To: Amanda Punton, Oregon Coastal Management Program, Department of Land Conservation and Development
Don Yon, Oregon Department of Environmental Quality

From: Bill Millhouser, OCRM Coastal Programs Division
Amy Carter, OCRM Coastal Programs Division
Teena Reichgott, EPA Region 10

Date: January 10, 2003

Re: EPA/NOAA 6217 Boundary Decision; and Response to Oregon's *Supplemental Information in response to the Federal Findings of January 1998*, submitted April 1999, January 2002, and October 2002

This memo serves as the combined NOAA and EPA Region 10 response to information that DLCD and DEQ submitted in 1999 and 2002 in order to meet the conditions placed on Oregon's Coastal Nonpoint Pollution Control Program (CNPCP). This combined response supplements previous NOAA and EPA comments sent to DLCD and DEQ.

Please note that NOAA and EPA's final decision on these conditions is contingent upon EPA Headquarters review of the submittals as well as a public notice and opportunity for public comment on our intent to fully approve Oregon's CNPCP. This process will occur once Oregon has met all conditions.

A. Draft Boundary Decision for the State of Oregon and Washington

The following constitutes the NOAA and EPA draft Boundary Decision for Oregon and Washington. In a letter dated January 12, 2000, Oregon stated its intent to include the entirety of the Rogue and Umpqua Basins in the 6217 management area, but not the additional areas along the Columbia River. Both states, NOAA, and EPA must agree to this boundary determination before final approval can occur. The state, NOAA, EPA Region 10, and EPA Headquarters should review this draft language and discuss any discrepancies as soon as possible.

Decision: The 6217 management area for the State of Oregon will be the existing coastal zone 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.

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The boundary of the 6217 management area on the Columbia River is consistent with the Washington boundary, which is the existing coastal zone boundary, which includes the first tier of coastal counties. The inland boundary of the management area intersects the Columbia River at the eastern border of Wahkiakum County.

Original NOAA Boundary Recommendation and 6217 Program approval findings:

Oregon- the NOAA Boundary recommendation stated that significant adverse impacts on the State's coastal waters could be expected from existing nonpoint sources in the Rogue, Umpqua and Lower Columbia River Basins. The NOAA boundary recommendation included the "Coastal Watersheds" in these three basins. On the Columbia, the coastal watershed included a strip of land on the southern shore of the Columbia River up to the Bonneville Dam; In the Rogue and Umpqua, the recommended boundary included the entirety of each watershed.

Washington- The NOAA boundary recommendation for the Washington 6217 management area recommended including the immediate watersheds on the northern side of the Columbia River up to the Bonneville Dam. In other areas of the State, the recommended boundary was coterminous with the CZM boundary or included less area than the CZM boundary.[1] As noted in the Findings document for conditional approval, the State submittal indicated that Washington would implement management measures statewide by focusing on watersheds.

However, subsequent discussions with the State indicated that they do not intend to implement the Coastal Nonpoint Pollution Control Program beyond its coastal zone. The State also expressed a desire that the final Washington 6217 management area be compatible with the Oregon 6217 management area along the Columbia River. Therefore, NOAA, EPA and the Washington Department of Ecology were to enter into discussions with the Oregon Department of Land Conservation and Development (DLCD) and the Oregon Department of Environmental Quality (DEQ) to ensure that efforts in the two States provide comparable protection to the states' coastal waters.

Current Status:

Oregon- In a letter dated January 12, 2000, the Oregon agreed to include the entirety of the Rogue and Umpqua Basins in the 6217 management area, but not the additional areas along the Columbia River. The State's rationale for not including the Lower Columbia in the 6217 management area is that there are already a number of federal and state programs that address

[1]NOAA and EPA determined that the 6217 management area could not be less than the CZM boundary.

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nonpoint source pollution in this area, including 303 (d) listed streams, Agricultural Water Quality Management Area Plans, existing and proposed stormwater controls in the Portland Metro area, and the Lower Columbia NEP, among others, and that the land area along the Columbia in the coastal watershed contributes insignificant nonpoint source pollution compared with the rest of the Columbia Basin.

Washington- Washington has maintained the position stated in the findings, which is that they would like their boundary to match Oregon's on the Columbia River.

Rationale: 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. In Washington, 91% of the portion of the Columbia River watershed within the State is located above Bonneville Dam. In Oregon, 98% of that portion of the watershed within the State is located above the "coastal watershed". In both states, 90% of all of the agricultural indicators of nonpoint source pollution examined by NOAA in making its boundary recommendation are located above the coastal watershed. Similarly, in both states, 70% or more of the population of the Columbia watershed resides above the coastal watershed. These figures show that a large number of nonpoint sources are spread out over a very large watershed, and that only a small part of the watershed is included in either the coastal zone or the coastal watershed of either state. 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 states' coastal management boundaries has a significant impact on the coastal waters of the states. Therefore, based on these complicating factors and the March 16, 1995 Flexibility for State Coastal Nonpoint Programs guidance, NOAA and EPA will defer to Oregon's and Washington's statement that the appropriate 6217 boundary is westward of Puget Island and the eastern border of Wahkiakum County, respectively.

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 6217 management area boundary, such as the development of TMDLs for 303(d) listed waters and phase II of the NPDES stormwater permits. However, NOAA and EPA remain concerned that sources outside the management area boundary could contribute to water impairment in the lower Columbia River. Therefore, we expect Oregon and Washington to use all applicable programs to control nonpoint source pollution beyond the 6217 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.

B. NOAA & EPA Region 10 Preliminary Decisions and Comments on Information Submitted in April 1999

The information included below reiterates NOAA and EPA preliminary approval of several conditions and responds to additional information that Oregon submitted after NOAA and EPA

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sent comments sent to the State on October 12, 1999.

Hydromodification

Finding: Oregon's program includes management measures in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation of the first two elements of both the channelization/channel modification management measures, the second and third elements of the eroding streambanks and shorelines management measures, and the dams management measure for erosion and sediment control. The program does not include (1) a process to improve surface water quality and restore instream and riparian habitat through the operation and maintenance of existing modified channels; (2) a process to address existing nonpoint source pollution problems caused by eroding streambanks and shorelines; and (3) the dams management measures for chemical and pollutant control and protection of surface water quality and instream and riparian habitat. In addition, exemptions in Oregon's removal-fill program may preclude the State from fully implementing the channelization, channel modification, and dams' management measures.

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.

Comments: Oregon has likely satisfied this condition, ***except*** for (1) the component addressing the need to demonstrate that the remaining exemptions to the removal-fill program do not preclude the State from fully implementing the management measures and (2) the need to include dam management measures protection of surface water quality and instream riparian habitat. Element 1 may be met by information submitted in December.

- Operation and maintenance of existing modified channels – 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;

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- 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; and
- Oregon's Statewide Riparian Management Policy.

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 streambanks or shorelines causing nonpoint source problems that are not reviewed under other authorities - The State notes that eroding stream banks in the 6217 management area are primarily due to forestry and agricultural practices which result in the removal of vegetation from riparian areas. The opportunities for riparian corridor restoration identified via the watershed assessments, Oregon Aquatic Habitat Restoration and Enhancement Guide, and the activities of the Riparian Management Working Group, will be helpful in addressing the effects of vegetation removal on eroding stream banks. 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).

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 DSL and receive section 401 Water Quality Certification by DEQ. Both authorities have guidelines which favor the use of bioengineering techniques in stabilization projects.

- Exemptions to the Removal Fill Program

The only remaining exemptions to the Removal Fill Program noted in the Findings that

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are still in place include maintenance activities associated with dikes, dams, levies and tidegates and maintenance of existing agricultural activities. In 1999 the State noted that DSL planned to clarify permitting guidelines by clearly defining the term maintenance activity. The State recently submitted additional information on the status of the exemptions.

- Dam Management Measures - In response to the comments that NOAA and EPA sent to the State on October 12, 1999, DLCD submitted additional information on the Oregon Water Resources Department (OWRD) review of dam construction, operation, and maintenance activities. OWRD can condition dam construction, operation and maintenance activities through its review of permits for water appropriations. Under OAR 690, Division 310 OWRD must determine whether the proposed surface water use will impair or detrimentally affect the public interest.

  OAR 690-31–0120(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.

  In a letter to Amanda Punton dated February 24, 2000, OWRD detailed the water right permit review process and provided a list of standard conditions that may be appended to the permit. Several conditions address dam construction, operation and maintenance activities, including withdrawals, fish habitat, sediment, and downstream water quality. Oregon has not fully demonstrated, however, that the condition for protection of surface water quality and instream and riparian habitat for dam operations has been met. NOAA and EPA would like more information on how Oregon manages dam operations that result in the loss of desirable surface water quality and habitat.

  EPA and NOAA have determined that, effective December 20, 2002, state coastal nonpoint control programs are no longer required to include the dam management measure for chemical and pollutant control in the CNPCP because the NPDES storm water regulations for industrial activities on construction sites apply nationwide and therefore throughout the coastal management areas of states and territories.

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C. Comments on January 2002 Submittal - Measures for Marinas and Recreational Boating

Marina Flushing, Water Quality, and Habitat Assessment

Finding: Oregon's program includes management measures in conformity with the 6217(g) guidance for marina flushing, water quality, and habitat assessment, but it does not include enforceable policies and mechanisms to ensure implementation of the marina flushing and habitat assessment management measures.

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 6217 management area.

Comments: Oregon has likely satisfied the conditions for marina flushing and habitat assessment.

- Marina Flushing - We believe that existing DEQ, DSL, and ODFW review policies should adequately address flushing. In response to verbal comments, DLCD recently submitted written clarification of the existing programs.

Shoreline Stabilization, Stormwater Runoff, Fueling Station Design, Solid Waste Management, Liquid Material Management, and Petroleum Control

Finding: Oregon's program does not include management measures in conformity with the 6217(g) guidance or enforceable policies and mechanisms to ensure implementation.

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 6217 management area.

Comments: Oregon has likely satisfied the conditions for stormwater runoff, fueling station design, solid waste management, liquid material management, and petroleum control through the BMP manual ***except*** that the "back up authority" referred to on page 3 of the submittal should be more clearly explained.

We need written description of existing activities, policies, or standards that address the shoreline stabilization management measure. We feel that an expanded analysis of Goal 16 and 17 protection would obviate the need for the waiver requested in your submittal.

Sewage Facility Management and Maintenance

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Finding: Oregon's program includes management measures in conformity with the 6217(g) guidance but does not include enforceable policies and mechanisms to ensure implementation throughout the 6217 management area.
Condition: Within three years, Oregon will include in its program enforceable policies and mechanisms to ensure implementation of these management measures throughout the 6217 management area.

Comments: Oregon has likely satisfied the condition on sewage facility management and maintenance through the Vessel Waste Facility Construction Program. However, we would like to see an expanded description of the Vessel Waste Facility Construction Program, including the budget for the program and an explanation of how this program will provide for any future installations.

Fish Waste and Boat Cleaning

Finding: The State proposes to issue an NPDES general permit for fish waste management. When this permit is issued, this activity will be excluded from the State's coastal nonpoint program. Oregon has also provided adequate information to demonstrate that existing NPDES general permits address the boat cleaning management measure; these activities are therefore not subject to the State's coastal nonpoint program.

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.

Comments: Oregon has satisfied this condition. As this activity is adequately addressed in the BMP manual, a NPDES permit is not needed.

Boat Operation

Finding: Oregon's program does not include in its program management measures in conformity with the 6217(g) guidance but does include enforceable policies and mechanisms that can be used to ensure implementation.

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

Comments: NOAA and EPA have made a preliminary determination that Oregon has satisfied this condition. The Oregon State Marine Board has authority under Oregon Revised Statutes (ORS) 830.175 - .200 to regulate, through administrative rule making recreational boating in

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specific waterways for a variety of purposes, including protection of water quality and fish and wildlife resources. In December 1996, the Marine Board revised Oregon Administrative Rule (OAR) 250-019 to further detail the Marine Board's role and responsibility in responding to requests for boating restrictions. Requests may be made by citizen groups, local governments, or state agencies. Division 19 provides requirements for the petitioner and guidelines for review of each petition.

D. Comments on October 2002 Submittal - Critical Coastal Areas, Additional Management Areas and Technical Assistance

Finding: Oregon's program does not include processes for the identification of critical coastal areas or for the development and continuing revision of management measures applicable to critical coastal areas and cases where the 6217 (g) measures are fully implemented but water quality threats or impairments persist. The program does not describe efforts to provide technical assistance to local governments and the public for implementing additional management measures.

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.

Identification of critical coastal areas - development and implementation of management measures relevant to protecting water quality for these critical coastal areas

Comments: NOAA and EPA have made a preliminary determination that Oregon has satisfied the condition requiring development of 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.

Process for identifying critical coastal areas - 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

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quality impairment. Goal 16 requires classification of Oregon's estuaries into one of four types - natural, conservation, shallow draft development, or deep draft development. Within the estuary areas are further divided into "distinct water use management units" which define the permissible uses within the unit. In estuaries classified as natural or conservation, only activities which support these designations are allowed. Therefore, Goal 16 is an appropriate vehicle for identifying critical coastal areas in estuaries.

- 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. TMDLs and their associated implementation plans can also identify critical areas for special attention.

- Process for developing and revising management measures to be applied in critical coastal areas and in areas where necessary to attain water quality standards - The state of Oregon requires that TMDLs developed for impaired watersheds be accompanied by water quality management plans (WQMP) that specify load reductions, a schedule for meeting load reductions, and management authorities responsible for achieving the load reduction. It is anticipated that all watersheds in the 6217 management area will have TMDLs completed by 2006.

  The process developed through the Oregon Watershed Enhancement Board to assist with the development of watershed assessments, which are then used to develop a plan for restoration and enhancement of watershed functions also fulfills the requirements for developing and revising management measures for critical coastal areas.

Identification and implementation of additional management measures for forestry

Comments: NOAA and EPA have made a preliminary determination that Oregon has not satisfied the condition requiring the State to identify and begin applying additional management measures for forestry in several areas critical to water quality protection. We agree that Oregon has processes to identify additional management measures for forestry in these key areas. While Oregon has adopted several new provisions related to roads and human safety, very little progress has been made in addressing water quality problems associated with landslide prone areas, riparian protection, and cumulative effects even when the preponderance of scientific evidence and expert opinion show that implementation of additional measures is needed to meet water quality standards. In the rationale for findings and conditions, 1998, EPA and NOAA identified areas under the Forest Practices Act and Administrative Rules that should be strengthened to attain water quality standards and fully support beneficial uses. "These areas include protection of medium, small, and non-fish bearing streams, including intermittent streams; protection of areas at high risk for landslides; the ability of forest practices to address

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cumulative impacts of forestry activities; road density and maintenance, particularly on so-called "legacy" roads; and the adequacy of stream buffers for application of certain chemicals."

Oregon's October 2002 submittal describes four related efforts that show progress on some of the areas of concern: (1) Voluntary actions by private landowners under the Oregon Plan for Salmon and Watersheds (Oregon Plan); (2) the Independent Multidisciplinary Science Team (IMST), convened under the Oregon Plan, which investigated forest practices in the state and made both long and short term recommendations on management changes that were needed to insure the protection of salmon habitat; (3) the Sufficiency Analysis of the Oregon Forest Practices Act (FPA) conducted by DEQ and ODF, which reviewed the FPA's sufficiency to attain water quality standards; and (4) recent amendments to the Oregon Administrative Rules related to forest practices.

Voluntary actions under the Oregon Plan for Salmon and Watersheds have included projects for road surveys and improvement, fish passage, large wood placement, monitoring, and education. These projects are valuable and worth tracking and reporting as part of program implementation.

Recommendations in the Interagency Multidisciplinary Science Team (IMST) report address most NOAA/EPA areas of concern directly: Recommendation 2 addresses landscape (large watershed) planning, Recommendations 3, 4, and 5 address adequate protection of small and non-fish bearing streams, Recommendations 8 - 12 address road maintenance including old roads and railroad grades, and Recommendation 13 addresses management in landslide prone areas.

The DEQ/ODF Sufficiency Analysis contain qualified recommendations that have potential to address some of the NOAA/EPA areas of concern.

Amendments to the Oregon Administrative Rules (OAR) require identification of landslide hazard areas in stewardship plans and road construction and maintenance. However, hazards are defined only as they relate to risk for losses of life and property, not water quality.

According to Section 6217(b)(3), each state program shall contain additional management measures "necessary to achieve and maintain applicable water quality standards under section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1313) and protect designated uses." Oregon, in approved TMDLs, has identified specific targets for temperature and sediment in specific coastal basins. Analyses have shown that the current Forest Practices Act will not attain these targets. Oregon has the authority under OAR 629-635-120 to develop and adopt basin specific rules for forestry in watersheds that have been designated as water quality limited. Implementation of additional management measures based on the IMST recommendations in basins with approved TMDLs would put practices in place that have real potential to attain the identified targets. Such action could be taken immediately without changing the existing Forest Practices Act.

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We recognize that the state process for amending the FPA and related administrative rules may take several years to complete. If Oregon chooses to continue to apply the FPA consistently statewide (without the basin specific rules), then our expectation would be that the science-based recommendations of the IMST and the sufficiency analysis will be fully adopted, particularly those addressing small and non-fish bearing streams and management of landslide prone areas.

We urge the State to move forward expeditiously to implement recommended additional measures, either through application of basin specific rules or changes to the FPA and OARs. This is important for coastal waters in Oregon, since forestry is the predominant land use in the coastal watersheds and since the FPA and OARs are most often put forward as the implementation plan for TMDLs on private and state forest lands.

Technical assistance for implementation of additional management measures identified for critical coastal areas

Comments: NOAA and EPA have made a preliminary determination that Oregon has satisfied the condition requiring development of a program to provide technical assistance. As described in the October 2002 submittal, Oregon has a number of ongoing grant programs, publications, and workshops that provide technical assistance to support implementation of additional management measures. 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).

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