

NOAA and EPA Preliminary Decisions on Information Submitted by Oregon to Meet Coastal Nonpoint Program Conditions (Interim Approval Decisions Only)

I. OREGON COASTAL NONPOINT BOUNDARY

CONDITION: Within one year, the Oregon Department of Land Conservation and Development (DLCD), Oregon Department of Environmental Quality (DEQ), U.S EPA, NOAA, and other relevant State, local, and federal agencies will participate in a cooperative process to review relevant information and determine an appropriate coastal nonpoint management area boundary consistent with established national guidance for the 6217 program.

INTERIM APPROVAL FINDING: Oregon has satisfied this condition (January 2004).

RATIONALE: Oregon's 6217 or coastal nonpoint management area for the State of Oregon is the state's existing coastal zone boundary with the addition of the inland portions of the Rogue and Umpqua Basins, in their entirety. The inland boundary of the management area intersects the Columbia River at the westward end of Puget Island, near the inland boundary of Washington's coastal nonpoint management area. The inland boundary of Washington's management area intersects the Columbia River at the eastern border of WRIA 25, just east of the Wahkiakum County border.

This boundary is slightly smaller than the one NOAA originally recommended based on the state's coastal watersheds. However, NOAA and EPA's March 16, 1995, *Flexibility for State Coastal Nonpoint Programs*, guidance noted that states could use additional data and information to submit an alternative coastal nonpoint program boundary that may be less extensive than the state's coastal watershed. The Columbia River Basin is a huge, multi-state and multi-national drainage basin covering 233,000 square miles; three states and Canada contribute to the water quality of the lower Columbia River. Given its vast size, a significant amount of nonpoint source pollution within the Columbia River watershed occurs outside the coastal nonpoint boundary. In Oregon, 98% of the Columbia River watershed within the State is located above the coastal watershed. Also, 90% of the agricultural indicators of nonpoint source pollution NOAA examined in making its boundary recommendation are located above the coastal nonpoint boundary. Similarly, 70% or more of the population of the Columbia River watershed resides above the coastal watershed. These factors make it extremely difficult to determine whether the relatively small portion of polluted runoff generated within the coastal watershed but outside of the Oregon's coastal nonpoint program management boundary has a significant impact on the coastal waters of the state. Therefore, based on these complicating factors and the 1995 flexibility guidance," NOAA and EPA will defer to Oregon's statement that the appropriate coastal nonpoint program boundary is westward of Puget Island.

Comment [JC1]: Comment 1: Update. Is this still true?

Comment [AP2]: Land uses and population distribution in the region has not changed significantly enough to alter these rough estimates.

NOAA and EPA recognize that there are other tools that are currently in use or being developed to address nonpoint source pollution outside of the coastal nonpoint management area, such as

TMDLs for 303(d) listed waters and National Pollutant Discharge and Elimination System (NPDES) Phase I and Phase II stormwater permits. However, NOAA and EPA remain concerned that sources outside the coastal nonpoint management area could contribute to water impairment in the lower Columbia River. Therefore, we expect Oregon to use all applicable programs to control nonpoint source pollution beyond the coastal nonpoint management area in the Lower Columbia coastal watersheds, to monitor water quality, and, if necessary, to take additional steps in the future to address those sources that have a significant impact on coastal water quality.

II. AGRICULTURAL MANAGEMENT MEASURES

A. CONFINED ANIMAL FACILITIES (Large and Small Units)

CONDITION: Within two years, Oregon will include in its program management measures in conformity with the 6217 (g) guidance for facilities where animals are confined for less than four months and that do not have prepared surfaces or waste water control facilities. Also within two years, Oregon will provide a strategy (in accordance with section XII, pages 19-20) for use of the State’s water quality law (ORS 468B) as a back-up enforceable mechanism to ensure implementation of the management measures for confined animal facilities as proposed on pages 48-50 of the State’s program submittal.

INTERIM APPROVAL FINDING: Oregon has satisfied this condition (January 2004).

RATIONALE: The Oregon Legislature adopted House Bill (HB) 2156 in 2001, amending ORS 468B to define confined animal feeding operations according to rules established by the Oregon Department of Environmental Quality (DEQ) and Oregon Department of Agriculture (ODA) and to require that the definition distinguish between various categories of operations, including those regulated by NPDES permits. The new definition removes the exclusion for combined animal feeding operations (CAFOs) where animals are confined for less than four months and that do not have prepared surfaces or waste water facilities. OAR 603-074 establishes rules for administering the CAFO program, including enforcement against water quality violations. Since 1999, ODA has conducted annual inspections of permitted CAFOs. There are six inspectors; three ~~or four~~ of the inspectors cover some part of the coast. An inspector based in Tillamook services the northern portion of the CNPCP area. The state also has a complaint-driven enforcement process and an educational outreach program.

Comment [kt3]: Yes, with edit.

Comment [AC4]: Comment 2: Is this still accurate?

B. EROSION AND SEDIMENT CONTROL, NUTRIENT, PESTICIDE, GRAZING, AND IRRIGATION WATER MANAGEMENT

CONDITIONS: Within one year, Oregon will (1) designate agricultural water quality management areas (AWQMAs) that encompass agricultural lands within the coastal nonpoint management area, and (2) complete the wording of the alternative management measure for grazing, consistent with the 6217(g) guidance. Agricultural water quality management area plans (AWQMAPs) will include management measures in conformity with the 6217(g) guidance,

including written plans and equipment calibration as required practices for the nutrient management measure, and a process for identifying practices that will be used to achieve the pesticide management measure. The State will develop a process to incorporate the irrigation water management measure into the overall AWQMAPs. Within five years, AWQMAPs will be in place.

INTERIM APPROVAL FINDING: Oregon has satisfied these conditions (January 2004, October 2007).

RATIONALE: Oregon has satisfied the conditions for Agricultural Water Quality Management Areas (AWQMA), Agricultural Water Quality Management Area Plans (AWQMAPs or 1010 plans), and grazing. The State ~~has initially~~ established seven AWQMAs covering its coastal nonpoint program boundary and has developed AWQMAPs consistent with the 6217(g) guidance for all of these areas. In 2010, the Bear Creek basin planning area was incorporated into the Inland Rogue basin planning area when these two areas were reviewed and updated during the biennial review process.

All 6217(g) agriculture management measures, including nutrient management, pesticide management, irrigation, and grazing, have been included in the appendices of the coastal AWQMA ~~plans~~. Coastal AWQMA plans describe the relationship of the plans to the Coastal Zone Nonpoint Control Program and refers readers to the appendix of the plan where a complete listing of the agricultural measures identified under the 6217(g) guidance can be found. Because ODA's authority to prevent and control nonpoint source pollution associated with agricultural activities and soil erosion is linked to DEQ's authority for nonpoint source regulation (ORS 468B.025) by incorporation of this statute into the AWQMA regulations for each of the coastal areas ODA's authority for nonpoint source pollution is consistent with that of DEQ. In addition, the AWQMA plans and rules identify general riparian requirements to help landowners identify a link for their activities to state expectations which are consistent with 6217(g) guidance. Thus, the State is able to ensure implementation of these agricultural management measures is in conformity with the 6217(g) guidance.

~~, and in some cases, the measures have been incorporated directly into the plans. ODA and DEQ have established a joint process to review and revise the AWQMAPs every two years, although NOAA and EPA note that the state has not been able to keep with this two year review cycle for all plans.~~

Rules governing the implementation of the Oregon Agricultural Water Quality Management Program (OAR 603-090-0020(4)) provide for biennial review of the progress of implementation of the AWQMA plans. Completing reviews of all 38 planning areas every two years has been challenging given ODA's goal to accomplish significant outreach, assistance to landowners, compliance, coordination with partner agencies, and monitoring. In addition, because this is a public process, involvement of the public and other agencies often results in a longer period of time to complete the evaluation of the plan. Generally, ODA has been successful to complete biennial reviews within 12 months of the two year period being reviewed. To accomplish this,

Comment [AC5]: *Comment 3:* Providing specific examples to support statement would help strengthen rationale.

Comment [AC6]: *Comment 4:* The document on the website (See pdf doc available at http://www.oregon.gov/ODA/NRD/pages/water_quality_faq.aspx#Are_all_the_area_plans_and_rules_completed) is not current and needs to be updated as it implies that Oregon is not sticking with 2-yr cycle. Some of the AgWQMAPs received "light reviews" after two years, then two years later, received comprehensive reviews. ODA should provide an update of the reviews for each relevant AgWQMAPs and an explanation of the difference between "light" reviews and comprehensive reviews. ODA also should address the question as to whether or not light reviews actually represent cursory reviews and provide examples where the "light" and comprehensive reviews actually result in changes to AgWQMAPs and associated rules.

Comment [kt7]: Language added to address comments 3 and 4.

ODA began conducting a 'light' review every other time to provide an opportunity to connect with the local community and address conspicuous needs. In the other two year review period, ODA works with DEQ to review the plans and rules, identify issues with implementation, identify potential improvements to plans and rules, identify and address new water quality parameters and work with the local community to incorporate these updates to the plans and rules. Because of the public process involved this may take more than 12 months to complete. Examples of changes that came about because of the biennial review process include:

- Bear Creek was updated to include a riparian rule when temperature standards were established for the basin
- In 2010 Bear Creek AWQMA combined with the Inland Rogue in recognition of the changes that had occurred as water quality standards and TMDLs were developed.
- Plans have been updated to reflect adoption of TMDLs for the basin and to recognize changes in relevant water quality standards and listings in the basin.

NOAA and EPA strongly encourage Oregon incorporate TMDL load allocations into AWQMAPs to ensure the plan reviews and updates occur regularly as designed and that the state uses this process to insert the 6217(g) agricultural management measures directly into the body of AWQMAPs over time.

ODA can adopt rules and prohibitions necessary to implement the AWQMAPs under ORS 568.900-568.933 and OAR 603-090-0000 through 603-090-0120. While ODA has adopted rules for all AWQMAPs within the coastal nonpoint program boundary that provide some direct enforcement authority for the plans, NOAA and EPA acknowledge that these rules are not strong enough to provide the state with direct enforcement authority for the AWQMAPs to meet 6217(g) requirements. However, the state has provided a legal opinion from its Attorney General pursuant to NOAA and EPA's 1998 *Final Administrative Changes to the Coastal Nonpoint Pollution Control Program Guidance*, demonstrating the state has adequate back-up authority to ensure implementation of the AWQMAPs. The legal opinion asserts that DEQ and the Environmental Quality Commission (EQC), in conjunction with ODA, has statutory authority to prevent nonpoint source pollution and require implementation of the 6217(g) management measures for agriculture as necessary under ORS 468B and ORS 568.900 to ORS 568.933. ODA shall consult with DEQ and the EQC in the adoption and review of 1010 plans and the adoption of rules to implement the plans, providing a clear link between implementing and enforcing agencies (ORS 568.930). In addition, ODA's regulatory authority for water pollution from non-point source agricultural activities mirrors DEQs by including ORS 468B.025 by reference in the rules for each of the AWQM areas.

ODA is also committed to use enforceable mechanisms to address water quality pollution problems where voluntary compliance is not achieved (OAR 603-090-0000).
In addition, a Memorandum of Agreement between DEQ and ODA memorializes coordination efforts addressing TMDLs for water quality limited water bodies and AWQMAPs.

Comment [kt8]: Yes, see language added above.

Comment [JC9]: *Comment 5:* Please confirm that AWQMPs still include 6217(g) measures. Provide any additional information to strengthen rationale and show how AWQMPs are allowing OR to implement the 6217(g) measures for Agriculture.

Comment [kt10]: See language inserted below. It seemed to flow better if we moved things around a bit.

Comment [JC11]: *Comment 6:* Is it still an accurate statement that "Oregon is committed to use enforceable mechanisms to address water quality pollution problems"? Although the most recent MOU was signed by Katy Coba and Dick Pedersen on 5/17/12 (see www.deq.state.or.us/wq/nonpoint/docs/ODADEQM_OA2012.pdf) does memorialize coordination efforts between DEQ and ODA for addressing TMDLs and AgWQMAPS especially where TMDLs have been completed by DEQ, the 2012 MOU does not include language that to indicate that DEQ has the statutory authority to prevent NPS pollution and require implementation of 6217(g) management measures for agriculture. If OR has an example(s) of enforcement actions the state has taken to ensure implementation of the 6217(g) MMs for agriculture, that would be helpful.

Although Oregon has fully satisfied the AWQMAP condition on its coastal nonpoint program and met all 6217(g) requirements (i.e., has a process in place to implement the (g) management measures), NOAA and EPA are concerned about other aspects of the AWQMA planning process. Even though AWQMAPs are developed on a watershed scale and are not intended to only address impaired waters, NOAA and EPA are concerned that the impetus for AWQMA planning is focused on impaired areas alone. Therefore, people may assume that measures need only to be implemented in specific areas where water quality is already degraded, which is not the case. Site-specific implementation triggered by degradation rather than proactive implementation across the landscape is not consistent with the 6217 goals of pollution prevention. NOAA and EPA also are concerned that, in actuality, the state does not take enforcement action when voluntary plan implementation is not meeting water quality goals.

Given these concerns, NOAA and EPA strongly encourage DEQ and ODA to do a thorough sufficiency analysis every two years and revise the plan and rules accordingly to include more specific standards consistent with the 6217(g) management measures for agriculture. In addition, NOAA and EPA also strongly encourage ODA to take a more active enforcement role to ensure the AWQMAPs and 6217(g) measures are being implemented as designed.

The State also has specific programs for nutrient management and irrigation that provide additional support for the AWQMAPs. Nutrient management plans, consistent with the 6217(g) guidance, are required under all new or expanded CAFO permits in compliance with ORS-468B, OAR-60374, the Federal Water Pollution Control Act (33 U.S.C., Section 1251 et seq.), and NPDES. Under the CAFO laws and rules, ODA has the authority to require nutrient management plans as part of compliance orders they issue to correct nutrient or waste load violations. All CAFOs registered to the Oregon 2009 CAFO NPDES General Permit have developed and are implementing Waste Management Plans to insure that nutrients and waste are applied at agronomic rates for the crop being produced and so runoff doesn't occur. Applications inconsistent with the Animal Waste Management Plans are violations of the permit, subject to enforcement action and have resulted in the issuance of civil penalties to the operators. Requirements of the Animal Waste Management Plans can be found at http://www.oregon.gov/ODA/NRD/docs/pdf/awmp_minreq.pdf. The Water Resources Department's (WRD) Water Use Basin Programs codified in OAR Chapter 690 also support the irrigation measure by establishing subbasin classifications and limits on water use. NOAA and EPA encourage the ODA and DEQ to improve their coordination with WRD to ensure implementation of the 6217(g) irrigation measures. Oregon State University has also developed Western Oregon Irrigation Guides which include information on timing, measuring soil-water depletion, and application rates.

ODA uses enforcement to address water quality pollution problems where voluntary compliance is not achieved— through the regulatory authorities provided in the CAFO program, the Agricultural Water Quality Management program, and the Pesticide program. As a result of these authorities, in 2012, ODA issued five civil penalties related to the AWQM program, 13 civil penalties related to CAFOs, and 26 civil penalties related to pesticides. Also in 2012, based on

Comment [AC12]: Comment 7: ODA started two initiatives to proactively identify Ag related violations in watersheds. ODA, in cooperation with SWCDs, started using a Focus Areas approach to assessing conditions in watersheds, and ODA initiated its own initiative referred to as Strategic Implementation Areas. Provide greater detail on how these two initiatives address the identified issue.

Comment [kt13]: EPA/NOAA, it's up to you to decide whether these paragraphs warrant revision based upon the new language inserted into this section – including the language below regarding the new initiatives.

Comment [AC14]: Comment 8: Confirm this statement is still accurate. Are there any examples where ODA has used its authority to require nutrient mngt plans? Providing specific examples would help strengthen rationale.

Comment [kt15]: Yes, it is still accurate.

Comment [kt16]: The answers to comments 8 and 9 is "yes." All permitted CAFOs are required to develop a waste management plan to identify how waste will be managed so pollution does not occur and waste is applied at agronomic rates (equivalent to a nutrient management plan). Applications inconsistent with the Animal Waste Management Plans are violations of the permit, subject to enforcement action and have resulted in the issuance of civil penalties to the operators. Requirements of the Animal Waste Management Plans can be found at http://www.oregon.gov/ODA/NRD/docs/pdf/awmp_minreq.pdf. Relevant Oregon State University guides are included in the plans. OSU's extension bulletins for irrigation management and other activities can be found on the OSU web pages.

Comment [AC17]: Comment 9: Are these guides still current and used/promoted in CNP mngt area?

evidence collected by ODA's CAFO program, the Environmental Crimes Division of the Oregon Department of Justice was successful in a case against a livestock operator who was unlawfully operating without a CAFO permit and for polluting waters of the state. The penalty set by the judge in this case was \$300,000. In 2013, the Trial Division has been assisting the Department with injunctive relief against an individual for removal of riparian vegetation. The relief demanded is payment of the civil penalty and implementation of the Plan of Correction identified by ODA. Plan of Correction costs are expected to be in the \$40,000 range. Enforcement actions for previous years are also available from ODA.

ODA also achieves compliance through the use of Notices of Non Compliance, Letters of Warning and Water Quality Advisories. ODA considers itself successful when it is able to get landowners to implement management changes that incorporate 6217(g) measures through its regulatory actions without needing to go to civil penalties or criminal charges. Informing landowners of state and federal expectations for natural resource management to protect water quality is an ongoing process as many landowners are disconnected from outlets to this information.

In 2012, ODA's Water Quality Program with the assistance of Oregon's Board of Agriculture and partner agencies initiated an in-depth program review. The review included evaluation of the compliance efforts, monitoring, plans and rules, SWCD partnerships and building relationships. As a result of this effort, all SWCDs have initiated a focus area evaluation, targeted outreach, and will follow up with an evaluation of progress. ODA continues to work with our partners to finalize development of a strategic implementation process that will move ODA's compliance program from a complaint based process to a targeted compliance effort by the agency.

ODA also initiated a Strategic Implementation initiative in 2012. Strategic Implementation efforts are expected to enhance the program focus, including compliance activities in the most critical areas through focused monitoring and department-initiated compliance actions. Two areas of particular interest to the Coastal Nonpoint Program conditions are (1) monitoring agricultural conditions, impacts and improvements (discussed later in this document under Measure X (monitoring) and (2) regulatory/compliance actions.

For regulatory/compliance actions, ODA's Strategic Implementation initiative involves strategically focusing ODA's compliance efforts. This is challenging since high level landscape assessments are not adequate to provide a measure of compliance with agriculture water quality rules. For example, aerial images and Lidar may be useful for identifying compliance issues resulting from placement of manure piles or livestock control facilities, but are inadequate for identifying riparian issues or seasonal issues due to agricultural activities. Addressing riparian and seasonal issues is best accomplished by evaluating areas through personal observations and direct measurements. Because much private land is not readily observable from a public viewpoint, assessments of lands for compliance may be limited to a subset of the total area available under watershed scale evaluations except for those issues readily visible from aerial or Lidar images. None-the less, the Agricultural Water Quality Program is proposing to use all available information to strategically focus agency compliance and enforcement efforts including

complaints.

Because the language consistent with the 6217(g) measure for grazing is included as a recommended practice in the appendix of all AWQMAPs, the state no longer needs to complete the wording of the alternative management measure for grazing.

III. URBAN AREAS MANAGEMENT MEASURES

A. SITE DEVELOPMENT, CONSTRUCTION SITE EROSION AND SEDIMENT, AND CHEMICAL CONTROL

CONDITION: Within two years, Oregon will include in its program management measures in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation throughout the coastal nonpoint management area.

INTERIM APPROVAL FINDING: Oregon has satisfied this condition.

- The state is exempt from the Construction Site Erosion and Sediment Control and Construction Site Chemical Control measures throughout the 6217 boundary. These measures are now covered under the NPDES Phase I and II Stormwater Program. (January 2004)
- The state has satisfied the programmatic component of site development management measure. (January 2004)
- Oregon has demonstrated it has enforceable policies and mechanism in place to ensure implementation of the site development measures throughout the 6217 boundary. (June 2008)

RATIONALE: Oregon meets the site development, construction site erosion and sediment control and construction site chemical control measures through a mixture of regulatory and voluntary programs including its NPDES and TMDL programs, State Land Use Goals, and Water Quality Model Code and Guidebook.

First, NOAA and EPA have determined that states are exempt from the construction site erosion and sediment control and construction site chemical management measure requirements throughout the coastal nonpoint management area. States are also exempt from the new development management measure within NPDES Phase I and II MS4 communities. These activities are covered through the NPDES stormwater permit program. (See NOAA and EPA December 20, 2002 memo, *Policy Clarification on Overlap of 6217 Coastal Nonpoint Programs with Phase I and II Stormwater Regulations*). In Oregon, the City of Ashland, City of Medford and Rogue Valley Sewer Services (includes cities of Central Point, Phoenix and Talent, and portions of Jackson County in Medford Urbanized Area)~~the Medford Urbanized Area and Jackson and Lane Counties~~ are currently the only MS4 within the coastal nonpoint management area. The cities of Eagle Point, Gold Hill, Grants Pass and Rogue River ~~Grants Pass, Roseburg, and Coos Bay~~ are to be evaluated under draft MS4 designation criteria but they have not been designated Phase II

communities as of yet, and the City of Jacksonville which was previously granted a waiver from the NS4 permit needs re-evaluation. DEQ does not currently have plans to evaluate Roseburg or Coos Bay under the NS4 program.

Comment [AC18]: *Comment 10:* Update. Have these and any other communities in CNP mgmt area been added to Phase II communities? Are there others designated now with the 2010 census data?

Comment [kt19]: See added text.

To address the site development measure, Oregon also uses the Water Quality Model Code and Guidebook along with its NPDES General Permit for Construction Activities, and State Land Use Goals to satisfy this condition. First, all activities that disturb more than an acre of land must receive a NPDES General Permit for Construction Activities. The General Permit includes, as additional control practices which must be developed if appropriate to the site, recommendations to minimize the area of disturbance and requires the permittee to describe practices that will protect existing vegetation.

State Land Use Goals 5, 6, and 7 also protect areas that provide water quality benefits and limit disturbance of natural drainage features; Local codes that are consistent with these goals and associated rules: minimize impervious surfaces, and limit clearing, and grading, and the placement of new structures and roads within identified significant natural resource areas, steep slopes and floodplains. State law requires each city and county to adopt a comprehensive plan and the zoning and land-division ordinances needed to put the plan into effect. The local comprehensive plans must be consistent with the statewide planning goals.

In addition to the NPDES permit and State Land Use Goals and rules, the Water Quality Model Code and Guidebook, includes guidelines and examples model development codes that are consistent with the (g) guidance for site development such as limiting impervious surface, retaining natural vegetation, protecting areas that provide important water quality benefits, and limiting disturbance of natural drainage features.

Comment [WR20]: *Comment 11:* Would this be an accurate statement?

Comment [AP21]: Yes, although the trainings and outreach do not use the Water Quality Model Code. Rather, they incorporate a wealth information on LID available through NEMO, Portland metro area stormwater utilities and other sources.

To help promote the best management practices in urban areas included in the Model Code and Guidebook, Oregon State University OSU Extension/Oregon Sea Grant has an active outreach and training program for local communities on low-impact development called Stormwater Solutions. DEQ supported Stormwater Solutions in its early stages with a 319 program grant, and has teamed up with the EQC to sponsor "stormwater solutions" workshops along the coast, Willamette, and Rouge Valleys. NOAA and EPA encourage Oregon to continue its proactive outreach about good stormwater management practices for site development to local communities.

Comment [AP22]: The bulk of the Water Quality Model Code was revised about six years ago. The wetland protection model code was revised last year. The WQMC has not been distributed broadly, but in a targeted manner. It has been available for outreach efforts like Stormwater Solutions, Rogue Valley COG's stormwater and TMDL implementation plan outreach efforts, Lane County COG's wetland and riparian protection outreach efforts, and University of Oregon's Community Planning Workshop. The three codes that are used most are the riparian protection, wetland protection, and stormwater management codes. DLCD plans to publish the code to our web site in the next few months.

NOAA and EPA understand that the state is currently updating the Model Code and Guidebook. The state anticipates distributing it to city and county planning directors via CD and the web this spring/summer. NOAA and EPA look forward to reviewing the updated document. In addition to distributing the document to local planners and announcing the new release at a statewide planning conference, we strongly encourage the state to take a more proactive approach to educating and training local planners and other decision makers about the guidebook.

Comment [AC23]: *Comment 12:* Update. We could not find a newer version (beyond Oct. 2000) online. Make sure the online version matches the print version and describe how Oregon continues to promote the Cost and Guidebook to local governments etc more recently. Training for communities, etc?

The Department of Land Conservation and Development (DLCD) maintains three field staff positions in the 6217 management area. The North Coast, South Cost and Southern Oregon Field

Representatives provide technical assistance to city and county planning departments and help insure that local plan and code amendments are consistent state planning goals and rules. DLCD's Natural Resource Specialist also works directly with cities and counties on plan and code amendments related to natural feature and water quality protection. The Water Quality Model Code is used to provide this assistance.

The Department of Environmental Quality (DEQ) maintains four Basin Coordinators and one Basin Specialist in the 6217 Management Area. These staff use a significant amount of their time to provide technical assistance to city and county staff for implementation of TMDLs and nonpoint source rules. They also administer 319 grants to address urban and rural residential water quality issues. Three DEQ headquarter staff use a significant portion of their time to provide support of these activities in the 6217 Management Area.”

Per NOAA and EPA's 1998 *Final Administration Changes Memo*, Oregon has provided a legal opinion from its Attorney General to enable the state to use voluntary programs, like the Water Quality Model Code and Guidebook and stormwater and low impact development outreach programs, to help address its 6217 requirements. The legal opinion states Oregon has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of the 6217(g) measures, including the new and site development management measures, as needed.

B. WATERSHED PROTECTION AND EXISTING DEVELOPMENT

CONDITION: Within three years, Oregon will further develop its program to implement the management measures for watershed protection and existing development in conformity with the 6217(g) guidance throughout the coastal nonpoint management area.

INTERIM APPROVAL FINDING: Oregon has satisfied this condition (January 2004).

RATIONALE: Oregon has satisfied its condition for existing development and watershed protection through its TMDL program, urban growth boundaries (UGBs), Land Use Goals, watershed protection and restoration activities under the Oregon Watershed Enhancement Board (OWEB) and the Oregon Plan for Salmon and Watersheds, and Executive Order No. EO99-01 which reaffirms the Oregon Plan for Salmon and Watersheds.

-In March 2011, Oregon began its first implementation-ready TMDL in the Midcoast Basins. Implementation-ready TMDLs identify nonpoint sources on a finer scale than a traditional TMDL, and also identify responsible persons/agencies and the pollutant loading reductions necessary in more detail. There are more specific management strategies for responsible parties, a timeline associated with management strategies, and more oversight on the implementation planning process. Oregon also held two statewide meetings on policies related to ~~TMDL~~ Implementation-Ready TMDLs.

Comment [AC24]: Comment 13: Provide additional language on how Oregon's TMDL program including the new IR-TMDL approach identifies opportunities to reduce polluted runoff from existing development for impaired waterbodies. Also provide any details from and cite the new TMDL implementation guidance where appropriate.

Comment [kt25]: See below.

In 2013 DEQ will publish its “Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area.” The guidance will provide information and recommendations for Designated Management Agencies (DMAs). Specifically, the guidance will remind DMAs that they are required under the existing provisions in OAR 340-042-0080 to develop TMDL Implementation Plans in accordance with the applicable Water Quality Management Plan (WQMP). The guidance will also recommend that DMA’s expand their TMDL Implementation Plans to include control measures applicable to operators of regulated small MS4 sources and the control measures recommended by EPA in the “CZARA New Development Management Measure.” These include practices that reduce post-construction development Total Suspended Solids loadings by 80% or reduce TSS loadings so that the average annual TSS loads are no greater than pre-development loadings, and maintaining post-construction development peak runoff rate and average volume to pre-development levels. DEQ will also provide training for DMAs and other stakeholders about the guidance and the new development management measures.

Oregon’s rigid UGBs provide watershed protection benefits by confining urban development to a predetermined geographic boundary. The State provides extensive assistance to communities coping with population increases to encourage and requires efficient use of land within the UGB. State land use laws require that land within UGBs be developed at urban densities. UGB expansions are allowed only to accommodate a demonstrated need for additional residential, commercial or industrial land. Efficient use of land and urban infrastructure within UGBs is supported by the Transportation and Growth Management Program, a joint effort of, such as including the Department of Land Conservation and Development’s (DLCD) and the Oregon Department of Transportation Transportation Growth Management Program, which TGM provides technical and financial assistance to local governments to incorporate “Smart Growth” principals into their planning codes. These measures serve to facilitate compact development, promote the use of alternate modes of transportation, limit sprawl and thus protect natural resources and systems. One objective of the TGM program is to promote development patterns where a greater number of people are served by existing roads.

Where a UGB needs to be expanded, the state statute (ORS 197.298) sets priorities for specifying which what lands adjacent to the UGB should be considered for may be included in an expansion; environmental factors must be considered. The statute also allows lower priority land for urbanization to be included can be considered for inclusion into the UGB if future urban services (i.e., roads, sanitary sewers, storm sewers, other public utilities) could cannot be provided to the higher priority land due to topographical or physical constraints (i.e., steep erodible slopes, sensitive riparian habitat, wetlands or other areas essential to the natural drainage system of the area) which is consistent with the 6217(g) guidance for watershed protection.

Under the Oregon Plan, watershed councils have developed watershed assessments that help identify opportunities to preserve and restore areas that provide important water quality benefits or are necessary to maintain riparian and aquatic biota. The assessments also help identify priority

Comment [AC26]: Comment 14: Is the DLCD’s Transportation Growth Management program still active?

Comment [kt27]: Yes.

Comment [AP28]: See, <http://www.oregon.gov/LCD/TGM/Pages/index.aspx>

Comment [AC29]: Comment 15: Provide citation for the state statute. We understand that Chapter 197 -Comprehensive Land Use Planning and Coordination is the law that addresses land use throughout the state. Is this the correct citation? Section 197.230 - "Considerations: finding of need required for adoption or amendment of goal" states that the DLCD and the Land Conservation Commission shall: (c) Give consideration to the following areas and activities: (A)...: (B) Estuarine areas: (C) Tide, marsh and wetland areas: (D) Lakes and lakeshore areas: (E) Wilderness....(F) Beaches, dunes, coastal headlands and related areas: (G) Wild and scenic rivers and related lands: (H) Floodplains and geologic hazard etc.: (I) Unique wildlife habitats; and (J) agricultural lands.

Comment [kt30]: Done.

projects to reduce polluted runoff from existing development. Based on these assessments, watershed councils develop watershed action plans to make support funding decisions for watershed projects carried out through the Oregon Watershed Enhancement Board or the Healthy Streams Partnership. OWEB identified at least 269 restoration projects that support existing development (projects within cities, metropolitan areas, small communities, etc.) and these projects include bio swales, erosion control structures, shoreline restoration and stream restoration on streams with city boundaries.

Finally, other statewide planning goals support the watershed protection measure, and guidelines such as Goals 5 and 67 and associated rules, also support the watershed protection measure by requiring set expectations for identifying and protecting environmentally sensitive areas [OAR 6690-23] and areas prone to hazards, including floodplains [Goal 7] and hillsides with greater than 25% slope [OAR 660-008-0005(2)] local governments to inventory sensitive areas and protect natural resources. Statewide Planning Goals 16 and 17 mandate protection of significant tidally influenced wetland, riparian and estuarine habitat resources. Local comprehensive plans and implementing regulations must direct and limit urban development to provide for protection of these resources. Oregon encourages requires local governments to adopt ordinances to support these Goals. NOAA and EPA strongly recommend the State continue to ensure local governments adopt ordinances consistent with the statewide land use goals.

Per the NOAA and EPA's 1998 *Final Administration Changes Memo*, Oregon has provided a legal opinion from its Attorney General to enable the state to use voluntary programs, like OWEB, to help address its 6217(g) requirements. The legal opinion states Oregon has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of all 6217(g) management measures, including existing development and watershed protection, as needed.

IV. ROADS, HIGHWAYS, AND BRIDGES MANAGEMENT MEASURES

CONDITION: Within two years, Oregon will (1) develop management measures in conformity with the 6217 (g) guidance for construction site chemical control; (2) develop enforceable policies and mechanisms to implement the roads, highways and bridges measures on all federal and State highways throughout the coastal nonpoint management area; (3) develop management measures in conformity with the 6217 (g) guidance and enforceable policies and mechanisms for local roads, highways, and bridges throughout the coastal nonpoint management area; and (4) provide a strategy (in accordance with section XII, pages 19-20) for use of the State's water quality law (ORS 468B) as a back-up enforceable mechanism to ensure implementation of the management measures for operation and maintenance and for runoff systems, as proposed on pages 155 and 157 of the State's program submittal.

INTERIM APPROVAL FINDING: Oregon has satisfied these conditions (January 2004, June 2008).

Comment [AC31]: Comment 16: Are all these projects w/in the CNP mngt area? What time period do these projects cover?

Comment [AP32]: A current query of OWEB data indicates that this number may have been state wide. To date, within UGBs, 157 projects have received OWEB funding in the 6217 management area. 614 projects within UGBs have been funded statewide. See Attachment #1 OWEB Funding Inside UGBs for more detail.

Comment [AP33]: OWEB funding for watershed restoration projects is ongoing. The OCMP reports on OWEB spending and projects within the coastal zone as part of our annual grant product report. Also see, <http://www.oregon.gov/OWEB/docs/oitt.html>

RATIONALE: Oregon has satisfied its roads, highways, and bridges conditions through its NPDES and ~~TMDL-TMDL~~ programs, and OWEB grant programs. First, NOAA and EPA have determined that states are exempt from the construction site erosion and sediment control and construction site chemical management measure requirements throughout the coastal nonpoint management area as these activities are covered through the NPDES stormwater permit program. States are also exempt from the other roads, highways, and bridges management measures within NPDES Phase I and II MS4 communities. (See NOAA and EPA December 20, 2002 memo, *Policy Clarification on Overlap of 6217 Coastal Nonpoint Programs with Phase I and II Stormwater Regulations*). In Oregon, the City of Ashland, City of Medford and Rogue Valley Sewer Services (includes cities of Central Point, Phoenix and Talent, and portions of Jackson County in Medford Urbanized Area) are currently the only MS4 within the coastal nonpoint management area. In Oregon, the Medford Urbanized Area and Jackson and Lane Counties are currently the only MS4 within the coastal nonpoint management area. Grants Pass, Roseburg, and Coos Bay are to be evaluated under draft MS4 designation criteria but they have not been designated Phase II communities as of yet.

Comment [kt34]: Done.

Comment [AC35]: *Comment 17:* See Comment 10

Outside of MS4 areas, the Oregon Department of Transportation's (ODOT) Phase I Stormwater NPDES MS4 General Permit enables the state to satisfy the remaining roads, highways and bridges conditions for state and federal roadways. For local roads, Oregon relies largely on a voluntary approach backed by enforceable authorities. The state encourages local governments to follow ODOT's maintenance and construction manuals which are consistent with the 6217(g) guidance ~~and holds training sessions that many local government road crews attend to learn about best management practices for road construction and maintenance.~~ ODOT also offers education and outreach activities to other public agencies, and invites contractors and county and city road authorities. The Roads Scholar Program offers several classes including Environmental BMPs 1 and 2. Each of these two classes has been offered about 25 times since 2002 in locations throughout the state. ODOT's data base shows over 250 records of attendance for employs from cities and counties in the 6217 management area. The Roads Scholar Program continues to offer classes in locations accessible to coastal and southern Oregon Jurisdictions . ~~For example, in February 2001, ODOT sent a letter to all local governments, recommending they use the department's manuals.~~

Comment [AP36]: See Attachment #2 ODOT Roads Scholar brochure.

Comment [AC37]: *Comment 18:* Has Oregon done sent a letter to all local governments recommending the use of the manuals more recently than 2001? Are there other more recent examples of how Oregon is encouraging local governments to use the manual?

The DEQ's TMDL Implementation Plan guidance (May 2007) further promotes ODOT's manuals for use by local governments as a way of addressing water quality impairments. ODOT's manuals will also be promoted in DEQ's "Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area" that will be finalized in 2013. Completed TMDL Implementation Plans for Jackson and Curry Counties demonstrate that counties are adopting ODOT's manuals to reduce polluted runoff from road siting and maintenance activities.

Comment [AP38]: The county road Program manager for the association of Oregon Counties confirmed that all of the counties in the 6217 management area uses the ODOT Blue Book to inform road maintenance activities. See www.oregon.gov/ODOT/HWY/OOM/docs/blue_book.pdf

Comment [AC39]: *Comment 19:* Update to reflect new guidance when finalized and if it is applicable.

Comment [kt40]: Done

Department of State lands General Authorization permit for “Certain Transportation-Related Activities” OAR 141-089-740 through 755 was adopted in 2011. Soil removal authorized by the permit must not adversely affect woody vegetation, wetlands or waters.

Comment [AP41]: See Attachment #3 DSL GA for Transportation.

The Army Corps of Engineer’s Portland District (all of Oregon) has regional conditions that apply to all 404 and section 10 permits that require: erosion and sediment control, fish passage BMPs; and post construction stormwater management.

Comment [AP42]: See Attachment #4 Corp NWP Regional Permit Conditions

The Oregon Watershed Enhancement Board (OWEB) provides funding for a variety of watershed enhancement activities, including improvements to existing roads, highways and bridges to reduce polluted runoff. In the most recent summary report, nearly \$30M of OWEB funds went to road improvements statewide during FY 2002 and 2003. The state estimates that one third of those funds were spent within the coastal nonpoint management area. From 2009 through June of 2013 almost seven million dollars of OWEB grant funding went to restoration and technical assistance projects to mitigate impacts from roads in the 6217 management area. Projects involved the removal of blockages or barriers that impeded salmonid passage at road stream crossings or reduced road sediments that were entering streams.

Comment [AC43]: *Comment 20:* Update to reflect statistics and projects that support improvements to existing roads, highways and bridges to reduce polluted runoff.

Comment [AP44]: See Attachment #5 OWEB Funding for Road Projects

Oregon has submitted a legal opinion from its Attorney General pursuant to the *1998 Final Administration Changes Memo* to demonstrate it has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of the voluntary elements of the road, highway, and bridges management measures.

V. MARINAS & RECREATIONAL BOATING MANAGEMENT MEASURES

A. MARINA FLUSHING, WATER QUALITY, and HABITAT ASSESSMENT

CONDITION: Within three years, Oregon will include in its program enforceable policies and mechanisms to implement the marina flushing and habitat assessment management measures throughout the coastal nonpoint management area.

INTERIM APPROVAL FINDING: Oregon has satisfied this condition (June 25, 2008).

RATIONALE: New or expanded marinas require a removal-fill permit from the Division-Department of State Lands (DSL). The review process for these permits enables DSL to implement both the marina flushing and habitat assessment management measures. DSL developed a permit review checklist in 2004 to guide permit reviewers in what they should be looking for when reviewing marina permit applications. The checklist includes marina flushing and recommends 6217(g) guidance best management practices for flushing to achieve adequate water quality. To address habitat issues, DSL permit reviewers must condition the permits to “avoid or minimize impacts to fish and wildlife resources” when conducting in-water or shoreline work (141-085-0029(7)(c)).

Comment [AC45]: *Comment 21:* Confirm checklist still being used.

Comment [AP46]: DSL is not aware of any permits in the past 10 years that involve new marinas. There is no evidence that a checklist of design standards for marinas existed.

Comment [AP47]: This is no longer a valid reference. Division 85 was renumbered. The next paragraph explain what has changed.

Input from Oregon 7-15-13

Permit Conditions reference 141-085-0029(7)(c) relating to removal fill “shall be conducted to avoid or minimize effects to fish and wildlife resources”. This reference is from historical rules. In January, 2010, DSL replaced that language with 141-085-0585(1) which relates to permit conditions, generally, and reads:
“ Applicable Permit Conditions. If the Department approves the permit, it will impose applicable conditions to eliminate or reduce the reasonably expected adverse impacts of project development to waters of this state”. DSL has broad discretion to impose any condition necessary to protect waters. Attached are the standard permit condition templates that show the range of potential conditions.

Comment [GKA48]: See the two attached permits

In addition to DSL’s direct review, Oregon’s Department of Fish and Wildlife (ODFW) also reviews marina applications under the removal-fill law (ORS 196.795-990) to advise DSL on its permit decisions. ODFW has three policy standards (#14304, #14309, and #14310) consistent with the 6217(g) guidance for flushing to guide their permit evaluations.

In estuarine areas, the habitat assessment measure is also supported by the State’s Land Use Goal 16 (OAR 660-015-0010(1)) which provides the State with enforceable policies and mechanisms to implement the habitat assessment measure in the estuarine areas of the 6217 boundary. Goal 16 requires all local jurisdictions in the coastal zone to evaluate estuaries and identify appropriate locations for water dependent uses, including marinas. The existing natural condition and function of the estuary must be considered during the evaluation process. These Goal 16 requirements have been implemented through the local adoption of detailed spatial plans for each of Oregon’s major estuaries. These plans divide each estuary into discrete geographic areas known as management units; each management unit is classified as natural, conservation or development. These classifications dictate permissible types and levels of development; Specifically marinas are prohibited in areas with “natural” designations. Natural areas, at a minimum, must contain all major tracts of saltmarsh, tidflats and seagrass beds and comprise approximately 36% of the total area of Oregon estuaries.

B. SHORELINE STABILIZATION, STORMWATER RUNOFF, FUELING STATION DESIGN, SOLID WASTE MANAGEMENT, LIQUID MATERIAL MANAGEMENT, AND PETROLEUM CONTROL

CONDITION: Within three years, Oregon will develop management measures in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation of these management measures throughout the coastal nonpoint management area.

INTERIM APPROVAL FINDING: Oregon has satisfied this condition (February 2004).

RATIONALE: To address many of the marina management measures, the state has developed and is implementing a voluntary clean marina certification program. The accompanying *Oregon*

Clean Marina Guidebook contains practices consistent with the 6217(g) guidance for the solid waste management, liquid material management, petroleum control, fueling station design, and storm water runoff management measures and has been distributed to all marinas within the coastal management area. The state offers other technical assistance to marinas to help them become “clean”, including self-assessment checklists, site visits, and online educational materials. Over ~~55-61~~ marinas throughout the state have ~~already~~ been certified. Nineteen of 69 marinas in the coastal zone have been certified (66% of boat slips) and eight more (15% of boat slips) are working on meeting the requirements for certification. Oregon Marine Board continues to fund a Clean Marina Coordinator position. In 2012 four facilities, with a total of 990 boat slips, were certified in the coastal zone.

Comment [AC49]: Comment 22: The list online reflects 58 certified marinas but some are in Portland and I imagine other cities outside the CNP boundary. How many are actually within the coastal nonpoint source boundary?

Comment [AP50]: See updated statistics in text.

Although the Guidebook does not address shoreline stabilization, Oregon has satisfied this management measure through other riparian and restoration programs such as the Oregon Watershed Enhancement Board grant (OWEB), ~~and the Oregon Aquatic Habitat Restoration and Enhancement Guide, and Oregon’s Statewide Riparian Management Policy.~~ The State also encourages use of bioengineering techniques in bank stabilization project undertaken by property owners. Bioengineering techniques are required by both the DSL General Authorization for bank stabilization projects [OAR 141-89-0720 through 735] and by special conditions under the DEQ 401 certification of the Army Corp of Engineers Nationwide permit for bank stabilization. These general permits are less expensive and can be issued on a faster time line than individual permits.

Comment [AC51]: Comment 23: Is Oregon’s Statewide Riparian Management Policy still in effect?

Comment [AP52]: The Statewide Riparian Policy was a directive to state agencies issued by governor Kitzhaber in 2002. The intent was to insure that state agencies could carry out their missions in a manner that supported landscape approaches to watershed management. It was not an enforceable policy or program specially designed to implement 6217 management measures. Reviews requested by the governor were completed. It is no longer in effect.

Comment [AC53]: Comment 24: How so? Is there a formal program or BMP guide that Oregon uses?

Comment [AP54]: See Attachment #6 DEQ 401 Cert Bank Stabilization.

Oregon has submitted a legal opinion from its Attorney General pursuant to the *1998 Final Administration Changes Memo* to demonstrate it has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of the marina management measures, as needed. In addition, Oregon references OAR Chapter 340, Div 101 for Hazardous Waste and DEQ’s Air Quality Regulations (OAR 340-246-0010-0230) as other enforceable policies the State can use to prevent hull scrapings and potentially other toxic materials from entering the air and water streams. Oregon’s regulations for underground fuel storage tanks (OAR 340-150-0001 thorough 0620) can be used to implement the fuel station design measure when tanks are below ground.

C. SEWAGE FACILITY MANAGEMENT and MAINTENANCE

CONDITION: Within three years, Oregon will include in its program enforceable policies and mechanisms to ensure implementation of these management measures throughout the coastal nonpoint management area.

INTERIM APPROVAL FINDING: Oregon has satisfied this condition (February 2004).

RATIONALE: Oregon’s marina guidebook is consistent with the (g) guidance for sewage facility management and maintenance including guidelines for determining the number of boat waste collection devices at marinas and moorages. The State also has a Vessel Waste Facility Construction Program that funds vessel waste disposal facilities. However, these programs are

Input from Oregon 7-15-13

voluntary. Oregon cites their Water Pollution Control Regulation (specifically ORS 468B.25) as back-up authority to ensure these measures are implemented.

D. FISH WASTE and BOAT CLEANING

CONDITION: Within three years, Oregon will issue an NPDES general permit for fish waste management, which will apply to all facilities identified in the 6217(g) guidance.

INTERIM APPROVAL FINDING: Oregon has satisfied this condition (February 2004).

RATIONALE: Instead of addressing the fish management measure through a NPDES permit, the State has elected to satisfy the condition through its voluntary *Oregon Clean Marina Guidebook* and clean marina certification program. The Guidebook contains practices that are consistent with the 6217(g) guidance for fish waste management. See Part V.C above for additional information on Oregon's clean marina program and back-up authorities.

E. BOAT OPERATION

CONDITION: Within three years, Oregon will include management measures in conformity with the 6217(g) guidance.

INTERIM APPROVAL FINDING: Oregon has satisfied this condition (February 2004).

RATIONALE: Oregon satisfied this condition through its voluntary clean marina certification program, Oregon Clean Marina Guidebook, and Oregon State Marine Board's regulatory authority. First, the guidebook contains practices that are consistent with the 6217(g) guidance for fish waste management. See Part V.C above for additional information on Oregon's clean marina program and back-up authorities.

In addition to the guidebook, the Oregon State Marine Board has authority under Oregon Revised Statutes (ORS) 830.175 -.200 to regulate, through administrative rule making, recreational boating in specific waterways for a variety of purposes, including protection of water quality and fish and wildlife resources. Boating restriction requests may be made by citizen groups, local governments, or state agencies. Several local rules limiting boating activity have resulted due to OAR 250-19.

VI. HYDROMODIFICATION

CONDITION: Within two years, Oregon will develop processes to identify and implement opportunities to (1) improve the physical and chemical characteristics of surface waters and instream and riparian habitat in existing modified channels and (2) stabilize eroding streambanks or shorelines causing nonpoint problems that are not reviewed under existing authorities. Also within two years, Oregon will include in its program the dam management measures for chemical and pollutant control and protection of surface water quality and instream and riparian habitat in

conformity with the (g) guidance. Within three years, Oregon will also either modify the exemptions to the removal-fill program or demonstrate that the exemptions do not preclude the State from fully implementing the management measures.

INTERIM APPROVAL FINDING: Oregon has satisfied these conditions (February 2004).

RATIONALE: Oregon, through a number of related restoration and protection initiatives, has developed a process to identify and implement opportunities to improve the physical and chemical characteristics of surface water in existing modified channels. Oregon has also developed a process to identify opportunities to restore instream and riparian habitat. Key components include: the Oregon Plan for Salmon and Watersheds, a framework for anadromous fish recovery which fosters local watershed council work to assess and restore watersheds; the Healthy Streams Partnership; the Oregon Watershed Enhancement Board, which funds riparian restoration projects, including stream habitat enhancement and restoration of previously altered stream reaches; the Oregon Aquatic Habitat Restoration and Enhancement Guide, which provides guidance on identifying and conducting restoration activities and state agency criteria and priorities for restoration; riparian management components of Agriculture Water Quality Management Area Plans; Oregon Department of Fish and Wildlife (ODFW) fish passage rules; and Oregon's Statewide Riparian Management Policy the ODFW Western Oregon Stream Restoration Program, which provides direct technical assistance to watershed councils and private land owners to ensure successful restoration projects.

In addition, in May of 2002, the Governor's Office published a progressive "Statewide Riparian Management Policy" that states "State agency programs that affect riparian zones should seek to manage for riparian functions as much as possible along the entire stream system, consistent with regional ecology, site capability, and social and economic needs." Among the riparian functions listed are filtration of sediments, organic material, and toxic substances in surface runoff.

Eroding stream banks in the coastal nonpoint management area are primarily due to legacy forestry and agricultural practices which resulted in the removal of vegetation from riparian areas, and damage to the natural stream morphology from practices such as canalization, installation of tide gates and splash damming. The opportunities for riparian corridor restoration identified via the watershed assessments, and the Oregon Aquatic Habitat Restoration and Enhancement Guide, and the activities of the Riparian Management Working Group, help to address the effects of vegetation removal on eroding stream banks. In addition, ODA and ODF have entered into a Memorandum of Understanding with DEQ relating to the development of TMDLs and Agriculture Water Quality Management Area Plans (AWQMAPs), both mechanisms for addressing eroding streambanks. Agricultural activities that cause eroding streambanks are subject to regulatory actions by ODA. Legacy conditions (for example, channelization, diking, presence of naturalized weeds such as blackberry and reed canary grass) are not addressed through existing regulatory tools but are being addressed through: education; outreach; technical assistance activities by SWCDs, NRCS, and OSU Extension; work by the Oregon Invasive Species Council and its partners on controlling invasive species; through work and funding provided by OWEB to

Comment [AP55]: OWEB's web site has much information and data on restoration projects. See "Oregon Watershed Restoration Tool" <http://oe.oregonexplorer.info/RestorationTool/> and "OWEB Investment Tracker" <http://www.oregon.gov/OWEB/docs/oitt.html>. Also for reports on Watershed restoration priorities see http://www.oregon.gov/OWEB/pages/restoration_priorities.aspx

Comment [AP56]: This was an agreement used to support development and implementation of SB1010 and TMDLs. It served its purpose and is no longer an active organizational structure.

Comment [AP57]: See <http://www.dfw.state.or.us/lands/wosrp.asp> and Attachment #7 Western Oregon Stream Restoration Program.docx

Comment [AC58]: Comment 25: Is the "Statewide Riparian Management Policy" still in effect?

Comment [kt59]: See previous comment.

Comment [AP60]: The Riparian Management Work Group was a temporary, *ad hoc* group of state agency representatives convened to recommend actions in support of the Oregon Plan for Salmon and Watersheds. A report issued in 2000 recommended a "landscape context for a statewide riparian policy". This recommendation was the basis for the Riparian Management Policy which was a directive to state agencies issued by Governor Kitzhaber in 2002.

Comment [AC61]: Comment 26: Specific examples would help strengthen rationale here.

Comment [AC62]: Comment 27: Specific examples of how these programs have been used to address eroding streambanks would be helpful or other ODA/ODF efforts.

achieve natural resource improvements; and other public/private partnerships. Finally, the State is encouraging the use of bioengineering techniques in bank stabilization projects undertaken by property owners. These projects must be reviewed and permitted by the ~~Division~~ Department of State Lands (DSL) and receive section 401 Water Quality Certification by DEQ. Both agencies have guidelines which favor the use of bioengineering techniques in stabilization projects.

Oregon has strong fish passage requirements which help to ensure that fish can migrate through the state's waterways. Since August 2001, the owner or operator of an artificial obstruction located in waters in which native migratory fish are currently or were historically present must address fish passage requirements prior to certain trigger events. Laws regarding fish passage are found in ORS 509.580 through 910 and in OAR 635, Division 412 and are implemented by the Oregon Department of Fish and Wildlife (ODFW). Trigger events include: installation and major replacement of roads and other structures; a fundamental change in permit status (e.g., new water right, renewed hydroelectric license); or abandonment of the artificial obstruction. Native migratory fish include native salmon, trout, lamprey, sturgeon, and suckers, as well as a few other species. Addressing fish passage requirements entails the owner/operator obtaining from ODFW: 1) approval for a passage plan when passage will be provided, 2) a waiver from providing passage, or 3) an exemption from providing passage. It is the intent of state fish passage laws (ORS 509.585(1)) that, in most cases, option #1 should be sought and passage should be provided at the artificial obstruction. Please see <http://www.dfw.state.or.us/fish/passagel/index.asp> for more information.

The Oregon Water Resources Department (OWRD) reviews all dam construction, operation, and maintenance activities. Under OAR 690, Division 310, OWRD must determine whether the proposed surface water use will impair or detrimentally affect the public interest. OWRD can condition dam construction, operation and maintenance activities through its review of permits for water appropriations to protect surface water quality, and instream and riparian habitat. OAR 690-310-0120(3)(b) defines minimum factors to be considered for new appropriations, including "water quality, with special attention to sources either listed as water quality limited or for which total maximum daily loads have been set . . . and sources which the Environmental Quality Commission has classified as outstanding resource waters." OAR 690, Division 33 establishes additional public interest standards with regard to sensitive, threatened, or endangered fish species, and requires OWRD to follow recommendations of an interagency review team comprising representatives of ODA, DEQ, ODFW, OWRD, and other state natural resource agencies, as appropriate, as to whether a proposed surface water use will or will not impair or be detrimental to the public interest. If the recommendation of the interagency review team is that the proposed surface water use will impair or be detrimental to the public interest, the Department nevertheless has the discretion to determine otherwise if it finds that certain listed criteria are met.

When conditioning a permit, OWRD draws from a list of standard conditions. Several conditions address dam construction, operation and maintenance activities, including withdrawals, fish habitat, sediment, and downstream water quality. OWRD has demonstrated it can and does

Comment [AP63]: See DSL General Authorization for Waterway Bank Stabilization, OAR 141-089 (non-tidal waterways)

Comment [AP64]: DEQ issued a programmatic 404 certification for several Corp Nationwide permits in 2012. Special conditions are listed for Corp Nationwide Permit #13, Bank Stabilization that require bioengineering. See DEQ's April 9, 2012 letter <http://www.deq.state.or.us/wq/sec401cert/docs/2012/NWP401f.pdf> and Attachment #6

Comment [AC65]: Comment 21: Still the case?

condition dam construction, operation and maintenance activities through its water appropriations permit review process to protect surface water quality, and instream and riparian habitats consistent with the 6217 (g) guidance.

NOAA and EPA have determined that states are exempt from the dam management measure for chemical and pollutant control throughout the coastal nonpoint management area as these activities are covered through the NPDES stormwater permit program. (See NOAA and EPA December 20, 2002 memo, *Policy Clarification on Overlap of 6217 Coastal Nonpoint Programs with Phase I and II Stormwater Regulations*).

Previously, removal and fill activities involving 50 cubic yards or less of material that were not located within essential fish habitat were exempt from the removal fill laws (OAR 141.085). The rule also limited the ODFW from designating more than 20% of any stream as essential fish habitat. Division 102 of the OAR has since been amended to expand the essential fish habitat classification. Now 75-80% all waterbodies in the coastal nonpoint management area are designated essential habitat, thus removing the 50 cubic yard exemption for removal and fill activities.

In December 2002, the DSL also amended the removal and fill administrative rules (OAR 141.085) to make Oregon’s laws consistent with the Federal 404 permit exemptions and more clearly define exempt maintenance and reconstruction activities, as well as exempt farm and forest practices. The state has demonstrated that these minor exemptions will not have a significant impact on surface water quality or impact the state’s ability to implement the (g) measures. The state’s main strategy for implementing the maintenance aspects of the channelization/channel modification and eroding stream banks management measures is no longer the removal-fill regulations. The state is now relying on a variety of programs such as Oregon’s Watershed Enhancement Board grants program, the Oregon Aquatic Habitat and Restoration Enhancement Guide, and the Agriculture Water Quality Management Area Plans (see sections above for more details).

Oregon has submitted a legal opinion from its Attorney General pursuant to the 1998 *Final Administration Changes Memo* to demonstrate it has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of the voluntary elements of hydromodification management measures, as needed

VII. WETLANDS, RIPARIAN AREAS, AND VEGETATED TREATMENT SYSTEMS

CONDITION: Within two years, Oregon will include in its program management measures in conformity with the 6217 (g) guidance to assure the protection of riparian areas. The State will also develop a process to promote the restoration of riparian areas in conformity with the 6217 (g) guidance.

INTERIM APPROVAL FINDING: Oregon has satisfied this condition (June 2008).

Comment [AC66]: Comment 29: Still true?

Comment [AP67]: Yes. Essential Fish Habitat designations are based on stream reaches used by state and federally listed species. Listings have not been removed. See <http://www.oregon.gov/dsl/PERMITS/Pages/esshabitat.aspx>

Comment [AP68]: In December 2002, DSL also amended the removal and fill administrative rules (OAR 141.085) to make Oregon’s laws consistent with the Federal 404 permit exemptions and more clearly define exempt maintenance and reconstruction activities, as well as exempt farm and forest practices.

Comment [AC69]: Comment 30: Any specific examples would help strengthen rationale.

Comment [kt70]: See above for more details.

RATIONALE: Protection of riparian areas in Oregon preserves riparian areas is addressed under State Land Use Goal 5. The goal requires local governments to inventory natural resources, including riparian areas, and adopt programs that will preserve significant riparian areas. Local governments can elect to use the “safe harbor” criteria (a streamlined designation process) or the more detailed standard Goal 5 process to identify significant riparian areas. Under the “safe harbor” process, all riparian corridors adjacent to fish bearing streams and lakes are considered significant riparian resources. Local governments must pass ordinances to establish either a 75 or 50 foot riparian protection zone depending on the size of the waterbody. Development, vegetation removal and impervious surfaces are generally prohibited within these protection zones.

Exemptions are only granted for some uses if impacts to the resource are minimized and for others if equal or better protection for riparian resources is provided through riparian restoration or enhanced buffer treatment.

Under the standard Goal 5 process, local governments are required to conduct a comprehensive inventory of their riparian areas to identify significant riparian resources. The significance of each riparian area must be justifiable based on findings derived from the inventory. The DLCDC reviews the inventories to determine they are adequate. The standard process acknowledges that local governments do have to manage other priority land uses that may conflict with riparian protection. Nonetheless, they are still required to establish an effective management strategy for riparian resource protection.

All cities with a population greater than 2,500 10,000 and all counties with a population greater than 15,000 must also periodically update their comprehensive plans. All counties within the coastal nonpoint management area are required to undergo these periodic reviews. During these updates, they must conduct new inventories of significant riparian resources and ensure they have programs in place to protect Goal 5 resources. Several coastal cities have also adopted Goal 5 riparian protection programs voluntarily (without the trigger of periodic review).

Oregon has also supported riparian restoration and protection through OWEB funded projects. Between 2004 and 2013 over \$27 million in OWEB funding has helped acquire and permanently protect water quality and fisheries habitat of critical ecologically significant areas throughout Oregon. Within Oregon's coastal basins, in excess of \$10 million has been spent on these activities on more than 6,700 acres during that same year period.

Agriculture and forestry activities are exempt from Goal 5 requirements; however, riparian protection involving these activities is addressed directly through the Agriculture Water Quality Management Area (AWQMA) plans and rules (agriculture) and the Forest Practices Act (FPA) (forestry). For example, as described earlier under the Agriculture Management Measures section, AWQMAs have developed management plans consistent with the 6217(g) guidance for the agricultural measures which include practices to protect sensitive areas such as riparian zones. The administrative rules for each of the Coastal management areas provide that agricultural activities must also note that riparian management should be conducted to allow for the establishment,

Comment [kt71]: ORS 197.629 has been amended. Cities under 10,000 population are not required to undergo periodic review. Undertaking an update of Goal 5 work is currently voluntary for counties.

Comment [WR72]: Comment 31: Accurate?

Comment [AP73]: Oregon's CMP reports to OCRM on OWEB project funding every year as part of our state match for our coastal grant. Also see "OWEB Investment Tracker" <http://www.oregon.gov/OWEB/docs/oijt.html>

Comment [AC74]: Comment 32: Any specific examples on how protecting/restoring riparian areas would help strengthen rationale or additional ODA/ODF efforts to address riparian areas.

Comment [kt75]: ODA did not have any specific examples but augmented the language below.

Comment [AC76]: Comment 33: Do all AWQMPs in CNP mngt area include management measures consistent with 6217(g) MMs for agriculture...specially those that get at riparian protection?

Comment [kt77]: Re: comment 33: yes – see response to comments 3 and 5.

growth, and maintenance of riparian vegetation appropriate to the site and to provide streambank stability, filtering of overland flow, and shade. Agricultural activities not meeting this requirement are subject to regulatory actions up to and including civil penalties. In addition, the program has utilized other legal avenues such as injunctive relief to achieve compliance where riparian vegetation has been damaged.

Comment [AC78]: Comment 34: Citation?

Oregon's IR-TMDL program can also play an important role in riparian protection. All the basins within the coastal nonpoint management area have water quality impairments for temperature. To address this impairment, each designated management agency (DMA) within the listed sub-basins must develop TMDL Implementation Plans for temperature. Riparian protection and restoration are important components for reducing temperature impairments as riparian areas provide needed shading to waterways. Although recent litigation on the water quality standards and TMDLs for temperature in Oregon make it difficult to project the timing for when all temperature TMDLs in the coastal basins will be completed, several TMDL Implementation Plans developed prior to the new IR-TMDL process are consistent with the 6217(g) guidance for riparian protection.

Comment [AC79]: Comment 35: Still accurate?

Comment [kt80]: Yes

As an example, a wide range of actions related to riparian protection have been taken by the Rogue and Bear Creek DMAs. They are categorized below:

Comment [JC81]: Comment 36: Is this true? Can you provide specific examples?

Comment [AP82]: Some examples have been provided.

- **Updated the riparian ordinance:**
Medford (Included additional fish bearing streams), Grants Pass is planning to revise/update their ordinance (may wait until FEMA's direction is clear)
- **Adopted a riparian ordinance:**
Ashland (2009)
- **Referenced existing codes (some do not specifically reference a riparian ordinance):**
Gold Beach, Cave Junction, Talent, Phoenix, Jacksonville, Jackson County, Josephine County, Curry County
- **Postponing ordinance adoption until FEMA requirements are clear:**
Eagle Point, Central Point, Rogue River
- **Volunteer program:**
Gold Hill and maybe Shady Cove

In the conditional findings on Oregon's Coastal Nonpoint Program, NOAA and EPA stated concern that forest land riparian areas were not being protected when the land was converted to another use under existing programs. In 2006, Oregon finalized a Memorandum of Agreement (MOA) between the Departments of Forestry, Agriculture, State Lands, Fish and Wildlife, Parks and Recreation, Land Conservation and Development, and Environmental Quality to address this issue. The MOA clearly establishes a process for notifying all signatory agencies when forest land is converted to other uses so that each agency can ensure that its responsibilities in protecting water quality and riparian areas will be carried out. The landowner/operator must submit a Plan for an

Alternative Practice to ODF that addresses potential water quality or natural resource impacts of the proposed alternative practice. ODF then shares the plan with the other agencies for review. No conversion activity will be approved unless it complies with the resource protection rules of the appropriate state agency(ies) that have jurisdiction over the new activity.

VIII. ADMINISTRATIVE COORDINATION

CONDITION: Within one year, Oregon will establish a process for ensuring coordination among State and local agencies with a role in the implementation of the coastal nonpoint program.

INTERIM APPROVAL FINDING: Oregon has satisfied this condition (April 2004).

RATIONALE: Oregon has established a process for ensuring coordination among State and local agencies to implement the coastal nonpoint program by developing formal coordination mechanisms such as memorandum of understanding, advisory boards, agency outreach to local municipalities, and having regular informal communication among parties responsible for the program.

DEQ has signed separate Memorandums of Understanding (MOUs) with the ODA and ODF to outline agency roles in developing and revising agricultural water quality management plans and TMDLs for forestry, respectively. Several state agencies including DEQ, ODF, the ODWR, and ODFW, have also signed an MOU to provide for continued cooperation to achieve the goals of the Oregon Plan for Salmon and Watersheds, many aspects of which address 6217(g) measures.

In 2011, the state established Regional Solutions Centers (RSCs) throughout the state. RSCs are places for state agencies to collaborate with each other, local governments, and with other public, private, and civic interests to solve problems and seize opportunities. RSCs include representatives from DEQ, DLCD, ODOT, the Department of Housing and Community Services, and the Business Development Department. Other state agencies are added to the teams as needed for regional priorities. Regional Advisory Committees, made up of Oregonians appointed by the Governor from business, civic organizations, government, foundations, and higher education, identify priorities to guide the work in each of the ten regions. The committees also help connect resources from the community to expand the state's collective capacity to solve problems and seize opportunities. RSCs in Tillamook, Eugene, Medford and Coos Bay serve different portions of the coast and engage with locals on a variety of projects involving environmental and land use issues. For example, the Eugene RSC is assisting the cities of Yachats and Waldport evaluate options for managing their biosolids in an environmentally-protective and cost-effective manner, and the Medford RSC recently initiated a project with Coos County addressing inadequate septic systems.

The Community Solutions Team Advisory Board is comprised of several state agencies including the DEQ, ODF, DLCD, and ODOT. The Advisory Board coordinates local development issues including many topics relevant to the coastal nonpoint program such as TMDLs and land use laws.

Comment [AC83]: *Comment 37:* Confirm this still exists and functions as described.

Comment [kt84]: This Advisory Board has been disbanded and reconstituted as RSCs. See language above.

Oregon's Coastal Management Program also conducts regular outreach to local governments within the coastal zone. Discussions include development and implementation of the coastal nonpoint program.

Finally, agency staff involved in the coastal nonpoint program regularly communicate with one another through informal channels. Both DEQ and DLCD have staff dedicated to the coastal nonpoint program and these individuals work with appropriate people at the other state and local agencies as needed to develop and implement the coastal nonpoint program. NOAA and EPA encourage DLCD and DEQ, as the lead state agencies for the coastal nonpoint program, to continue coordination efforts with other state and local government agencies.

IX. CRITICAL COASTAL AREAS AND TECHNICAL ASSISTANCE

CONDITION: Within two years, Oregon will identify and begin applying additional management measures where water quality impairments and degradation of beneficial uses attributable to forestry exist despite implementation of the (g) measures. Within two years, Oregon will develop a process for the identification of critical coastal areas and a process for developing and revising management measures to be applied in critical coastal areas and in areas where necessary to attain and maintain water quality standards. Also within two years, the State will develop a program to provide technical assistance in the implementation of additional management measures.

INTERIM APPROVAL FINDING:

- Oregon has developed a process to identify critical coastal areas and a process to develop and revise management measures to be applied in critical coastal areas and in areas where necessary to attain water quality standards. (April 2004).
- Oregon has developed a program to provide technical assistance in the implementation of additional management measures. (April 2004).

RATIONALE: Oregon has described a process for identifying critical coastal areas that considers the factors recommended in the NOAA/EPA 1993 *Program Development and Approval Guidance*. Statewide Planning Goal 16, Estuarine Resources (OAR 660-015-0010(1)) recognizes the importance of protecting Oregon’s estuaries where new or substantially expanding uses could cause or contribute to water quality impairment. Goal 16 requires classification of Oregon’s estuaries into one of four types—natural, conservation, shallow draft development, or deep draft development. ~~The Through locally adopted management plans, each~~ estuary ~~areas are is~~ further divided into “distinct water use management units” which ~~are classified to~~ define the permissible uses within each unit. In estuaries classified as natural or conservation, only activities which support these designations are allowed. ~~In estuaries classified as development, substantial areas are likewise reserved in natural and conservation management units, including all major tracts of tide flats, tidal marsh, and seagrass and algae beds. In all, more than 93% of Oregon’s total estuarine aquatic area is designated in local management plans as either natural or conservation.~~ Therefore, Goal 16 is an appropriate vehicle for identifying critical coastal areas in estuaries.

In addition, ~~The Oregon Watershed Enhancement Board (OWEB) uses watershed assessments to develop restoration and enhancement plans and prioritize projects within each watershed. OWEB has funded a process to identify restoration priorities at the basin scale. OWEB staff continues work with watershed councils and other conservation entities in the basins to develop regional priorities, the OWEB watershed assessment protocol lays out a process to identify and map areas within watersheds that are in need of protection.~~ Such a process is a good vehicle to identify critical coastal areas in the coastal watersheds. ~~The watershed assessments are used to develop restoration and enhancement plans and prioritize projects within each watershed.~~

TMDLs and their associated implementation plans can also identify critical areas for special attention. Oregon requires that TMDLs developed for impaired watersheds be accompanied by water quality management plans that specify load reductions, a schedule for meeting load reductions, and management authorities responsible for achieving the load reduction. DEQ plans to use an implementation-ready TMDL process for the Coastal Basins. The first pilot is the Midcoast TMDL, an ongoing effort, by DEQ to address temperature, sediment, and bacteria impairments. The implementation-ready TMDL process differs from the traditional TMDL process, because a more refined source assessment, land use analysis, and specific BMPs are expected to be included. ~~DEQ will identify BMPs sufficient to meet load reduction targets with watershed modeling techniques. These BMPs will need to demonstrate compliance with the water quality standards.~~ Prior to the temperature water quality standards ruling, Oregon indicated they ~~would~~ complete IR-TMDLs in all watersheds in the coastal nonpoint management area by 2021.

Comment [AP85]: See, http://www.oregon.gov/OWEB/pages/restoration_priorities.aspx

Comment [kt86]: Yes.

Comment [AC87]: *Comment 38*: Still accurate? More current estimate available?

NOAA and EPA have determined that Oregon has satisfactorily developed a program to provide technical assistance. Oregon has a number of on-going grant programs, publications, and workshops that provide technical assistance to support implementation of additional management measures, many of which have been discussed in earlier sections of this document. The State has adequately described the type of technical assistance provided (grants, technical assistance documents, training workshops); the agencies providing the technical assistance (DLCD, DEQ, OWEB, ODF); the intended recipients (coastal jurisdictions, watershed councils, individual land owners, forest operators); and a schedule of availability as required in the *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance* (NOAA and EPA, January 1993).

X. MONITORING

CONDITION: Within one year, Oregon will include in its program a plan that enables the State to assess over time the extent to which implementation of management measures is reducing pollution loads and improving water quality.

INTERIM APPROVAL FINDING: Oregon has satisfied this condition (June 2008).

RATIONALE: Oregon has developed a general monitoring plan that enables the State to assess over time the extent to which the management measures are being implemented and improving water quality. The monitoring program has established a statewide rotating schedule for monitoring set reference sites and randomly selected sites for compliance with the State's water quality standards. DEQ currently implements the following monitoring programs:

- Ambient Monitoring: water column, ~~six times per year~~, traditional water quality parameters, status and trending
- Beach Bacteria Monitoring: selected beaches during the summer.
- ~~Oregon Health Authority program.~~
- National Aquatic Resource surveys (NARS): rivers, streams, wetlands, estuaries. Water quality, biotic integrity, habitat, water quality.
- ~~National scale EPA survey. Relatively few randomly selected sites on Oregon Coast.~~
- Toxics Monitoring: water column, sediment, fish
- TMDL monitoring since 2004.
- Volunteer Monitoring Program

The legislature included two new monitoring positions in DEQ's 2013-2015 budget.

The State uses this monitoring information to develop 305(b) reports and TMDLs. In developing the TMDL implementation plans, additional monitoring may be recommended to determine the effectiveness of restoration actions, as well as measuring progress towards improving water quality. Each TMDL Implementation Plan is also required to include a monitoring and assessment

Comment [AP88]: For more information see Attachment #8 Strategy for Monitoring Oregon Waters

Comment [kt89]: While this statement is true, it doesn't really belong here. This was part of the integrated budget request for the Enterprise Monitoring initiative described below.

Comment [JC90]: *Comment 40:* Does the monitoring included both measuring the BMP and TMDL effectiveness, as well as measuring progress towards improving water quality and meeting WQS?

component to describe how the designated management agencies will routinely evaluate the effectiveness of the implementation plan and to determine if additional actions are needed to sufficiently improve impaired water bodies.

Comment [kt91]: Suggest leaving the language as is. It may differ from one TMDL to another. Generally, BMP effectiveness isn't something you want to do over and over. Implementation monitoring is one of the key pieces.

In 2012, Oregon's governor established the Enterprise Monitoring Initiative to maximize statewide efforts for environmental protection and restoration. The Enterprise Initiative recognizes that natural resource issues cross agency jurisdictional boundaries. Oregon's legislature adjourned on July 8, 2013, after approving two-year budgets (July 2013 – June 2015) for state agencies, including the Governor's integrated budget request to support the initiative. Although final numbers are not yet available, this will result in roughly an additional \$4.1 million to be distributed across Oregon's natural resource agencies to build and strengthen water quality monitoring and management efforts, with \$1.7 million specified to enhance monitoring where it is most needed.

Comment [AP92]: See attachment #9 Enterprise Monitoring Summary

Forestry is the dominant land use within the coastal nonpoint program boundary. Therefore, to better assess the implementation and effectiveness of the Forestry Practices Act (FPA), which is consistent with the 6217(g) guidance, ODF carries out the Forest Practices Monitoring Program. The ODF's monitoring program described in the December 2002 Forest Practices Monitoring Program Strategic Plan involves both BMP implementation and effectiveness monitoring. All monitoring data is available in a central database as part of the State of Forests Integrated Information System and ODF analyzes and reports on the information collected annually. The ODF has already released several monitoring studies including the effectiveness of forest road sediment and drainage control practices, harvest effects on riparian areas, effectiveness of the FPA at obtaining temperature standards, and a comprehensive study on BMP implementation. Based on the monitoring conducted, each report recommends changes to the FPA to the Board of Forestry in order to improve the forestry program.

Comment [AC93]: Comment 41: Has this Plan been updated?

Comment [AC94]: Comment 42: Still accurate?

Comment [AC95]: Comment 43: Have any more reports been released?

Comment [AP96]: Re AC 101-103: For current information on reports see new text below.

While forestry is the dominant land use within the coastal nonpoint program boundary, only 68% of the streamside areas with high intrinsic potential for coho salmon, is currently being managed for forest uses. The percentage of area in forest uses is projected to decrease slightly, while percentages in rural residential and urban uses are projected to increase.

The Enterprise Monitoring Initiative included additional support for the Forest Practices Monitoring Program. This program assesses the implementation and effectiveness of the Forestry Practices Act (FPA), which is consistent with the 6217(g) guidance. The ODF's monitoring program described in the December 2002 Forest Practices Monitoring Program Strategic Plan involves both BMP implementation and effectiveness monitoring. ODF is currently reviewing the Strategic Plan and is developing a work plan for updating the strategy. The revision will involve stakeholders, topic experts, and be conducted with Board of Forestry

Comment [AC97]: Comment 41: Has this Plan been updated?

Comment [AP98]: No, It is currently being reviewed. See text

input and review. Monitoring data is publically available upon request. ODF reports annually to the Board of Forestry on all monitoring efforts.

The ODF has completed several monitoring studies including the effectiveness of forest road sediment and drainage control practices and wet-weather hauling, which led to changes in forestry BMPs to protect water quality. More recently, the program has published three scientific papers on harvest effects on small and medium fish bearing streams, leading to the current rule revision process for riparian buffers on these streams. The program's effectiveness monitoring unit ensures data collection that informs the Board of Forestry's adaptive management approach of establishing BMPs, monitoring effectiveness, and updating rules based on science.

The ODF monitoring program also provides technical expertise for compliance auditing of BMP implementation. ODF has instituted an annual audit to measure compliance with the FPA. This year's audit focuses on measuring compliance with rules that govern forest road construction / maintenance and timber harvesting regulations. The audit will also examine selected rules related to planning forest operations, protecting water resources, and harvest operations near streams and waterways. Results of the audit will be used to help focus educational and training programs related to FPA implementation.

The Enterprise Monitoring Initiative also committed fiscal and technical support to the Oregon Watersheds Research Cooperative (WRC) at the Oregon State University (OSU) College of Forestry. The WRC conducts multi-agency, adaptive management, watershed research projects, including the Hinkle Creek, Trask River and Alsea paired watershed studies. Housed and led by OSU, Cooperative members include state and federal agencies, forestland owners, and other organizations. The WRC specifically examines the effectiveness of State Forests Forest Management Plan (SFMP) strategies and FPA standards to maintain and protect headwater stream processes and conditions. The Trask River Watershed Study is evaluating how small streams respond to forest harvest and if responses are carried downstream. The research evaluates water quality effects in small non-fish and fish bearing streams, and determines the process-level links between harvest related water quality effects to the biological effects on fish and other biota. The study uses a whole-watershed, integrated design that links biological with physical studies in order to document responses and evaluate ecological tradeoffs. Information will help guide policy and management decisions in an adaptive management context for both state and private forests to determine if current management achieves goals for aquatic conservation.

Comment [AP99]: See <http://watershedsresearch.org/>

ODA also maintains a water quality monitoring program that monitors agricultural land conditions, such as tracking streamside vegetation, to help it evaluate the effectiveness of landowners' and agencies' conservation efforts on agricultural lands in protecting and improving water quality. In 2011-13, the legislature authorized funding for ODA to initiate a monitoring effort that will allow the department to assess conditions along agricultural lands that impact water quality and changes in these conditions over time. In 2012, the governor initiated an-This effort is part of the Governor's Enterprise Monitoring Initiative to maximize statewide efforts to evaluate the state of the environment and guide environmental protection and restoration efforts. ODA is a

participant in this process and is coordinating its monitoring efforts with work done by other state agencies.

As part of ODA's Strategic Implementation initiative that began in 2012, ODA is striving to develop and utilize monitoring programs to evaluate riparian vegetation at a watershed scale, compliance at a site-specific scale, and ambient monitoring conditions at a scale necessary to evaluate water quality changes that reflects the basin as a whole, particularly for water temperature. The department is working to utilize assessments done by others such as DEQ's streamside vegetation models and the Willamette Partnership's landscape assessment. Where this is not possible, ODA is developing a process to evaluate available aerial images and Lidar information to conduct a watershed scale riparian vegetation analysis in areas that are predominately in agricultural production. This first evaluation will be conducted in the fall of 2013 in two sixth order HUCs. Ultimately, ODA expects to expand the use of this tool throughout the state. ODA plans to use publicly available aerial images and Lidar information to evaluate watershed scale changes that are occurring over the long-term. These efforts will be effective for evaluating immediate change in management but documenting changes in water quality may take longer to see changes due to the time needed for vegetation to develop (i.e. shade from increased riparian vegetation). These efforts will also allow for better use of compliance and outreach resources as problems are identified and addressed.

In the 2011-13 and 2013-15 bienniums, the Oregon Legislature provided ODA with funding to expand DEQ ambient monitoring sites to include additional watersheds representing predominately agriculture use to evaluate cumulative changes in water quality. This will provide a monitoring tool to provide water quality data that can be paired with vegetation, management, and compliance data to evaluate effectiveness of activities. NOAA and EPA encourage Oregon to continue to implement and improve upon the various monitoring programs that comprise its Coastal Nonpoint Program monitoring network.

The State should continue to dedicate sufficient staff and resources to carry out the monitoring programs. In addition, Oregon should strongly consider developing other tracking/assessment programs similar to the Forest Practices Monitoring Program for other select measures that address significant land uses within the coastal nonpoint program boundary, such as key urban or agricultural measures. The ODF should also ensure that they continue to conduct comprehensive BMP implementation studies on a regular basis and work towards implementing recommendations from past monitoring studies in a timely manner.

The State's 2012 Enterprise Monitoring Initiative and resource allocated for the 2013-15 biennium demonstrates Oregon's commitment to monitoring. The increased investment is part of a ten-year strategic approach to ensuring sufficient staff and resources to carry out the monitoring programs. The enterprise approach is designed to complement dedicated tracking/assessment programs such as the Forest Practices Monitoring Program by focusing resources to address monitoring needs at the appropriate scale and focus within the coastal nonpoint program boundary, such as key urban or agricultural measures at a landscape scale.

Comment [AC100]: Comment 44: Have any additional tracking programs been developed?

Comment [AC101]: Comment 45: Is this being done?

Input from Oregon 7-15-13

Oregon Watershed Enhancement Board (OWEB) supports a range of monitoring activities and grants. These include: baseline, compliance, status and trend, effectiveness, and validation monitoring. Through the complement of different types of monitoring efforts, OWEB is able to document watershed conditions, track changes in critical habitat and species over time, and evaluate the effectiveness of conservation and restoration efforts. This diversity of monitoring approaches is essential to building an understanding of watershed health, tracking the success of watershed improvement projects, and setting restoration priorities.

Comment [AP102]: See, http://www.oregon.gov/OWEB/MONITOR/pages/web_monitoring_reporting.aspx

DRAFT