

Other available titles in this series include:

Erosion Control
Non-Point Source Pollution
Oregon Coastal Planning Goals
Wetland Permitting
Wetland and Riparian Areas



Columbia River Estuary Study Taskforce

750 Commercial Street, Room 205
Astoria, OR 97103
503-325-0435
www.columbiaestuary.org

All photographs and drawings by CREST unless otherwise cited.

December 2003. The purpose of this brochure series is to provide information to CREST Oregon jurisdictions. This brochure was funded by a coastal project grant from the Oregon Department of Land Conservation and Development.

Federal Laws



**The Clean Water Act
The Coastal Zone Management Act
The Endangered Species Act
The National Environmental Policy Act
For More Information**

December 2003



CLEAN WATER ACT (CWA)

Background and Purpose of the CWA

Public awareness and concern about water pollution led to the enactment of the Federal Water Pollution Control Act Amendments of 1972. Further amended in 1977 this law is commonly referred to as the Clean Water Act (CWA). The CWA is administered by the state.

The CWA employs a variety of regulatory and non-regulatory tools to reduce direct and indirect pollutant discharges into waterways. The goal of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters so they can support "the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water."

Water Quality Certification

Water quality certification is outlined in Section 401(a) of the CWA. Section 401(a) requires that before issuing a license or permit that may result in any discharge to waters of the United States, a federal agency must obtain from the authority responsible for administering the CWA in a state, a certification that the discharge is consistent with the CWA. In Oregon, this agency is the Department of Environmental Quality (DEQ). Considerations for issuing a 401 Certification include the current and future feasibility of maintaining state ambient water quality standards and "beneficial uses" of clean water.

CWA provisions to which Section 401 certification applies include 404 permits from the Corps of Engineers and National Pollution Discharge Elimination System permits from the DEQ.



Section 404

Section 404 Clean Water Act (1972) regulates all waters of the US (including all wetlands) and the discharges of dredged or fill material into those waters or wetlands. These permits are issued by the U.S. Army Corps of Engineers.

FOR MORE INFORMATION

Sources of Information

Your local jurisdiction's Planning Department (Clatsop County, Astoria, Cannon Beach, Gearhart, Seaside, Warrenton) is a good source of information.

Coastal Zone Management Act, 1972.
www.ocrm.nos.noaa.gov/czm/czm_act.html#anchor21499

Department of Environmental Quality. Section 401 Water Quality Certification.
<http://www.deq.state.or.us/wq/401Cert/401CertHome.htm>

National Environmental Policy Act, 1969.
<http://ceq.eh.doe.gov/nepa/regs/nepa/nepaeqia.htm>

United States Environmental Protection Agency. *Clean Water Act*.
www.epa.gov/watertrain/cwa/cwa58.htm

United States Fish and Wildlife Service. October 2002. *ESA Basics: Over 25 years of protecting endangered species*. USFWS Endangered Species Program.

United States Fish and Wildlife Service. *The Endangered Species Act*.
<http://endangered.fws.gov/esa.html>

United States National Oceanic and Atmospheric Administration, Fisheries, Office of Protected Resources. www.nmfs.noaa.gov/prot_res/overview/es.html

Contacts

Environmental Protection Agency
Region 10
1200 6th Avenue
Seattle, WA 98101
(206) 553-1200
www.epa.gov

NOAA Fisheries, Regional Office
7600 Sand Point Way, NE
Seattle, WA 98115-0070
(206) 526-6150
www.nwr.noaa.gov

US Fish & Wildlife Service
Region One
Eastside Federal Complex
911 N.E. 11th Avenue
Portland, OR 97232-4181
<http://pacific.fws.gov/ecoservices>

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Background and Purpose of the NEPA

The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions.

The Environmental Assessment

The environmental assessment (EA) is a concise public document that is used to briefly provide evidence and analysis sufficient for determining whether an EIS is required or whether a Finding Of No Significant Impact (FONSI) can be supported.

NEPA requires that EA's be prepared for proposed actions which have not been exempt from NEPA, categorically excluded (an action that has been previously demonstrated to have no potential for significant effect, individually or cumulatively, on the environment), covered in an existing EIS or other environmental analysis, and which do not normally or obviously require an EIS.

The Environmental Impact Statement

Under the NEPA, for every "major federal action significantly affecting the quality of the human environment", the agency involved must prepare an environmental impact statement (EIS). The EIS is a detailed discussion of the environmental consequences of a proposed action. The EIS includes, among other things, a discussion of the following: the environmental impact(s) of the proposed action; any adverse environmental effects (long-term and short-term) that cannot be avoided under the proposed action; and, alternatives to the proposed action, including the no-action alternative.

The EIS must be made available for public comment.



COASTAL ZONE MANAGEMENT ACT (CZMA)

Background and Purpose of the CZMA

The Federal Coastal Zone Management Act (CZMA) was enacted in 1972 to address the increasing demands of population growth and development on coastal areas. The CZMA empowers coastal states to comprehensively manage coastal areas based on the recognition that the key to effective management is state and local involvement. The CZMA requires the balancing of coastal zone protection and development and mandates that competing uses be addressed.

Coastal Zone Consistency Review

The CZMA provides an incentive to encourage coastal states to develop and maintain coastal management programs. If the states adopt federally approved coastal management programs, the CZMA provides those coastal states with legal authority to ensure that any federal actions occurring in or outside of the coastal zone which affect coastal land or water uses or natural resources must be consistent with the adopted coastal program.

The following activities are subject to federal consistency:

- Direct Federal Agency Activities;
- Outer Continental Shelf Activities;
- Federal Financial Assistance to Public Entities;
- **Federal Permits & Licenses.**

Individual actions that require a *Federal permit or license* are also subject to coastal zone consistency review. These permits include:

- Corps Individual Permits – Section 10/404 (Rivers & Harbors Act/CWA)
- Letters of Permission – Section 10 (Rivers & Harbors Act)
- Nationwide Permits – Section 10/404 (Rivers & Harbors Act/CWA)

Nationwide Permits is a type of general permit that applies to a class of activities that have been found to have relatively low impact, provided that the conditions laid out in the permit are followed.



ENDANGERED SPECIES ACT (ESA)

Background and Purpose of the ESA

The Endangered Species Act (ESA), 1973 provides a program for the conservation of threatened and endangered plants and animals and the habitats in which they are found. The U.S. Fish & Wildlife Service and the U.S. Department of the Interior maintain the list of federally endangered and threatened species. The National Oceanic and Atmospheric Administration (NOAA) Fisheries, Office of Protected Resources is responsible for the implementation of the ESA for marine and anadromous species. The U.S. Fish and Wildlife Service is responsible for the implementation of the ESA for freshwater and terrestrial species.

Under the ESA a species can be listed under one of the following statuses:

Endangered – any plant or animal species that is in danger of extinction throughout all or a significant portion of its range.

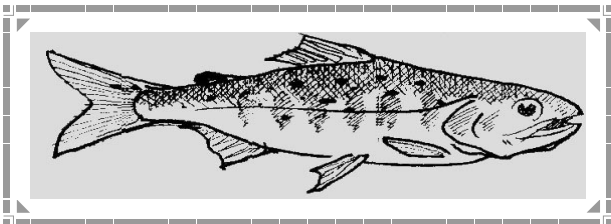
Threatened – any plant or animal species that is likely to become endangered within the foreseeable future throughout all or a significant portion of its range if factors contributing to their population decline or habitat degradation or loss continue.

Candidate – any plant or animal species where there are indications that their populations are not stable. These species can be thought of as “under review”.

Species of Concern – any plant or animal species believed to have declining population and/or habitat, yet there is a lack of scientific information to list them.

For a species to be listed there is a status review of the species population and habitat. For every listed species a recovery plan must be implemented. The species is then monitored for improvement or decline. It is illegal to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct” with regard to a threatened or endangered species. These actions are known as “take”, and apply to both the species and their habitat.

Oregon has also adopted its own version of the ESA. It is possible to have a species listed on the Oregon ESA List but not on the Federal List and vice versa.



ENDANGERED SPECIES ACT

Some ESA-listed species in Clatsop County

Species	Federal Status
Bald Eagle	Threatened
Chinook Salmon	Endangered & Threatened
Chum Salmon	Threatened
Coho Salmon	Threatened
Columbia White-Tailed Deer	Endangered
Oregon Silverspot Butterfly	Threatened
Sockeye Salmon	Endangered & Threatened
Steelhead	Endangered & Threatened
Western Snowy Plover	Threatened

Applicable Sections of the ESA

Section 7

Section 7 of the ESA requires federal agencies to consult with the appropriate ESA-agency to ensure that the actions they authorize, fund, or carry out will not jeopardize listed species. Section 7 applies to any action that is permitted, licensed, funded or otherwise authorized by a Federal Agency.

Section 10

Section 10 of the ESA discusses Habitat Conservation Plans (HCP). An HCP is designed to relieve restrictions on private landowners who want to develop land inhabited by endangered species. They have the option of developing a habitat conservation plan that provides for the conservation of the species. If the plan is approved the landowner will be given an “incidental take permit”. The incidental take permit allows for the loss of life or habitat of an endangered species without penalty or liability, provided that development proceeds according to the provisions in the HCP.

Section 4(d)

The ESA Section 4(d) rules provide protections for species listed as “threatened.” These 4(d) rules put take prohibitions in place *except* for specific categories of activities that contribute to conserving listed salmon and steelhead.