NOAA and EPA Preliminary Decisions on Information Submitted by Oregon to Meet Coastal Nonpoint Program Conditions of Approval

I. MARINAS

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 6217 management area.

FINDING: Oregon has not fully satisfied the conditions for marina flushing or habitat assessment.

RATIONALE: Oregon's Department of Fish and Wildlife (ODFW) reviews marina applications under the removal-fill law (ORS 196.795-990). ODFW has three policy standards (#14304, #14309, and #14310) consistent with the (g) guidance for flushing to guide their permit evaluations. However, the Division of State Lands (DSL) administers the removal-fill program and is the state agency that can place conditions on permits to address the flushing management measure. It is unclear if DLS is required to adhere to ODFW's recommendations and if they actually place conditions on marina permits consistent with the (g) guidance for flushing. The State should provide examples of DLS permits that have been conditioned based on ODFW's recommendations to address marina flushing issues.

The State's Land Use Goal 16 (OAR 660-015-0010(1)) 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. Specifically marinas are prohibited in areas with "natural" designations. Natural areas, at a minimum, must contain all major tracks of saltmarsh, tideflats and seagrass beds. However, Goal 16 only applies to marinas sited in estuarine areas. The State still lacks enforceable policies and mechanisms to support the habitat assessment measure in freshwater areas within the 6217 boundary. Oregon should clarify if Goal 16 can apply to fresh waters within the 6217 area as well. If Goal 16 doesn't apply to these fresh water areas, then the State must describe what other programs are in place to marinas are sited and designed to protect against adverse effects to shelfish resources, wetlands, and other important riparian and aquatic habitat areas in non-estuarine waters. If the State proposes voluntary programs for fresh water areas, they must submit a legal opinion stating Oregon has adequate back-up authority to ensure the management measure is implemented throughout the 6217 boundary.