UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

APR 1 0 2014

Ms. Patricia L. Snow, Manager
Oregon Coastal Management Program
Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, Oregon 97301-2540

Dear Ms. Snow:

Thank you for the Department of Land Conservation and Development's (DLCD) January 27, 2014, request to incorporate Part Five of the Oregon Territorial Sea Plan (TSP) into the Oregon Coastal Management Program. You requested that the changes described below be incorporated as routine program changes (RPCs), pursuant to the Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and Office of Ocean and Coastal Resource Management (OCRM) Program Change Guidance (July 1996). OCRM received the submission on February 18, 2014. OCRM's decision deadline was extended to April 15, 2014.

Based on our review of your submission, we concur that the changes are RPCs and approve the incorporation of the changes to the Oregon Coastal Management Program. The State may only apply those changes approved as enforceable policies for CZMA federal consistency review purposes after publishing notice of this approval pursuant to 15 C.F.R. § 923.84(b)(4), and OCRM's *Addendum to the July 1996 Program Change Guidance (November 2013)*, and the new or revised enforceable policies in Part Five shall only be applied to federal agency activities proposed, and applications for federal authorizations filed, after OCRM's approval. Please include in the public notice the list of changes provided in this letter and state that the applicability of these changes is subject to certain qualifications found in this approval letter. Please provide a copy of the notice of approval to OCRM.

CHANGES APPROVED

See the enclosed table of changes approved as incorporated into the Oregon Coastal Management Program.

QUALIFICATIONS

OCRM notes that Part Five does not provide the State with management authority over activities occurring in federal waters. The Oregon Coastal Management Program would apply the enforceable policies in Part Five to federal agency activities proposed in federal waters pursuant to 15 C.F.R. part 930, subpart C, and to federal license or permit activities proposed in federal waters pursuant to 15 C.F.R. part 930, subpart D. For federal license or permit activities under subpart D proposed in federal waters, the state may request OCRM approval to review proposed projects on a case-by-case basis as an "unlisted activity" pursuant to 15 C.F.R. § 930.54, or the State may seek to add to its OCRM-approved federal consistency list of federal license or permit activities a "geographic location description" for certain areas of federal waters pursuant to 15 C.F.R. § 930.53.

At the request of OCRM, DLCD has identified in an Appendix C all enforceable policies within Part Five that would be used for CZMA federal consistency review purposes. The approval of Part Five only recognizes those policies listed within Appendix C, applied in conjunction with Appendix A (Definitions)

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and Appendix B (Map Designations), as enforceable policies that can be used by the State for CZMA federal consistency review purposes with the exceptions noted below.

Section D.2 of Appendix C, states:

> *A facility that has been developed to the full extent of its design and operating capacity may, during the lifetime of its authorization, require systematic improvements to the technology, structures and operational procedures that were originally authorized. The regulating agency shall require a new facility development plan, as appropriate and necessary, to provide the data and information for the redevelopment and operation of the new facility components.*

Although the above may be required for state permitting purposes, when a state concurs with a proposed action, there is no further opportunity to review the activity under the CZMA federal consistency provisions unless a separate federal authorization triggering federal consistency review is required for an action related to the facility in the future. CZMA federal consistency reviews are limited to the proposed actions before states. In that regard, a state cannot use CZMA conditional concurrences to review future activities that do not require a later federal authorization. Likewise, a state cannot condition concurrence of one project by requiring a permit or license applicant to undertake another project such as a pilot project (e.g., Appendix C, section B.4.f.(2.), Pilot Project, footnote 25 and footnote 28).

In addition, OCRM notes that Part Five does not contain any necessary data and information requirements for the initiation of the CZMA federal consistency review process pursuant to 15 C.F.R. § 930.58.

As a general qualification on approval of Part Five, states may not incorporate enforceable policies by reference. If an approved enforceable policy found in Appendix C refers to another regulation, policy, standard, guidance, or other such requirement or document (hereinafter "referenced policy"), the referenced policy itself must be submitted to and approved by OCRM as an enforceable policy in order to be applied under the federal consistency review provisions of the CZMA. Therefore, no requirement or document referenced in these approved enforceable policies may be applied for federal consistency unless that requirement or document has separately been approved by OCRM.

PUBLIC AND FEDERAL AGENCY COMMENTS

OCRM received no comments on this RPC submission.

Thank you for your cooperation in this review. Please contact Jackie Rolleri at 301-563-1179, if you have any questions.

Sincerely,

Joelle Gore, Acting Chief
Coastal Programs Division

Enclosure(s): Changes Approved and Incorporated into the Oregon Coastal Management Program

Enclosure to OCRM's April 10, 2014 Approval of the Incorporation of Changes to the Oregon Coastal Management Program Changes marked with an asterisk (*) are incorporated into the Oregon Coastal Management Program, but do not contain enforceable policies that can be used for Federal Consistency.			
Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
ADDED:		mm/dd/yyyy	mm/dd/yyyy
TSP Part Five	*While OCRM approves Part Five of the Territorial Sea Plan in its entirety for incorporation into the Oregon Coastal Management Program, OCRM only approves as enforceable policies the sections listed below.	1/24/13	10/7/13
Appendix A: Definitions	Appendix A - All	1/24/13	10/7/13
Appendix B: Map Designations	Appendix B - All	1/24/13	10/7/13
Appendix C: Enforceable Policies Subject to Federal Consistency **Note:** the enforceable policies identified in Appendix C are taken from portions of the following sections in Part Five: B.4.b. Sufficiency of Resource and Use Inventory and Effects B.4.d. Inventory Content B.4.e. Written Evaluation B.4.f. Pilot and Phased Development B.4.f.2 Pilot Project B.4.f.3 Phased Development B.4.g. Special Resources and Use Review Standards B.4.g.1 General siting and development requirements B.4.g.2 Fisheries Use Protection Standards B.4.g.3 Ecological Resource Protection Standards B.4.g.4 Recreational Resource Standards B.4.g.5 Visual Resource Protection D.1 Phased Development Plan	Appendix C – Partial (*Subject to the qualifications stated in OCRM's approval letter*)	1/24/13	10/7/13

Enclosure to OCRM's April 10, 2014 Approval of the Incorporation of Changes to the Oregon Coastal Management Program Changes marked with an asterisk (*) are incorporated into the Oregon Coastal Management Program, but do not contain enforceable policies that can be used for Federal Consistency.			
Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
D.2 Facility Development Plan D.3 Project Operation Plan D.4 Decommissioning Plan D.5 Financial Assurance Plan D.6 Agreements			