

Facts & Fiction:

Oregon's Response to the EPA and NOAA Proposed Disapproval of Oregon's Coastal Nonpoint Pollution Control Program

On December 19, 2013 the State of Oregon issued a news release¹ responding to an announcement by the U.S. Environmental Protection Agency (EPA) and National Oceanic and Atmospheric Administration (NOAA) the agencies were going to propose disapproval of Oregon's Coastal Nonpoint Pollution Control Program (CNPCP). Full approval of the CNPCP is required for Oregon to continue to receive federal grant funds pursuant to the Coastal Zone Act Reauthorization Amendments (CZARA). Below are quotes from the news release with factual rebuttal:

Fiction: “Oregon is a national leader in improving water quality, and Gov. Kitzhaber is committed to maintaining that record,” [said Richard Whitman, natural resources policy advisor for Governor John Kitzhaber].”

FACT: **Oregon is not a national leader in improving water quality.** There is no measure by which Oregon is reducing water pollution faster or with more success than any other state. Oregon's list of impaired waters continues to grow,² its discharge permit backlog continues to grow,³ its logging practices are the worst on the West coast,⁴ and it does not control pollution from farming. This statement is pure “Oregon exceptionalism.”

Fiction: “Oregon is committed to achieving the very same environmental outcomes EPA and NOAA want to achieve: clean water and healthy fisheries,” said Dick Pedersen, director of Oregon's Department of Environmental Quality.”

FACT: **Oregon has not achieved clean water or healthy fisheries in 16 years.** Oregon was informed of its Coastal Program deficiencies in 1998, and in the ensuing 16 years – despite the repeated urging of federal agencies – Oregon has refused to adopt forest practices sufficient to protect water quality and Oregon coast coho. Oregon DEQ made commitments in 2010 to fix these problems and then subsequently walked away from them.

Fiction: “Water quality trends across most of the state are positive, and Oregon is already successfully restoring salmon runs and maintaining coastal watershed health,” [said Dick Pedersen].”

FACT: **Coastal water quality & habitat protection trends are mostly flat or negative.**⁵ Continued poor coastal watershed health was a basis of the June 20, 2011 National Marine Fisheries Service (NMFS) decision to retain the “threatened” status of the Oregon coast (OC) coho. NMFS concluded “the combined [Oregon Department of Fish and Wildlife]/NMFS analysis of freshwater habitat trends for the Oregon coast found little evidence for an overall improving trend in freshwater habitat conditions since the mid-1990s, and evidence of negative trends in some strata.” NMFS also concluded that “relying on active restoration to mitigate for the effects of ongoing land management that degrades OC coho salmon habitat is not feasible” and that “the legacy of past forest management practices combined with lowland agriculture and urban development has resulted in a situation in which the areas of highest habitat capacity . . . are now severely degraded.”⁶ The Oregon Department of Fish and Wildlife (ODFW) agrees many freshwater environmental impacts on Oregon coast coho are human related, including “rearing and spawning habitat loss[.]”⁷ Even the Oregon Department of Forestry has found its logging practices violate water quality standards.⁸

Fiction: “State officials maintain that EPA and NOAA, in their proposed ruling, are asking the state to adopt one-size-fits-all measures that are not tailored to preventing problems or to addressing specific issues in specific watersheds.”

FACT: **Oregon repudiated its own commitments to adopt tailored measures.** To settle a lawsuit, the Oregon Department of Environmental Quality (DEQ) made commitments based on an Oregon Attorney General legal opinion of July 2, 2010 that stated DEQ could “establish its own implementation requirements” to override those of the Oregon Board of Forestry if DEQ deems the practices inadequate to meet the Clean Water Act. Based on the legal opinion, DEQ committed to using a “new and novel” approach to meeting water quality standards that including the development of Best Management Practices (BMP) for nonpoint sources and the issuance of enforceable orders to significant nonpoint sources. DEQ committed to demonstrate its ability and willingness to issue and enforce such tailored practices in Oregon’s Mid-Coast Basin.⁹

However, Oregon went back on its word. In a letter dated July 1, 2013, Oregon DEQ said that it would instead rely on Oregon’s land use planning and continue current logging practices, admitting this approach “diverges from the commitments in the original settlement agreement[.]” **It is Oregon DEQ that rejected its own commitments to tailor logging practices to individual watersheds, not EPA and NOAA.**

Fiction: “EPA and NOAA’s proposal . . . threatens more effective pollution reduction methods for Oregon,” said Whitman.”

FACT: **Oregon’s methods aren’t adequate.** Oregon’s Independent Multidisciplinary Science Team (IMST), reporting in 1999 to then-Governor Kitzhaber, concluded that “some specific aspects [of] the Oregon Forest Practices Rules and the Measures of the Oregon Plan need improvement in dealing with riparian buffers, large wood management, sedimentation and fish passage at road-stream crossings. . . . the current site-specific approach of regulation and voluntary actions is not sufficient to accomplish the recovery of wild salmonids.”¹⁰

1. Oregon DEQ, *News Release: EPA and NOAA propose disapproval of Oregon’s coastal area pollution program* (Dec. 19, 2013).

2. See, e.g., EPA, *Additions to Oregon’s 2010 Impaired Waters List* (Dec. 2012) at <http://yosemite.epa.gov/R10/water.nsf/TMDLs/R10addsto2010ORList> (870 new segments added); ODEQ, *Summary of New 303(d) Listings, Delistings, and Other Significant Assessments Proposed With Oregon’s 2012 Integrated Report* (Dec. 20, 2013) at <http://www.oregon.gov/deq/WQ/Documents/Assessment/Summary2012Assessment.pdf> (136 segments added, none delisted due to clean-up).

3. See, e.g., EPA, *Permit Status Report for Non-Tribal Individual Major Permits - March 2013* http://www.epa.gov/npdes/pubs/grade_2013.pdf (Only 29 percent of Oregon’s major permits are current); EPA, *Permit Status Report for Non-Tribal Individual Minor Permits - March 2013* http://www.epa.gov/npdes/pubs/grade_minor_2013.pdf (42 percent of Oregon’s minor permits were current compared to a national average of 83.4 percent); EPA, *Permit Status Report for Non-Tribal General Permit Covered facilities - March 2013* http://www.epa.gov/npdes/pubs/grade_all_2013.pdf (Oregon 47.4 percent compared to national average of 91.5 percent). Since March 2013, Oregon DEQ has renewed only a handful of permits.

4. See, e.g., Mark Swanson, *Comparison of the impacts of forest practices regulations on carbon storage in Washington, Oregon, California, and British Columbia* (July 17, 2008) at Table 2 (riparian buffers) http://www.ecy.wa.gov/climatechange/2008CTdocs/10102008_forestpractices_carbonstorage.pdf.

5. See, e.g., DEQ, *North Coast Water Quality Status and Action Plan Summary 2012*, <http://www.deq.state.or.us/wq/watershed/Docs/NorthCoastSummary.pdf> (All 10 North Coast sites showed declining trends in Oregon Water Quality Index Scores (1999 to 2009) with 8 “significantly declining” in suspended sediment.)

6. 76 Fed. Reg. 35755, 35760, 35765 (June 20, 2011) <http://www.westcoast.fisheries.noaa.gov/publications/frn/2011/76fr35755.pdf>.

7. ODFW, *Coho Salmon* at <http://www.dfw.state.or.us/fish/species/coho.asp>.

8. See e.g., Groom, J.D., L. Dent, and L.J. Madsen. *Stream temperature change detection for state and private forests in the Oregon Coast Range*, Water Resources Research, 47.1 (2011), <http://www.science.oregonstate.edu/~madsenl/files/GroomDentMadsen2011.pdf>.

9. See *Northwest Environmental Advocates v. Locke, et al.*, Civil No. 09w0017-PK *Final Settlement Agreement* (September 2010) http://www.northwestenvironmentaladvocates.org/blog/wp-content/uploads/2011/03/dt_intfc4d86844e01a23_4d86cf5ba5cf0.pdf

10. IMST, Letter to Governor Kitzhaber et al. enclosing Technical Report 1999-1 at 1-2 (Sept. 14, 1999), <http://www.fsl.orst.edu/imst/reports/1999-1.pdf>.