Summary of NOAA and EPA Response to Comments Regarding the Agencies' Proposed Finding that Oregon has Failed to Submit a Fully Approvable Coastal Nonpoint Program

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I. GENERAL COMMENTS

A. Proposed Decision

Comment: The majority of commenters supported NOAA and EPA's proposed finding that Oregon has failed to submit a fully approvable coastal nonpoint program under Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA). In addition to specific concerns addressed in other sections below, commenters noted that 16 years after receiving conditional approval for its coastal nonpoint program, Oregon still does not have an adequate program in place to control polluted runoff to coastal waters and protect designated used, nor has the state adopted additional management measures for forestry where water quality impairments and degradation of beneficial uses attributable to forestry exist despite implementation of the (g) measures. Commenters also noted that the state failed to follow through on its 2010 commitments to NOAA and EPA—commitments NOAA and EPA used to inform their settlement agreement deadlines with the Northwest Environmental Advocates—to address three remaining conditions on its program related to new development, septic systems, and forestry by March 2013.

While some commenters agreed that Oregon did need to do more to improve water quality, they did not agree with NOAA and EPA's proposed decision because they opposed withholding federal funding under CZMA Section 306 and CWA Section 319, two programs that help to improve water quality and restore habitat. A few commenters noted NOAA and EPA should continue to work with Oregon to improve its water quality programs and that the state just needed additional time to meet the CZARA requirements.

Other commenters opposed NOAA and EPA's proposed finding. Generally, they stated Oregon did have adequate programs in place to meet, or in some cases exceed, the CZARA requirements and control polluted runoff. More specific comments are discussed in sections below.

Source: 1-C, 2-B, 4-A, 5-A, 8-B, 9-A, 13-A, 14-A, 14-C, 15-A, 16-B, 17-A, 19-B, 22-A, 22-C, 23-A, 24-A, 25-A, 25-B, 26-B, 28-A, 30-A, 30-B, 30-H, 31-A, 33-A, 33-B, 34-A, 35-A, 36-A, 36-B, 36-C, 37-B, 37-C, 37-D, 40-A, 41-A, 42-A, 42-B, 43-A, 44-A, 44-B, 46-A, 47-A, 48-B, 49-A, 53-A, 52-A, 54-A, 55-B, 56-C, 57-A, 64-B, 64-D, 66-B, 66-D, 68-B, 68-D

Response: NOAA and EPA appreciate the many comments received in response to the federal agencies proposed decision to find that Oregon has failed to submit an approvable program. After carefully considering all comments received and the state's March 20, 2014, response to the proposed decision, NOAA and EPA continue to find that Oregon has failed to submit an approvable program. As described more fully in the final decision memorandum, although Oregon has made tremendous progress in addressing many of the original conditions placed on the state's program, the state has not satisfactorily met the conditions related to **** [add statement of where Oregon's program falls short]. Therefore, NOAA and EPA find that the state has failed to submit a fully approvable program under Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA).

Per the statute, beginning with FY 2015 federal funding, NOAA will withhold 30 percent of funding for Oregon under Section 306 of the Coastal Zone Management Act that supports implementation of the state's coastal management program and EPA will withhold 30 percent of funding for Oregon under Section 319 of the Clean Water Act that supports implementation of the state's nonpoint source management program.

Although some commenters would prefer NOAA and EPA provide Oregon with additional time to develop a fully approvable program and not withhold funding to the state, NOAA and EPA do not have that flexibility based on the statute and the settlement agreement with the Northwest Environmental Advocates. The Northwest Environmental Advocates sued NOAA and EPA in 2009 challenging the agencies' joint administration of Oregon's coastal nonpoint program. The plaintiff's primary argument was that NOAA and EPA failed to take a final action on the approval (without conditions) or disapproval of Oregon's coastal nonpoint program, and withhold funds from Oregon for not having a fully approved program. NOAA and EPA settled the lawsuit in 2010 and agreed make a final decision on the approvability of the program by May 15, 2014 (extended to January 30, 2015 based on the volume of public comments received).

B. State Legislature Has Been Obstructing ODEQ's Ability to Make Changes

Comment: One commenter stated that the Oregon Department of Environmental Quality has been working hard to get the improvements needed to improve water quality and meet all coastal nonpoint program requirements. However the State Legislature has been obstructing ODEQ's progress and is the one that needs to take action.

Source: 25-C

Response: NOAA and EPA have been working closely with DEQ, DLCD, and other agencies to develop the state's coastal nonpoint program. The federal agencies' final determination on Oregon's program is not based on whether or not any state entity has been reportedly "obstructing" progress.

C. Federal and State Governments Have Responsibility to Manage Waters

Comment: One commenter stated that the Federal and state governments have a responsibility to manage waters in the public trust for maximum long-term benefit for current and future generations. They noted this was not being done.

Source: 22-C

Response: Federal and state governments do have a responsibility to manage public waters for current and future generations. That is why NOAA and EPA are using the authority they have under CZARA to find that Oregon has failed to submit an approvable coastal nonpoint program and withhold funding from the state under Section 306 of the CZMA and Section 319 of the CWA.

II. FUNDING

A. Impacts of Withholding Funds

Comment: Commenters recognized that withholding funds under Section 306 of the Coastal Zone Management Act (CZMA) and Section 319 of the Clean Water Act (CWA) could negatively impact the state's ability to improve quality and support beneficial programs such as Total Maximum Daily Loads (TMDLs), Oregon Watershed Enhancement Board (OWEB) watershed planning and restoration projects,

local land use planning, and the provision of technical assistance to coastal communities to help them address pressing coastal management issues such as coastal hazards, stormwater management, and growth management. A few commenters were against NOAA and EPA withholding funds from these programs because they felt withholding funding from two important programs for addressing polluted runoff and coastal habitat issues in the state would be counterproductive and would likely not result in the policy and programmatic changes NOAA and EPA seek. Others noted that withholding funding would hurt two state programs and agencies, Oregon's Coastal Management Program in the Department of Land and Conservation and Development and Oregon's Nonpoint Source Management Program in the Department of Environmental Quality, that have very little (if any) influence over the most significant remaining issues (i.e., forestry and agriculture). Some commenters also noted that withholding funds would negatively impact coastal communities and watershed groups that also rely on this funding from NOAA and EPA.

Other commenters supported withholding funds even though they acknowledged it may have some negative impacts initially. They saw withholding funding as the only way to get action in the state to improve water quality and protect designated used. One commenter also noted that NOAA and EPA's failure to withhold funding sooner allowed Oregon to limp along for over 16 years with inadequate management measures for its coastal nonpoint program while drinking water and other water quality impairments occurred.

Source: 1-C, 5-A, 8-B, 14-C, 16-B, 17-A, 25-A, 25-B, 25-D, 25-E, 25-F, 33-A, 33-B, 36-A, 36-B, 36-C, 37-B, 37-C, 37-D, 43-A, 48-B, 55-B, 64-B, 66-B, 68-B,

Response: NOAA and EPA recognize that withholding funding under Section 306 of the CZMA and Section 319 of the CWA could make it more difficult for Oregon to maintain the same level of effort on key programs that help improve water quality and protect salmon habitat, such as the state's coastal management, TMDL, and nonpoint source programs. However, the penalty provision in CZARA was designed to provide a financial disincentive to states to encourage them to develop fully approvable coastal nonpoint programs to provide better protection for coastal water quality. The statute directs NOAA and EPA to withhold funding when they find a state has failed to submit an approvable coastal nonpoint program which Oregon has done. NOAA and EPA will continue to help Oregon direct some of its remaining federal CWA Section 319 and CZMA Section 306 funding, and other federal funding sources, as appropriate, to develop a fully approvable coastal nonpoint program so that the funding reductions from the penalties can be eliminated as soon as possible.

B. Oregon Stands to Lose $4 million in Federal Funding

Comment: Several commenters stated that if NOAA and EPA's proposed finding that Oregon has failed to submit a fully approvable coastal nonpoint program stands, Oregon would lose $4 million in federal funding.

Source: 1-C, 14-C, 43-A

Response: NOAA and EPA would like to correct this statement. Oregon only stands to lose $4 million in federal funding if it continues fail to submit an approvable coastal nonpoint program. Based on current appropriations, that would not occur until ***. Each year, beginning with federal FY 2015, Oregon fails to submit an approvable program, the state will lose 30 percent of the state's allocation under Section

306 of the CZMA and Section 319 of the Clean Water Act. For FY 2015, that is only about $*** in federal funding (a loss of $*** for $** for CZMA Section 306 and $** for CWA Section 319).

III. AUTHORITIES UNDER THE COASTAL ZONE ACT REAUTHORIAZATION AMENDMENTS (CZARA)

A. Suitability of Voluntary Approaches Backed By Enforceable Authorities

Comment: Several commenters noted that CZARA requires coastal states to have enforceable mechanisms for each management measure. They were not satisfied with the voluntary approaches Oregon was using to address many CZARA management measure requirements. They noted that the voluntary approaches were not being adhered to and that Oregon was not using its back-up authority to enforce and ensure implementation of the CZARA management measures, when needed. A few commenters also noted that Oregon has not described the link between the enforcement agency and implementing agency and the process the agencies use to take enforcement action when voluntary approaches are not adequate to protect water quality. Another commenter noted that voluntary approaches will not work and that the state needed to adopt approaches that could be enforced directly.

Source: 15-C, 15-D, 16-A, 28-E, 30-O, 46-H, 49-J

Response:

B. Federal Government Taking Over Oregon's Coastal Nonpoint Program

Comment: One commenter noted that NOAA and EPA have an obligation to step in for Oregon and take over its coastal nonpoint pollution control program since the state lacks the will to address its polluted runoff issues.

Source: 55-C

Response: Unlike some of the EPA water quality programs under the Clean Water Act, like the National Pollutant Discharge Elimination System (NPDES) Stormwater Program, CZARA provides for exclusive state and local, not federal, decision-making regarding the specific land-use practices that will be used to meet the coastal nonpoint program management measures. The act does not provide NOAA or EPA with the authority to take over, or implement, a state's coastal nonpoint program if the state fails to act. The law

C. Oregon Needs More Time to Develop Its Coastal Nonpoint Program

Comment: A few commenters stated NOAA and EPA should give Oregon additional time to develop a fully approvable coastal nonpoint program. They noted that developing a program and addressing the remaining conditions NOAA and EPA placed on the state's program is very challenging and that the state has made significant progress since gaining conditional approval. They also noted that the state is

continuing to make additional improvements, such as the rulemaking process to achieve better riparian protection for fish-bearing streams the Oregon Department of Forestry and Board of Forestry is currently undertaking, but that the state needs more time before the new rule is adopted.

A few other commenters noted that Oregon has had plenty of time since receiving conditional approval for its coastal nonpoint program in 1998 and that water quality is no better now that it was 16 years ago.

Source: 14-D, 33-C, 28-F

Response: NOAA and EPA have already provided Oregon sufficient time to develop a fully approvable coastal nonpoint program. Per a settlement agreement with the Northwest Environmental Advocates, the federal agencies must make a final decision by May 15, 2014, (subsequently extended to January 30, 2015, based on the numerous public comments received), regarding whether or not Oregon has failed to submit an approved (without conditions) coastal nonpoint program.

CZARA, passed in 1990, provided all coastal states participating in the National Coastal Zone Management Program 30 months after the date (January 1993) EPA published the final program guidance to submit a coastal nonpoint program for approval. The statute also stated NOAA and EPA shall withhold funding from CZMA Section 306 and CWA Section 319, respectively, beginning as early at 1996 if the agencies found a state had failed to submit an approvable program.

Recognizing the complexities involved in developing a coastal nonpoint program and the time involved to develop programs, backed by enforceable policies, to implement the 56 management measures, NOAA and EPA initially approved all state programs, with conditions, they needed to address. NOAA and EPA also additional guidance memos notes that if NOAA and EPA find the state has failed to submit an approvable programs as early as 1996,

D. CZARA Requires State to Address Issues that are Out of Its Control

Comment: One commenter disagreed with the Coastal Nonpoint Program regarding its requirement that states have to meet all CZARA management measures. They noted that some measures, such as onsite sewage disposal systems, are often addressed at the local level, and therefore, outside of the state's jurisdiction.

Source: 10-B

Response: NOAA and EPA do not agree that states should not be required to meet the onsite sewage disposal system (OSDS) management measures because they are often addresses at the local level. The CZARA statute requires all coastal states participating in the National Coastal Zone Management Program to develop coastal nonpoint programs that "provide for the implementation, at a minimum, of management measures in conformity with the guidance published under subsection (g)…" (See Section 6217 (b)). The 1993 guidance EPA developed to comply with subsection (g), *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters*, outlines two management measures related to new and existing onsite sewage disposal systems (OSDS) that states must address.

NOAA and EPA recognize that local governments often play a significant role in managing OSDS. Recognizing this, the federal agencies have accepted a variety of approaches states use to meet these

management measures that have relied on direct state-level authority, a mixture of state and local-level authorities, or state-led voluntary approaches backed by enforceable authorities. As NOAA and EPA's 1998 conditional approval findings and 2015 decision memorandum describe, Oregon satisfies the OSDS management measures through a combination of direct state authorities and arrangement with the Relators' Association to promote voluntary inspections at the time of property transfer.

E. NOAA and EPA are Holding Oregon to a Higher Standard

Comment: One commenter stated NOAA and EPA were holding Oregon to a higher standard than other states. Raising the approval threshold for Oregon compared to other states was unfair to Oregon. NOAA and EPA should focus on helping Oregon meet the previously established minimum standards for other state coastal nonpoint programs rather than requiring Oregon to meet a higher bar.

Source: 10-A

Response: NOAA and EPA are not holding Oregon to a higher standard than other states. The CZARA statutory requirements and 6217(g) guidance that is the federal agencies used to evaluate Oregon's program are the same that is used to evaluate every other states' program. Oregon, along with Washington and California, did receive conditions placed on their programs requiring the states to develop additional management measures for forestry that went beyond the basic CZARA 6217(g) forestry management measures. This was done in recognition of salmon and the more stringent water quality requirements they required. Even though the three Pacific Northwest states had programs in place to satisfy 6217(g) forestry management measures, impacts to salmon and salmon habitat were still occurring due to forestry so additional management measures for forestry were needed.

Oregon, however, is the only state where NOAA and EPA have been sued over the agencies' ability to conditionally approve a state's coastal nonpoint program. That lawsuit was settled and EPA and NOAA entered into a settlement agreement with the plaintiff which requires NOAA and EPA to meet certain deadlines that do not apply to other states. The settlement agreement requires EPA and NOAA to make a final decision on the approvability of Oregon's program by May 15, 2014 (extended to January 30, 2015, due the number of public comments received).

F. Need to Take a Tailored Approach to NPS Control

Comment: A few commenters were concerned that NOAA and EPA were applying a one-size-fits all approach to addressing nonpoint source pollution in Oregon by requiring the state to meet specific national management measures. They felt that a more tailored approach that considers Oregon's specific circumstances would be more appropriate.

Source: 8-C, 10-E

Response: By its nature, CZARA gives states great deference to develop programs that are consistent with the broad national 6217(g) management measure requirements yet are tailored to meet the state's specific circumstances. Section 6217 does not provide NOAA or EPA with authority to require states or local governments to take specific actions to address coastal nonpoint source pollution. Rather, NOAA

and EPA work with the state to find the best approach for each state yet is consistent with the overarching CZARA requirements.

As required by section 6217 (g), EPA published, *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters*. The guidance specifies 56 management measures that form the core requirements of a state's coastal nonpoint program. While the guidance establishes baseline standards for addressing broad categories and sources of nonpoint source pollutants, there are many different approaches states, like Oregon, can (and have) taken to be consistent with the overarching 6217(g) management measure requirements.

NOAA and EPA have suggested various approaches Oregon could take to meet the 6217(g) management measures but the decision regarding the specific land-use practices that the state uses to meet the measures rests with the state. For example, Oregon originally proposed to address the condition on its program about ensuring routine inspections of existing onsite sewage disposal systems with a rule change that would have required inspections at the time of property transfer. When the rule change did not pass, NOAA and EPA worked with the state to come up with a suitable alternative that involved working with the Realtors' Association to develop a voluntary point of sale inspection program that was backed by enforceable authorities that would satisfy the 6217(g) management measure (see decision rationale for additional details).

G. Coastal Nonpoint Program Needs to Address Climate Change

Comment: One commenter noted that Oregon's Coastal Nonpoint Program needs to address climate change; water shortages and toxins will become even more pressing issues as the climate continues to change.

Source: 50-A

Response: Climate change is an important issue facing coastal states and can have an impact on coastal water quality. NOAA and EPA take climate change very seriously and are involved in a number of initiatives to help states and other entities become more resilient to climate change. For example through the National Coastal Zone Management Program NOAA has been providing financial and technical assistance to Oregon to encourage local governments to incorporate hazards and climate change considerations into their local comprehensive plans. Specifically, NOAA and Oregon have been working with local governments to plan for and reduce exposure to climate-related natural hazards in Oregon's coastal zone. Also, through *** EPA [provide a specific example of how EPA is working with Oregon to be more resilience to climate change?]

However, CZARA, does not have any specific requirements for states to address climate change through their coastal nonpoint programs. When approving state coastal nonpoint programs, NOAA and EPA must make sure each state satisfies the requirements laid out in the 1993 *Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters,* developed pursuant to Section 6217(g). The 1993 guidance only contains a few mentions of climate change in the discussion of several suggested best management practices a state could employ to implement the management measure. The discussion for the new onsite sewage disposal system management measure mentions that the rate of sea level rise should be considered when siting onsite sewage disposal systems and the discussion for the stream bank and shoreline erosion management measure notes that setback regulations should

recognize that special features of the streambank or shoreline, may change, providing an example of beaches and wetlands that are expected to migrate landward due to rising water levels as a result of global warming. However, none of these are required elements for a state's coastal nonpoint program.

IV. GENERAL—WATER QUALITY, MONITORING, AND ENFORCEMENT

A. Status of Oregon Coastal Water Quality Should Inform NOAA and EPA Decision

Comment: Many commenters noted the need for Oregon to do more to improve coastal water quality and designated uses. The fact that many coastal water quality problems in the state still exist demonstrates that Oregon's existing programs to control coastal nonpoint source pollution are inadequate and that the state needs to do more to strengthen its coastal nonpoint program. Specific concerns cited included failure to meet water quality standards, numerous TMDLs for temperature, sediment, and/or toxics, impaired drinking water, and recent federal species listings under the Endangered Species Act for salmon, salmon habitat, amphibians, and wildlife. For example, several commenters cited the recent federal listings for Southern Oregon Northern California Coast coho salmon as illustrative of how salmon populations and habitat have continued to decline, due, in part, to human-related water quality and habitat impairments. Commenters specifically called out activities from timber harvesting, agriculture and urban development as a reason for these impairments.

Several other commenters noted that recent improvements in Oregon's coastal water quality and salmon runs demonstrate that the state's coastal nonpoint pollution control program is effective. One commenter stated that Oregon streams are among the cleanest in the country and provide good water for aquaculture. A few other commenters noted the good work and water quality and habitat improvements made by watershed groups, Oregon Watershed Enhancement Board (OWEB), Soil and Water Conservation Districts, and the voluntary efforts the timber industry and farmers (cattlemen) have implemented on their own. For example, one commenter cited an Oregon Department of Fish and Wildlife study that shows many out-migrating and returning salmon to Tillamook State forest land and described how collaborative restoration efforts of federal, state, county and private citizen groups have effectively worked together to improve the Tillamook watershed. Another commenter stated there was too much focus on the need to see water quality improvements; rather, given the increase in population and other development pressures in recent decades, even maintaining water quality levels should be considered a success.

Source: 1-A, 1-B, 5-B, 8-A, 10-C, 11-A, 14-B, 15-E, 19-B, 19-E, 20-A, 20-D, 22-D, 25-A, 26-A, 28-F, 30-B, 30-I, 30-O, 31-B, 35-A, 35-B, 35-C, 39-A, 42-B, 42-C, 42-I, 43-F, 44-B, 48-C, 56-B, 57-GG, 57-VV, 82-C, 82-E, 83-C, 83-D

Response:

B. Need Improved Water Quality Monitoring

Note: See also specific comments related to Agriculture-Monitoring and Tracking, Pesticides-Monitoring and Tracking, and Forestry-Pesticides.

Comment: Several commenters stated their concern over the inadequacy of Oregon's water quality monitoring programs, especially related to monitoring after aerial application of pesticides and herbicides on forest lands. Commenters noted that Oregon doesn't have monitoring programs in place

to adequately assess whether or not pollution controls are achieving their goals and protecting water quality. Therefore, it is difficult for the state to determine if and when additional management measures are needed as CZARA requires.

Commenters suggested several different monitoring approaches Oregon needed to require and implement in order to adequately protect water quality. These included: requiring turbidity monitoring of streams during and after rainstorms and taking enforcement action when excess turbidity is found; requiring recurrent road surface condition monitoring; requiring more frequent inspections of drinking water, especially when pesticide spraying occurs; and improving upon a recently developed strategy for determining agricultural landowners' compliance with water quality rules.

Several other commenters stated Oregon's monitoring and tracking programs were adequate and touted the State's greater focus on water quality monitoring over the past few years.

Source: 2-A, 30-R, 42-G, 42-H, 46-H, 49-I, 57-BB, 71-??, 84-??.

Response: NOAA and EPA recognize commenters are concerned about the adequacy of Oregon's water quality monitoring programs and that the existing monitoring efforts are not robust enough to observe potential impacts from pesticide application and other land uses and to determine when and if additional management measures are needed. NOAA and EPA also recognize Oregon's efforts over the past few years to improve its water quality monitoring efforts, such as the state's ****.

While NOAA and EPA are pleased with the state's renewed focus on monitoring, as noted in several places in the federal agencies' 2015 decision memorandum, there is still room for improvement. NOAA and EPA have strongly encouraged Oregon to further strengthen its monitoring programs, especially related to agriculture and pesticides.

C. Enforcement

Comment: One commenter noted that Oregon fails to systematically address water quality standard violations caused by excess sedimentation.

Source: 57-UU

Response D.4: CZARA requires state coastal nonpoint programs need to "provide for the implementation" of the 6217(g) management measures. Therefore, when evaluating whether or not the state has satisfied its CZARA requirements, NOAA and EPA do not consider how well a state is implementing or enforcing its laws and programs that comprise its coastal nonpoint program (or whether or not these programs are meeting water quality standards). For coastal nonpoint program approval, NOAA and EPA only consider whether or not a state has programs and processes in place to meet the 6217(g) management measure requirements.

Evaluating how well a state is implementing is approval coastal nonpoint program comes later. CZARA notes that states shall implement their approved programs through changes to its nonpoint source management plan, approved under Section 319 of the Clean Water Act, and through changes to its coastal zone management program, developed under Section 306 of the Coastal Zone Management Act. Therefore, NOAA and EPA evaluate how well a state is implementing its coastal nonpoint program

through routine assessment mechanisms for the state's Nonpoint Source Management Program and Coastal Management Program.

[Insert something on 319 evaluation mechanisms.]

The CZMA calls on NOAA to conduct routine evaluations of state coastal management programs. During these evaluations, NOAA assesses how well states are implementing their approved coastal management programs, administering federal grant funding under the program, and achieving the goals of the National Coastal Zone Management Program, including "the management of coastal development to improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters" (See CZMA Section 303(2)(c)).

Also, as stated in the introductory chapter of the 6217(g) guidance, *Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters,* the legislative history (floor statement of Rep. Gerry Studds, House sponsor of section 6217) acknowledges that the management measures are based on technical and economic achievability rather than achieving particular water quality standards. The legislative history indicates that implementation of management measures was "intentionally divorced from identified water quality problems because of the enormous difficulty of establishing cause and effect linkages between particular land use activities and specific water quality problems." Therefore, as noted above, under the Coastal Nonpoint Program, NOAA and EPA assess whether or not a state has appropriate technology-based management measures in place, not whether the approaches effectively achieve water quality standards.

If, after implementing the technology-based the 6217(g) management measures, water quality impairments are still occurring, CZARA employs an adaptive approach. The Act also requires states to provide for the implementation of additional management measures within identified areas to address land uses that are either currently causing water quality impairments or where reasonably foreseeable new or expanding land uses could threaten coastal water quality (Section 6217 (b)(3)).

V. CRITICAL COASTAL AREAS AND ADDITIONAL MANAGEMENT MEASURES

A. Process for Identifying Critical Coastal Areas and Additional Management Measures is Not Effective

Comment: One commenter noted that Oregon's process for identifying critical coastal areas and the need for additional management measures, which relies largely on the state's Clean Water Act 303d listing process for impaired waters and TMDL program, is flawed in several ways. Specifically, the commenter notes Oregon's Clean Water Act 303d listing process is not effective. The state fails to meet the 303d list regulatory requirements to "assemble and evaluate all existing and readily available water quality related data and information to develop the list" and the state does not use nonpoint source assessments to develop its 303d lists. The commenter also stated that Oregon ignores a variety of technical information available to help identify land uses that consistently cause or contribute to water quality standard violations. In addition, the commenter noted that Oregon does not use TMDLs to identify critical coastal areas and assess where existing CZARA management measures are not adequate for meeting water quality standards, as required for CZARA approval. They also note that the associated TMDL water quality management plans do not support an effective coastal nonpoint program. For

example, despite the numerous temperature TMDLs that have been developed in Oregon's coastal watershed, they note that load allocations have not been used to determine minimum riparian buffer width, height, or density to achieve the load allocation.

Source: 57-KK, 57-LL, 57-MM, 57-NN, 57-QQ, 57-RR, 57-SS, 57-TT

Response:

B. NOAA and EPA Lack Authority to Require Additional Management Measures

Comment: A few commenters stated NOAA and EPA do not have the authority to require Oregon to develop additional management measures that go beyond the original management measures in the CZARA guidance. [***more details***]

Other commenters noted that CZARA requires Oregon to demonstrate that it has additional management measures in place to meet water quality standards and protect designated uses. The commenters noted that Oregon has not met this requirement since water quality standards are still not being met and designated uses are not being protected. They are supportive of placing additional management measure requirements on Oregon's coastal nonpoint program and suggested specific measures or nonpoint source issues the additional measures needed to address (see specific comments below).

*Source: ***, 15-E, 28-E, 30-B, 30-O, 57-CC*

Response:

VI. PESTICIDES AND TOXICS—GENERAL

Note: NOAA and EPA received a variety of comments related to pesticides. Summaries of the general pesticide comments and the federal agencies' responses are provided here. See Agriculture-Pesticides and Forestry-Pesticides for a full discussion of the comments received related to pesticides.

A. Adequacy of Oregon's Coastal Nonpoint Program to Address Pesticides and Other Toxics

Comment: Several commenters noted that Oregon needs to improve how it addresses nonpoint source pollution caused by toxics, including pesticides, herbicides, and superfund contaminants. Commenters specifically noted they believed there was excessive use of toxic chemicals in agriculture and forestry practices. One commenter was also concerned about superfund contamination impacting shellfish harvests.

Commenters expressed their concerns with the ability of Oregon's existing pesticide management program to protect the quality of water in streams and groundwater as well as protect human health and aquatic species. One commenter supported this statement by citing results from a watershed council herbicide study that found that pesticides used along roadsides, agricultural fields, and forestry operations were all evident in Oregon's waterways. They noted that while applicators may have applied the herbicide correctly, the study demonstrates runoff is still occurring, indicating that the State's rules are ineffective at protecting water quality from herbicide application. Several other commenters also

felt the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), coupled with the state's pesticide rules and its Water Quality Pesticide Management Plan, were insufficient to control polluted runoff from pesticide application to Oregon's coastal waters.

A few commenters also stated that not only do they believe Oregon has weak pesticide laws but compliance with the existing rules is poor. One commenter asserted that evidence suggested that federal label restrictions for Atrazine are not being followed. Other commenters complained about the state's poor record keeping of pesticide application and inadequate notice with spraying would occur near their neighborhoods and homes. In addition, one commenter contended that Oregon's pesticide rules were much weaker compared to neighboring states.

Commenters emphasized the need for greater pesticide protection for all land uses within Oregon's coastal zone, especially for agriculture and forestry practices. In particular, several commenters called out that better controls, including larger buffer requirements, are needed for the aerial application of pesticides and herbicides, especially near streams.

One commenter cited various studies to demonstrate pesticide impacts to human health and the environment from one commonly used herbicide, glyphosate. For example, a few studies in the late 1990s and early 2000s linked exposure to glyphosate to an increased risk of non-Hodgkin lymphoma. Other health effects from exposure to glyphosate described by the commenter included breast cancer, ADD/ADHD, increased risks of late abortion, endocrine disruption, and possible increased risk of multiple myeloma. According to studies from the late 2000s, glyphosate causes altered immune responses in fish, and Roundup, a commonly used glyphosate product, is lethal to amphibians. Other environmental impacts from glyphosate were also described. The commenter contended that these human health and environmental impacts have been attributed to exposure to levels of glyphosate below the EPA set standards. The commenter also stated that studies that show adverse health effects of other formulated glyphosate products.

Other commenters disagreed. The believed Oregon has adequate pesticide controls in place which are consistent with CZARA 6217(g) requirements. Landowners were required to follow the FIFRA label requirements and meet additional state requirements. In addition, the EPA-approved, Oregon Water Quality Pesticide Management Plan provides additional description of the State's approach to pesticide management.

Source: 2-B, 17-C, 32-A, 38-A, 41-A, 46-H, 54-B, 54-D, 54-F, 54-H, 54-I, 54-M, 54-N, 54-O, 54-Q, 54-R, 54-S, 57-GG, 57-HH, 57-II, 57-ZZ, 71-AH, 71-AI, 71-AJ, 71-AK, 81-B, 83-E, 83-M

Response:

- Brief Statement about our decision(s) regarding pesticides for Ag and Forestry (ref decision rationale for greater detail and our authorities under CZARA.
- Acknowledge concern with pesticide use and encouragement to Oregon to continue to strengthen programs.
- NOAA and EPA will continue to work with Oregon within our authorities, to ensure water quality, human health, and aquatic sps. Protection.

- CZARA does not speak to superfund contaminates. Rather superfund contaminants are more appropriately addressed through the Comprehensive Environmental Response, Compensation, and Liability Act (the Superfund Act).

B. Pesticides—Adequacy of Pesticide Monitoring Efforts

Comment: Several commenters noted the need for Oregon to strengthen its pesticide monitoring efforts. They stated that Oregon did not have a program in place to determine if federal label requirements are being followed, nor did it monitor widely and regularly for pesticide runoff. One commenter noted that while unknown and unmonitored pesticide uses are a problem, unknown and unmonitored health and environmental risks from pesticides are also a significant problem.

Commenters discussed various monitoring programs that are needed in Oregon, including programs to: monitor pesticide use and impacts; assess whether pesticide management practices are sufficiently reducing pollution and improving water quality; monitor for pesticides in the air, which eventually deposit onto surface waters and soils; monitor for pesticides in coastal watersheds; monitor for pesticides in surface and drinking waters following an aerial spray event; and track whether federal label laws are being complied with.

One commenter also stated that most pesticide risk assessments are based on old and incomplete data and endpoint evaluations and that these needed to be updated with more current information for a better understanding of the true impact of pesticides and acceptable exposure limits. In addition there was little to no understanding of effects from "inert" ingredients in pesticides. The commenter believed that there needed to be more testing and disclosure of these inert ingredients.

A few commenters objected to NOAA and EPA's statement in the proposed decision document commending the State's Water Quality Pesticide Management Plan and new pilot pesticide monitoring study. They did not think these programs should be praised as part of Oregon's Coastal Nonpoint Program. They did not believe the State's claim that pesticide monitoring would support an adaptive approach and demonstrate when additional controls are needed. They stated that Oregon conducted very little pesticide monitoring to drive an adaptive approach and that none of the pilot monitoring sites are located in the coastal zone.

Source: 54-E, 54-F, 54-S, 57-ZZ,

Response:

VII. NEW DEVELOPMENT

Comment: Many commenters agreed with NOAA and EPA's proposed finding that Oregon has failed to fully address CZARA requirements for new development, specifically that the state has not provided a commitment to use its back-up authorities to ensure implementation of the management measure

requirements when needed. However, a few commenters did not believe Oregon had an effective program to control stormwater runoff from new development and meet water quality standards. They noted that the state needed to do more than the voluntary program described. For example, one commenter noted that the TMDL Implementation Guidance must require (not recommend) DMAs to follow NPDES Phase II requirements for small MS4s. Another option that was suggested was that NOAA and EPA should require the state to incorporate the CZARA new development management measures into an existing NPDES General Permit or craft a new permit.

Not all commenters were supportive of new regulatory requirements to address the new development management measure. For example, one commenter preferred that the state use its existing authorities and stormwater permits more effectively rather than place additional requirements on small cities and counties. The commenter noted that small cities and counties are not the main source of impairment and often lack the technical expertise and financial resources to meet the new requirements. They suggested the coverage for the 1200C NPDES general permit could be expanded by decreasing the acreage threshold for the permit or using an approach similar to the 1200OCS permit used to address water quality problems in the Columbia Slough.

Source: 11-B, 13-B, 15-G, 34-B, 34-C, 34-D, 80-C

Response E.1:

VII. ONSITE SEWAGE DISPOSAL SYSTEMS

A. Adequacy of Oregon's Programs to Meet CZARA Requirements for OSDS

Comment: Many commenters agreed with NOAA and EPA's proposed finding that Oregon has failed to fully address CZARA requirements for existing onsite sewage disposal systems, specifically ensuring routine inspections. While some commenters were supportive of the state's planned outreach efforts to promote voluntary inspections, they agreed with NOAA and EPA that Oregon does not have a tracking program in place to assess the effectiveness of its voluntary program nor has the state demonstrated a commitment to use its back-up enforcement authority to ensure inspections, when needed.

Other commenters were not supportive of Oregon's voluntary approach at all. They felt the state needed to require routine inspections and have more direct enforcement authorities. They noted Oregon's OSDS management program was not sufficient for meeting water quality standards and that enforcement action was minimal for existing leaking septic systems. One commenter noted that Dunes City passed an OSDS ordinance to require routine inspections because previous voluntary approaches did not work. Another commenter was concerned about several communities (Lane County and the City of Florence) allowing septic systems to be cited near lakes.

Source: 11-B, 12-B, 13-B, 15-G, 34-B, 34-5, 35-E, 48-A, 48-K

Response:

B. More Needed to Improve OSDS Management

Comment: A few commenters noted specific actions Oregon needs to take before NOAA and EPA approve the state's programs for meeting the OSDS management measure. Actions include: siting OSDS in locations where they are properly separated from groundwater; restricting system density to reduce nitrate input to groundwater; ensure proper sizing of the system to minimize concentrations of contaminants and prevent hydraulic overloading; requiring mandatory inspections every 3-5 years or at the time of property transfer; requiring mandatory pumping after each inspection whenever needed; establishing a step-by-step program for the state to help homeowners with grants and low-cost loans that need support for pumping or replacing failing systems; and establishing explicit enforcement mechanisms.

Source: 34-E, 48-J, 78-E

Response:

C. Concerned with Sewage Discharge to Waterways During Rain Events

Comment: One commenter noted that some communities, such as Myrtle Point and Powers, discharge sewage during rain events, preventing shellfish harvest.

Source: 17-B

Response:

IX. FORESTRY

A. Impacts of Forestry Industry

Comment: NOAA and EPA received mixed comments on its finding that Oregon failed to submit adequate management measures for forestry. Majority of commenters agreed that existing forest practices do not adequately prevent impacts to water quality or designated beneficial uses (e.g. fish spawning, migration, etc.) and additional management measures are needed. Commenters raised various issues associated with the forest industry. Impacts from clear cutting practices were described as contributing to water quality degradation and landslides. A few commenters discussed their concerns with impacts from logging and clear cutting and provided specific examples of impacts that result from forest roads contributing sediment to streams, landslides from clear cutting, inadequate buffers along streams, and the loss of fish spawning habitat. One commenter pointed out the adverse effects of pesticides on amphibians and crawfish in non-fish bearing streams. While another noted the effects of logging on restoration efforts of the Coho Salmon, citing a NOAA opinion for a potential ESA delisting of Coho Salmon.

Source: 57-F, 57-I, 63-B, 67-E, 67-F, 67-G, 70-C, 75-F

Response:

B. General Effectiveness of Existing Forest Practices and Programs

Comment: Many commenters argued that current land use laws and the Forest Practices Act do not provide sufficient protection of Oregon streams and additional management measures for forest practices are necessary to have an approvable program under CZARA. Some commenters contend that the FPA is inconsistent with water quality standards and CZARA and the Oregon Department of Environmental Quality has failed to use its authority to address these inconsistencies. It was also noted that the lack of political will along with state tax benefits to timber industry contribute to the lack of resources state agencies have to improve degraded water quality. One commenter noted that compliance with forest practices regulations is not equal to compliance with water quality standards, and in most cases, enforcement occurs only after water quality damage has already occurred.

Conversely, a few commenters have argued that existing programs regulating forest practices are consistent with CZARA and that no additional management measures are needed. It was contended that the FPA adequately protects Oregon's watersheds and the Oregon CNP should be approved without conditions. It was noted that the FPA already requires BMP monitoring including pesticide use monitoring, and landslides and public safety monitoring. And based on monitoring results, forest practice rules have evolved and improved over time. One commenter argued that both EPA and NOAA have failed to show that Oregon's forest practices rules do not meet water quality and beneficial use objectives; on the contrary, a "large body of science" demonstrates that Oregon forest practices have a "neutral to positive" effect on aquatic life.

Source: 35-I, 57-D, 57-E, 57-F, 57-G, 57-H, 57-S, 57-V, 57-W, 70-C, 75-E, 75-G, 77-F, 77-G, 79-B, 79-C

Response:

C. Adequacy of Forest Practices Act to Satisfy CZARA Requirements

Comment: One group commented that Oregon's Forest Practices Act "establishes a dynamic program that responds promptly and deliberately to environmental issues as they arise…" The group cited sections of the FPA related to forest practices and water quality. It pointed out that the FPA requires that water resources, including drinking water, be maintained and that BMPs be established as necessary to insure maintenance of water quality standards. The commenter contends that the language of this FPA provision adheres to the CZARA requirement that additional management measures be established to maintain applicable water quality standards. The commenter also noted that the FPA already requires BMP monitoring including pesticide use monitoring, and landslides and public safety monitoring. And based on monitoring results, forest practice rules have evolved and improved over time. The commenter argued that while NOAA and EPA have expressed their concerns about forest roads delivering sediment into streams, they have not cited any sources supporting these concerns.

Source: 77-F, 77-G, 77-M

Response:

D. Forestry Riparian Management

Comment: Many commenters agreed that the State has not done enough to prevent polluted runoff elated to timber harvesting and riparian protection. One comment stated that existing piecemeal approaches are not sufficient. Commenters have expressed their concerns for impacts to fish and drinking water and contend that water quality is and should be a priority for Oregon's watersheds. They argue the State must increase protection for small and medium fish bearing streams and non-fish streams and acknowledge that stream protection proposals have been introduced in the past but have yet to be approved.

Commenters describe how existing riparian buffer rules for these streams are not adequate for ensuring good drinking water quality or protection of fish bearing streams. One commenter pointed out how Oregon is behind California and Washington in regard to setbacks, the notification or application process and consequences for non-compliance. Examples provided by commenters illustrate how existing buffers are too narrow or even non-existent due to clear cutting. One commenter noted the lack of buffers on non-fish streams make sedimentation a constant issue. It was also pointed out that excess sediment entering public waters from logging roads and chemicals (fertilizers, herbicides and pesticides) applied in riparian areas result in carcinogens and other toxins making their way into Oregon's drinking water and fish-bearing streams.

Others agree with the need for additional management measures but contend that the federal agencies need to work with Oregon to address the remaining concerns while keeping in mind the political challenges Oregon faces. The idea was presented that "Thoughtful science" should be provided when addressing these challenges. Moreover, maintaining support of the forest industry is also important for water quality protection.

One commenter contended that additional riparian setbacks would only hurt the logging industry and drive lumber prices up.

Source: 4-C, 13-B, 14-D, 20-B, 24-C, 28-B, 30-E, 30-K, 30-L, 30-M, 35-I, 35-J, 40-A, 43-E, 44-D, 46-C

Response:

E. Forestry Landslide Management

Comment: Some commenters acknowledged that landslides caused by logging practices such as clear cutting are a real problem in Oregon and additional management measures are necessary to address these impacts. It was noted that Oregon does not have sufficient programs in place to control non-point pollution from forestry practices, particularly due to logging on private lands.

Others expressed their disagreement with the federal agencies' recent decision and argued that the evidence provided by the federal entities was misleading, only focusing on "landslide density relationships" rather than considering the "total number of landslides triggered during major storms". If consider the latter, one would see that the "potential increases in sediment delivery to public resources from landslides...is proportionally small". In addition, it was argued that EPA has not offered objective evidence that additional management measures are needed to maintain water quality. It was

recommended that EPA consider a broader scale view over longer timeframes to evaluate whether water quality and designated uses are impaired. The commenter added that the federal agencies have not produced any evidence that landslides resulting from forest management activities have caused exceedances in water quality or negatively impacted aquatic life.

Source: 61-A, 63-B, 67-B, 77-J, 77-K, 77-L

Response:

E. Forestry Road Management

Comment: One group commented that there is no program in place to control non-point pollution sufficiently to meet CZARA and management measures are needed to maintain water quality and protect designated beneficial uses due to logging impacts. Examples of logging roads and associated impacts to watersheds and habitat were noted by various commenters. Speaking to current forest practice rules, another group commented that "generic BMPs" are imposed and are not backed by relevant water quality data and so fail at protecting water quality and beneficial uses. The group added that existing rules for forest roads are vague and prioritize logging over protection of water quality. One argument stated that Oregon's road location rule, which only requires operators to minimize risk to streams rather than requiring them to avoid water quality problems, is not sufficient. Other examples given demonstrating the inadequacies of the current forest practices rules include how they are not designed to eliminate delivery of fine sediment or to ensure that delivery does not impair water quality and they do not require that existing, inactive logging roads or "legacy roads" be brought into compliance with water quality standards.

Another group made the argument that while NOAA and EPA have expressed their concerns about forest roads delivering sediment into streams and have requested that the state enact an inventory and reporting program for forest roads, they have not cited any sources supporting these concerns and have presented no basis for the request. The commenter contends that new rule revisions (2002 – 2003) and success under the Oregon Plan for Salmon and Watersheds were detailed in the State's submission and are evidence that the Oregon Forest Practices Act is working as it should and the Board of Forestry is committed to implement additional management measures for forestry roads as needed. They also note that salmon stocks are recovering.

Source: 57-D, 57-I, 57-N, 57-O, 57-P, 57-R, 57-T, 57-U, 67-B, 75-D, 77-M, 77-N, 77-O, 77-P, 77-Q, 77-P, 77-Q

Response:

F. Forestry Pesticides Management

Comment: Many commenters voiced concerns about pesticide and herbicide use associated with the forest industry in Oregon, especially using aerial spraying as a method of applying these chemicals. Adverse impacts to drinking water sources, designated uses, and habitats were among the list of issues commenters raised. Stories of chemicals used in forest practices found in local streams and in state residents were reported. Some believe that Oregon coastal watersheds are not adequately protected

from pesticides and herbicides. A few noted that existing buffers are ineffective including existing no-spray buffers around fish-bearing streams, which are considered to be too small and non-fish bearing streams are not protected at all. One commenter suggested a pesticide-free buffer around certain land uses such as schools. One commenter discussed how certain herbicide chemical properties allow for them to persist in the environment and are eventually carried downstream to fish. It was noted that not enough is known about the interactions of chemicals when mixed. Moreover, it was expressed that additional research is needed to determine if aerial spraying of herbicides in forest industry is a necessary method of application.

Several commenters sited specific studies or personal observations to support their statements. For example, one commenter referenced a report, *Oregon's Industrial Forests and Herbicide Use: A Case Study of Risk to People, Drinking Water and Salmon*, to explain how "private forestry operations in Oregon operate under antiquated and loose regulations, allowing aerial spraying and unmonitored applications of pesticides as compared to their federal forestry operation and border-state counterparts." They listed specific findings from the report including: (1) There are known endocrine disrupting chemicals entering Oregon's drinking water sources and fish-bearing streams; (2) Oregon does not require a no-spray buffer near homes and schools; (3) Aerial herbicide sprays regularly occur directly over headwaters and tributaries of protected salmon streams; (4) Oregon permits pesticides to be sprayed with only the smallest protective buffer of 60 feet from salmon and steelhead streams—a buffer significantly smaller than other Northwest states with similar forest and river ecosystems; (5) Stricter chemical and pesticide rules apply in neighboring states with heavy forestry industries; (6) Under the current administrative rules, the Oregon Forest Practices Act prohibits researchers, doctors and the public from obtaining accurate information about what types and quantities of herbicides are sprayed.

However, other commenters contended that existing water quality monitoring activities for non-fish bearing streams during and after spraying herbicides has shown no "detrimental impacts" and Oregon continues to support monitoring that would identify potential problems if any arise. The commenter added that there have been changes over the years in chemical labeling and how chemicals are applied to forests. The commenter pointed out that pesticide applicators are licensed and, along with landowners, are already subject to stringent regulations and guidelines under the FPA and FIFRA.

Source: 62-B, 62-C, 69-C, 70-C, 70-D, 70-E, 70-G, 70-J, 72-B, 75-C, 76-A, 76-C, 77-R, 77-S, 77-T, 85-D, 85-E

Response:

G. Inadequate Forestry Pesticide Monitoring

Comment: In addition to their general concern about pesticide use by the forest industry and inadequate riparian buffers when pesticides are applied, several commenters expressed their concern about the inadequacy of the Oregon's water quality monitoring efforts following aerial application of pesticides and herbicides on forestry lands. One commenter stated Oregon has no program to determine the presence of forestry pesticides in the air and resulting in drift and deposition onto surface waters and soils. Commenters gave many examples of how they believe drinking water, human health, and fish and wildlife have been impaired by aerial spraying.

One commenter noted without effective monitoring protocols, the state lacks data to prove aerial application was a problem and improvements were needed. For example, one commenter stated there

was no monitoring of aerial drift even though the Oregon Health Administration said chemicals could drift two to four miles. Another commenter also noted there was little to no coordination between DEQ and ODF on pesticide monitoring. One commenter also questioned NOAA and EPA's praise of Oregon's Water Quality Pesticide Management Plan. They noted that while the state purportedly uses water monitoring data to develop adaptive management approaches, the state actually undertakes very little pesticide monitoring and that there is no evidence the state collects any data in coastal watersheds.

It was pointed out that while NOAA and EPA found state-level frameworks and actions sufficient for addressing pesticide water quality controls, none of the pilot monitoring programs supporting this finding occur in the coastal zone. A commenter also added that the agencies "improperly assume that, should riparian buffer standards for type N streams and monitoring programs within the coastal zone adhere to existing state laws and programs concerning water quality and pesticides, then Oregon's CNPCP would warrant approval." The commenter contended that existing state and federal laws do not sufficiently address a large portion of pesticide application activities and do not collect necessary pesticide application and risk data. Referring to Oregon's Water Quality Pesticide Management Plan, which has a component that relies on monitoring data, a commenter noted that the state does little monitoring of pesticides and there is no indication of data being collected in coastal watersheds.

Source: 30-R, 42-G, 42-H, 46-H, 49-I, 57-II, 70-F

Response:

H. Forestry Clear Cuts

Comment: Commenters expressed their concerns with the clear cutting practice associated with the logging industry. They disagreed with the amount of clear cutting that occurs, including the FPA rule, which allows up to 120 acres. The point was made that the rule did not consider cumulative impacts. Commenters discussed the impacts to water quality associated with clear cutting, particularly when combined with a lack of riparian buffers and sprays. In addition, the problem of clear cutting on steep, erosional slopes, which contributes to landslide problems and further impacts water quality. One commenter argued that clear cutting is not sustainable and Oregon needs to practice sustainable forestry. Commenters provided examples of impacts resulting from clear cutting including extensive clear cutting that has occurred in riparian areas around watersheds, including waterways that provide drinking water, despite having steep slopes and erosive soils; and clear cutting that has occurred in areas with designated spotted owl sites and high risk areas.

Source: 12-A, 40-A, 42-D, 43-D, 53-F. 75-B, 75-C, 75-D,

Response:

X. AGRICULTURE

A. Ability of Oregon's Agricultural Programs to Meet CZARA Requirements

Comment: Some commenters noted that they did not believe Oregon had satisfied the CZARA requirements for Agriculture and the conditions related to the agriculture management measures that NOAA and EPA placed on Oregon's Coastal Nonpoint Program. They noted that Oregon must address impacts caused by polluted runoff from agricultural activities. Various points were made about the inadequacy of the management approaches and programs the state relies on to meet the CZARA requirements (see additional comments related to agriculture below for detailed examples).

Other commenters felt that the State had satisfied the CZARA agriculture management measure requirements and the conditions placed on its program related to agriculture (see additional comments related to agriculture for detailed examples). They stated that finding otherwise would be unreasonable and contrary to CZARA requirements. It would also hold Oregon to a higher standard than other states. Some commenters also contended that if NOAA and EPA find that the State has not submitted an approvable program for agriculture, that decision would punish the agriculture community; they would lose important federal funding that help reduce polluted runoff from agricultural activities.

Source: 5-B, 13-C, 19-C, 44-F, 47-B, 49-G, 56-J, 60-A, 64-A, 64-C, 65-F, 66-A, 66-C, 66-A, 68-C, 71, 84-B

Response:

Main Points to Highlight?

- After careful consideration of all comments, the State's March 2014 submittal, and other information, NOAA and EPA have concluded _____.
- State what our decision is and why we feel that way (or just refer to rationale in decision doc if that will provide sufficient explanation).

B. Extent of Nonpoint Source Pollution from Agriculture

Comment: Several commenters questioned NOAA and EPA's claim in the proposed decision rationale that nonpoint source problems from agriculture are widespread. Commenters stated that agriculture was not the predominate land use within the coastal nonpoint management area. Two different commenters provided statistics on the extent of agricultural land within the coastal nonpoint management area to support this claim. While they presented slightly different statistics (i.e., agriculture land represents only five percent of land use in the coastal zone with pasture/hay use the predominate land use versus 25 percent of land within the coastal nonpoint program area is agriculture but less than one percent of those agricultural lands are used for activities other than pasture/hay) they arrived at the same conclusion. Given that agricultural land comprises a small overall land area and that most of these agricultural lands are used for pasture or hay, potential water quality impacts from agriculture are reduced since there is little opportunity for soil disturbance or nutrient loading from traditional row crops. They contended that most ambient water quality monitoring reports indicate "fair to excellent water quality" and monitoring sites with poor conditions are not due to agricultural activities.

The same commenters did not feel that NOAA and EPA supported their statement in the proposed decision document that water quality impacts from agriculture were widespread. They found fault with NOAA and EPA's sole reliance on NOAA National Marine Fisheries Services' (NMFS) recent listings for

coho salmon and draft recovery plans (both under the Endangered Species Act). One commenter stated that the draft salmon listings and recovery plan findings are based on opinion and anecdotal evidence and are unsupported by scientific fact. Therefore, they requested that NOAA and EPA's references to the coho salmon listings and recovery plan findings as they relate to agriculture impacts to water quality be removed. Another commenter stated that NMFS's listings and plans did not support a conclusion that water quality or designated use impairments due to agriculture are "widespread." For example, the commenter reflected that the NMFS documents do not specify which land use(s) require greater buffers to adequately protect coho salmon.

However, other commenters noted that polluted runoff from agricultural activities was a significant concern and contributed to water quality degradation. They noted that Oregon must address nonpoint source pollution impacts from agriculture. (See also response to "Effectiveness of Oregon's Agriculture Programs for Achieving Water Quality Standards and Protecting Designated Uses" comment.)

Source: 13-C, 19C, 64-H, 66-H, 68-H, 70-O, 71-B, 71-F, 71-M, 84-C, 84-G

Response:

Main Points to Highlight?

- What we believe the science says about the significance of ag runoff/how widespread ag NPS problem is in the coastal mngt area. Cite specific studies to support statements.
- Refute claims about inadequacy of NMFS reports?
- Note that we have revised the ag decision rationale to provide additional support for NOAA and EPA's statements about the extent of ag pollution.

C. Effectiveness of Oregon's Agriculture Programs to Achieve Water Quality Standards and Protect Designated Uses

Comment: Several commenters expressed concern that the approaches Oregon relies on to meet the CZARA agriculture management measure requirements were not sufficient to achieve water quality standards and protect designated uses. For example, several commenters stated that the Agriculture Water Quality Management Area (AWQMA) rules were too vague to ensure water quality standards are achieved. Another commenter called out Oregon's pesticide management practices as being inadequate to meet water quality standards. One commenter stated that ODA publicly acknowledged that even 100 percent landowner compliance with the current AWQMA rules was not sufficient for achieving water quality standards. The commenters concluded that it was important for the state to include agriculture management measures that enable the state to achieve and maintain water quality standards.

Commenters provided several examples of why they believe Oregon's agriculture programs are unable to meet water quality standards and designated uses. One commenter mentioned that Tillamook Bay was closed to shellfish harvesting for 100 days of the year due to polluted runoff from dairy farms. Another commenter stated that Oregon's Water Use Basin Program failed to maintain minimum water flows, which resulted in impairments to water quality and habitat needed for sensitive and endangered species.

Several other commenters, however, stated that Oregon has developed water quality standards designed to protect designated uses (including coho salmon and other endangered or threatened fish species) and that Oregon's agriculture programs, including the AWQMA Program, are designed to ensure agriculture activities do not prevent the State from achieving those water quality standards and protecting species. One commenter cited excerpts from the North Coast Basin AWQMA rule that state, among other things: "No person conducting agricultural land management shall cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means (ORS 468B.025(1)(a))." and " No person conducting agricultural land management shall discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards establish." (OAR 603-095-0840)

Source: 46-H, 57-AA, 57-GG, 57-NN, 65-G, 66-E, 71-N, 78-F, 78-G, 83-G, 84-B

Response:

D. Effectiveness of the Agriculture Water Quality Management Area Program and Plans for Meeting the CZARA Management Measures

Comment: Several commenters expressed concern with Oregon's reliance on the Agriculture Water Quality Management Area (AWQMA) Program to meet the CZARA management measures and address polluted runoff. However, other commenters were supportive of the program and thought it did enable the state to meet its CZARA agriculture requirements.

Commenters who believed the AWQMA Program did not satisfy the CZARA requirements were concerned that the AWQMA plans, which include the CZARA management measures for agriculture in their appendices, are voluntary. One comment cited Oregon statute and rules that state: "The rules adopted under this subsection shall constitute the only enforceable aspects of a water quality management plan" (ORS 568.912(1)) and "Area rules are the only enforceable aspect of an AWQMA plan" (OAR 603-090-000(4)). The commenters were concerned that the AWQMA rules, which provide ODA with enforcement authority for the program, do not include specific requirements consistent with the CZARA 6217(g) management measures that adequately protect water quality. They believed the AWQMA Program was not sufficient for meeting CZARA requirements because management measures must be backed by enforceable authority under CZARA. The CZARA management measures in the appendix of the voluntary plans are not enforceable.

A few commenters who participated in AWQMA planning efforts for several different coastal basins cited personal observations that supported their conclusions that the voluntary AWQMA plans lacked specific requirements to adequately protect water quality. One participant with the Mid-Coast Basin described how the planning team rejected including more specific protections for riparian buffers even though they were aware that water quality problems in the basin, such as temperature increases and bacteria contamination from livestock, were created or being exacerbated because riparian vegetation was inadequate. Another commenter who had experience with the Inland Rogue AWQMA plan stated that what was deemed an inappropriate land use practice was subjective because the plan and rules lacked specific thresholds for what was or was not an inappropriate activity.

One commenter was also concerned that ODA does not have an implementation plan, with interim milestones and timeline, in place to ensure the voluntary actions in the plans occur. Another commenter also called out the State's inability to point to significant achievements of the AWQMA Program to improve agriculture land use practices that have caused or contributed to water quality impairments. They believed that since the AWQMA plans and rules have been in place since 2007, the State should have more to show for the program by now if it was actually achieving its goals to protect and improve water quality.

Several other commenters had a different perspective. They felt that the AWQMA Program does enable Oregon to satisfy the CZARA agriculture management measures and the conditions related to agriculture that NOAA and EPA placed on its coastal nonpoint program. One commenter contended that the AWQMA plans and rules exceed CZARA requirements. The commenters stated the coastal AWQMA plans directly reference the CZARA management measures and that ODA has the authority to require the CZARA management measures and to impose additional measures, if necessary. They believed the AWQMA plans and rules provide sufficient goals, policies, and authorities, to improve water quality within coastal watersheds.

One commenter stated that the AWQMA Program includes many practices that are consistent with (or exceed) the CZARA management measures. For example, the plans and rules ensure animal wastes are placed to avoid impacts to water quality, site capable riparian vegetation is in place to reduce erosion, strict nutrient limits are established for waterways, and livestock access to waterways is limited to protect water quality and streambanks.

A few commenters objected to claims by others that the AWQMA plans and rules do not provide specific practices or requirements, such as set buffer widths. They claimed mandating such specific requirements be included in the plans or rules would be applying a "one-size-fits-all" approach which is contrary to the inherent flexibility CZARA affords. One commenter also stated that neither CZARA nor the 6217(g) guidance prescribes specific agricultural practices through the CZARA management measures.

Some commenters, who included several farmers, described how ODA works with ranchers and farmers to modify, reduce, and remove ineffective agriculture practices. They stated that farmers have worked hard to meet or exceed water quality standards by working with the State to develop AWQMA plans to set watershed goals and prioritize investments to enhance water quality. Farmers noted that they willingly participated in the AWQMA Program and voluntary programs because they had the understanding that the program and their voluntary efforts would meet all federal and state regulatory requirements for agriculture.

Commenters also noted the success of the state's AWQMA Program and voluntary efforts over the years. For example, one commenter stated between 1998-2012, the Oregon Watershed Enhancement Board (OWEB) contributed nearly $18 million to support coastal agriculture projects and Soil and Water Conservation Districts and landowners provided an additional $5 million in-kind support. These efforts restored over 950 linear stream miles and improved agricultural practices that impacted over 2,750 acres of farmland. In addition, the commenter also stated, that landowners voluntarily enrolled thousands of acres of farmland in federal programs designed to improve water quality.

Source: 55-E, 56-J, 57-CC, 57-EE, 64-C, 64-F, 65-B, 65-C, 65-D, 65-E, 65-F, 66-C, 66-F, 68-C, 68-F, 71-A, 71-B, 71-C, 71-G, 71-K, 71-N, 71-P, 71-Q, 71-R, 72-A, 73-A, 78-H, 78-I, 78-K, 84-D, 84-I, 84-N, 84-O

Response I.2:

E. Need for Oregon's Agriculture Programs to Have a Greater Focus on Prevention Rather than Rely on Addressing Water Quality Impairments After They Occur

Comment: A few commenters asserted that the AWQMA Program and plans only focused on areas with known water quality impairments. They felt that the AWQMA Program did not provide sufficient protection of more pristine areas to prevent them from becoming degraded. They stated by focusing on impairment rather than protection, ODA is allowing polluting practices to occur for many years until water quality becomes degraded and is documented through a TMDL. Commenters were also concerned that the AWQMA plans do not require restoration, especially pertaining to riparian buffers surrounding former agricultural sites. (*See also discussion under Agriculture-Buffer and Agriculture-Legacy Issues comments.*)

On the contrary, a few other commenters disagreed with NOAA and EPA's statement in the proposed decision rationale that AWQMA plans focused primarily on impaired areas. They stated that landowners are generally expected to protect water quality, not just impaired waters. They believed that ODA implements controls through the AWQMA Program to address sources of existing impairments as well as prevent polluted runoff elsewhere. One commenter provided a specific example of the North Coast Basin rules (OAR 603-095-0840) to illustrate how the standards address impaired areas as well as provide protection and restoration benefits. Another commenter also felt that ODA was coordinating well with DEQ to ensure continued integrity of the AWQMA Program and plans and ensure that landowners have the tools and adaptive approach to address polluted runoff.

Source: 46-H, 55-F, 80-I, 84-A, 84-D, 84-M, 84-P

Response:

F. Effectiveness of Oregon Department of Agriculture's Enforcement of Agriculture Programs

Comment: Several commenters stated they were concerned with ODA's lack of enforcement of its AWQMA rules and other agricultural rules. Other commenters did not believe there was an enforcement problem. They argued that CZARA does not require states to take specific enforcement action to receive approval. Rather, states only need to have management measures in place, backed by enforcement authority, which they believed Oregon has done.

Commenters that were concerned about enforcement of Oregon's agriculture programs believed Oregon's complaint-driven enforcement approach was not sufficient and that the state was not using its enforcement authorities when voluntary agriculture approaches fail to protect water quality. For example, one commenter, who is an agricultural landowner and a member of an AWQMA local advisory committee, discussed how the committee was informed that the AWQMA plan would be complaint

driven and compliance was voluntary. The commenter questioned the effectiveness of this approach for protecting water quality and designated uses when ODA only issued three fines over the last eleven years.

One commenter felt ODA worked to protect the agriculture industry more than implement the authorities it has to protect water quality. As a result, enforcement was only taken for very egregious cases and even then, it proceeded slowly. Another commenter also stated how difficult it could be to get ODA to take action on a complaint since only signed complaints actually triggered an investigation. Another commenter asserted that polluted runoff from agriculture was difficult to control because most agricultural activities were exempted from the same Clean Water Act standards. Over all, these commenters believed ODA's lax enforcement has allowed agriculture activities to continue to cause and contribute to water quality and designated use impairments.

In addition, one commenter also was concerned that ODA lacks an implementation plan to ensure that voluntary implementation of the AWQMA plans and other voluntary efforts occur. They noted that the implementation plan should include a proactive approach to enforcement (i.e., not rely entirely on a complaint-driven approach) and an enforcement response plan to ensure proper enforcement procedures and corrective actions are triggered when voluntary agricultural efforts are not being implemented or when voluntary approaches are not successfully protecting water quality.

Other commenters provided an opposing view. They argued that most agricultural landowners comply with existing water quality management rules and meet relevant CZARA requirements. They asserted that Oregon has a process in place to effectively address noncompliance issues and that ODA has the ability to enforce the AWQMA program and ensure compliance with water quality requirements.

They refute claims by others that few ODA enforcement actions over the years demonstrate that ODA does not have the ability and/or will to enforce the AWQMA program and ensure water quality is protected. On the contrary, the commenters noted that when a problem is identified, ODA first works closely with the noncompliant landowner to make necessary land use changes voluntarily before turning to enforcement. Therefore, they explained that most issues are corrected before a formal enforcement action is needed. Commenters also highlighted the existing review and monitoring processes ODA has enacted to track program "implementation and effectiveness". (See also discussion for "Agriculture-Monitoring and Tracking" comment.)

As noted above, they also contended that while CZARA requires the State and its agencies to have enforcement authority for the CZARA management measures. One commenter stated that CZARA does not require states to take a certain number of enforcement actions or meet a specific enforcement threshold. They believe that not only does ODA have suitable enforcement authority but the state's July 2013 coastal nonpoint program submission, which provided examples of several agriculture enforcement actions, demonstrates that ODA has used its authority to enforce the AWQMA rules, where necessary and appropriate.

Source: 41-C, 46-H, 53-E, 54-K, 55-I, 55-D, 56-J, 56-K, 78-J, 80-F

Response:

G. Inadequacy of Oregon Water Resources Department's (OWRD) Water Use Basin Program for Meeting Irrigation Management Measure

Comment: One group commented that the Oregon Water Resources Department's (OWRD's) Water Use Basin Program is inadequate for meeting CZARA requirements for agriculture. They suggested that NOAA and EPA were incorrect when finding that OWRD's Water Use Basin Program supports the irrigation measure and reiterated that Oregon's Basin Programs do not ensure that water quality and habitat for sensitive and endangered species will not be impaired. They urged EPA and NOAA to look closely at the deficiencies of the Basin Programs before attributing any water quality or fish habitat protection value to them as a measure in support of Oregon's agricultural conditions. They added that Oregon's rules provide no assurance that water use will be adequately limited to maintain minimum flows and that teh Basin Programs fail, in practice, to protect minimum perennial streamflows and instream rights held by OWRD for the protection of aquatic wildlife and water quality. They concluded that EPA should disapprove Oregon's agricultural measures and acknowledged the lack of protection offered by Oregon's Water Use Basin Programs for preservation of aquatic life and designated uses in the agencies' final determination.

Source: 65-B, 65-C, 65-D, 65-E, 65-F, 65-G

Response:

H. Agriculture Riparian Buffers

Comment: Various commenters noted the importance of, and need for, adequate agricultural riparian buffers along both fish and non-fish bearing streams. They stated the buffers were important to protect water quality, including cold water temperatures needed for the recovery and health of native salmon. The commenters felt that Oregon currently lacks appropriate riparian management practices for agriculture lands to help meet water quality standards and to protect coho salmon, amphibians, and drinking water. In addition, a commenter pointed out that ODA's remote sensing monitoring of riparian areas has shown little improvements in buffers despite implementation of the AWQMA Program and other agriculture programs.

Several commenters provided specific examples of Oregon's poor riparian buffer management. For example, several commenter contended that management measures in Oregon's agricultural plans are deficient to provide protection of stream banks, bank stability, and the destruction of riparian areas by livestock. They explained that stream banks are key to protecting water bodies from elevated sediment delivery that affects levels of turbidity and fine sediment in streams and eroding stream banks contribute to temperature increases, reduce large woody debris to streams, which is critical to salmonid recovery, and contribute to nutrient and pesticide delivery from upslope agricultural activities.

Another commenter spoke about their experience serving as an advisory member to the Mid-Coast Basin AWQMA Advisory Committee during its local area planning in 2009. They explained that when specific buffer proposals were presented to the committee, "All of the specific proposals for riparian protection were rejected by the committee, despite their knowledge of specific water quality problems in the basin created or exacerbated by inadequate riparian vegetation, including stream temperature problems and bacterial contamination from livestock."

A few commenters also discussed how the AWQMA rules do not require active restoration of suitable riparian vegetation. Rather the rules only prohibit agricultural activities from preventing the natural re-establishment of "site capable" riparian vegetation that often results in the establishment of invasive species, like blackberries, along the riparian zone that do not provide the same water quality protection and habitat value as native vegetation.

However, other commenters stated Oregon's current riparian management practices were sufficient for meeting CZARA requirements. Commenters asserted the AWQMA rule did provide for protection of riparian areas and stated that if a violation occurred, i.e. agricultural activities inhibit establishment of riparian vegetation, the livestock would have to be removed or managed appropriately. A commenter provided an example of several North Coast Basin AWQMA rule requirements, such agriculture management activities must be conducted in a way to maintains stream bank integrity through 25-year storm events and minimize the degradation of established native vegetation while allowing for the presence of nonnative vegetation.

The commenter refuted others' claims that the "site capable" vegetation that the rules required was not effective at protecting water quality. They asserted that "site capable" vegetation plays an important role at filtering pesticides from runoff before it enters surface waters. Commenters also pointed out that farmers and ranchers implemented many practices to protect and restore riparian vegetation such as installed miles of piping for livestock watering, and planted and fenced many miles of stream banks. In addition, commenters stated that there is no requirement in CZARA or Section 6217(g) requiring specific riparian buffers on agricultural lands and that NOAA and EPA provided no concrete evidence in their proposed decision document to demonstrate why Oregon needed to improve its management of agriculture riparian buffers to meet CZARA requirements. One commenter did not believe the NMFS reports NOAA and EPA cited in the proposed decision document specified that agriculture land use as a reason better riparian buffers were needed to protect coho salmon.

Source: 15-H, 44-F, 49-G, 55-E, 55-H, 57-SS, 57-XX, 57-YY, 57-ZZ, 71-H, 71-R, 71-W, 71-AI, 71-AJ, 72-A, 78-G, 78-F, 81-A, 83-E, 83-F, 83-L, 84-G, 84-O

Response:

I. Agriculture Pesticide Management

Note: Comments specifically related to pesticides and agriculture are summarized and responded to here. However, NOAA and EPA received general comments on pesticide management as well as specific pesticides related to forestry. Please see Pesticides-General and Forestry-Pesticides for a full discussion of the comments received related to pesticides.

Comment: Commenters expressed concerns with the amount of pesticide application and the lack of management measures in place to address agricultural pesticide use in Oregon. They stated inappropriate pesticide use and controls impacted both human and environmental health. Commenters concluded that Oregon's management measures for pesticides are not adequate to meet water quality standards or support designated uses and additional management measures to address pesticides are needed. Commenters asserted that Oregon needs to improve upon both its application restrictions,

providing greater controls on spraying in coastal watersheds, and to improve its protections for all stream classes.

Commenters provided specific examples to support their belief that agriculture pesticide management was inadequate. For example, members of AWQMA local advisory committees relayed that the committees were advised to not even consider pesticides as a pollutant. Therefore, they questioned if the AWQMA Program is sufficient to meet the CZARA 6217(g) management measure requirements. Another commenter referred to an herbicide monitoring study that found that polluted runoff resulted from herbicide applications on agricultural lands, as well as other sources.
In addition, other commenters stated that Oregon does not have sufficient programs in place to monitor pesticide use and impacts. They argued that unknown and unmonitored uses, along with unmonitored health and environmental risks associated with pesticides contribute to the inadequacy of Oregon's program. While another commenter contended that because most risk assessments for pesticides are based on old and incomplete data and endpoint evaluations, pesticide management measures should require re-evaluations of endpoints and health and environment impacts. In addition, they believed that risk assessments should also include testing of inert ingredients found in pesticide products.

One commenter also stated that NOAA and EPA's rationale for agriculture in the proposed decision document does not make any findings about the adequacy of Oregon's program to protect water quality and designated uses from pesticides applied to agricultural lands.

However, not all commenters believed Oregon's agriculture pesticide management program was inadequate. Other commenters stated that Oregon does have appropriate management practices and rules in place. A commenter pointed out that Oregon law already encompasses all 6217(g) requirements for pesticide management. All landowners are required to follow pesticide label requirements under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") and follow ODA's pesticide rules. These rules, coupled with the state's Pesticide Stewardship Program, CAFO, and AWQMA Programs allow the State to address any agricultural pesticide issues. In addition, a commenter mentioned that the AWQMA Program's site capable vegetation requirement for riparian areas filters pesticides from runoff before they enter waterways. Also, because applying pesticides costs money, farmers have an economic incentive to use them judiciously and keep pesticides where they are applied.

Source: 28-D, 38-A, 46-H, 54-B, 54-D, 54-G, 54-H, 54-L, 54-M, 54-N, 54-O, 54-P, 54-Q, 54-R, 54-S, 57-GG, 57-HH, 58-G, 59-A, 71-AH, 71-AI, 71-AJ, 71-AK, 72-A, 81-B, 83-A, 83-E, 83-M

Response:

I. Combined Animal Feeding Operations

Comment: A few commenters expressed concerns with Oregon's track record at regulating livestock practices. They suggested that Oregon does not even have agriculture management measures in place to adequately regulate combined animal feeding operations (CAFOs). One commenter suggested additional agriculture management measures were needed to improve permitting, monitoring, and relocation of CAFOs.

One commenter pointed out that enforcement of CAFO and other livestock management measures is is problematic in Oregon. Inadequate enforcement contributes to degraded water quality. For example, commenters referenced many examples of actual water pollution from livestock, including fecal waste from cows floating in waterways. They described instances where complaints against CAFOs have been submitted repeatedly to ODA but they received no response or resolution to their complaints.

On the other hand, other commenters explained that Oregon's existing requirements relating to managing CAFOs are adequate at maintaining water quality and disagreed that additional management measures are needed. They stated that ODA's rules require landowners to evaluate fertilizer efficiency, assess the layout of their farms and storage facilities, locate potential areas where runoff could contact nutrient carrying substances and relocate or avoid placing storage there.

In addition, they stated that CAFOs are subject to state-wide NPDES permits and are therefore exempt from 6217(g). Moreover, they contended that landowners still go beyond what is required in the 6217(g) CAFO management measures by ensuring there is no discharge to water; runoff is stored and covered; and waste and runoff nutrient levels, temperature, amount of time stored, and time and quantity of land application of manure at agronomic rates are measured and monitored.
Source: 15-F, 15-H, 60-C, 71-Y, 71-Z, 71-AE, 81-B

Response:

J. Agriculture Grazing Management

Comment: A few commenters provided comments specifically on the adequacy of Oregon's Coastal Nonpoint Program in addressing the 6217(g) grazing management measure. Several commenters believed the 6217(g) management measures, themselves, were flawed and did not provide adequate protection of water quality. They stated that as written, the grazing management measure allows for broad interpretation that can result in the adoption of ineffective grazing management approaches that do not protect or restore riparian vegetation and do not provide stream shading, as they believed was the case in Oregon. For example, they did not believe the 6217(g) management measure requirement to provide salt and water for livestock away from riparian zones was effective. In addition, the commenter criticized the 6217(g) measure for not requiring a halt to grazing in riparian areas during the summer.

However, other commenters supported Oregon's grazing practices. They felt the AWQMA Program is consistent with the 6217(g) grazing management measure and protects stream banks and water sources from grazing activities. They point out that AWQMA rules limit the amount of time livestock have access to waterways. In addition, the rules do not allow agricultural activities, including grazing, to inhibit the growth of site capable of riparian vegetation. If there a violation of this restriction, livestock would need to be removed or managed more appropriately.

Source: 57-YY, 71-AG, 71-AH, 71-AI

Response:

K. Need for Additional Management Measures for Agriculture

Comment: Multiple commenters noted that Oregon needed to implement additional management measures for agriculture to meet water quality standards and to protect designated uses. One commenter specifically asserted that the existing agriculture management measures do not protect waterbodies from temperature pollution. They stated that temperature pollution is the most pervasive water quality problem in coastal lowland streams and that elevated temperatures can also impact salmonid productivity. They concluded that it is very likely agriculture activities are contributing to temperature standard violations because for most TMDLs, the allowable temperature increases for nonpoint source pollutants is zero. They stated that none of the AWQMA rules for Oregon coastal watersheds, incorporate additional management measures needed to meet the zero load allocations established in the temperature TMDLs.

Commenters suggested specific additional management measures to protect water quality. For example, to address temperature pollution, several comments reflected that minimum riparian buffer widths need to be established. One commenter stated that published literature suggested that the minimum width should be no less than 100 feet (30 meters) and that greater than 100 foot buffers may be needed in certain areas, such as low gradient meandering channels that are adjacent to designated critical habitat for listed species. Another commenter believed that specific height and density requirements also needed to be established for riparian vegetated buffers.

Other additional management measures that commenters identified included: adopting better pesticide management; fencing streams and riparian areas to reduce impacts by livestock; improving permitting, monitoring and relocation of CAFOs; and adopting regulatory provisions to promote the establishment of riparian vegetation in critical habitat areas and the reintroduction of beaver in suitable locations.

On the other hand, several other commenters asserted that additional management measures for agriculture were not needed. The commenters noted that EPA and NOAA have not provided specific data or information that would support the need for additional management measures. They also noted that CZARA does not require states to implement specific practices, such as specific requirements for agricultural riparian buffers or the restoration of lands to pre-agricultural uses.

In addition, they assert that CZARA does not give NOAA and EPA the authority to place specific additional management measure requirements on a state's program. Rather, they state that the CZARA guidance notes that it is the state's responsibility to identify when, where, and what additional management measures are needed. (See discussion under General-Additional Management Measures for response to this specific comment).

Source: 15-H, 23-B, 44-C, 44-F, 47-B, 56-M, 57-CC, 57-EE, 57-GG, 57-XX, 60-A, 60-E, 64-E, 66-E, 68-E, 71-E, 71-H, 71-I, 84-I

K. Economic Achievability of Agriculture Management Measures

Comment: A few commenters emphasized that CZARA requires that all management measures must be "economically achievable" (Section 6217(g)(5)). Therefore they asserted that it would be inconsistent with CZARA to require landowners to implement management measures that are not "economically achievable." They stated that Oregon's AWQMA Program is rooted in implementing economically

achievable agriculture practices, consistent with CZARA statutory requirements. On a related note, another commenter also stated that the more voluntary-based approaches, backed by enforceable authorities, Oregon employs to support implementation of its 6217(g) agriculture management measures are more cost-effective because they allow the landowner the flexibility to select the right best management practice for his or her specific site conditions.

Sources: 64-E, 64-I, 66-E, 66-I, 68-E, 68-I, 71-H, 84-L

Response:

L. Addressing Agriculture Legacy Issues

Comment: A few commenters expressed their concern about legacy agriculture issues, such as where riparian vegetation may have regrown on former agricultural land but is comprised largely of invasive species (i.e., blackberry brambles) and does not provide sufficient protection of stream water quality or create quality habitat. They criticized the AWQMA Program as not doing enough to address legacy issues. They stated that the AWQMA Program does not require active restoration--only removal of current practices that impair restoration. The commenter contended that this creates a gap that must be addressed if Oregon is going to meet its water quality standards. They believed that Oregon needed to adopt additional management measure requirements to address this legacy issue.

Another commenter believed ODA has the authority needed to take action against legacy issues, they did not believe the agency had the political will to do so.

Several other commenters opposed the statement NOAA and EPA made in the proposed decision findings that AWQMA planning and enforcement does not address "legacy" issues created by agriculture activities that are no longer occurring. They stated that neither CZARA nor the 6217(g) guidance define legacy issues or require that state coastal nonpoint programs to address legacy issues. They asserted that nothing within CZARA indicated Congress ever intended for states to consider "legacy" issues through their coastal nonpoint programs.

They stated that even though there is no CZARA requirement to address legacy agriculture issues, Oregon does have a process in place to identify opportunities to enhance and restore watersheds, including address "legacy" agriculture issues. They assert state addresses these issues through the Oregon Plan for Salmon and Watersheds, the Oregon Aquatic Habitat Restoration and Enhancement Guide, the Oregon Watershed Enhancement Board riparian restoration projects, AWQMA plans, and many other federal, public and private partnerships. the still invests money to address these issues. The commenter states these programs are successful due to the voluntary efforts of many Oregon agriculture landowners.

Another group contended that NOAA and EPA contradicted themselves in regard to legacy agriculture issues in the proposed decision document. They noted the federal agencies made a finding that legacy effects were not addressed through existing regulatory tools but then concluded that agriculture plans were a regulatory mechanism to address past actions that are the primary cause of eroding stream banks.
Source: 15-H, 44-F, 55-I, 57-X, 71-T, 80-I, 84-J, 84-K

Response:

M. Effectiveness of Existing Monitoring and Tracking Programs for Agriculture

Comment: Several commenters expressed their concern with Oregon's existing monitoring and tracking efforts to evaluate the effectiveness of its agriculture programs. They did not believe they were sufficient to understand how well existing management approaches are being implemented, how effective those approaches are at protecting and restoring water quality, and when adaptive approaches are needed. A few commenters did acknowledge that ODA's new strategy for more targeted water quality monitoring is a step forward, but they also believed a more robust monitoring and tracking program was needed for agriculture. One commenter asserted that a State independent science team found ODA's proposed monitoring plan lacked detail and focus and lacked an understanding of basic monitoring.

Several commenters specifically stated that ODA does not effectively track implementation and effectiveness of AWQMA plans. A commenter suggested that Oregon needed to include an overall compliance strategy to ensure that AWQMA plans and rules are adequately implemented to meet TMDL load allocations and water quality standards. They added that there must be a policy and proactive process to assess AWQMA plan and rule implementation and for taking appropriate enforcement action when violations occur.

Another commenter stated there was a significant gap in the existing science to understand the effectiveness of Oregon's agricultural practices in protecting water quality and designated uses. They noted that the State cannot move forward with stronger agriculture regulations without first having a good understanding of how its existing programs are falling short and what improvements are needed to ensure water quality standards are being met.

On the other hand, other commenters believed the State's existing monitoring and tracking efforts were effective at assessing implementation of agriculture practices. Specifically they noted that biennial reviews of the AWQMA plans, with about 18 reviews done each year, provide a way to track plan implementation. They also highlighted the State's efforts to develop a more formalized evaluation processes through the Strategic Implementation Areas and Focus Areas process to target priority areas and issues. They also stated the State's new Enterprise Monitoring Initiative, which began in 2012, monitors waterways passing through agriculture lands and can be used to inform the effectiveness of the AWQMA program.
In addition, a commenter asserted that most ambient water quality monitoring in the coastal region reported fair to excellent water quality and sites with poor conditions were not due to agriculture activities.

Source: 46-H, 49-I, 53-E, 53-H, 54-R, 55-G, 55-H, 57-11, 70-B, 70-F, 70-K, 70-L, 71-O, 71-S, 71-Z, 72-A, 73-A, 78-H, 79-I, 80-F, 80-G

Response I.9

XI. HYDROMODIFICATION

Comment: A couple of commenters discussed the negative impacts of hydromodification, noting the effects of dams on water quality and habitat and impacts from channel modification. They declared that Oregon has failed to control polluted runoff from eroding stream banks and shorelines and it does not have programs in place to protect and restore channel conditions from modification.

Source: 46-H, 49-F

Response:

XII. WETLANDS

Comment: One commenter noted that Oregon does not have programs in place to protect and restore riparian areas needed to maintain cool stream temperatures and habitat or to protect and restore wetlands.

Source: 49-F

Response:

OTHER COMMENTS—NOT RESPONSIVE?

The Public Comment Period

Comment: One commenter questioned why NOAA and EPA requested public comment on their proposed decision. They noted public comment was needed as long as the federal agencies' decision and analysis is based on established criteria and valid science which they believed to be the case.

Source: 15-B

Response:

Importance of Beavers

Comment: One commenter expressed their concern over diminishing beaver because they are being trapped and hunted out. They note that beavers play an important role in maintain natural stream channels, wetlands, and complex floodplains.

Source: 44-G

Response:

Proposed Decision Exceeds NOAA and EPA's Authority

Comment: One commenter noted that the Federal Government places too many regulations on the states, private property owners, and individuals and that NOAA and EPA exceeded the limits defined by the U.S Constitution. The commenter suggested that Congress should remove the budgets for NOAA and EPA and return those funds back to the state.

Source: 29-A

Response:

Summary of NOAA and EPA Response to Comments Regarding the Agencies' Proposed Finding that Oregon has Failed to Submit a Fully Approvable Coastal Nonpoint Program

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I. GENERAL COMMENTS

A. Proposed Decision

Comment: The majority of commenters supported NOAA and EPA's proposed finding that Oregon has failed to submit a fully approvable coastal nonpoint program under Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA). In addition to specific concerns addressed in other sections below, commenters noted that 16 years after receiving conditional approval for its coastal nonpoint program, Oregon still does not have an adequate program in place to control polluted runoff to coastal waters and protect designated used, nor has the state adopted additional management measures for forestry where water quality impairments and degradation of beneficial uses attributable to forestry exist despite implementation of the (g) measures. Commenters also noted that the state failed to follow through on its 2010 commitments to NOAA and EPA—commitments NOAA and EPA used to inform their settlement agreement deadlines with the Northwest Environmental Advocates—to address three remaining conditions on its program related to new development, septic systems, and forestry by March 2013.

While some commenters agreed that Oregon did need to do more to improve water quality, they did not agree with NOAA and EPA's proposed decision because they opposed withholding federal funding under CZMA Section 306 and CWA Section 319, two programs that help to improve water quality and restore habitat. A few commenters noted NOAA and EPA should continue to work with Oregon to improve its water quality programs and that the state just needed additional time to meet the CZARA requirements.

Other commenters opposed NOAA and EPA's proposed finding. Generally, they stated Oregon did have adequate programs in place to meet, or in some cases exceed, the CZARA requirements and control polluted runoff. More specific comments are discussed in sections below.

Source: 1-C, 2-B, 4-A, 5-A, 8-B, 9-A, 13-A, 14-A, 14-C, 15-A, 16-B, 17-A, 19-B, 22-A, 22-C, 23-A, 24-A, 25-A, 25-B, 26-B, 28-A, 30-A, 30-B, 30-H, 31-A, 33-A, 33-B, 34-A, 35-A, 36-A, 36-B, 36-C, 37-B, 37-C, 37-D, 40-A, 41-A, 42-A, 42-B, 43-A, 44-A, 44-B, 46-A, 47-A, 48-B, 49-A, 53-A, 52-A, 54-A, 55-B, 56-C, 57-A, 64-B, 64-D, 66-B, 66-D, 68-B, 68-D

Response: NOAA and EPA appreciate the many comments received in response to the federal agencies proposed decision to find that Oregon has failed to submit an approvable program. After carefully considering all comments received and the state's March 20, 2014, response to the proposed decision, NOAA and EPA continue to find that Oregon has failed to submit an approvable program. As described more fully in the final decision memorandum, although Oregon has made tremendous progress in addressing many of the original conditions placed on the state's program, the state has not satisfactorily met the conditions related to **** [add statement of where Oregon's program falls short]. Therefore, NOAA and EPA find that the state has failed to submit a fully approvable program under Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA).

Per the statute, beginning with FY 2015 federal funding, NOAA will withhold 30 percent of funding for Oregon under Section 306 of the Coastal Zone Management Act that supports implementation of the state's coastal management program and EPA will withhold 30 percent of funding for Oregon under Section 319 of the Clean Water Act that supports implementation of the state's nonpoint source management program.

Although some commenters would prefer NOAA and EPA provide Oregon with additional time to develop a fully approvable program and not withhold funding to the state, NOAA and EPA do not have that flexibility based on the statute and the settlement agreement with the Northwest Environmental Advocates. The Northwest Environmental Advocates sued NOAA and EPA in 2009 challenging the agencies' joint administration of Oregon's coastal nonpoint program. The plaintiff's primary argument was that NOAA and EPA failed to take a final action on the approval (without conditions) or disapproval of Oregon's coastal nonpoint program, and withhold funds from Oregon for not having a fully approved program. NOAA and EPA settled the lawsuit in 2010 and agreed make a final decision on the approvability of the program by May 15, 2014 (extended to January 30, 2015 based on the volume of public comments received).

B. State Legislature Has Been Obstructing ODEQ's Ability to Make Changes

Comment: One commenter stated that the Oregon Department of Environmental Quality has been working hard to get the improvements needed to improve water quality and meet all coastal nonpoint program requirements. However the State Legislature has been obstructing ODEQ's progress and is the one that needs to take action.

Source: 25-C

Response: NOAA and EPA have been working closely with DEQ, DLCD, and other agencies to develop the state's coastal nonpoint program. The federal agencies' final determination on Oregon's program is not based on whether or not any state entity has been reportedly "obstructing" progress.

C. Federal and State Governments Have Responsibility to Manage Waters

Comment: One commenter stated that the Federal and state governments have a responsibility to manage waters in the public trust for maximum long-term benefit for current and future generations. They noted this was not being done.

Source: 22-C

Response: Federal and state governments do have a responsibility to manage public waters for current and future generations. That is why NOAA and EPA are using the authority they have under CZARA to find that Oregon has failed to submit an approvable coastal nonpoint program and withhold funding from the state under Section 306 of the CZMA and Section 319 of the CWA.

II. FUNDING

A. Impacts of Withholding Funds

Comment: Commenters recognized that withholding funds under Section 306 of the Coastal Zone Management Act (CZMA) and Section 319 of the Clean Water Act (CWA) could negatively impact the state's ability to improve quality and support beneficial programs such as Total Maximum Daily Loads (TMDLs), Oregon Watershed Enhancement Board (OWEB) watershed planning and restoration projects,

local land use planning, and the provision of technical assistance to coastal communities to help them address pressing coastal management issues such as coastal hazards, stormwater management, and growth management. A few commenters were against NOAA and EPA withholding funds from these programs because they felt withholding funding from two important programs for addressing polluted runoff and coastal habitat issues in the state would be counterproductive and would likely not result in the policy and programmatic changes NOAA and EPA seek. Others noted that withholding funding would hurt two state programs and agencies, Oregon's Coastal Management Program in the Department of Land and Conservation and Development and Oregon's Nonpoint Source Management Program in the Department of Environmental Quality, that have very little (if any) influence over the most significant remaining issues (i.e., forestry and agriculture). Some commenters also noted that withholding funds would negatively impact coastal communities and watershed groups that also rely on this funding from NOAA and EPA.

Other commenters supported withholding funds even though they acknowledged it may have some negative impacts initially. They saw withholding funding as the only way to get action in the state to improve water quality and protect designated used. One commenter also noted that NOAA and EPA's failure to withhold funding sooner allowed Oregon to limp along for over 16 years with inadequate management measures for its coastal nonpoint program while drinking water and other water quality impairments occurred.

Source: 1-C, 5-A, 8-B, 14-C, 16-B, 17-A, 25-A, 25-B, 25-D, 25-E, 25-F, 33-A, 33-B, 36-A, 36-B, 36-C, 37-B, 37-C, 37-D, 43-A, 48-B, 55-B, 64-B, 66-B, 68-B,

Response: NOAA and EPA recognize that withholding funding under Section 306 of the CZMA and Section 319 of the CWA could make it more difficult for Oregon to maintain the same level of effort on key programs that help improve water quality and protect salmon habitat, such as the state's coastal management, TMDL, and nonpoint source programs. However, the penalty provision in CZARA was designed to provide a financial disincentive to states to encourage them to develop fully approvable coastal nonpoint programs to provide better protection for coastal water quality. The statute directs NOAA and EPA to withhold funding when they find a state has failed to submit an approvable coastal nonpoint program which Oregon has done. NOAA and EPA will continue to help Oregon direct some of its remaining federal CWA Section 319 and CZMA Section 306 funding, and other federal funding sources, as appropriate, to develop a fully approvable coastal nonpoint program so that the funding reductions from the penalties can be eliminated as soon as possible.

B. Oregon Stands to Lose $4 million in Federal Funding

Comment: Several commenters stated that if NOAA and EPA's proposed finding that Oregon has failed to submit a fully approvable coastal nonpoint program stands, Oregon would lose $4 million in federal funding.

Source: 1-C, 14-C, 43-A

Response: NOAA and EPA would like to correct this statement. Oregon only stands to lose $4 million in federal funding if it continues fail to submit an approvable coastal nonpoint program. Based on current appropriations, that would not occur until ***. Each year, beginning with federal FY 2015, Oregon fails to submit an approvable program, the state will lose 30 percent of the state's allocation under Section

306 of the CZMA and Section 319 of the Clean Water Act. For FY 2015, that is only about $*** in federal funding (a loss of $*** for $** for CZMA Section 306 and $** for CWA Section 319).

III. AUTHORITIES UNDER THE COASTAL ZONE ACT REAUTHORIAZATION AMENDMENTS (CZARA)

A. Suitability of Voluntary Approaches Backed By Enforceable Authorities

Comment: Several commenters noted that CZARA requires coastal states to have enforceable mechanisms for each management measure. They were not satisfied with the voluntary approaches Oregon was using to address many CZARA management measure requirements. They noted that the voluntary approaches were not being adhered to and that Oregon was not using its back-up authority to enforce and ensure implementation of the CZARA management measures, when needed. A few commenters also noted that Oregon has not described the link between the enforcement agency and implementing agency and the process the agencies use to take enforcement action when voluntary approaches are not adequate to protect water quality. Another commenter noted that voluntary approaches will not work and that the state needed to adopt approaches that could be enforced directly.

Source: 15-C, 15-D, 16-A, 28-E, 30-O, 46-H, 49-J

Response:

B. Federal Government Taking Over Oregon's Coastal Nonpoint Program

Comment: One commenter noted that NOAA and EPA have an obligation to step in for Oregon and take over its coastal nonpoint pollution control program since the state lacks the will to address its polluted runoff issues.

Source: 55-C

Response: Unlike some of the EPA water quality programs under the Clean Water Act, like the National Pollutant Discharge Elimination System (NPDES) Stormwater Program, CZARA provides for exclusive state and local, not federal, decision-making regarding the specific land-use practices that will be used to meet the coastal nonpoint program management measures. The act does not provide NOAA or EPA with the authority to take over, or implement, a state's coastal nonpoint program if the state fails to act. The law

C. Oregon Needs More Time to Develop Its Coastal Nonpoint Program

Comment: A few commenters stated NOAA and EPA should give Oregon additional time to develop a fully approvable coastal nonpoint program. They noted that developing a program and addressing the remaining conditions NOAA and EPA placed on the state's program is very challenging and that the state has made significant progress since gaining conditional approval. They also noted that the state is

continuing to make additional improvements, such as the rulemaking process to achieve better riparian protection for fish-bearing streams the Oregon Department of Forestry and Board of Forestry is currently undertaking, but that the state needs more time before the new rule is adopted.

A few other commenters noted that Oregon has had plenty of time since receiving conditional approval for its coastal nonpoint program in 1998 and that water quality is no better now that it was 16 years ago.

Source: 14-D, 33-C, 28-F

Response: NOAA and EPA have already provided Oregon sufficient time to develop a fully approvable coastal nonpoint program. Per a settlement agreement with the Northwest Environmental Advocates, the federal agencies must make a final decision by May 15, 2014, (subsequently extended to January 30, 2015, based on the numerous public comments received), regarding whether or not Oregon has failed to submit an approved (without conditions) coastal nonpoint program.

CZARA, passed in 1990, provided all coastal states participating in the National Coastal Zone Management Program 30 months after the date (January 1993) EPA published the final program guidance to submit a coastal nonpoint program for approval. The statute also stated NOAA and EPA shall withhold funding from CZMA Section 306 and CWA Section 319, respectively, beginning as early at 1996 if the agencies found a state had failed to submit an approvable program.

Recognizing the complexities involved in developing a coastal nonpoint program and the time involved to develop programs, backed by enforceable policies, to implement the 56 management measures, NOAA and EPA initially approved all state programs, with conditions, they needed to address. NOAA and EPA also additional guidance memos notes that if NOAA and EPA find the state has failed to submit an approvable programs as early as 1996,

D. CZARA Requires State to Address Issues that are Out of Its Control

Comment: One commenter disagreed with the Coastal Nonpoint Program regarding its requirement that states have to meet all CZARA management measures. They noted that some measures, such as onsite sewage disposal systems, are often addressed at the local level, and therefore, outside of the state's jurisdiction.

Source: 10-B

Response: NOAA and EPA do not agree that states should not be required to meet the onsite sewage disposal system (OSDS) management measures because they are often addresses at the local level. The CZARA statute requires all coastal states participating in the National Coastal Zone Management Program to develop coastal nonpoint programs that "provide for the implementation, at a minimum, of management measures in conformity with the guidance published under subsection (g)…" (See Section 6217 (b)). The 1993 guidance EPA developed to comply with subsection (g), *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters*, outlines two management measures related to new and existing onsite sewage disposal systems (OSDS) that states must address.

NOAA and EPA recognize that local governments often play a significant role in managing OSDS. Recognizing this, the federal agencies have accepted a variety of approaches states use to meet these

management measures that have relied on direct state-level authority, a mixture of state and local-level authorities, or state-led voluntary approaches backed by enforceable authorities. As NOAA and EPA's 1998 conditional approval findings and 2015 decision memorandum describe, Oregon satisfies the OSDS management measures through a combination of direct state authorities and arrangement with the Relators' Association to promote voluntary inspections at the time of property transfer.

E. NOAA and EPA are Holding Oregon to a Higher Standard

Comment: One commenter stated NOAA and EPA were holding Oregon to a higher standard than other states. Raising the approval threshold for Oregon compared to other states was unfair to Oregon. NOAA and EPA should focus on helping Oregon meet the previously established minimum standards for other state coastal nonpoint programs rather than requiring Oregon to meet a higher bar.

Source: 10-A

Response: NOAA and EPA are not holding Oregon to a higher standard than other states. The CZARA statutory requirements and 6217(g) guidance that is the federal agencies used to evaluate Oregon's program are the same that is used to evaluate every other states' program. Oregon, along with Washington and California, did receive conditions placed on their programs requiring the states to develop additional management measures for forestry that went beyond the basic CZARA 6217(g) forestry management measures. This was done in recognition of salmon and the more stringent water quality requirements they required. Even though the three Pacific Northwest states had programs in place to satisfy 6217(g) forestry management measures, impacts to salmon and salmon habitat were still occurring due to forestry so additional management measures for forestry were needed.

Comment [AC1]: Not sure how much we want to get into the add MM for forestry issue here. The add MM for forestry requirement for OR is much more specific than those for WA and OR so many could say that that was holding OR to a higher standard?

Ex. 5 - Deliberative

Oregon, however, is the only state where NOAA and EPA have been sued over the agencies' ability to conditionally approve a state's coastal nonpoint program. That lawsuit was settled and EPA and NOAA entered into a settlement agreement with the plaintiff which requires NOAA and EPA to meet certain deadlines that do not apply to other states. The settlement agreement requires EPA and NOAA to make a final decision on the approvability of Oregon's program by May 15, 2014 (extended to January 30, 2015, due the number of public comments received).

F. Need to Take a Tailored Approach to NPS Control

Comment: A few commenters were concerned that NOAA and EPA were applying a one-size-fits all approach to addressing nonpoint source pollution in Oregon by requiring the state to meet specific national management measures. They felt that a more tailored approach that considers Oregon's specific circumstances would be more appropriate.

Source: 8-C, 10-E

Response: By its nature, CZARA gives states great deference to develop programs that are consistent with the broad national 6217(g) management measure requirements yet are tailored to meet the state's specific circumstances. Section 6217 does not provide NOAA or EPA with authority to require states or local governments to take specific actions to address coastal nonpoint source pollution. Rather, NOAA

and EPA work with the state to find the best approach for each state yet is consistent with the overarching CZARA requirements.

As required by section 6217 (g), EPA published, *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters*. The guidance specifies 56 management measures that form the core requirements of a state's coastal nonpoint program. While the guidance establishes baseline standards for addressing broad categories and sources of nonpoint source pollutants, there are many different approaches states, like Oregon, can (and have) taken to be consistent with the overarching 6217(g) management measure requirements.

NOAA and EPA have suggested various approaches Oregon could take to meet the 6217(g) management measures but the decision regarding the specific land-use practices that the state uses to meet the measures rests with the state. For example, Oregon originally proposed to address the condition on its program about ensuring routine inspections of existing onsite sewage disposal systems with a rule change that would have required inspections at the time of property transfer. When the rule change did not pass, NOAA and EPA worked with the state to come up with a suitable alternative that involved working with the Realtors' Association to develop a voluntary point of sale inspection program that was backed by enforceable authorities that would satisfy the 6217(g) management measure (see decision rationale for additional details).

G. Coastal Nonpoint Program Needs to Address Climate Change

Comment: One commenter noted that Oregon's Coastal Nonpoint Program needs to address climate change; water shortages and toxins will become even more pressing issues as the climate continues to change.

Source: 50-A

Response: Climate change is an important issue facing coastal states and can have an impact on coastal water quality. NOAA and EPA take climate change very seriously and are involved in a number of initiatives to help states and other entities become more resilient to climate change. For example through the National Coastal Zone Management Program NOAA has been providing financial and technical assistance to Oregon to encourage local governments to incorporate hazards and climate change considerations into their local comprehensive plans. Specifically, NOAA and Oregon have been working with local governments to plan for and reduce exposure to climate-related natural hazards in Oregon's coastal zone. Also, through *** EPA [provide a specific example of how EPA is working with Oregon to be more resilience to climate change?]

However, CZARA, does not have any specific requirements for states to address climate change through their coastal nonpoint programs. When approving state coastal nonpoint programs, NOAA and EPA must make sure each state satisfies the requirements laid out in the 1993 *Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters,* developed pursuant to Section 6217(g). The 1993 guidance only contains a few mentions of climate change in the discussion of several suggested best management practices a state could employ to implement the management measure. The discussion for the new onsite sewage disposal system management measure mentions that the rate of sea level rise should be considered when siting onsite sewage disposal systems and the discussion for the stream bank and shoreline erosion management measure notes that setback regulations should

recognize that special features of the streambank or shoreline, may change, providing an example of beaches and wetlands that are expected to migrate landward due to rising water levels as a result of global warming. However, none of these are required elements for a state's coastal nonpoint program.

IV. GENERAL—WATER QUALITY, MONITORING, AND ENFORCEMENT

A. Status of Oregon Coastal Water Quality Should Inform NOAA and EPA Decision

Comment: Many commenters noted the need for Oregon to do more to improve coastal water quality and designated uses. The fact that many coastal water quality problems in the state still exist demonstrates that Oregon's existing programs to control coastal nonpoint source pollution are inadequate and that the state needs to do more to strengthen its coastal nonpoint program. Specific concerns cited included failure to meet water quality standards, numerous TMDLs for temperature, sediment, and/or toxics, impaired drinking water, and recent federal species listings under the Endangered Species Act for salmon, salmon habitat, amphibians, and wildlife. For example, several commenters cited the recent federal listings for Southern Oregon Northern California Coast coho salmon as illustrative of how salmon populations and habitat have continued to decline, due, in part, to human-related water quality and habitat impairments. Commenters specifically called out activities from timber harvesting, agriculture and urban development as a reason for these impairments.

Comment [AC2]: Add: Oregon fails to ID land sues causing or threatening WQ by ignoring tech info available to ID land uses that consistently cause or contribute to violatins of wqs in coastal watersheds and harm designated uses. 57NN

Several other commenters noted that recent improvements in Oregon's coastal water quality and salmon runs demonstrate that the state's coastal nonpoint pollution control program is effective. One commenter stated that Oregon streams are among the cleanest in the country and provide good water for aquaculture. A few other commenters noted the good work and water quality and habitat improvements made by watershed groups, Oregon Watershed Enhancement Board (OWEB), Soil and Water Conservation Districts, and the voluntary efforts the timber industry and farmers (cattlemen) have implemented on their own. For example, one commenter cited an Oregon Department of Fish and Wildlife study that shows many out-migrating and returning salmon to Tillamook State forest land and described how collaborative restoration efforts of federal, state, county and private citizen groups have effectively worked together to improve the Tillamook watershed. Another commenter stated there was too much focus on the need to see water quality improvements; rather, given the increase in population and other development pressures in recent decades, even maintaining water quality levels should be considered a success.

Source: 1-A, 1-B, 5-B, 8-A, 10-C, 11-A, 14-B, 15-E, 19-B, 19-E, 20-A, 20-D, 22-D, 25-A, 26-A, 28-F, 30-B, 30-I, 30-O, 31-B, 35-A, 35-B, 35-C, 39-A, 42-B, 42-C, 42-I, 43-F, 44-B, 48-C, 56-B, 57-GG, 57-VV, 82-C, 82-E, 83-C, 83-D

Response:

B. Need Improved Water Quality Monitoring

Note: See also specific comments related to Agriculture-Monitoring and Tracking, Pesticides-Monitoring and Tracking, and Forestry-Pesticides.

Comment: Several commenters stated their concern over the inadequacy of Oregon's water quality monitoring programs, especially related to monitoring after aerial application of pesticides and herbicides on forest lands. Commenters noted that Oregon doesn't have monitoring programs in place

to adequately assess whether or not pollution controls are achieving their goals and protecting water quality. Therefore, it is difficult for the state to determine if and when additional management measures are needed as CZARA requires.

Commenters suggested several different monitoring approaches Oregon needed to require and implement in order to adequately protect water quality. These included: requiring turbidity monitoring of streams during and after rainstorms and taking enforcement action when excess turbidity is found; requiring recurrent road surface condition monitoring; requiring more frequent inspections of drinking water, especially when pesticide spraying occurs; and improving upon a recently developed strategy for determining agricultural landowners' compliance with water quality rules.

Several other commenters stated Oregon's monitoring and tracking programs were adequate and touted the State's greater focus on water quality monitoring over the past few years.

Source: 2-A, 30-R, 42-G, 42-H, 46-H, 49-I, 57-BB, 71-??, 84-??.

Response: NOAA and EPA recognize commenters are concerned about the adequacy of Oregon's water quality monitoring programs and that the existing monitoring efforts are not robust enough to observe potential impacts from pesticide application and other land uses and to determine when and if additional management measures are needed. NOAA and EPA also recognize Oregon's efforts over the past few years to improve its water quality monitoring efforts, such as the state's ****.

Comment [AC3]: Will need to revisit this response based on final statements in decision rationale for ag and forestry.

While NOAA and EPA are pleased with the state's renewed focus on monitoring, as noted in several places in the federal agencies' 2015 decision memorandum, there is still room for improvement. NOAA and EPA have strongly encouraged Oregon to further strengthen its monitoring programs, especially related to agriculture and pesticides.

Ex. 5 - Deliberative

C. Enforcement

Comment: One commenter noted that Oregon fails to systematically address water quality standard violations caused by excess sedimentation.

Source: 57-UU

Response D.4: CZARA requires state coastal nonpoint programs need to "provide for the implementation" of the 6217(g) management measures. Therefore, when evaluating whether or not the state has satisfied its CZARA requirements, NOAA and EPA do not consider how well a state is implementing or enforcing its laws and programs that comprise its coastal nonpoint program (or whether or not these programs are meeting water quality standards). For coastal nonpoint program approval, NOAA and EPA only consider whether or not a state has programs and processes in place to meet the 6217(g) management measure requirements.

Evaluating how well a state is implementing is approval coastal nonpoint program comes later. CZARA notes that states shall implement their approved programs through changes to its nonpoint source management plan, approved under Section 319 of the Clean Water Act, and through changes to its coastal zone management program, developed under Section 306 of the Coastal Zone Management Act. Therefore, NOAA and EPA evaluate how well a state is implementing its coastal nonpoint program

through routine assessment mechanisms for the state's Nonpoint Source Management Program and Coastal Management Program.

[Insert something on 319 evaluation mechanisms.]

The CZMA calls on NOAA to conduct routine evaluations of state coastal management programs. During these evaluations, NOAA assesses how well states are implementing their approved coastal management programs, administering federal grant funding under the program, and achieving the goals of the National Coastal Zone Management Program, including "the management of coastal development to improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters" (See CZMA Section 303(2)(c)).

Also, as stated in the introductory chapter of the 6217(g) guidance, *Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters,* the legislative history (floor statement of Rep. Gerry Studds, House sponsor of section 6217) acknowledges that the management measures are based on technical and economic achievability rather than achieving particular water quality standards. The legislative history indicates that implementation of management measures was "intentionally divorced from identified water quality problems because of the enormous difficulty of establishing cause and effect linkages between particular land use activities and specific water quality problems." Therefore, as noted above, under the Coastal Nonpoint Program, NOAA and EPA assess whether or not a state has appropriate technology-based management measures in place, not whether the approaches effectively achieve water quality standards.

If, after implementing the technology-based the 6217(g) management measures, water quality impairments are still occurring, CZARA employs an adaptive approach. The Act also requires states to provide for the implementation of additional management measures within identified areas to address land uses that are either currently causing water quality impairments or where reasonably foreseeable new or expanding land uses could threaten coastal water quality (Section 6217 (b)(3)).

V. CRITICAL COASTAL AREAS AND ADDITIONAL MANAGEMENT MEASURES

A. Process for Identifying Critical Coastal Areas and Additional Management Measures is Not Effective

Comment: One commenter noted that Oregon's process for identifying critical coastal areas and the need for additional management measures, which relies largely on the state's Clean Water Act 303d listing process for impaired waters and TMDL program, is flawed in several ways. Specifically, the commenter notes Oregon's Clean Water Act 303d listing process is not effective. The state fails to meet the 303d list regulatory requirements to "assemble and evaluate all existing and readily available water quality related data and information to develop the list" and the state does not use nonpoint source assessments to develop its 303d lists. The commenter also stated that Oregon ignores a variety of technical information available to help identify land uses that consistently cause or contribute to water quality standard violations. In addition, the commenter noted that Oregon does not use TMDLs to identify critical coastal areas and assess where existing CZARA management measures are not adequate for meeting water quality standards, as required for CZARA approval. They also note that the associated TMDL water quality management plans do not support an effective coastal nonpoint program. For

example, despite the numerous temperature TMDLs that have been developed in Oregon's coastal watershed, they note that load allocations have not been used to determine minimum riparian buffer width, height, or density to achieve the load allocation.

Source: 57-KK, 57-LL, 57-MM, 57-NN, 57-QQ, 57-RR, 57-SS, 57-TT

Response:

B. NOAA and EPA Lack Authority to Require Additional Management Measures

Comment: A few commenters stated NOAA and EPA do not have the authority to require Oregon to develop additional management measures that go beyond the original management measures in the CZARA guidance. [***more details***]

Comment [AC5]: Add comment about authority to require add MMs.

Other commenters noted that CZARA requires Oregon to demonstrate that it has additional management measures in place to meet water quality standards and protect designated uses. The commenters noted that Oregon has not met this requirement since water quality standards are still not being met and designated uses are not being protected. They are supportive of placing additional management measure requirements on Oregon's coastal nonpoint program and suggested specific measures or nonpoint source issues the additional measures needed to address (see specific comments below).

*Source: ***, 15-E, 28-E, 30-B, 30-O, 57-CC*

Response:

VI. PESTICIDES AND TOXICS—GENERAL

Note: NOAA and EPA received a variety of comments related to pesticides. Summaries of the general pesticide comments and the federal agencies' responses are provided here. See Agriculture-Pesticides and Forestry-Pesticides for a full discussion of the comments received related to pesticides.

A. Adequacy of Oregon's Coastal Nonpoint Program to Address Pesticides and Other Toxics

Comment: Several commenters noted that Oregon needs to improve how it addresses nonpoint source pollution caused by toxics, including pesticides, herbicides, and superfund contaminants. Commenters specifically noted they believed there was excessive use of toxic chemicals in agriculture and forestry practices. One commenter was also concerned about superfund contamination impacting shellfish harvests.

Commenters expressed their concerns with the ability of Oregon's existing pesticide management program to protect the quality of water in streams and groundwater as well as protect human health and aquatic species. One commenter supported this statement by citing results from a watershed council herbicide study that found that pesticides used along roadsides, agricultural fields, and forestry operations were all evident in Oregon's waterways. They noted that while applicators may have applied the herbicide correctly, the study demonstrates runoff is still occurring, indicating that the State's rules are ineffective at protecting water quality from herbicide application. Several other commenters also

felt the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), coupled with the state's pesticide rules and its Water Quality Pesticide Management Plan, were insufficient to control polluted runoff from pesticide application to Oregon's coastal waters.

A few commenters also stated that not only do they believe Oregon has weak pesticide laws but compliance with the existing rules is poor. One commenter asserted that evidence suggested that federal label restrictions for Atrazine are not being followed. Other commenters complained about the state's poor record keeping of pesticide application and inadequate notice with spraying would occur near their neighborhoods and homes. In addition, one commenter contended that Oregon's pesticide rules were much weaker compared to neighboring states.

Commenters emphasized the need for greater pesticide protection for all land uses within Oregon's coastal zone, especially for agriculture and forestry practices. In particular, several commenters called out that better controls, including larger buffer requirements, are needed for the aerial application of pesticides and herbicides, especially near streams.

One commenter cited various studies to demonstrate pesticide impacts to human health and the environment from one commonly used herbicide, glyphosate. For example, a few studies in the late 1990s and early 2000s linked exposure to glyphosate to an increased risk of non-Hodgkin lymphoma. Other health effects from exposure to glyphosate described by the commenter included breast cancer, ADD/ADHD, increased risks of late abortion, endocrine disruption, and possible increased risk of multiple myeloma. According to studies from the late 2000s, glyphosate causes altered immune responses in fish, and Roundup, a commonly used glyphosate product, is lethal to amphibians. Other environmental impacts from glyphosate were also described. The commenter contended that these human health and environmental impacts have been attributed to exposure to levels of glyphosate below the EPA set standards. The commenter also stated that studies that show adverse health effects of other formulated glyphosate products.

Other commenters disagreed. The believed Oregon has adequate pesticide controls in place which are consistent with CZARA 6217(g) requirements. Landowners were required to follow the FIFRA label requirements and meet additional state requirements. In addition, the EPA-approved, Oregon Water Quality Pesticide Management Plan provides additional description of the State's approach to pesticide management.

Source: 2-B, 17-C, 32-A, 38-A, 41-A, 46-H, 54-B, 54-D, 54-F, 54-H, 54-I, 54-M, 54-N, 54-O, 54-Q, 54-R, 54-S, 57-GG, 57-HH, 57-II, 57-ZZ, 71-AH, 71-AI, 71-AJ, 71-AK, 81-B, 83-E, 83-M

Response:

- Brief Statement about our decision(s) regarding pesticides for Ag and Forestry (ref decision rationale for greater detail and our authorities under CZARA.
- Acknowledge concern with pesticide use and encouragement to Oregon to continue to strengthen programs.
- NOAA and EPA will continue to work with Oregon within our authorities, to ensure water quality, human health, and aquatic sps. Protection.

- CZARA does not speak to superfund contaminates. Rather superfund contaminants are more appropriately addressed through the Comprehensive Environmental Response, Compensation, and Liability Act (the Superfund Act).

B. Pesticides—Adequacy of Pesticide Monitoring Efforts

Comment: Several commenters noted the need for Oregon to strengthen its pesticide monitoring efforts. They stated that Oregon did not have a program in place to determine if federal label requirements are being followed, nor did it monitor widely and regularly for pesticide runoff. One commenter noted that while unknown and unmonitored pesticide uses are a problem, unknown and unmonitored health and environmental risks from pesticides are also a significant problem.

Commenters discussed various monitoring programs that are needed in Oregon, including programs to: monitor pesticide use and impacts; assess whether pesticide management practices are sufficiently reducing pollution and improving water quality; monitor for pesticides in the air, which eventually deposit onto surface waters and soils; monitor for pesticides in coastal watersheds; monitor for pesticides in surface and drinking waters following an aerial spray event; and track whether federal label laws are being complied with.

One commenter also stated that most pesticide risk assessments are based on old and incomplete data and endpoint evaluations and that these needed to be updated with more current information for a better understanding of the true impact of pesticides and acceptable exposure limits. In addition there was little to no understanding of effects from "inert" ingredients in pesticides. The commenter believed that there needed to be more testing and disclosure of these inert ingredients.

A few commenters objected to NOAA and EPA's statement in the proposed decision document commending the State's Water Quality Pesticide Management Plan and new pilot pesticide monitoring study. They did not think these programs should be praised as part of Oregon's Coastal Nonpoint Program. They did not believe the State's claim that pesticide monitoring would support an adaptive approach and demonstrate when additional controls are needed. They stated that Oregon conducted very little pesticide monitoring to drive an adaptive approach and that none of the pilot monitoring sites are located in the coastal zone.

Source: 54-E, 54-F, 54-S, 57-ZZ,

Response:

VII. NEW DEVELOPMENT

Comment: Many commenters agreed with NOAA and EPA's proposed finding that Oregon has failed to fully address CZARA requirements for new development, specifically that the state has not provided a commitment to use its back-up authorities to ensure implementation of the management measure

requirements when needed. However, a few commenters did not believe Oregon had an effective program to control stormwater runoff from new development and meet water quality standards. They noted that the state needed to do more than the voluntary program described. For example, one commenter noted that the TMDL Implementation Guidance must require (not recommend) DMAs to follow NPDES Phase II requirements for small MS4s. Another option that was suggested was that NOAA and EPA should require the state to incorporate the CZARA new development management measures into an existing NPDES General Permit or craft a new permit.

Not all commenters were supportive of new regulatory requirements to address the new development management measure. For example, one commenter preferred that the state use its existing authorities and stormwater permits more effectively rather than place additional requirements on small cities and counties. The commenter noted that small cities and counties are not the main source of impairment and often lack the technical expertise and financial resources to meet the new requirements. They suggested the coverage for the 1200C NPDES general permit could be expanded by decreasing the acreage threshold for the permit or using an approach similar to the 1200OCS permit used to address water quality problems in the Columbia Slough.

Source: 11-B, 13-B, 15-G, 34-B, 34-C, 34-D, 80-C

Response E.1:

VII. ONSITE SEWAGE DISPOSAL SYSTEMS

A. Adequacy of Oregon's Programs to Meet CZARA Requirements for OSDS

Comment: Many commenters agreed with NOAA and EPA's proposed finding that Oregon has failed to fully address CZARA requirements for existing onsite sewage disposal systems, specifically ensuring routine inspections. While some commenters were supportive of the state's planned outreach efforts to promote voluntary inspections, they agreed with NOAA and EPA that Oregon does not have a tracking program in place to assess the effectiveness of its voluntary program nor has the state demonstrated a commitment to use its back-up enforcement authority to ensure inspections, when needed.

Other commenters were not supportive of Oregon's voluntary approach at all. They felt the state needed to require routine inspections and have more direct enforcement authorities. They noted Oregon's OSDS management program was not sufficient for meeting water quality standards and that enforcement action was minimal for existing leaking septic systems. One commenter noted that Dunes City passed an OSDS ordinance to require routine inspections because previous voluntary approaches did not work. Another commenter was concerned about several communities (Lane County and the City of Florence) allowing septic systems to be cited near lakes.

Source: 11-B, 12-B, 13-B, 15-G, 34-B, 34-5, 35-E, 48-A, 48-K

Response:

B. More Needed to Improve OSDS Management

Comment: A few commenters noted specific actions Oregon needs to take before NOAA and EPA approve the state's programs for meeting the OSDS management measure. Actions include: siting OSDS in locations where they are properly separated from groundwater; restricting system density to reduce nitrate input to groundwater; ensure proper sizing of the system to minimize concentrations of contaminants and prevent hydraulic overloading; requiring mandatory inspections every 3-5 years or at the time of property transfer; requiring mandatory pumping after each inspection whenever needed; establishing a step-by-step program for the state to help homeowners with grants and low-cost loans that need support for pumping or replacing failing systems; and establishing explicit enforcement mechanisms.

Source: 34-E, 48-J, 78-E

Response:

C. Concerned with Sewage Discharge to Waterways During Rain Events

Comment: One commenter noted that some communities, such as Myrtle Point and Powers, discharge sewage during rain events, preventing shellfish harvest.

Source: 17-B

Response:

IX. FORESTRY

A. Impacts of Forestry Industry

Comment: NOAA and EPA received mixed comments on its finding that Oregon failed to submit adequate management measures for forestry. Majority of commenters agreed that existing forest practices do not adequately prevent impacts to water quality or designated beneficial uses (e.g. fish spawning, migration, etc.) and additional management measures are needed. Commenters raised various issues associated with the forest industry. Impacts from clear cutting practices were described as contributing to water quality degradation and landslides. A few commenters discussed their concerns with impacts from logging and clear cutting and provided specific examples of impacts that result from forest roads contributing sediment to streams, landslides from clear cutting, inadequate buffers along streams, and the loss of fish spawning habitat. One commenter pointed out the adverse effects of pesticides on amphibians and crawfish in non-fish bearing streams. While another noted the effects of logging on restoration efforts of the Coho Salmon, citing a NOAA opinion for a potential ESA delisting of Coho Salmon.

Source: 57-F, 57-I, 63-B, 67-E, 67-F, 67-G, 70-C, 75-F

Response:

B. General Effectiveness of Existing Forest Practices and Programs

Comment: Many commenters argued that current land use laws and the Forest Practices Act do not provide sufficient protection of Oregon streams and additional management measures for forest practices are necessary to have an approvable program under CZARA. Some commenters contend that the FPA is inconsistent with water quality standards and CZARA and the Oregon Department of Environmental Quality has failed to use its authority to address these inconsistencies. It was also noted that the lack of political will along with state tax benefits to timber industry contribute to the lack of resources state agencies have to improve degraded water quality. One commenter noted that compliance with forest practices regulations is not equal to compliance with water quality standards, and in most cases, enforcement occurs only after water quality damage has already occurred.

Conversely, a few commenters have argued that existing programs regulating forest practices are consistent with CZARA and that no additional management measures are needed. It was contended that the FPA adequately protects Oregon's watersheds and the Oregon CNP should be approved without conditions. It was noted that the FPA already requires BMP monitoring including pesticide use monitoring, and landslides and public safety monitoring. And based on monitoring results, forest practice rules have evolved and improved over time. One commenter argued that both EPA and NOAA have failed to show that Oregon's forest practices rules do not meet water quality and beneficial use objectives; on the contrary, a "large body of science" demonstrates that Oregon forest practices have a "neutral to positive" effect on aquatic life.

Source: 35-I, 57-D, 57-E, 57-F, 57-G, 57-H, 57-S, 57-V, 57-W, 70-C, 75-E, 75-G, 77-F, 77-G, 79-B, 79-C

Response:

C. Adequacy of Forest Practices Act to Satisfy CZARA Requirements

Comment: One group commented that Oregon's Forest Practices Act "establishes a dynamic program that responds promptly and deliberately to environmental issues as they arise…" The group cited sections of the FPA related to forest practices and water quality. It pointed out that the FPA requires that water resources, including drinking water, be maintained and that BMPs be established as necessary to insure maintenance of water quality standards. The commenter contends that the language of this FPA provision adheres to the CZARA requirement that additional management measures be established to maintain applicable water quality standards. The commenter also noted that the FPA already requires BMP monitoring including pesticide use monitoring, and landslides and public safety monitoring. And based on monitoring results, forest practice rules have evolved and improved over time. The commenter argued that while NOAA and EPA have expressed their concerns about forest roads delivering sediment into streams, they have not cited any sources supporting these concerns.

Source: 77-F, 77-G, 77-M

Response:

D. Forestry Riparian Management

Comment: Many commenters agreed that the State has not done enough to prevent polluted runoff elated to timber harvesting and riparian protection. One comment stated that existing piecemeal approaches are not sufficient. Commenters have expressed their concerns for impacts to fish and drinking water and contend that water quality is and should be a priority for Oregon's watersheds. They argue the State must increase protection for small and medium fish bearing streams and non-fish streams and acknowledge that stream protection proposals have been introduced in the past but have yet to be approved.

Commenters describe how existing riparian buffer rules for these streams are not adequate for ensuring good drinking water quality or protection of fish bearing streams. One commenter pointed out how Oregon is behind California and Washington in regard to setbacks, the notification or application process and consequences for non-compliance. Examples provided by commenters illustrate how existing buffers are too narrow or even non-existent due to clear cutting. One commenter noted the lack of buffers on non-fish streams make sedimentation a constant issue. It was also pointed out that excess sediment entering public waters from logging roads and chemicals (fertilizers, herbicides and pesticides) applied in riparian areas result in carcinogens and other toxins making their way into Oregon's drinking water and fish-bearing streams.

Others agree with the need for additional management measures but contend that the federal agencies need to work with Oregon to address the remaining concerns while keeping in mind the political challenges Oregon faces. The idea was presented that "Thoughtful science" should be provided when addressing these challenges. Moreover, maintaining support of the forest industry is also important for water quality protection.

One commenter contended that additional riparian setbacks would only hurt the logging industry and drive lumber prices up.

Source: 4-C, 13-B, 14-D, 20-B, 24-C, 28-B, 30-E, 30-K, 30-L, 30-M, 35-I, 35-J, 40-A, 43-E, 44-D, 46-C

Response:

E. Forestry Landslide Management

Comment: Some commenters acknowledged that landslides caused by logging practices such as clear cutting are a real problem in Oregon and additional management measures are necessary to address these impacts. It was noted that Oregon does not have sufficient programs in place to control non-point pollution from forestry practices, particularly due to logging on private lands.

Others expressed their disagreement with the federal agencies' recent decision and argued that the evidence provided by the federal entities was misleading, only focusing on "landslide density relationships" rather than considering the "total number of landslides triggered during major storms". If consider the latter, one would see that the "potential increases in sediment delivery to public resources from landslides...is proportionally small". In addition, it was argued that EPA has not offered objective evidence that additional management measures are needed to maintain water quality. It was

recommended that EPA consider a broader scale view over longer timeframes to evaluate whether water quality and designated uses are impaired. The commenter added that the federal agencies have not produced any evidence that landslides resulting from forest management activities have caused exceedances in water quality or negatively impacted aquatic life.

Source: 61-A, 63-B, 67-B, 77-J, 77-K, 77-L

Response:

E. Forestry Road Management

Comment: One group commented that there is no program in place to control non-point pollution sufficiently to meet CZARA and management measures are needed to maintain water quality and protect designated beneficial uses due to logging impacts. Examples of logging roads and associated impacts to watersheds and habitat were noted by various commenters. Speaking to current forest practice rules, another group commented that "generic BMPs" are imposed and are not backed by relevant water quality data and so fail at protecting water quality and beneficial uses. The group added that existing rules for forest roads are vague and prioritize logging over protection of water quality. One argument stated that Oregon's road location rule, which only requires operators to minimize risk to streams rather than requiring them to avoid water quality problems, is not sufficient. Other examples given demonstrating the inadequacies of the current forest practices rules include how they are not designed to eliminate delivery of fine sediment or to ensure that delivery does not impair water quality and they do not require that existing, inactive logging roads or "legacy roads" be brought into compliance with water quality standards.

Another group made the argument that while NOAA and EPA have expressed their concerns about forest roads delivering sediment into streams and have requested that the state enact an inventory and reporting program for forest roads, they have not cited any sources supporting these concerns and have presented no basis for the request. The commenter contends that new rule revisions (2002 – 2003) and success under the Oregon Plan for Salmon and Watersheds were detailed in the State's submission and are evidence that the Oregon Forest Practices Act is working as it should and the Board of Forestry is committed to implement additional management measures for forestry roads as needed. They also note that salmon stocks are recovering.

Source: 57-D, 57-I, 57-N, 57-O, 57-P, 57-R, 57-T, 57-U, 67-B, 75-D, 77-M, 77-N, 77-O, 77-P, 77-Q, 77-P, 77-Q

Response:

F. Forestry Pesticides Management

Comment: Many commenters voiced concerns about pesticide and herbicide use associated with the forest industry in Oregon, especially using aerial spraying as a method of applying these chemicals. Adverse impacts to drinking water sources, designated uses, and habitats were among the list of issues commenters raised. Stories of chemicals used in forest practices found in local streams and in state residents were reported. Some believe that Oregon coastal watersheds are not adequately protected

from pesticides and herbicides. A few noted that existing buffers are ineffective including existing no-spray buffers around fish-bearing streams, which are considered to be too small and non-fish bearing streams are not protected at all. One commenter suggested a pesticide-free buffer around certain land uses such as schools. One commenter discussed how certain herbicide chemical properties allow for them to persist in the environment and are eventually carried downstream to fish. It was noted that not enough is known about the interactions of chemicals when mixed. Moreover, it was expressed that additional research is needed to determine if aerial spraying of herbicides in forest industry is a necessary method of application.

Several commenters sited specific studies or personal observations to support their statements. For example, one commenter referenced a report, *Oregon's Industrial Forests and Herbicide Use: A Case Study of Risk to People, Drinking Water and Salmon*, to explain how "private forestry operations in Oregon operate under antiquated and loose regulations, allowing aerial spraying and unmonitored applications of pesticides as compared to their federal forestry operation and border-state counterparts." They listed specific findings from the report including: (1) There are known endocrine disrupting chemicals entering Oregon's drinking water sources and fish-bearing streams; (2) Oregon does not require a no-spray buffer near homes and schools; (3) Aerial herbicide sprays regularly occur directly over headwaters and tributaries of protected salmon streams; (4) Oregon permits pesticides to be sprayed with only the smallest protective buffer of 60 feet from salmon and steelhead streams—a buffer significantly smaller than other Northwest states with similar forest and river ecosystems; (5) Stricter chemical and pesticide rules apply in neighboring states with heavy forestry industries; (6) Under the current administrative rules, the Oregon Forest Practices Act prohibits researchers, doctors and the public from obtaining accurate information about what types and quantities of herbicides are sprayed.

However, other commenters contended that existing water quality monitoring activities for non-fish bearing streams during and after spraying herbicides has shown no "detrimental impacts" and Oregon continues to support monitoring that would identify potential problems if any arise. The commenter added that there have been changes over the years in chemical labeling and how chemicals are applied to forests. The commenter pointed out that pesticide applicators are licensed and, along with landowners, are already subject to stringent regulations and guidelines under the FPA and FIFRA.

Source: 62-B, 62-C, 69-C, 70-C, 70-D, 70-E, 70-G, 70-J, 72-B, 75-C, 76-A, 76-C, 77-R, 77-S, 77-T, 85-D, 85-E

Response:

G. Inadequate Forestry Pesticide Monitoring

Comment: In addition to their general concern about pesticide use by the forest industry and inadequate riparian buffers when pesticides are applied, several commenters expressed their concern about the inadequacy of the Oregon's water quality monitoring efforts following aerial application of pesticides and herbicides on forestry lands. One commenter stated Oregon has no program to determine the presence of forestry pesticides in the air and resulting in drift and deposition onto surface waters and soils. Commenters gave many examples of how they believe drinking water, human health, and fish and wildlife have been impaired by aerial spraying.

One commenter noted without effective monitoring protocols, the state lacks data to prove aerial application was a problem and improvements were needed. For example, one commenter stated there

was no monitoring of aerial drift even though the Oregon Health Administration said chemicals could drift two to four miles. Another commenter also noted there was little to no coordination between DEQ and ODF on pesticide monitoring. One commenter also questioned NOAA and EPA's praise of Oregon's Water Quality Pesticide Management Plan. They noted that while the state purportedly uses water monitoring data to develop adaptive management approaches, the state actually undertakes very little pesticide monitoring and that there is no evidence the state collects any data in coastal watersheds.

It was pointed out that while NOAA and EPA found state-level frameworks and actions sufficient for addressing pesticide water quality controls, none of the pilot monitoring programs supporting this finding occur in the coastal zone. A commenter also added that the agencies "improperly assume that, should riparian buffer standards for type N streams and monitoring programs within the coastal zone adhere to existing state laws and programs concerning water quality and pesticides, then Oregon's CNPCP would warrant approval." The commenter contended that existing state and federal laws do not sufficiently address a large portion of pesticide application activities and do not collect necessary pesticide application and risk data. Referring to Oregon's Water Quality Pesticide Management Plan, which has a component that relies on monitoring data, a commenter noted that the state does little monitoring of pesticides and there is no indication of data being collected in coastal watersheds.

Source: 30-R, 42-G, 42-H, 46-H, 49-I, 57-II, 70-F

Response:

H. Forestry Clear Cuts

Comment: Commenters expressed their concerns with the clear cutting practice associated with the logging industry. They disagreed with the amount of clear cutting that occurs, including the FPA rule, which allows up to 120 acres. The point was made that the rule did not consider cumulative impacts. Commenters discussed the impacts to water quality associated with clear cutting, particularly when combined with a lack of riparian buffers and sprays. In addition, the problem of clear cutting on steep, erosional slopes, which contributes to landslide problems and further impacts water quality. One commenter argued that clear cutting is not sustainable and Oregon needs to practice sustainable forestry. Commenters provided examples of impacts resulting from clear cutting including extensive clear cutting that has occurred in riparian areas around watersheds, including waterways that provide drinking water, despite having steep slopes and erosive soils; and clear cutting that has occurred in areas with designated spotted owl sites and high risk areas.

Source: 12-A, 40-A, 42-D, 43-D, 53-F. 75-B, 75-C, 75-D,

Response:

X. AGRICULTURE

A. Ability of Oregon's Agricultural Programs to Meet CZARA Requirements

Comment: Some commenters noted that they did not believe Oregon had satisfied the CZARA requirements for Agriculture and the conditions related to the agriculture management measures that NOAA and EPA placed on Oregon's Coastal Nonpoint Program. They noted that Oregon must address impacts caused by polluted runoff from agricultural activities. Various points were made about the inadequacy of the management approaches and programs the state relies on to meet the CZARA requirements (see additional comments related to agriculture below for detailed examples).

Other commenters felt that the State had satisfied the CZARA agriculture management measure requirements and the conditions placed on its program related to agriculture (see additional comments related to agriculture for detailed examples). They stated that finding otherwise would be unreasonable and contrary to CZARA requirements. It would also hold Oregon to a higher standard than other states. Some commenters also contended that if NOAA and EPA find that the State has not submitted an approvable program for agriculture, that decision would punish the agriculture community; they would lose important federal funding that help reduce polluted runoff from agricultural activities.

Source: 5-B, 13-C, 19-C, 44-F, 47-B, 49-G, 56-J, 60-A, 64-A, 64-C, 65-F, 66-A, 66-C, 66-A, 68-C, 71, 84-B

Response:

Main Points to Highlight?

- After careful consideration of all comments, the State's March 2014 submittal, and other information, NOAA and EPA have concluded _____.
- State what our decision is and why we feel that way (or just refer to rationale in decision doc if that will provide sufficient explanation).

B. Extent of Nonpoint Source Pollution from Agriculture

Comment: Several commenters questioned NOAA and EPA's claim in the proposed decision rationale that nonpoint source problems from agriculture are widespread. Commenters stated that agriculture was not the predominate land use within the coastal nonpoint management area. Two different commenters provided statistics on the extent of agricultural land within the coastal nonpoint management area to support this claim. While they presented slightly different statistics (i.e., agriculture land represents only five percent of land use in the coastal zone with pasture/hay use the predominate land use versus 25 percent of land within the coastal nonpoint program area is agriculture but less than one percent of those agricultural lands are used for activities other than pasture/hay) they arrived at the same conclusion. Given that agricultural land comprises a small overall land area and that most of these agricultural lands are used for pasture or hay, potential water quality impacts from agriculture are reduced since there is little opportunity for soil disturbance or nutrient loading from traditional row crops. They contended that most ambient water quality monitoring reports indicate "fair to excellent water quality" and monitoring sites with poor conditions are not due to agricultural activities.

The same commenters did not feel that NOAA and EPA supported their statement in the proposed decision document that water quality impacts from agriculture were widespread. They found fault with NOAA and EPA's sole reliance on NOAA National Marine Fisheries Services' (NMFS) recent listings for

coho salmon and draft recovery plans (both under the Endangered Species Act). One commenter stated that the draft salmon listings and recovery plan findings are based on opinion and anecdotal evidence and are unsupported by scientific fact. Therefore, they requested that NOAA and EPA's references to the coho salmon listings and recovery plan findings as they relate to agriculture impacts to water quality be removed. Another commenter stated that NMFS's listings and plans did not support a conclusion that water quality or designated use impairments due to agriculture are "widespread." For example, the commenter reflected that the NMFS documents do not specify which land use(s) require greater buffers to adequately protect coho salmon.

However, other commenters noted that polluted runoff from agricultural activities was a significant concern and contributed to water quality degradation. They noted that Oregon must address nonpoint source pollution impacts from agriculture. (See also response to "Effectiveness of Oregon's Agriculture Programs for Achieving Water Quality Standards and Protecting Designated Uses" comment.)

Source: 13-C, 19C, 64-H, 66-H, 68-H, 70-O, 71-B, 71-F, 71-M, 84-C, 84-G

Response:

Main Points to Highlight?

- What we believe the science says about the significance of ag runoff/how widespread ag NPS problem is in the coastal mngt area. Cite specific studies to support statements.
- Refute claims about inadequacy of NMFS reports?
- Note that we have revised the ag decision rationale to provide additional support for NOAA and EPA's statements about the extent of ag pollution.

C. Effectiveness of Oregon's Agriculture Programs to Achieve Water Quality Standards and Protect Designated Uses

Comment: Several commenters expressed concern that the approaches Oregon relies on to meet the CZARA agriculture management measure requirements were not sufficient to achieve water quality standards and protect designated uses. For example, several commenters stated that the Agriculture Water Quality Management Area (AWQMA) rules were too vague to ensure water quality standards are achieved. Another commenter called out Oregon's pesticide management practices as being inadequate to meet water quality standards. One commenter stated that ODA publicly acknowledged that even 100 percent landowner compliance with the current AWQMA rules was not sufficient for achieving water quality standards. The commenters concluded that it was important for the state to include agriculture management measures that enable the state to achieve and maintain water quality standards.

Commenters provided several examples of why they believe Oregon's agriculture programs are unable to meet water quality standards and designated uses. One commenter mentioned that Tillamook Bay was closed to shellfish harvesting for 100 days of the year due to polluted runoff from dairy farms. Another commenter stated that Oregon's Water Use Basin Program failed to maintain minimum water flows, which resulted in impairments to water quality and habitat needed for sensitive and endangered species.

Several other commenters, however, stated that Oregon has developed water quality standards designed to protect designated uses (including coho salmon and other endangered or threatened fish species) and that Oregon's agriculture programs, including the AWQMA Program, are designed to ensure agriculture activities do not prevent the State from achieving those water quality standards and protecting species. One commenter cited excerpts from the North Coast Basin AWQMA rule that state, among other things: "No person conducting agricultural land management shall cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means (ORS 468B.025(1)(a))." and " No person conducting agricultural land management shall discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards establish." (OAR 603-095-0840)

Source: 46-H, 57-AA, 57-GG, 57-NN, 65-G, 66-E, 71-N, 78-F, 78-G, 83-G, 84-B

Response:

D. Effectiveness of the Agriculture Water Quality Management Area Program and Plans for Meeting the CZARA Management Measures

Comment: Several commenters expressed concern with Oregon's reliance on the Agriculture Water Quality Management Area (AWQMA) Program to meet the CZARA management measures and address polluted runoff. However, other commenters were supportive of the program and thought it did enable the state to meet its CZARA agriculture requirements.

Commenters who believed the AWQMA Program did not satisfy the CZARA requirements were concerned that the AWQMA plans, which include the CZARA management measures for agriculture in their appendices, are voluntary. One comment cited Oregon statute and rules that state: "The rules adopted under this subsection shall constitute the only enforceable aspects of a water quality management plan" (ORS 568.912(1)) and "Area rules are the only enforceable aspect of an AWQMA plan" (OAR 603-090-000(4)). The commenters were concerned that the AWQMA rules, which provide ODA with enforcement authority for the program, do not include specific requirements consistent with the CZARA 6217(g) management measures that adequately protect water quality. They believed the AWQMA Program was not sufficient for meeting CZARA requirements because management measures must be backed by enforceable authority under CZARA. The CZARA management measures in the appendix of the voluntary plans are not enforceable.

A few commenters who participated in AWQMA planning efforts for several different coastal basins cited personal observations that supported their conclusions that the voluntary AWQMA plans lacked specific requirements to adequately protect water quality. One participant with the Mid-Coast Basin described how the planning team rejected including more specific protections for riparian buffers even though they were aware that water quality problems in the basin, such as temperature increases and bacteria contamination from livestock, were created or being exacerbated because riparian vegetation was inadequate. Another commenter who had experience with the Inland Rogue AWQMA plan stated that what was deemed an inappropriate land use practice was subjective because the plan and rules lacked specific thresholds for what was or was not an inappropriate activity.

One commenter was also concerned that ODA does not have an implementation plan, with interim milestones and timeline, in place to ensure the voluntary actions in the plans occur. Another commenter also called out the State's inability to point to significant achievements of the AWQMA Program to improve agriculture land use practices that have caused or contributed to water quality impairments. They believed that since the AWQMA plans and rules have been in place since 2007, the State should have more to show for the program by now if it was actually achieving its goals to protect and improve water quality.

Several other commenters had a different perspective. They felt that the AWQMA Program does enable Oregon to satisfy the CZARA agriculture management measures and the conditions related to agriculture that NOAA and EPA placed on its coastal nonpoint program. One commenter contended that the AWQMA plans and rules exceed CZARA requirements. The commenters stated the coastal AWQMA plans directly reference the CZARA management measures and that ODA has the authority to require the CZARA management measures and to impose additional measures, if necessary. They believed the AWQMA plans and rules provide sufficient goals, policies, and authorities, to improve water quality within coastal watersheds.

One commenter stated that the AWQMA Program includes many practices that are consistent with (or exceed) the CZARA management measures. For example, the plans and rules ensure animal wastes are placed to avoid impacts to water quality, site capable riparian vegetation is in place to reduce erosion, strict nutrient limits are established for waterways, and livestock access to waterways is limited to protect water quality and streambanks.

A few commenters objected to claims by others that the AWQMA plans and rules do not provide specific practices or requirements, such as set buffer widths. They claimed mandating such specific requirements be included in the plans or rules would be applying a "one-size-fits-all" approach which is contrary to the inherent flexibility CZARA affords. One commenter also stated that neither CZARA nor the 6217(g) guidance prescribes specific agricultural practices through the CZARA management measures.

Some commenters, who included several farmers, described how ODA works with ranchers and farmers to modify, reduce, and remove ineffective agriculture practices. They stated that farmers have worked hard to meet or exceed water quality standards by working with the State to develop AWQMA plans to set watershed goals and prioritize investments to enhance water quality. Farmers noted that they willingly participated in the AWQMA Program and voluntary programs because they had the understanding that the program and their voluntary efforts would meet all federal and state regulatory requirements for agriculture.

Commenters also noted the success of the state's AWQMA Program and voluntary efforts over the years. For example, one commenter stated between 1998-2012, the Oregon Watershed Enhancement Board (OWEB) contributed nearly $18 million to support coastal agriculture projects and Soil and Water Conservation Districts and landowners provided an additional $5 million in-kind support. These efforts restored over 950 linear stream miles and improved agricultural practices that impacted over 2,750 acres of farmland. In addition, the commenter also stated, that landowners voluntarily enrolled thousands of acres of farmland in federal programs designed to improve water quality.

Source: 55-E, 56-J, 57-CC, 57-EE, 64-C, 64-F, 65-B, 65-C, 65-D, 65-E, 65-F, 66-C, 66-F, 68-C, 68-F, 71-A, 71-B, 71-C, 71-G, 71-K, 71-N, 71-P, 71-Q, 71-R, 72-A, 73-A, 78-H, 78-I, 78-K, 84-D, 84-I, 84-N, 84-O

Response I.2:

E. Need for Oregon's Agriculture Programs to Have a Greater Focus on Prevention Rather than Rely on Addressing Water Quality Impairments After They Occur

Comment: A few commenters asserted that the AWQMA Program and plans only focused on areas with known water quality impairments. They felt that the AWQMA Program did not provide sufficient protection of more pristine areas to prevent them from becoming degraded. They stated by focusing on impairment rather than protection, ODA is allowing polluting practices to occur for many years until water quality becomes degraded and is documented through a TMDL. Commenters were also concerned that the AWQMA plans do not require restoration, especially pertaining to riparian buffers surrounding former agricultural sites. (*See also discussion under Agriculture-Buffer and Agriculture-Legacy Issues comments.*)

On the contrary, a few other commenters disagreed with NOAA and EPA's statement in the proposed decision rationale that AWQMA plans focused primarily on impaired areas. They stated that landowners are generally expected to protect water quality, not just impaired waters. They believed that ODA implements controls through the AWQMA Program to address sources of existing impairments as well as prevent polluted runoff elsewhere. One commenter provided a specific example of the North Coast Basin rules (OAR 603-095-0840) to illustrate how the standards address impaired areas as well as provide protection and restoration benefits. Another commenter also felt that ODA was coordinating well with DEQ to ensure continued integrity of the AWQMA Program and plans and ensure that landowners have the tools and adaptive approach to address polluted runoff.

Source: 46-H, 55-F, 80-I, 84-A, 84-D, 84-M, 84-P

Response:

F. Effectiveness of Oregon Department of Agriculture's Enforcement of Agriculture Programs

Comment: Several commenters stated they were concerned with ODA's lack of enforcement of its AWQMA rules and other agricultural rules. Other commenters did not believe there was an enforcement problem. They argued that CZARA does not require states to take specific enforcement action to receive approval. Rather, states only need to have management measures in place, backed by enforcement authority, which they believed Oregon has done.

Commenters that were concerned about enforcement of Oregon's agriculture programs believed Oregon's complaint-driven enforcement approach was not sufficient and that the state was not using its enforcement authorities when voluntary agriculture approaches fail to protect water quality. For example, one commenter, who is an agricultural landowner and a member of an AWQMA local advisory committee, discussed how the committee was informed that the AWQMA plan would be complaint

driven and compliance was voluntary. The commenter questioned the effectiveness of this approach for protecting water quality and designated uses when ODA only issued three fines over the last eleven years.

One commenter felt ODA worked to protect the agriculture industry more than implement the authorities it has to protect water quality. As a result, enforcement was only taken for very egregious cases and even then, it proceeded slowly. Another commenter also stated how difficult it could be to get ODA to take action on a complaint since only signed complaints actually triggered an investigation. Another commenter asserted that polluted runoff from agriculture was difficult to control because most agricultural activities were exempted from the same Clean Water Act standards. Over all, these commenters believed ODA's lax enforcement has allowed agriculture activities to continue to cause and contribute to water quality and designated use impairments.

In addition, one commenter also was concerned that ODA lacks an implementation plan to ensure that voluntary implementation of the AWQMA plans and other voluntary efforts occur. They noted that the implementation plan should include a proactive approach to enforcement (i.e., not rely entirely on a complaint-driven approach) and an enforcement response plan to ensure proper enforcement procedures and corrective actions are triggered when voluntary agricultural efforts are not being implemented or when voluntary approaches are not successfully protecting water quality.

Other commenters provided an opposing view. They argued that most agricultural landowners comply with existing water quality management rules and meet relevant CZARA requirements. They asserted that Oregon has a process in place to effectively address noncompliance issues and that ODA has the ability to enforce the AWQMA program and ensure compliance with water quality requirements.

They refute claims by others that few ODA enforcement actions over the years demonstrate that ODA does not have the ability and/or will to enforce the AWQMA program and ensure water quality is protected. On the contrary, the commenters noted that when a problem is identified, ODA first works closely with the noncompliant landowner to make necessary land use changes voluntarily before turning to enforcement. Therefore, they explained that most issues are corrected before a formal enforcement action is needed. Commenters also highlighted the existing review and monitoring processes ODA has enacted to track program "implementation and effectiveness". (See also discussion for "Agriculture-Monitoring and Tracking" comment.)

As noted above, they also contended that while CZARA requires the State and its agencies to have enforcement authority for the CZARA management measures. One commenter stated that CZARA does not require states to take a certain number of enforcement actions or meet a specific enforcement threshold. They believe that not only does ODA have suitable enforcement authority but the state's July 2013 coastal nonpoint program submission, which provided examples of several agriculture enforcement actions, demonstrates that ODA has used its authority to enforce the AWQMA rules, where necessary and appropriate.

Source: 41-C, 46-H, 53-E, 54-K, 55-I, 55-D, 56-J, 56-K, 78-J, 80-F

Response:

G. Inadequacy of Oregon Water Resources Department's (OWRD) Water Use Basin Program for Meeting Irrigation Management Measure

Comment: One group commented that the Oregon Water Resources Department's (OWRD's) Water Use Basin Program is inadequate for meeting CZARA requirements for agriculture. They suggested that NOAA and EPA were incorrect when finding that OWRD's Water Use Basin Program supports the irrigation measure and reiterated that Oregon's Basin Programs do not ensure that water quality and habitat for sensitive and endangered species will not be impaired. They urged EPA and NOAA to look closely at the deficiencies of the Basin Programs before attributing any water quality or fish habitat protection value to them as a measure in support of Oregon's agricultural conditions. They added that Oregon's rules provide no assurance that water use will be adequately limited to maintain minimum flows and that teh Basin Programs fail, in practice, to protect minimum perennial streamflows and instream rights held by OWRD for the protection of aquatic wildlife and water quality. They concluded that EPA should disapprove Oregon's agricultural measures and acknowledged the lack of protection offered by Oregon's Water Use Basin Programs for preservation of aquatic life and designated uses in the agencies' final determination.

Source: 65-B, 65-C, 65-D, 65-E, 65-F, 65-G

Response:

H. Agriculture Riparian Buffers

Comment: Various commenters noted the importance of, and need for, adequate agricultural riparian buffers along both fish and non-fish bearing streams. They stated the buffers were important to protect water quality, including cold water temperatures needed for the recovery and health of native salmon. The commenters felt that Oregon currently lacks appropriate riparian management practices for agriculture lands to help meet water quality standards and to protect coho salmon, amphibians, and drinking water. In addition, a commenter pointed out that ODA's remote sensing monitoring of riparian areas has shown little improvements in buffers despite implementation of the AWQMA Program and other agriculture programs.

Several commenters provided specific examples of Oregon's poor riparian buffer management. For example, several commenter contended that management measures in Oregon's agricultural plans are deficient to provide protection of stream banks, bank stability, and the destruction of riparian areas by livestock. They explained that stream banks are key to protecting water bodies from elevated sediment delivery that affects levels of turbidity and fine sediment in streams and eroding stream banks contribute to temperature increases, reduce large woody debris to streams, which is critical to salmonid recovery, and contribute to nutrient and pesticide delivery from upslope agricultural activities.

Another commenter spoke about their experience serving as an advisory member to the Mid-Coast Basin AWQMA Advisory Committee during its local area planning in 2009. They explained that when specific buffer proposals were presented to the committee, "All of the specific proposals for riparian protection were rejected by the committee, despite their knowledge of specific water quality problems in the basin created or exacerbated by inadequate riparian vegetation, including stream temperature problems and bacterial contamination from livestock."

A few commenters also discussed how the AWQMA rules do not require active restoration of suitable riparian vegetation. Rather the rules only prohibit agricultural activities from preventing the natural re-establishment of "site capable" riparian vegetation that often results in the establishment of invasive species, like blackberries, along the riparian zone that do not provide the same water quality protection and habitat value as native vegetation.

However, other commenters stated Oregon's current riparian management practices were sufficient for meeting CZARA requirements. Commenters asserted the AWQMA rule did provide for protection of riparian areas and stated that if a violation occurred, i.e. agricultural activities inhibit establishment of riparian vegetation, the livestock would have to be removed or managed appropriately. A commenter provided an example of several North Coast Basin AWQMA rule requirements, such agriculture management activities must be conducted in a way to maintains stream bank integrity through 25-year storm events and minimize the degradation of established native vegetation while allowing for the presence of nonnative vegetation.

The commenter refuted others' claims that the "site capable" vegetation that the rules required was not effective at protecting water quality. They asserted that "site capable" vegetation plays an important role at filtering pesticides from runoff before it enters surface waters. Commenters also pointed out that farmers and ranchers implemented many practices to protect and restore riparian vegetation such as installed miles of piping for livestock watering, and planted and fenced many miles of stream banks. In addition, commenters stated that there is no requirement in CZARA or Section 6217(g) requiring specific riparian buffers on agricultural lands and that NOAA and EPA provided no concrete evidence in their proposed decision document to demonstrate why Oregon needed to improve its management of agriculture riparian buffers to meet CZARA requirements. One commenter did not believe the NMFS reports NOAA and EPA cited in the proposed decision document specified that agriculture land use as a reason better riparian buffers were needed to protect coho salmon.

Source: 15-H, 44-F, 49-G, 55-E, 55-H, 57-SS, 57-XX, 57-YY, 57-ZZ, 71-H, 71-R, 71-W, 71-AI, 71-AJ, 72-A, 78-G, 78-F, 81-A, 83-E, 83-F, 83-L, 84-G, 84-O

Response:

I. Agriculture Pesticide Management

Note: Comments specifically related to pesticides and agriculture are summarized and responded to here. However, NOAA and EPA received general comments on pesticide management as well as specific pesticides related to forestry. Please see Pesticides-General and Forestry-Pesticides for a full discussion of the comments received related to pesticides.

Comment: Commenters expressed concerns with the amount of pesticide application and the lack of management measures in place to address agricultural pesticide use in Oregon. They stated inappropriate pesticide use and controls impacted both human and environmental health. Commenters concluded that Oregon's management measures for pesticides are not adequate to meet water quality standards or support designated uses and additional management measures to address pesticides are needed. Commenters asserted that Oregon needs to improve upon both its application restrictions,

providing greater controls on spraying in coastal watersheds, and to improve its protections for all stream classes.

Commenters provided specific examples to support their belief that agriculture pesticide management was inadequate. For example, members of AWQMA local advisory committees relayed that the committees were advised to not even consider pesticides as a pollutant. Therefore, they questioned if the AWQMA Program is sufficient to meet the CZARA 6217(g) management measure requirements. Another commenter referred to an herbicide monitoring study that found that polluted runoff resulted from herbicide applications on agricultural lands, as well as other sources.
In addition, other commenters stated that Oregon does not have sufficient programs in place to monitor pesticide use and impacts. They argued that unknown and unmonitored uses, along with unmonitored health and environmental risks associated with pesticides contribute to the inadequacy of Oregon's program. While another commenter contended that because most risk assessments for pesticides are based on old and incomplete data and endpoint evaluations, pesticide management measures should require re-evaluations of endpoints and health and environment impacts. In addition, they believed that risk assessments should also include testing of inert ingredients found in pesticide products.

One commenter also stated that NOAA and EPA's rationale for agriculture in the proposed decision document does not make any findings about the adequacy of Oregon's program to protect water quality and designated uses from pesticides applied to agricultural lands.

However, not all commenters believed Oregon's agriculture pesticide management program was inadequate. Other commenters stated that Oregon does have appropriate management practices and rules in place. A commenter pointed out that Oregon law already encompasses all 6217(g) requirements for pesticide management. All landowners are required to follow pesticide label requirements under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") and follow ODA's pesticide rules. These rules, coupled with the state's Pesticide Stewardship Program, CAFO, and AWQMA Programs allow the State to address any agricultural pesticide issues. In addition, a commenter mentioned that the AWQMA Program's site capable vegetation requirement for riparian areas filters pesticides from runoff before they enter waterways. Also, because applying pesticides costs money, farmers have an economic incentive to use them judiciously and keep pesticides where they are applied.

Source: 28-D, 38-A, 46-H, 54-B, 54-D, 54-G, 54-H, 54-L, 54-M, 54-N, 54-O, 54-P, 54-Q, 54-R, 54-S, 57-GG, 57-HH, 58-G, 59-A, 71-AH, 71-AI, 71-AJ, 71-AK, 72-A, 81-B, 83-A, 83-E, 83-M

Response:

I. Combined Animal Feeding Operations

Comment: A few commenters expressed concerns with Oregon's track record at regulating livestock practices. They suggested that Oregon does not even have agriculture management measures in place to adequately regulate combined animal feeding operations (CAFOs). One commenter suggested additional agriculture management measures were needed to improve permitting, monitoring, and relocation of CAFOs.

One commenter pointed out that enforcement of CAFO and other livestock management measures is is problematic in Oregon. Inadequate enforcement contributes to degraded water quality. For example, commenters referenced many examples of actual water pollution from livestock, including fecal waste from cows floating in waterways. They described instances where complaints against CAFOs have been submitted repeatedly to ODA but they received no response or resolution to their complaints.

On the other hand, other commenters explained that Oregon's existing requirements relating to managing CAFOs are adequate at maintaining water quality and disagreed that additional management measures are needed. They stated that ODA's rules require landowners to evaluate fertilizer efficiency, assess the layout of their farms and storage facilities, locate potential areas where runoff could contact nutrient carrying substances and relocate or avoid placing storage there.

In addition, they stated that CAFOs are subject to state-wide NPDES permits and are therefore exempt from 6217(g). Moreover, they contended that landowners still go beyond what is required in the 6217(g) CAFO management measures by ensuring there is no discharge to water; runoff is stored and covered; and waste and runoff nutrient levels, temperature, amount of time stored, and time and quantity of land application of manure at agronomic rates are measured and monitored.
Source: 15-F, 15-H, 60-C, 71-Y, 71-Z, 71-AE, 81-B

Response:

J. Agriculture Grazing Management

Comment: A few commenters provided comments specifically on the adequacy of Oregon's Coastal Nonpoint Program in addressing the 6217(g) grazing management measure. Several commenters believed the 6217(g) management measures, themselves, were flawed and did not provide adequate protection of water quality. They stated that as written, the grazing management measure allows for broad interpretation that can result in the adoption of ineffective grazing management approaches that do not protect or restore riparian vegetation and do not provide stream shading, as they believed was the case in Oregon. For example, they did not believe the 6217(g) management measure requirement to provide salt and water for livestock away from riparian zones was effective. In addition, the commenter criticized the 6217(g) measure for not requiring a halt to grazing in riparian areas during the summer.

However, other commenters supported Oregon's grazing practices. They felt the AWQMA Program is consistent with the 6217(g) grazing management measure and protects stream banks and water sources from grazing activities. They point out that AWQMA rules limit the amount of time livestock have access to waterways. In addition, the rules do not allow agricultural activities, including grazing, to inhibit the growth of site capable of riparian vegetation. If there a violation of this restriction, livestock would need to be removed or managed more appropriately.

Source: 57-YY, 71-AG, 71-AH, 71-AI

Response:

K. Need for Additional Management Measures for Agriculture

Comment: Multiple commenters noted that Oregon needed to implement additional management measures for agriculture to meet water quality standards and to protect designated uses. One commenter specifically asserted that the existing agriculture management measures do not protect waterbodies from temperature pollution. They stated that temperature pollution is the most pervasive water quality problem in coastal lowland streams and that elevated temperatures can also impact salmonid productivity. They concluded that it is very likely agriculture activities are contributing to temperature standard violations because for most TMDLs, the allowable temperature increases for nonpoint source pollutants is zero. They stated that none of the AWQMA rules for Oregon coastal watersheds, incorporate additional management measures needed to meet the zero load allocations established in the temperature TMDLs.

Commenters suggested specific additional management measures to protect water quality. For example, to address temperature pollution, several comments reflected that minimum riparian buffer widths need to be established. One commenter stated that published literature suggested that the minimum width should be no less than 100 feet (30 meters) and that greater than 100 foot buffers may be needed in certain areas, such as low gradient meandering channels that are adjacent to designated critical habitat for listed species. Another commenter believed that specific height and density requirements also needed to be established for riparian vegetated buffers.

Other additional management measures that commenters identified included: adopting better pesticide management; fencing streams and riparian areas to reduce impacts by livestock; improving permitting, monitoring and relocation of CAFOs; and adopting regulatory provisions to promote the establishment of riparian vegetation in critical habitat areas and the reintroduction of beaver in suitable locations.

On the other hand, several other commenters asserted that additional management measures for agriculture were not needed. The commenters noted that EPA and NOAA have not provided specific data or information that would support the need for additional management measures. They also noted that CZARA does not require states to implement specific practices, such as specific requirements for agricultural riparian buffers or the restoration of lands to pre-agricultural uses.

In addition, they assert that CZARA does not give NOAA and EPA the authority to place specific additional management measure requirements on a state's program. Rather, they state that the CZARA guidance notes that it is the state's responsibility to identify when, where, and what additional management measures are needed. (See discussion under General-Additional Management Measures for response to this specific comment).

Source: 15-H, 23-B, 44-C, 44-F, 47-B, 56-M, 57-CC, 57-EE, 57-GG, 57-XX, 60-A, 60-E, 64-E, 66-E, 68-E, 71-E, 71-H, 71-I, 84-I

K. Economic Achievability of Agriculture Management Measures

Comment: A few commenters emphasized that CZARA requires that all management measures must be "economically achievable" (Section 6217(g)(5)). Therefore they asserted that it would be inconsistent with CZARA to require landowners to implement management measures that are not "economically achievable." They stated that Oregon's AWQMA Program is rooted in implementing economically

achievable agriculture practices, consistent with CZARA statutory requirements. On a related note, another commenter also stated that the more voluntary-based approaches, backed by enforceable authorities, Oregon employs to support implementation of its 6217(g) agriculture management measures are more cost-effective because they allow the landowner the flexibility to select the right best management practice for his or her specific site conditions.

Sources: 64-E, 64-I, 66-E, 66-I, 68-E, 68-I, 71-H, 84-L

Response:

L. Addressing Agriculture Legacy Issues

Comment: A few commenters expressed their concern about legacy agriculture issues, such as where riparian vegetation may have regrown on former agricultural land but is comprised largely of invasive species (i.e., blackberry brambles) and does not provide sufficient protection of stream water quality or create quality habitat. They criticized the AWQMA Program as not doing enough to address legacy issues. They stated that the AWQMA Program does not require active restoration--only removal of current practices that impair restoration. The commenter contended that this creates a gap that must be addressed if Oregon is going to meet its water quality standards. They believed that Oregon needed to adopt additional management measure requirements to address this legacy issue.

Another commenter believed ODA has the authority needed to take action against legacy issues, they did not believe the agency had the political will to do so.

Several other commenters opposed the statement NOAA and EPA made in the proposed decision findings that AWQMA planning and enforcement does not address "legacy" issues created by agriculture activities that are no longer occurring. They stated that neither CZARA nor the 6217(g) guidance define legacy issues or require that state coastal nonpoint programs to address legacy issues. They asserted that nothing within CZARA indicated Congress ever intended for states to consider "legacy" issues through their coastal nonpoint programs.

They stated that even though there is no CZARA requirement to address legacy agriculture issues, Oregon does have a process in place to identify opportunities to enhance and restore watersheds, including address "legacy" agriculture issues. They assert state addresses these issues through the Oregon Plan for Salmon and Watersheds, the Oregon Aquatic Habitat Restoration and Enhancement Guide, the Oregon Watershed Enhancement Board riparian restoration projects, AWQMA plans, and many other federal, public and private partnerships. the still invests money to address these issues. The commenter states these programs are successful due to the voluntary efforts of many Oregon agriculture landowners.

Another group contended that NOAA and EPA contradicted themselves in regard to legacy agriculture issues in the proposed decision document. They noted the federal agencies made a finding that legacy effects were not addressed through existing regulatory tools but then concluded that agriculture plans were a regulatory mechanism to address past actions that are the primary cause of eroding stream banks.
Source: 15-H, 44-F, 55-I, 57-X, 71-T, 80-I, 84-J, 84-K

Response:

M. Effectiveness of Existing Monitoring and Tracking Programs for Agriculture

Comment: Several commenters expressed their concern with Oregon's existing monitoring and tracking efforts to evaluate the effectiveness of its agriculture programs. They did not believe they were sufficient to understand how well existing management approaches are being implemented, how effective those approaches are at protecting and restoring water quality, and when adaptive approaches are needed. A few commenters did acknowledge that ODA's new strategy for more targeted water quality monitoring is a step forward, but they also believed a more robust monitoring and tracking program was needed for agriculture. One commenter asserted that a State independent science team found ODA's proposed monitoring plan lacked detail and focus and lacked an understanding of basic monitoring.

Several commenters specifically stated that ODA does not effectively track implementation and effectiveness of AWQMA plans. A commenter suggested that Oregon needed to include an overall compliance strategy to ensure that AWQMA plans and rules are adequately implemented to meet TMDL load allocations and water quality standards. They added that there must be a policy and proactive process to assess AWQMA plan and rule implementation and for taking appropriate enforcement action when violations occur.

Another commenter stated there was a significant gap in the existing science to understand the effectiveness of Oregon's agricultural practices in protecting water quality and designated uses. They noted that the State cannot move forward with stronger agriculture regulations without first having a good understanding of how its existing programs are falling short and what improvements are needed to ensure water quality standards are being met.

On the other hand, other commenters believed the State's existing monitoring and tracking efforts were effective at assessing implementation of agriculture practices. Specifically they noted that biennial reviews of the AWQMA plans, with about 18 reviews done each year, provide a way to track plan implementation. They also highlighted the State's efforts to develop a more formalized evaluation processes through the Strategic Implementation Areas and Focus Areas process to target priority areas and issues. They also stated the State's new Enterprise Monitoring Initiative, which began in 2012, monitors waterways passing through agriculture lands and can be used to inform the effectiveness of the AWQMA program.
In addition, a commenter asserted that most ambient water quality monitoring in the coastal region reported fair to excellent water quality and sites with poor conditions were not due to agriculture activities.

Source: 46-H, 49-I, 53-E, 53-H, 54-R, 55-G, 55-H, 57-11, 70-B, 70-F, 70-K, 70-L, 71-O, 71-S, 71-Z, 72-A, 73-A, 78-H, 79-I, 80-F, 80-G

Response I.9

XI. HYDROMODIFICATION

Comment: A couple of commenters discussed the negative impacts of hydromodification, noting the effects of dams on water quality and habitat and impacts from channel modification. They declared that Oregon has failed to control polluted runoff from eroding stream banks and shorelines and it does not have programs in place to protect and restore channel conditions from modification.

Source: 46-H, 49-F

Response:

XII. WETLANDS

Comment: One commenter noted that Oregon does not have programs in place to protect and restore riparian areas needed to maintain cool stream temperatures and habitat or to protect and restore wetlands.

Source: 49-F

Response:

OTHER COMMENTS—NOT RESPONSIVE?

The Public Comment Period

Comment: One commenter questioned why NOAA and EPA requested public comment on their proposed decision. They noted public comment was needed as long as the federal agencies' decision and analysis is based on established criteria and valid science which they believed to be the case.

Source: 15-B

Response:

Importance of Beavers

Comment [AC6]: Combine with comments on need to develop add MMs for beavers? I think NWEA may have made some point along these lines???

Comment: One commenter expressed their concern over diminishing beaver because they are being trapped and hunted out. They note that beavers play an important role in maintain natural stream channels, wetlands, and complex floodplains.

Source: 44-G

Response:

Proposed Decision Exceeds NOAA and EPA's Authority

Comment: One commenter noted that the Federal Government places too many regulations on the states, private property owners, and individuals and that NOAA and EPA exceeded the limits defined by the U.S Constitution. The commenter suggested that Congress should remove the budgets for NOAA and EPA and return those funds back to the state.

Source: 29-A

Response: