Sept. 8, 2014

Hot Issue for ECOS Meeting: Oregon Coastal Nonpoint Program under CZARA

- Dick Pederson, Director OR DEQ and new ECOS President, may approach senior EPA management on the Oregon-specific issue below.
- NOAA and EPA share responsibility for administering CZARA. Based on NOAA and EPA's settlement agreement with the Northwest Environmental Advocates (NWEA), the agencies are required to jointly announce our final decision by January 2015 on whether Oregon has failed to submit an approvable state Coastal Nonpoint Program (CNP) as required under the Coastal Zone Act Reauthorization Amendments (CZARA) of 1990.
- In December 2013 NOAA and EPA released a public notice of intent to determine that Oregon has failed to submit an approvable CNP. This was not a final agency action. NOAA and EPA opened a 90-day public comment period on this proposed decision, as required by the settlement agreement.
- Numerous public comments were received for and against the proposed decision.
- NOAA and EPA have reviewed Oregon's CNP update and all the public comments in preparation for our final decision next January. Program staff, attorneys and management from NOAA, EPA Region 10 and Headquarters are meeting frequently to prepare a decision document, including draft rationales for each outstanding issue, and to prepare a response to comments document. The specific outstanding issues concern needing greater protections from timber harvesting (in landslide-prone areas, for pesticide applications, for riparian zones and for logging roads), runoff controls for new urban development, and inspections for septic systems. Although not a basis for proposing disapproval of Oregon's CNP, NOAA and EPA sought comments on the State's Agricultural water quality program based on concerns raised by NWEA and others.
- During the comment period Oregon submitted an updated CNP to NOAA and EPA. While Oregon's March 2014 CNP update provides improvements for controlling runoff for new development and inspecting septic systems, it does not offer much new information for how the State plans to improve forest practices. Significant issues for controlling forestry impacts remain.
- If we need to disapprove the state's program next January, CZARA requires NOAA and EPA to withhold a portion of the state's funding under Section 306 of the Coastal Zone Management Act and CWA Section 319. The state would lose about $600K/year in 319 funds and a similar amount in NOAA funds.
- .

<u>MORE BACKGROUND: OR Forestry practices</u>

- Forestry impacts are the primary issues targeted by NWEA Suit and Settlement Agreement. Four issues remain:
    - Increase protections for medium, small, and non-fish-bearing streams – Oregon's submittal describes a rule-making effort to address medium and small fish-bearing streams, but the rule-making is not final and will not address "Type N" non-fish-bearing streams to protect salmon habitat downstream (see photo of typical clear-cut across a Type N stream in Oregon's Coast Range).
    - Increase protections for high-risk landslide areas – OR still allows timber harvesting and road construction on landslide prone areas that is not protective of fish habitat and water quality.
    - Controlling impacts from legacy logging roads.

- Increase protections from pesticide application (e.g., aerial spraying of herbicides across Type N streams despite label restrictions for applying directly onto water).

- . DELETE PHOTO

Sept. 8, 2014

Hot Issue for ECOS Meeting: Oregon Coastal Nonpoint Program under CZARA

- Dick Pederson, Director OR DEQ and new ECOS President, may approach senior EPA management on the Oregon-specific issue below.
- NOAA and EPA share responsibility for administering CZARA. Based on NOAA and EPA's settlement agreement with the Northwest Environmental Advocates (NWEA), the agencies are required to jointly announce our final decision by January 2015 on whether Oregon has failed to submit an approvable state Coastal Nonpoint Program (CNP) as required under the Coastal Zone Act Reauthorization Amendments (CZARA) of 1990.
- ~~As required by the settlement agreement,~~ In December 2013 NOAA and EPA released a public notice of intent ~~on its decision by November 15, 2013 (delayed until December 2013 as a result of the October 2013 government shutdown). The December 2013 decision was a Notice of Intent~~ to determine that Oregon has failed to submit an approvable CNP. This was not a final agency action. NOAA and EPA opened a 90-day public comment period on this proposed decision, as required by the settlement agreement.

Comment [HL1]: Reducing text here and next bullet

- Numerous public comments were received for and against the proposed decision.~~, most of which supported the agencies' decision. Many comments provided lengthy supporting documentation that was scientific in nature.~~
- NOAA and EPA have reviewed Oregon's CNP update and all the public comments in preparation for our final decision next January. Program staff, attorneys and management from NOAA, EPA Region 10 and Headquarters are meeting frequently to prepare a decision document, including draft rationales for each outstanding issue, and to prepare a response to comments document. The specific outstanding issues concern needing greater protections from timber harvesting (in landslide-prone areas, for pesticide applications, for riparian zones and for logging roads), runoff controls for new urban development, and inspections for septic systems. Although not a basis for proposing disapproval of Oregon's CNP, NOAA and EPA sought comments on the State's Agricultural water quality program based on concerns raised by NWEA and others.
- During the comment period Oregon submitted an updated CNP to NOAA and EPA. While Oregon's March 2014 CNP update provides improvements for controlling runoff for new development and inspecting septic systems, it does not offer much new information for how the State plans to improve forest practices. Significant issues for controlling forestry impacts remain.

Comment [HL2]: Moved this sentence down from bullet 4

- If we need to disapprove the state's program next January, CZARA requires NOAA and EPA to withhold a portion of the state's funding under Section 306 of the Coastal Zone Management Act and CWA Section 319. The state would lose about $600K/year in 319 funds and a similar amount in NOAA funds.

Ex. 5 - Deliberative

Ex. 5 - Deliberative

MORE BACKGROUND: OR Forestry practices ~~on CZARA~~

- Forestry impacts are the primary issues targeted by NWEA Suit and Settlement Agreement. Four issues remain:

Comment [HL4]: Moved your text down here in lieu of general background on CZARA

- Increase protections for medium, small, and non-fish-bearing streams – Oregon's submittal describes a rule-making effort to address medium and small fish-bearing streams, but the rule-making is not final and will not address "Type N" non-fish-bearing streams to protect salmon habitat downstream (see photo of typical clear-cut across a Type N stream in Oregon's Coast Range).
- Increase protections for high-risk landslide areas – OR still allows timber harvesting and road construction on landslide prone areas that is not protective of fish habitat and water quality.
- Controlling impacts from legacy logging roads.
- Increase protections from pesticide application (e.g., aerial spraying of herbicides across Type N streams despite label restrictions for applying directly onto water).

~~Section 6217 of CZARA requires states and territories with federally approved Coastal Zone Management Programs to develop and implement Coast Nonpoint Source Control Programs (CNPCPs). Since 1993 NOAA and EPA have worked jointly with coastal States and Territories to develop and approve their CNPCPs, which cover 56 management measures across six categories of nonpoint source management (agriculture, urban, forestry, marinas, hydromodification, wetlands and riparian areas). CZARA also requires States to establish "additional management measures" where needed to protect water quality standards and designated uses. To date 22 states have fully approved CNPCPs, with 11 remaining to be approved, including OR~~. DELETE PHOTO

Formatted: Normal, Indent: Left: 0.25", Space After: 6 pt, No bullets or numbering

~~**Photo of clear-cut "Type N" non-fish-bearing stream upstream of endangered salmon habitat**~~

Formatted: List Paragraph, Space After: 0 pt, Bulleted + Level: 1 + Aligned at: 0" + Indent at: 0.25"

Comment [HL5]: Remove photo.
P.S. also, do we know the origin of this photo?