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March 20, 2014

Joelle Gore, Acting Chief
Coastal Programs Division (N/ORM3)
Office of Ocean and Coastal Resource Management
National Ocean Service
National Oceanic and Atmospheric Administration
1305 East-West Highway
Silver Spring, Maryland 20910

Re: Proposed disapproval of Oregon's Coastal Nonpoint Pollution Control Program

Dear Ms. Gore:

Thank you for the opportunity to comment on NOAA's proposed disapproval of Oregon's Coastal Nonpoint Pollution Control Program. I have had a special interest in this program since the early 1990's when I studied marine science and policy as part of my graduate studies at Oregon State University's College of Oceanic and Atmospheric Studies, from which I received an M.S. Degree in 1994.

As part of my graduate program, I did an internship with the Oregon Department of Environmental Quality. Following completion of that internship, I was asked to stay on as a temporary employee and assist with documentation of Oregon's Coastal Nonpoint Pollution Control Program and submittal of the program to NOAA and the Environmental Protection Agency for approval under the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). On behalf of DEQ, I worked with employees of the Oregon Department of Land Conservation and Development's Coastal Management Program in gathering documents and preparing the submittal of the program to federal authorities. Following the program submittal, I continued to work for the Department of Environmental Quality on changes to state programs to meet the requirements of CZARA. After several years, I began to work on water quality in specific coastal basins, in particular the Umpqua and Mid Coast basins, and continued this work until I retired at the end of September, 2011.

The ramifications of a finding that Oregon's Coastal Nonpoint Pollution Control Program lacks certain required elements are that two types of federal assistance funds to Oregon will be reduced as a penalty for failing to submit an approvable program. Funds for coastal management programs under Section 306 of the Coastal Zone Management Act and funds for nonpoint source pollution reduction under Section 319 of the Clean Water Act are required to be cut for coastal states which do not have approvable programs.

The unfortunate result of this is that Oregon's capacity to address nonpoint source pollution would be reduced if its coastal management and nonpoint source control funds are reduced. These funds support both state agency staff and grants that help to reduce the impact of nonpoint source

pollution. So the result of a finding that Oregon does not have an approvable program would in fact reduce Oregon's ability to move toward an approvable program. This result does not seem consistent with the intent of Congress to require states to adequately address nonpoint source pollution. In addition, this result would not directly affect the two state agencies that are responsible for the biggest deficits in Oregon's Coastal Nonpoint Pollution Control Program, those being the Oregon Department of Forestry and the Oregon Department of Agriculture.

The fact that cutting federal funds would reduce the state's ability to meet the requirements of the CNPCP is undoubtedly the reason that the federal agencies have shown such great patience in giving Oregon time to meet the federal requirements. However, the state has been aware of the general requirements of CZARA since the early 1990's, and has been aware of the specific issues preventing program approval since 1998. Frankly, after 16 years, it is apparent that the state lacks the political will to implement the remaining requirements of the program, and the federal agencies should no longer sustain the myth that Oregon is moving forward on meeting these requirements.

This is an appropriate use of federal authority given the inability of Oregon's Department of Environmental Quality and the Department of Land Conservation and Development's Coastal Management Program to affect inadequate policies of the Oregon Department of Agriculture and Oregon Department of Forestry. These inadequate policies allow continued degradation of coastal water quality by agricultural and silvicultural activities on private land in Oregon. The Oregon Department of Environmental Quality does not have the legal authority to require action by ODA or ODF, and lacks the political will to change the situation. Under these circumstances, it is not only the right of the federal agencies to step in, but it is their obligation to do so as well.

The sufficiency of Oregon's agricultural management measures:

NOAA has cited the following concerns regarding Oregon's agricultural management measures that are part of its Coastal Nonpoint Pollution Control Program:

- 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.

In my work in Oregon's Umpqua and Mid Coast basins, I found all of these concerns to be present and to be a hindrance to achieving water quality standards or even progress toward those standards. The Oregon Department of Agriculture clearly saw its role as advocate for and protector of the agricultural industry, and devoted very little time, attention or resources to enforcement. Only the largest, most egregious cases have been subject to any enforcement action by ODA.

- **ODA's area plans are general and do not include specific riparian buffer requirements**

With regard to specific riparian buffer requirements in ODA agricultural area plans, I served as an advisory member to the Mid Coast Basin Agricultural Area Advisory Committee in its review of the local area plan beginning in 2009, when specific buffer proposals were presented to the committee. All of the specific proposals for riparian protection were rejected by the committee, despite their knowledge of specific water quality problems in the basin created or exacerbated by inadequate riparian vegetation, including stream temperature problems and bacterial contamination from livestock.

- **ODA's area plans focus on impaired areas rather than also focusing on protection**

ODA has steadfastly refused to adopt required management measures for private agriculture, instead giving the agricultural producer the discretion to determine how to meet water quality standards. By refusing to adopt best management practices, ODA is refusing to require protection for state waters from agricultural activities until such time as water quality standards are violated and those violations are detected by the state's monitoring program. By refusing to require protective management measures, ODA is allowing polluting practices to occur for many years until degraded water quality conditions are documented and Total Maximum Daily Loads developed, self-implementing or otherwise. Thus polluting conditions could exist for literally decades before ODA develops amendments to agricultural water quality management plans to address new pollution problems.

- **ODA does not track implementation and effectiveness of ODA area plans**

Regarding tracking the implementation and effectiveness of ODA area plans, in the past ODA has looked to limited water quality data from the Oregon DEQ, rather than actually tracking progress in protection of riparian areas or implementation of other management measures to protect coastal waters. A monitoring plan developed by ODA was submitted to the State's Independent Multidisciplinary Science Team (part of the state's salmon recovery effort), which found the plan to be lacking in detail and focus, and offered extensive advice to ODA about the basics of monitoring. http://www.fsl.orst.edu/imst/reports/ODA_06-27-06.pdf

The Oregon Department of Agriculture highly touted a program to use air photo interpretation to assess riparian area improvement. The program compared air photos of selected streams, first photographed in 2003 and then in 2008. The ODA eventually issued a report (in either 2011 or 2012) regarding this effort. See http://www.oregon.gov/ODA/NRD/docs/pdf/water/riparian_condition_monitoring_2008.pdf for the report. The report covers six basins, including three coastal basins: the Coos and Coquille, the North Coast and the Mid Coast basins. In none of the coastal basins (and in fact in none of the basins at all) was there evidence that protection of riparian areas was increasing. While minimal increases in a riparian index were noted for a few streams, just as many streams showed a decrease in the riparian index. Various technical reasons were cited as the reason for some of the decreases in the riparian indices, but overall the data did not show significant increases in riparian condition in any part of the state.

Even the most improved streams showed less than a 5% improvement over five years. In the Coos and

Coquille Basin, two streams had improved riparian index scores, while the other two had decreased scores. In the Mid Coast Basin, no streams had improved riparian scores in five years, while half had significant decreases in riparian indices. And in the North Coast Basin, again no streams had significant improvement in riparian scores, while one of the five streams monitored showed a significant decline in riparian condition. Whatever ODA is doing (or not doing), the agency has been strikingly ineffective at improving riparian conditions, in coastal basins and elsewhere.

Now it appears that ODA is abandoning this effort in favor of a new process developed within the last year and presented to the agricultural community within the last few months. See:

http://www.oregon.gov/ODA/NRD/docs/pdf/water/oda_assessment%20tools_presentation_at_%20oacd_conf.pdf and

http://www.oregon.gov/ODA/NRD/docs/pdf/water/assessment_overview_draft_9413.pdf.

- **ODA area plans do not address “legacy” issues created wholly in the past**

Regarding so-called “legacy” conditions, this is the term used by ODA to describe conditions that have existed for significant amounts of time, such as riparian areas consisting solely of blackberry vines or reed canary grass, neither of which provide adequate riparian function in terms of pollutant filtration, bank stabilization, or shade to protect cool water temperatures. In the past, ODA has taken the position that these “legacy” conditions are not the result of agricultural activity, and that the agency therefore lacked jurisdiction to address these conditions. Since these conditions exist on significant portions of coastal rivers and streams, ODA is in essence sacrificing significant opportunities to improve shade and filtration of pollutants on grazing and other agricultural land. Without improvement of these riparian areas, it will be difficult, if not impossible, for streams to achieve water quality standards for temperature and bacterial pollution.

I believe ODA does have the authority to address these conditions, but lacks the political will to do so. That being the case, it is necessary for the federal agencies to recognize this deficiency in Oregon's Coastal Nonpoint Pollution Control Program.

The sufficiency of Oregon's forestry management measures:

- **Protection of riparian areas**

The federal agencies propose to find that Oregon's forest practices lack adequate protection of medium, small and non-fish bearing streams. The Department of Forestry's own study, Ripstream, documents that harvesting on private forest land carries a significant risk (estimated at 40%) that harvesting will result in violations of Oregon's water quality standard for protecting cold water.

While it is true that the Oregon Board of Forestry is considering changes to its rules to establish additional riparian protection for medium and small fish bearing streams, there is no certainty that the Board will do so. Further, even if they do eventually act, the fact that they are considering such action will surely have the same result as when the Board first considered riparian protection changes

in the 1990's: private companies will harvest as much of the existing riparian zone as possible before any new rules would go into effect. Despite having the statutory authority to implement temporary rules to prevent this result, the Board of Forestry has indicated no intention to do so.

If the Board decides not to add any additional protection to medium and small fish bearing streams, the Environmental Quality Commission has the authority to petition the Board of Forestry for changes necessary to protect water quality. Even if it should undertake to do so, the statute gives the Board of Forestry up to two years to respond, and the EQC has few options if the Board of Forestry declines to act. So while theoretically there exists legal authority to require changes that will provide protection to medium and small fish-bearing streams, the practical reality is that there is no certainty whatsoever that there will be any additional riparian protection provided.

In addition, the Board of Forestry has not given any indication of an intent to provide riparian protection for small non-fish bearing streams, which make up 70% or more of coastal stream miles. The riparian areas of these streams are provided absolutely no buffer or other protection during timber harvest. While these streams do not support fish, they do drain to streams that contain fish, in particular salmonids, including the endangered Oregon coastal coho.

- **Forestry road additional management measures**

During the rainy season in Oregon, the Siuslaw River drainage, part of the Mid Coast Basin, is inundated with sediment, much of it from logging roads. When it rains, most streams in the Siuslaw look like chocolate milk, and in some cases the sediment loads are much worse than the worst possible construction site. Timber landings are full of knee-deep mud, and log trucks bring heavy loads of mud to paved roads downstream of harvest areas. The roading and harvesting in the basin has turned the Siuslaw drainage into a massive transfer of sediment from the hills to the ocean, never to return. The erosion from forest roads and from denuded hillsides is moving productive soil from timberlands to the bottom of the sea.

- **Buffers for pesticide application on Type N streams**

Department of Forestry rules require absolutely no buffer whatsoever on non-fish bearing streams, even if they are the headwaters of streams which provide habitat for fish, including endangered coho salmon. Extensive pesticide applications blanket these small streams, allowing these dangerous compounds to move downstream to areas inhabited by fish. When no buffer of any kind is required, it is obvious that pesticides get into these streams when the land on both sides of them is sprayed.

Analysis of pesticide application records produced as part of the state/federal investigation of human pesticide exposure in the Triangle Lake area west of Eugene shows that in the study area, more than 20 tons of pesticide products were applied in just a three-year period. This area is within the Siuslaw watershed, which is part of Oregon's coastal zone management area.

Timber companies use pesticides to kill vegetation that might compete with Douglas fir seedlings on lands that have been harvested of trees by clearcutting, or removing virtually all the trees in an area.

Pesticides are then applied in the spring and the fall to kill any noncommercial species (such as native bigleaf maple, alder, as well as other early seral stage vegetation including shrubs).

I assisted the organization Beyond Toxics of Eugene, Oregon, in developing the information upon which their comments dated March 18, 2014, are based, and I fully concur and endorse those comments. The comments show that current pesticide management resulted in extensive spraying over small, non-fish bearing streams, primarily headwaters of streams which provide habitat for endangered Oregon coastal coho.

Without requirements for a riparian leave zone, there is no possibility for limiting the amount of pesticide reaching such small streams. A mandated spray buffer would provide some protection for these small streams, but a vegetated riparian zone would provide much better protection because it would allow some filtration of pesticides running off the hillsides.

Conclusion

While a finding that Oregon lacks an approvable Coastal Nonpoint Pollution Control Program would result in the loss of federal funds to the State of Oregon, funds that could be used to improve its management of coastal nonpoint source pollution, nevertheless, the state's lack of progress over the past 16 years in meeting the requirements of CZARA leaves the federal agencies with virtually no other choice than to make such a finding. Despite the fact that the loss of these funds would further hamper efforts to control nonpoint source pollution, I urge the federal authorities to move forward with their finding that the state lacks an approvable program. To do otherwise would be to ignore the state's lack of progress and lack of political will to make the changes necessary to protect the state's water quality in coastal areas.

Respectfully submitted,

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