985, OCRM approved the incorporation of the Clatsop County Comprehensive Plan (Clatsop County Plan) and associated Clatsop County Land and Water Development and Use Ordinance (Clatsop County Ordinance) and the Clatsop County Development Standards Document (Clatsop County Standards) (collectively, Clatsop County land use provisions) into the OCMP. These changes to the OCMP were approved as a routine program change pursuant to 15 C.F.R. § 923.84 constituting further detailing of the OCMP. The approval letter stated that federal consistency will apply to the “elements” of the Clatsop County Plan.¹³

II. Purpose and Need

The purpose of OCRM’s action is to fulfill its responsibility under the CZMA to review and respond to the State’s program change request. OCRM’s approval is needed to allow the State to

¹² Robert W. Knecht, Acting Associate Administrator for Coastal Zone Management, NOAA, Approval of the Oregon Coastal Management Program, p. 3 (June 6, 1977).

¹³ See Letter from Peter L. Tweedt, Director, Office of Ocean and Coastal Resource Management, to James F. Ross, Director, Department of Land Conservation and Development (Dec. 20, 1985).

apply the proposed policies when reviewing federal actions for federal consistency review purposes under the CZMA.

As discussed above, the review and approval of proposed program changes is a statutorily required administrative action.¹⁴ In complying with this statutory requirement, OCRM reviews the state program change to ensure that the state continues to meet the eligibility criteria for participation in the CZMA program, and that the program change does not conflict with other federal laws or the national interest. As discussed in the Introduction, OCRM's review is limited to two elements, and OCRM must approve program changes unless: 1) the changes cause the management program to no longer satisfy the program approval criteria and requirements in 16 U.S.C. § 1455(d) and 15 C.F.R. part 923, subparts B-F; or 2) the changes raise other approvability issues. OCRM cannot use the program change review process to change state policy or to challenge state criteria or procedures.

State coastal management programs are intended to be comprehensive land and water use management programs. Because state programs have been found to be comprehensive, once approved, most changes to those programs serve the purpose of providing additional detail and are considered routine program changes. Where a proposed program change is found to meet the requirements for routine program changes under 15 C.F.R. 923.84, OCRM is required to approve the changes for incorporation into the state coastal management program. If OCRM does not approve or deny a proposed routine program change within a certain timeframe, the CZMA provides that the proposed change shall be deemed to have been approved.

In 1996, OCRM revised the program change regulations at 15 C.F.R. Part 923, Subpart H to require states to identify all enforceable policies proposed in program change approval requests. The intent of this revision to the program change regulations was to establish greater certainty as to the enforceable policies of states.

The 2006 evaluation of the OCMP conducted by OCRM pursuant to Section 312 of the CZMA found that changes to local plans, revisions to state rules, and new polices established at the state level had not been incorporated into the OCMP.¹⁵ The evaluation encouraged the OCMP to prioritize the submittal of enforceable policies that are of particular importance in regards to anticipated activities that the State will be reviewing for federal consistency.

The Clatsop County Board of Commissioners has periodically updated the Clatsop County land use provisions. On May 13, 2013, OCRM received Oregon's request to incorporate the current versions of the Clatsop County land use provisions as a routine program change request pursuant to 15 C.F.R. § 923.84 and OCRM's 1996 Program Change Guidance.¹⁶ OCRM has reviewed the proposed program change and found that the change would not substantially change the OCMP

¹⁴ See 16 U.S.C. § 1455(e).

¹⁵ NOAA OCRM, *Final Evaluation Findings: Oregon Coastal Management Program*, p. 23 (August 2003 to October 2006).

¹⁶ Oregon Coastal Management Program, *Public Notices for Coastal Program Updates* (May 7, 2013), available at http://www.oregon.gov/LCD/OCMP/Pages/PublicNotice_Intro.aspx#Public_Notices_for_Coastal_Program_Updates.

as approved by OCRM. Consistent with OCRM's determination that the 1985 changes to the OCMP incorporating the Clatsop County local coastal program were a routine program change providing further detail to the OCMP, OCRM finds that the revised Clatsop County comprehensive plan, zoning ordinances and development standards, submitted for approval in their entirety are not substantial changes to the OCMP.

Consistent with this proposed administrative action, in 2012, OCRM approved as RPCs changes to the Oregon's local coastal programs for Curry and Lincoln counties. These past actions support the agency's decision to treat the proposed action as an RPC rather than an amendment.

III. Description of Proposed Action and Alternatives

The proposed federal action is OCRM's approval of the incorporation of changes to the Clatsop County land use provisions into the Oregon Coastal Management Program as an RPC pursuant to 15 C.F.R. § 923.84.

OCRM has preliminarily determined that the changes constitute an RPC because they are a further detailing¹⁷ of the OCMP which is implemented in part through local coastal programs. The Clatsop County component of the OCMP was previously approved and implemented as part of the State's management program.¹⁸ Approval of the Clatsop County land use provision changes as an RPC is OCRM's preferred alternative (other alternatives considered are discussed below).

OCRM considered the following four alternatives:

Alternative 1: Approve the Clatsop County Land Use Provision Changes as an RPC (preferred alternative)

OCRM's proposed action and preferred alternative is to approve the Clatsop County changes as an RPC.¹⁹ As discussed above, OCRM has preliminarily determined that the changes constitute

¹⁷ RPCs are the further detailing of a state CMP that does not result in a substantial change to one or more of the five program areas identified in subparts B through F of 15 C.F.R. part 923. See 15 C.F.R. § 923.84(a). These program areas include uses subject to the management program, special management areas, coastal zone boundary, authorities and organization of the management program and coordination, public involvement and national interest. A state management program initially approved by NOAA contains a comprehensive suite of components and policies that meet each of these program areas. Given the comprehensive nature of the state management programs, most changes from what was previously approved and what is new is not a substantial change and is "further detailing" of what was previously approved.

¹⁸ See 15 C.F.R. § 923.84(a).

¹⁹ Although Alternative 1 is to approve the proposed program change, the approval would include standard qualifications and a denial in part for those sections found not to comply with the Coastal Zone Management Program Regulations at 15 C.F.R. Part 923 or other limitations under federal law. Provisions within the Clatsop County Land and Water Development and Use Ordinance (Section 5.124 at p. 315) which specify the local CZMA federal consistency review procedures for federal licenses and permits are in conflict with 15 C.F.R. §923.53. OCRM has also found that a provision in the Clatsop County Comprehensive Plan Goals and Policies contains a directive to the U.S. Fish and Wildlife Service (Policy P.20.12.7 at p. 84) which is beyond the authority of the local

an RPC. As a result of OCRM's approval, Oregon would be able to use the revised enforceable policies of the Clatsop County comprehensive plan, ordinances and standards for CZMA federal consistency reviews for federal actions proposed or filed with an authorizing Federal agency after OCRM's approval.

Alternative 2: Deny the Clatsop County Land Use Provision Changes as an RPC and Advise the State to Resubmit the Changes as an Amendment

Pursuant to 15 C.F.R. § 923.84(b)(5)(i), OCRM could deny the Clatsop County land use provision changes as an RPC if they are substantial changes that constitute an amendment under 15 C.F.R. § 923.81. OCRM would advise the State to resubmit the changes as an amendment. As a result of OCRM's denial, the State would not be able to use the Clatsop County land use provisions for federal consistency reviews until OCRM approves the amendment. In the interim, the 1983 version of the Clatsop County land use provisions (approved by OCRM in 1985) would still have effect under state law for purposes of CZMA federal consistency reviews to the extent that: any provision relied upon as an enforceable policy can be shown to have been previously approved by OCRM; those provisions continue to meet the definition of an enforceable policy; and the provision is enforceable in the most recent State-approved Clatsop County land use provisions. However, even if OCRM determined that the changes must be approved through the amendment process, the result would likely be the same as that under the first alternative, i.e., approval (although the timing of OCRM's decision would be different).

Alternative 3: Deny the Clatsop County Land Use Provision Changes

Pursuant to 15 C.F.R. § 923.84(b)(5)(ii), OCRM could deny the proposed changes if program approvability concerns were found.²⁰ While there may be some subjectivity in determining whether a state coastal management program continues to meet the requirements for program approvability, OCRM has no discretion in denying a proposed change. If a proposed program change would cause a state coastal management program to no longer meet the eligibility requirements for program approval, OCRM must deny the program change. In such a situation, the State would have to address the approvability issues before seeking OCRM's approval of the changes as an RPC or an amendment. Likewise, OCRM has no discretion in approving program changes if there is no basis for denial.

Regardless of whether the program change is approved or denied, the Clatsop County comprehensive plan, zoning ordinances and development standards would still have effect under local and state law. Also, any Clatsop County policy which had previously been approved by OCRM and shown not to have been substantially revised would still be applicable for CZMA federal consistency review purposes.

government or state. Both of these provisions pertain to procedural requirements and have been found not to have environmental effects.

²⁰ In comments received on the proposed change to the OCMP, concerns were raised in regards to alleged deficiencies with the OCMP as originally approved by OCRM in 1977. The alleged deficiencies in the OCMP are independent of the proposed change to incorporate revisions to the Clatsop County land use provisions and not within the subject matter of this submission that is before OCRM.

Alternative 4: No Action

OCRM could take no action to either approve or deny the Clatsop County land use provision changes. Under the CZMA, if OCRM fails to respond to a state's RPC request, the changes are deemed approved.²¹ Therefore, this alternative would have the same effect as approving the changes under the preferred alternative.

IV. Affected Environment and Environmental Consequences

A. Affected Environment

Landscape and Ecoregion: Clatsop County is located in the northwest corner of the State of Oregon where the Columbia River empties into the Pacific Ocean.²² The landscape of the county is typical of the Coastal Range ecoregion found along the coast from northern California to Washington State with low-elevation mountains and numerous rivers and streams.²³ The predominant landscape feature is Douglas-Fir forests but also includes ocean beaches, dunes, coastal prairies and inter-dune wetlands including North Pacific bogs and fens, and mixed coastal coniferous forests.²⁴ Both the offshore and terrestrial landscapes of Clatsop County are along migration routes for a variety of aquatic and avian species.

Land Ownership: About 30% of the lands within the county boundaries are state-owned forest lands.²⁵ There are no U.S. Forest Service lands, major Department of Defense facilities, or major National Park Service (NPS) Units in Clatsop County. Several national Wildlife Refuges and a National Historic Site are located in the county. These include:

- Julia Butler Hansen National Wildlife Refuge
- Lewis and Clark National Wildlife Refuge
- Oregon Islands National Wildlife Refuge
- Lewis and Clark National Historical Park²⁶

Developed Lands: Most of the land area of the county (827 square miles) is undeveloped. The county's five incorporated areas – Astoria, Cannon Beach, Gearhart, Seaside and Warrenton -- are all found along the coast or Columbia River.

²¹ See 16 U.S.C. § 1455(e) and 15 C.F.R. § 923.84(b)(3).

²² Clatsop County, Oregon, *About Clatsop County*, <http://co.clatsop.or.us/default.asp?pageid=443&deptid=6>, (last visited June 28, 2013).

²³ See Oregon Dept. of Forestry, *Oregon Indicators of Sustainable Forests*, <http://www.oregon.gov/ODF/indicators/Pages/indicatorEa.aspx> (last visited June 27, 2013).

²⁴ MIG, Inc., *North Clatsop Plains Sub-Area Plan Existing Conditions Report, Final* (May 2013), available at http://co.clatsop.or.us/assets/dept_12/pdf/northclatsopplains%20existingconditions%20final.pdf.

²⁵ Wikipedia, *Clatsop County, Oregon*, http://en.wikipedia.org/wiki/Clatsop_County,_Oregon (last visited June 27, 2013) [hereinafter Wikipedia, *Clatsop County*].

²⁶ Wikipedia, *Clatsop County*, *supra* note 22.

Ecological Conditions: – Nationally, Clatsop County ranks low on the scale of areas beset with air, water and hazardous waste problems.²⁷ Several federally listed endangered and threatened species may be found in the county.²⁸

Population: Most of the county’s population (37,039, 2010 U.S. Census) is concentrated in six incorporated cities. The rate of population growth from 2000-2010 was 4 percent.²⁹

About 13 percent of the population is classified as being within minority groups with the largest portion being those of Hispanic or Latin origin (7.8 percent).³⁰

The unemployment rate for Clatsop County in May 2013 was 7 percent. The County is not classified as a distressed community as the term is used in Oregon law.³¹

About 14.2% of the population lives on incomes below the poverty line; this percent is near the state and national averages (14.8% and 15% respectively).³²

Economy: The economy of the county has historically been based on fishing and timber. Although these industries still have a substantial presence in the county, the county's largest employers today are concentrated in the construction/manufacturing, retail, hospitality/tourism, healthcare, and government sectors.

Economic Infrastructure: The Port of Astoria is a major part of the economic infrastructure of Clatsop County. The port can accommodate deep-draft vessels, providing services to commercial and cargo vessels, fish processors, cruise ships and research vessels at several locations. Its facilities include shipping piers, mooring basins, industrial and office properties, and an airport. The port is currently redeveloping a former U.S. Navy facility located at Tongue Point and seeking to develop vacant land at Skipanon Peninsula where a liquefied natural gas facility has been proposed. Road access to the port is provided along Oregon Highways 26 and 30 and across the Astoria-Megler Bridge via Washington Highways 101 and 4/401. Rail access is available to Tongue Point via the Astoria Branch of the Portland & Western Railroad.³³

²⁷ Sperling’s Best Places, *Health in Clatsop County, Oregon*, <http://www.bestplaces.net/health/county/oregon/clatsop>, (last visited June 27, 2013).

²⁸ U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, *Federally Listed, Proposed, Candidate Species and Species of Concern Under the Jurisdiction of the Fish and Wildlife Service Which May Occur Within Clatsop County, Oregon*, available at <http://www.fws.gov/oregonfwo/Species/Lists/Documents/OregonStateSpeciesList.PDF> (last updated June 15, 2013).

²⁹ U.S. Dept. of Commerce, Census Bureau, *Clatsop County Quickfacts from the U.S. Census Bureau*, <http://quickfacts.census.gov/qfd/states/41/41007.html> (last visited June 27, 2013) [hereinafter *Clatsop County Quickfacts*].

³⁰ *Clatsop County Quickfacts*, *supra* note 26.

³¹ Business Oregon, *Distressed Areas in Oregon*, <http://www.oregon4biz.com> (last visited June 27, 2013)

³² *Clatsop County Quickfacts*, *supra* note 26.

³³ Port of Astoria, <http://www.portofastoria.com/> (last visited June 27, 2013).

In addition to Highways 26 and 30 noted above, the Clatsop County segment of Oregon Route 101 is part of a major transportation corridor along the U.S. Pacific coast.³⁴

Historical and Cultural Resources: Clatsop County contains sites that are historically significant in the history of the national expansion of the United States and settlement of the United States west of the Rocky Mountains. The area was inhabited by the Chinook-speaking Clatsop tribe at the time when the Lewis & Clark Corps of Discovery Expedition overwintered near Astoria upon having reached the Pacific Ocean. Settlement began in the early 1800's with Clatsop County being one of the earliest areas to be settled west of the Rockies.³⁵

The 1851 Tansy Point Treaty with the Clatsop-Nahalem tribes reserved lands for the tribes in the area where Fort Stevens was later located. In addition, the Clatsop-Nehalem people were recognized to have perpetual rights to fish and hunt at the confluence of the Necanicum River, as well as the Neawanna and Neacoxie creeks. However, Congress did not ratify the treaty nor recognize the Clatsop-Nehalem Tribes.³⁶

Numerous sites in Clatsop County have been designated on the National Historic Register, along with the designation of several historic districts.³⁷ In addition, significant architectural examples have been noted in the seaside resorts along the coast.

Natural Hazards: Clatsop County slightly exceeds the average number of federally declared natural disasters with 13 having been declared. The greatest natural disaster threats have been floods and storms, landslides and mudslides, and winter storms.³⁸ Clatsop County lies within the Cascadia Subduction Zone and is subject to earthquake and tsunami risks.

B. Environmental Consequences

1. Known, Direct Consequence of the Preferred Alternative

The only direct consequence of OCRM's approval is the recognition that the comprehensive plan, zoning ordinances and development standards are incorporated into the OCMF with certain provisions recognized as enforceable policies of the state coastal management program. Once recognized as enforceable policies for CZMA federal consistency review purposes, the State has the authority to review federal actions that may have reasonably foreseeable effects on coastal resources and uses to determine whether they are consistent with the enforceable policies approved as part of the program change.

³⁴ Wikipedia, *Clatsop County*, *supra* note 22.

³⁵ Wikipedia, *Clatsop County*, *supra* note 22.

³⁶ Oregon Coastal Zone Management Association, *Oregon Coastal Notes* (Nov. 21, 2006).

³⁷ National Register of Historic Places, <http://www.nationalregisterofhistoricplaces.com/OR/Clatsop/state.html> (last visited June 27, 2013).

³⁸ http://www.city-data.com/county/Clatsop_County-OR.html (June 27, 2013).

Any application of the approved enforceable policies would be an indirect effect (discussed below) since the application of an enforceable policy is contingent upon a federal action being proposed to be undertaken.

OCRM's approval of the incorporation of the comprehensive plan, ordinances and standards for Clatsop County into the OCMP would not affect the application of the plan, ordinances or standards as those provisions already apply under local and State law regardless of whether OCRM approves or denies them.

Incorporating the Clatsop County comprehensive plan, zoning ordinances, and development standards into the OCMP will not have effects on the human environment that are highly controversial, highly uncertain or involve unique or unknown risks.

2. Potential, Indirect Consequences of the Preferred Alternative

Any indirect consequences or cumulative impacts, if any, from OCRM's approval of the proposed program changes would be limited to a subset of activities within the county involving future federal agency actions. The outcome of the State's application of these policies through the CZMA federal consistency review process will vary with the particular circumstances of the activities reviewed. The purpose of federal consistency is to facilitate cooperation and coordination between state and federal agencies to identify and resolve potential federal/state conflicts. There is not a predetermined outcome to the CZMA federal consistency review process. Even if a state objects to an activity because it is inconsistent with an enforceable policy, an objection is not determinative of the final outcome of a proposed activity. A federal agency may proceed over a state objection if the agency finds that the proposed activity is consistent to the maximum extent practicable with the state's enforceable policy.³⁹ A federal license or permit applicant may appeal the State's objection to the U.S. Secretary of Commerce.⁴⁰ The Secretary may override the State's objection if the activity is necessary in the interest of national security or is consistent with the objectives or purposes of the CZMA, which include national interest considerations. The Secretary may override a State's objection if the activity furthers the national interest in a significant or substantial matter; the national interest outweighs any adverse coastal effects; and there is no reasonable alternative that would allow the activity to be consistent with the management program's enforceable policies.⁴¹ The outcome of the Secretary's review is case-specific.

The preferred alternative is consistent with past actions approving the incorporation of local comprehensive plans, zoning ordinances and development standards as routine program changes to the OCMP. The Clatsop County comprehensive plan, zoning ordinances and development standards were originally approved for incorporation in the OCMP in 1985. In 2012, OCRM approved changes to the local coastal programs for Curry and Lincoln counties. These past actions support the agency's decision to treat the proposed action as an RPC rather than as an amendment. Although the proposed action could influence similar future actions and decisions

³⁹ See 15 C.F.R. § 930.43(d)(1).

⁴⁰ See 15 C.F.R. part 930, subpart H.

⁴¹ See 15 C.F.R. § 930.121.

on proposed program changes, it does not establish a new or controlling precedent. Similar future actions will still be subject to an independent review. OCRM finds no cumulative effect associated with the proposed activity for the reasons noted above that the comprehensive plan, zoning ordinances and development standards are legally applicable as state and local law requirements independent of the CZMA.

a. Biological, Physical, and Chemical Consequences

The Clatsop County comprehensive plan, ordinances and standards were developed pursuant to statewide planning goals and guidelines. These include goals and guidelines for forest lands; natural resources, scenic and historic areas, and open spaces; air, water and land resources quality; areas subject to natural hazards; the Willamette River Greenway; estuarine resources; coastal shorelands; beaches and dunes; and ocean resources. The incorporation of the Clatsop County comprehensive plan, zoning ordinances, and development standards into the OCMP ensures that these goals will be considered by federal agencies. While proposed federal agency actions, if undertaken, are required to be consistent with state enforceable policies to the maximum extent practicable, states cannot direct federal agencies to take specific actions.

Although the Clatsop County comprehensive plan, zoning ordinances and development standards may further public health and safety, these laws are legally applicable in Clatsop County regardless of their incorporation into the OCMP. The approval of these program changes as an RPC is not anticipated to affect public health, and safety in any way beyond how the comprehensive plan, zoning ordinances and development standards already apply. Nor would the proposed incorporation of the comprehensive plan, zoning ordinances, or development standards into the OCMP apply to the unique characteristics of the geographic area of Clatsop in any manner different from state and local requirements already in effect.

b. Social and Economic Consequences

Under the Oregon Land Use Act of 1973, local government comprehensive plans, zoning ordinances and standards are intended to serve a variety of broad social and economic goals. Over the forty years since the Act was enacted, continued public support for the Act, as seen with its longevity, confirms that the Act is seen as meeting its intended social and economic goals. The statewide planning goals include citizen involvement; land use planning; agricultural lands; forest lands; natural resources, scenic and historic areas, and open spaces; air, water and land resources quality; areas subject to natural hazards; recreational needs, economic development, housing; public facilities and services; transportation; energy conservation; urbanization; the Willamette River Greenway; estuarine resources; coastal shorelands; beaches and dunes; and ocean resources.

In comments received on the proposed change, questions were raised in regards to the application of the enforceable policies therein to facilities of national interest and in particular energy facilities. Neither the approval by OCRM of state enforceable policies nor a state's CZMA objection based on those policies is the final determination of national interest under the CZMA. The Secretary of Commerce is the ultimate arbiter of deciding the national interest under

the CZMA. As noted above, the Secretary of Commerce may override a state's objection regardless of the merits of the objection.

3. Consequences of Other Alternatives

Alternatives two (Deny the Proposed Changes as an RPC and Advise the State to Resubmit the Changes as an Amendment) and four (No Action) would ultimately result in approval of the proposed changes. Therefore, these alternatives would have the same consequences as the preferred alternative discussed above, although the timing of approval could vary.

Alternative three (Deny the Proposed Changes) would result in different consequences, but the ultimate consequences are uncertain. The direct consequence of this alternative is that the State could not use the proposed changes for federal consistency. The State would still have federal consistency authority and could object to an activity if it is inconsistent with other policies. Thus, any additional consequences would be activity-specific and are uncertain at this time. In order to deny the proposed changes, OCRM would need to determine that the changes would affect the underlying approvability of the OCMP.

4. Conclusion

For the reasons described above, OCRM's approval of the proposed changes to the OCMP is not anticipated to result in a significant effect on the human environment.

V. Other Environmental and Administrative Review Requirements

Anadromous Fish Conservation Act

The Anadromous Fish Conservation Act (16 U.S.C. § 757a, *et seq.*) provides authority to conserve, develop, and enhance anadromous fishery resources.

Compliance: There are no compliance requirements for the Anadromous Fish Conservation Act.

Clean Air Act

The Clean Air Act (42 U.S.C. § 7401, *et seq.*) directs the U.S. Environmental Protection Agency to set limits on air emissions to ensure basic protection of health and the environment. The fundamental goal is the nationwide attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). Primary NAAQS are designed to protect human health. Secondary NAAQS are designed to protect the public welfare (for example, to prevent damage to soils, crops, vegetation, water, visibility, and property).

Compliance: The State of Oregon has been delegated authority to administer the Clean Air Act. The State "acknowledgement," i.e., approval of the Clatsop County comprehensive plan serves as a finding that the plan complies with Clean Air Act requirements.

Clean Water Act

The Clean Water Act (33 U.S.C. § 1251, *et seq.*) is the principal law governing pollution control and water quality of the nation's waterways. Section 404 of the Act authorizes a permit program for the beneficial use of dredged or fill material in navigable waters. The U.S. Army Corps of Engineers (USACE) administers the program.

Compliance: The State of Oregon has been delegated authority to administer the Clean Air Act. The State “acknowledgement,” i.e., approval of the Clatsop County comprehensive plan serves as a finding that the plan complies with Clean Air Act requirements.

Coastal Zone Management Act (CZMA)

The goal of the federal Coastal Zone Management Act (16 U.S.C. § 1451, *et seq.*; 15 C.F.R. part 923) is to preserve, protect, develop and, where possible, restore and enhance the nation’s coastal resources. The federal government provides grants to states with federally approved coastal management programs. The State of Oregon has a federally approved program. Section 1456 of the CZMA requires any federal action inside or outside of the coastal zone that affects any land or water use or natural resources of the coastal zone to be consistent, to the maximum extent practicable, with the enforceable policies of approved state management programs. It states that no federal license or permit may be granted without giving the State the opportunity to concur that the project is consistent with the State's coastal policies. The regulations outline the consistency procedures.

Compliance: The preferred alternative has been selected based on the requirements of the CZMA and its implementing regulations for approving changes to state coastal management programs.

The Coastal Barrier Resources Act (CBRA)

Originally passed in 1982 and reauthorized in 2005 (16 U.S.C. § 3501 *et seq.*; 12 U.S.C. § 1441 *et seq.*), CBRA was enacted to protect coastal barrier islands and their resources. Under CBRA, there are limitations on federal expenditures in designated CBRA units; however, there are certain project-specific allowances on a project-by-project basis.

Compliance: There are no CBRA units in the State of Oregon.

Endangered Species Act

The federal Endangered Species Act (16 U.S.C. § 1531, *et seq.*; 50 C.F.R. parts 17, 222, 224) directs all Federal agencies to conserve endangered and threatened species and their habitats and encourages such agencies to utilize their authority to further these purposes. Under the Act, NOAA’s National Marine Fisheries Service and the U.S. Fish and Wildlife Service (USFWS) publish lists of endangered and threatened species. Section 7 of the Act requires that Federal agencies consult with these two agencies to minimize the effects of federal actions on endangered and threatened species.

Compliance: OCRM determined that “no effect” to endangered species is appropriate for this action so formal consultation under section 7 consultation was not required.

Estuaries Protection Act

The Estuary Protection Act (16 U.S.C. §§ 1221-1226) highlights the values of estuaries and the need to conserve natural resources. It authorizes the Secretary of the Interior, in cooperation with other federal agencies and the states, to study and inventory estuaries of the United States, to determine whether such areas should be acquired by the federal government for protection, to assess impacts of commercial and industrial developments on estuaries, to enter into cost-sharing agreements with states and subdivisions for permanent management of estuarine areas in their possession, and to encourage state and local governments to consider the importance of estuaries in their planning activities related to federal natural resource grants.

Compliance: There are no compliance requirements for the Estuaries Protection Act.

Fish and Wildlife Conservation Act

The Fish and Wildlife Conservation Act of 1980 (16 U.S.C. § 2901; 50 C.F.R. § 83) provides for the consideration of impacts on wetlands, protected habitats, and fisheries.

Compliance: There are no compliance requirements for the Fish and Wildlife Conservation Act.

Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) (16 U.S.C. § 1801, *et seq.*) as amended and reauthorized by the Sustainable Fisheries Act (Public Law 104297), established a program to promote the protection of essential fish habitat (EFH) in the review of projects conducted under federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. After EFH has been described and identified in fishery management plans by the regional fishery management councils, federal agencies are obligated to consult with the Secretary of the U.S. Department of Commerce with respect to any action authorized, funded, or undertaken or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH.

Compliance: Waterbodies within Clatsop County have been designated as essential fish habitat pursuant to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The approval of the incorporation of the Clatsop County comprehensive plan, zoning ordinances and development standards into the OCMP has been determined not to affect EFH since such requirements already have the force of law. Under the MSFCMA, an EFH consultation with the National Marine Fisheries Service would be required for any federal action being proposed in the County.

Marine Mammal Protection Act

The Marine Mammal Protection Act (16 U.S.C. § 1361, *et seq.*) establishes a moratorium on the taking and importation of marine mammals and marine mammal products, with exceptions for scientific research, allowable incidental taking, subsistence activities by Alaskan natives, and hardship. The Act provides authority to manage and protect marine mammals, including maintenance of the ecosystem.

Compliance: No take authorization is required for the preferred alternative.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (16 U.S.C. § 715, *et seq.*) provides for the protection of migratory birds. The Act does not specifically protect the habitat of these birds but may be used to consider time of year restrictions for remedial activities on sites where it is likely migratory birds may be nesting and/or to stipulate maintenance schedules that would avoid the nesting seasons of migratory birds.

Compliance: The preferred alternative does not trigger any requirement under the Migratory Bird Treaty Act.

National Historic Preservation Act

The purpose of the National Historic Preservation Act (16 U.S.C. § 470, *et seq.*) is to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes by specifically providing for the preservation of historical of

archeological data which might otherwise be lost or destroyed.

Compliance: The State Historic Preservation Office (SHPO) was consulted with in the selection of the preferred alternative. The SHPO found that the preferred alternative was an administrative action that did not require review.

Rivers and Harbors Act

The Federal Rivers and Harbors Act (33 U.S.C. § 401, *et seq.*) regulates development and use of the nation's navigable waterways. Section 10 of the Act prohibits unauthorized obstruction or alteration of navigable waters and vests the USACE with authority to regulate discharges of fill and other materials into such waters.

Compliance: The Clatsop County comprehensive plan, zoning ordinances and development standards do not authorize any activity that would not receive a Rivers and Harbors Act authorization.

Executive Order 11990 Protection of Wetlands

Executive Order 11990 (40 C.F.R. § 6392 (a) and Appendix A) requires Federal agencies to avoid the adverse impacts associated with the destruction or loss of wetlands, to avoid new construction in wetlands if alternatives exist, and to develop mitigation measures if adverse impacts are unavoidable.

Compliance: There are no compliance issues with Executive Order (E.O.) 11990 as the EO only applies to federal agencies activities.

Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; Executive Order 12948; Amendment to Executive Order No. 12898

Executive Orders 12898 and 12948 require each Federal agency to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority and low-income populations.

Compliance: There are no compliance issues with Executive Orders (E.O.) 12898 and 12948 as those EOs only apply to federal agencies activities.

Executive Order Number 13112 Invasive Species

The purpose of Executive Order 13112 is to prevent the introduction of invasive species and provide for their control, and to minimize the economic, ecological, and human health impacts that invasive species cause.

Compliance: There are no compliance issues with Executive Order (E.O.) 13112 as the EO only applies to federal agencies activities.

VI. Conclusion: Finding of No Significant Impact

The National Oceanic and Atmospheric Administration proposes to approve the incorporation of the comprehensive plan, zoning ordinances and development standards for Clatsop County, Oregon into the Oregon Coastal Management Program as an RPC. Four alternatives were considered for the proposed project: approve the program changes as an RPC, deny the program change as an RPC and advise the State to resubmit the changes as an amendment, deny the program change, or take no action.

Significant individual and/or cumulative environmental effects would not result from implementation of the preferred alternative, and preparation of a Finding of No Significant Impact (FONSI) is warranted. NOAA Administrative Order (NAO) 216-6 (revised June 20, 1999) provides eleven criteria for determining the significance of the impacts of a proposed action. These criteria are discussed below as they relate to the proposed project.

a. Has the agency considered both beneficial and adverse effects (A significant effect may exist even if the Federal agency believes on balance the effect will be beneficial)?

The agency has considered both beneficial and adverse effects and no significant effects are anticipated. The only direct effect is that the updated and revised Clatsop County comprehensive plan, zoning ordinances and development standards would be incorporated into the OCMP and could be used by the State in determining whether to concur or object to a proposed federal action. Furthering cooperation and coordination between federal agencies and states is an express purpose of the CZMA and considered to be a beneficial effect. The preferred alternative is a further detailing of the OCMP which has already been approved OCRM and is being implemented through policies found at the state and local level. As such, the preferred alternative to approve the incorporation of the Clatsop County comprehensive plan, zoning ordinances and development standards is not considered to be a significant effect.

b. To what degree would the proposed action affect public health and safety?

The proposed action is not anticipated to affect public health and safety in any significant way different from how the comprehensive plan, zoning ordinances and development standards are already applied.

c. To what degree would the proposed action affect unique characteristics of the geographic area in which the proposed action is to take place?

The unique characteristics of the geographic areas are already subject to the legal protections afforded by state law and the Clatsop County comprehensive plan, zoning ordinances and development standards. The incorporation of these elements would not affect these areas in any way different from how those elements are already being applied under state and local law.

d. To what degree would the proposed action have effects on the human environment that are likely to be highly controversial?

The proposed program change is to incorporate into the OCMP local laws which are already in effect. These laws have been adopted through the local legislative and state review processes. Any controversy regarding these laws would be in regards to their application which, again, would be independent of the state CZMA review process.

e. What is the degree to which effects are highly uncertain or involve unique or unknown risks?

The direct effect of the action is certain and known. As a result of the proposed action, the State can apply program change during its federal consistency review of federal actions that have

reasonably foreseeable effects on any coastal use or resource. This effect does not involve unique or unknown risks because the agency has undertaken similar actions in the past

f. What is the degree to which the action establishes a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

The action is consistent with similar past actions. The Clatsop County comprehensive plan, zoning ordinances and development standards were originally approved for incorporation in the OCMP in 1985. In 2012, OCRM approved changes to the local coastal programs for Curry and Lincoln counties. These past actions support the agency's decision to treat the proposed action as an RPC rather than an amendment. Although the proposed action could influence similar future actions and decisions, it does not establish a new or controlling precedent. Similar future actions will still be subject to an independent review.

g. Does the proposed action have individually insignificant but cumulatively significant impacts?

The preferred alternative does not involve actions which have cumulatively significant impacts.

h. What is the degree to which the action adversely affects entities listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources?

NOAA determined that the proposed action would have no adverse effects on historic properties, and submitted this finding to the Oregon State Historic Preservation Office (SHPO). The SHPO concurred with this determination on August 13, 2013.

i. What is the degree to which endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973, are adversely affected?

Endangered and threatened species and their critical habitat would not be adversely affected by the proposed action. OCRM determined that the proposed action will have "no effect" on listed species or designated critical habitat, and no formal consultation is required.

j. Does the proposed action have a potential to violate Federal, state, or local law for environmental protection?

No. The proposed action is in compliance with all of the federal statutes noted in Section V of the EA. The proposed action has been reviewed at the state and local level and it does not have a potential to violate state or local law for environmental protection.

k. Will the proposed action result in the introduction or spread of a nonindigenous species?

No. The proposed action will not result in the introduction or spread of nonindigenous species.

Finding of No Significant Impact (FONSI) for the Approval of a Routine Program Change to Incorporate the Revised Comprehensive Plan, Zoning Ordinances, and Development Standards for Clatsop County into the Oregon Coastal Management Program

NOAA has prepared the attached Environmental Assessment (EA) for the Coastal Zone Management Program, which conforms to the procedural and technical requirements set forth in NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act, and NEPA. The proposed action and preferred alternative is to approve the incorporation of program changes to the Oregon Coastal Management Program as a routine program change. Having reviewed the EA, I have determined that the approval assessed within will not have a significant impact on the quality of the human environment. Therefore, the preparation of an Environmental Impact Statement for the proposed action is not required by Section 102(2)(c) of the National Environmental Policy Act or its implementing regulations.



9/4/13

for

Holly A. Bamford, Ph.D.
Assistant Administrator for
Ocean Services and Coastal Zone Management

Date

Appendix A: List of Preparers and Persons Consulted

The following persons participated in the development of this EA:

Jackie Rolleri
Coastal Programs Division
National Oceanic and Atmospheric Administration
Office of Ocean and Coastal Resource Management, SSMC4
1305 East-West Highway
Silver Spring, MD 20910

Kerry Kehoe
Coastal Programs Division
National Oceanic and Atmospheric Administration
Office of Ocean and Coastal Resource Management, SSMC4
1305 East-West Highway
Silver Spring, MD 20910

Patmarie Nedelka
National Policy and Evaluation Division
National Oceanic and Atmospheric Administration
Office of Ocean and Coastal Resource Management, SSMC4
1305 East-West Highway
Silver Spring, MD 20910

Kris Wall
Coastal Programs Division
National Oceanic and Atmospheric Administration
Office of Ocean and Coastal Resource Management
1201 NE Lloyd Boulevard, Suite 1100
Portland, OR 97232

Appendix B: Distribution List and Responses to Comments

A notice of the availability of the draft EA for public review and comment was posted on the OCRM and Oregon Coastal Management Program websites. Individual notices were sent by email to those who had expressed an interest in this matter, those being Lisa Toney at the law firm of Norton Rose Fulbright and Jake Brooks at Columbia Riverkeeper.

Comments were received from the law firm of Norton Rose Fulbright on behalf of LNG Development Company, LLC (d/b/a Oregon LNG) and Oregon Pipeline Company, LLC (together, "Oregon LNG").

Oregon LNG has submitted a consistency certification under the CZMA to the Oregon DLCD for a liquefied natural gas terminal and associated interstate pipeline that will run through several Oregon counties including Clatsop County.

Oregon LNG asserts that it has already been directly affected by these program changes even though OCRM has yet to approve the changes. The Oregon LNG comments address the effect that the application of the proposed program change would have on Oregon LNG specifically alleging that the County intends to use these program changes to block their project, and that the structure of the Oregon CMP will require the State to support the County's disapproval of the project by issuing a CZMA federal consistency objection.

Among the alternatives discussed in the draft EA, Oregon LNG asserts that the only alternative that OCRM may adopt is Alternative 3 to deny the program change due to preemption of the proposed local policies by the Natural Gas Act.

Oregon LNG also asserts that the Oregon CMP does not meet the requirements under the CZMA that states provide adequate consideration of the national interest involved in planning for, and managing, the coastal zone, including the siting of energy facilities which are of greater than local significance.

The Oregon LNG comments include procedural arguments that the State has failed to submit an analysis comparing the proposed policies to those previously approved by OCRM, and that the State cannot apply the proposed policies retroactively since the federal application for the Oregon LNG project has already been filed.

OCRM Response: Oregon LNG has commented on what it perceives to be several procedural inadequacies that do not pertain to environmental effects. Such procedural concerns under the CZMA will be addressed in the decision to approve or disapprove the proposed changes to the OCMP. Likewise, the bar to the retroactive application of the proposed policies to projects for which a federal license or permit application has already been filed is not pertinent to the potential environmental impacts analyzed by the EA. To the extent Oregon LNG is concerned that the proposed policies not be applied retroactively, OCRM agrees and finds that the preferred alternative to approve the proposed policies will not affect the Oregon LNG project.

As a matter of local law, and state law as applied through Oregon's Land Use Act as amended, the proposed local coastal program policies found in the comprehensive plan, zoning ordinances and development standards for Clatsop County are already in effect and have the force of law independent of the State's review authority under the CZMA.

The commenter states that OCRM cannot approve the proposed program change as the state cannot show that regional and national interests of greater than local significance could still be accommodated as required by the CZMA. OCRM, as acknowledged in the Oregon LNG comments, approved the OCMP in 1977 with a specific finding that the national interest considerations for the program had been met. By approving these local laws for incorporation into the OCMP, Federal agency activities, including the issuance of federal licenses or permits, would be subject to review for consistency with these policies. That is the direct consequence of the preferred alternative to approve these policies for incorporation into the OCMP. Even if these policies are used in the future as a basis for the state's objection to a project, an objection is not determinative of the final outcome for a proposed activity.

Federal agencies may proceed over a state's objection, and federal license or permit applicants can appeal a state's objection to the Secretary of Commerce who can override a state's objection without regard to the merits of the objection. It is beyond the scope of the EA and OCRM cannot foresee the outcome of the application of the proposed policies through the CZMA federal consistency review process as it is not the final step in the approval process for proposed activities.