

## **Overview**

The Clean Water Act (CWA) Section 320 (b)(7) (Purpose 7) requires a review to determine whether federal assistance and development programs are consistent with the objectives described in this CCMP. This chapter provides an overview of federal programs and development projects relevant to resource management in the Tillamook Bay Watershed. It identifies possible inconsistencies and describes the existing Oregon review process in place to coordinate federal programs with state and local mandates. Furthermore, this chapter describes the process that the Performance Partnership will follow to assure that future actions related to the CCMP are consistent with local, state and federal mandates, permits and programs.

In order to achieve the stated goals and objectives within the CCMP effectively, federal, state and local governments must strive for consistency and coordination among diverse programs. Federal programs can present inconsistencies at the local level due to multi-agency involvement in various efforts to fund, license, permit, or undertake resource management projects. Changes in federal policies, authority, and/or jurisdiction can bring about unintentional overlaps, conflicts or redundancies in programs. Without a method in place to identify problems, federal programs administered at national or regional levels may overlook or even work against local initiatives.

In Oregon, the federal Coastal Zone Management Act falls under the authority of the Oregon Department of Land Conservation and Development. The DLCDC review process provides opportunity for stakeholders to review pertinent information. This process is described within division 35 (Federal Consistency) of the Oregon Administrative Rules for the Land Conservation and Development Department (OAR 660-35-0040). As an example, the Oregon Division of State Lands, the DLCDC and the U.S. Army Corps of Engineers have designed a streamlined process for reviewing permit applications for fill and removal permits. Their joint permit form cannot be submitted until the local county planning department has reviewed and signed it. After this step, the application is jointly reviewed by the Oregon Division of State Lands, the Department of Land Conservation and Development and the COE. The county, the state and the COE all take steps to notify adjoining landowners,

stakeholders, and concerned parties of the application.

To further minimize local inconsistencies and redundancies, federal programs in the Tillamook Bay Watershed will be coordinated to achieve common objectives efficiently and effectively. The TBNEP Management Conference will undertake this responsibility through an innovative consortium called the Tillamook County Performance Partnership. The Performance Partnership will aggressively seek to streamline and coordinate government programs while meeting clearly stated performance indicators related to CCMP implementation.

In summary, this chapter will:

- 1) Provide an inventory of federal programs, mandates, and development projects that may affect actions proposed in the CCMP,
- 2) Strive to identify and outline potential conflicts and identify mandates that will need further coordination under the Tillamook County Performance Partnership, and
- 3) Define strategies for correcting or minimizing inconsistencies and redundancies.

## **Authority and Requirements of the Clean Water Act**

Section 320 of the Clean Water Act is the enabling legislation for the National Estuary Program. An analysis of federal programs for consistency is required by section 320 (b)(7). The section reads as follows: “The purposes of any Management Conference convened with respect to an estuary under this subsection shall be to:

*“...review all federal financial assistance programs and federal development projects in accordance with the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of the plan prepared under this section.*

*“For purposes of paragraph (7), such programs and projects shall not be limited to the assistance programs and development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the plan developed under this section.”*

To meet this Executive Order, the TBNEP on Dec. 1, 1998 initiated a review of federal programs and projects that may be relevant to the CCMP action in the Watershed. This includes current and potential programs and/or mandates relevant to environmental management. The review also identifies federal programs that might conflict with actions identified within the CCMP and describes a process to resolve federal inconsistencies.

## **Coordination with Other Programs**

The CCMP summarizes and integrates local, state, and federal programs into a comprehensive action plan for the Tillamook Bay Watershed. In this context, the CCMP includes and integrates federal goals, standards, and criteria relevant to the Tillamook Bay Watershed. Federal partners have been involved in the development of the CCMP and as a result, have helped to ensure an action plan that is consistent with their respective missions. In the Tillamook Bay Watershed, important federal reviewers included the USDA/Natural Resources Conservation Service (NRCS), US Army Corps of Engineers (USCOE), US Fish and Wildlife Service (USFWS), the Federal Emergency Management Agency (FEMA), National Marine Fisheries Service (NMFS), and the Environmental Protection Agency (EPA). These agencies will actively participate in implementation.

In many cases, the federal government delegates implementation and/or enforcement to state agencies. In the Tillamook Bay Watershed, state agencies with federal mandates have worked to integrate their programs and mandates into the CCMP. Important state partners include the Department of Land Conservation and Development (DLCD), responsible for the Coastal Zone Management Act; the Oregon Department of Environmental Quality (DEQ), overseeing implementation of relevant provisions of the Clean Water Act (including Total Maximum Daily Loads, NPDES permits, and 319 nonpoint source projects); and the Oregon Department of Agriculture, which manages the Confined Animal Feeding Operation (CAFO) permit/inspection process for livestock operations as well as the licensing and inspection program for commercial shellfish growers. The Tillamook County Performance Partnership includes all relevant state agencies responsible for federal mandates.

This section outlines existing federal review mechanisms and highlights programs that facilitate coordination. Important programs include:

- Coastal Zone Management Act (NOAA Section 307)
- Coastal Zone Act Reauthorization Amendments (NOAA Section 6217)
- Endangered Species Act (NOAA-NMFS Sections 7 & 10)
- Clean Water Act (EPA Section 319)
- Clean Water Act (USCOE Section 401)
- National Environmental Policy Act (EPA Section 309 and Section 1502.16(c))
- Office of Management and Budget (A-106)

## Coastal Zone Management Act (CZMA)

The Coastal Zone Management Act was developed to “protect, preserve, develop, and where possible, to restore or enhance the resources of the nation’s coastal zone.” The Act does not provide any new land use regulations but encourages states to conserve their coastal areas by developing and implementing coastal land and water use programs according to the guidelines established in the Act. As a voluntary program, the CZMA encourages states to participate by providing funding incentives and technical expertise to state planning efforts. The federal consistency provision is an important feature of the CZMA, which requires federal activities to be consistent with enforceable state policies and programs. Oregon has an approved Coastal Zone Management Plan.

***CZMA Federal Activities and Development Projects.*** Sections 307 (c)(1) and (2) of the CZMA require all federal activities and development projects, that affect any water use or natural resource of the coastal zone to be consistent to the maximum extent practicable with approved CZM programs. The phrase “to the maximum extent practicable” is defined to mean fully consistent with the state coastal management plan unless prohibited by laws and regulations that govern a federal agency’s activities.

***CZMA Federal Licenses and Permits.*** Section 307 (c)(3) of the CZMA provides that no federal license or permit shall be granted by a federal agency to an applicant for an activity, inside or outside of the coastal zone, affecting any land or water uses or natural resources of the coastal zone until the coastal state concurs (or concurrence is conclusively presumed) that the activity is consistent with the federally-approved state CZM program. The Secretary of Commerce, upon appeal, may override a state’s consistency objection, but only if the Secretary finds that the activity is consistent with the goals of the CZMA or necessary in the interest of national security.

***Financial Assistance to State and Local Government.*** Section 307(d) of the CZMA requires that state and local projects be in accordance with their Coastal Zone Plan to receive federal assistance. This is especially important in Oregon, which has developed an enforceable land use planning system. Organized around a series of statewide goals, this planning system defines specific criteria for the management of estuarine resources (Goal 16), coastal shorelands (Goal 17), beaches and dunes (Goal 18), and ocean resources (Goal 19).

Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) Section 6217 of the CZARA requires state coastal management programs to develop coastal nonpoint pollution control programs and enforceable policies to implement those nonpoint programs. Federal consistency may be used to implement coastal nonpoint program enforceable policies to support existing state coastal management programs.

## Endangered Species Act (ESA)

The Endangered Species Act (ESA) may be the most forceful federal legislation to affect aquatic habitat in the Tillamook Bay Watershed. Based on the “threatened” listing of the coho salmon and other species the legislation has the potential to restrict public and private land uses to protect critical habitat. The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) share responsibility for listing and restoring populations of threatened and endangered species. NMFS oversees all ESA responsibilities for anadromous salmonid (and other marine) listings. Specific duties include:

- Review status of species and determine if listing of the species is warranted under ESA;
- Propose and designate critical habitat for listed species;
- Under Section 7 of ESA, consult on activities or plans which are authorized, funded, or carried out by federal agencies which may affect listed species or their habitat to insure ESA compliance;
- Under Section 10 of ESA, work with land owners to develop Habitat Conservation Plans to minimize take of listed species which may result from activities on State or private lands;
- Enforce laws; and
- Develop and review species recovery plans.

***Incidental Take and Habitat Conservation Plans (HCP).*** Section 9 of the ESA prohibits the take of federally listed species without appropriate authorization. An incidental taking refers to the “killing, harming, or harassment” of a federally listed species due to activities which are not meant to disrupt the species and are otherwise lawful. Section 10 requires a land user to apply for a permit to take federally listed species. In order to be eligible for an incidental take permit, applicants must prepare a Habitat Conservation Plan (HCP).

The ESA, pursuant to Sections 7 and 10, therefore, provides authorization to work in critical habitat areas by issuing “incidental take” permits. These permits include provisions to specify:

- The amount (number) or extent (habitat) of anticipated take, if any;
- Measures considered reasonable and prudent to minimize the risk; and
- Nondiscretionary terms and conditions to implement the reasonable and prudent measures, including the procedures used to handle or dispose of any individuals of the species actually taken.

In order to obtain an incidental take permit an applicant must prepare and gain approval of a Habitat Conservation Plan (HCP). An HCP must specify:

- Measures the applicant will undertake to monitor, minimize, and mitigate such impacts; funding that will be made available to undertake such measures; and procedures to deal with unforeseen circumstances;
- Alternative measures the applicant considered that would not result in take, and the reasons why such alternatives are not being utilized;
- Impacts likely to result from proposed taking of federally listed species;
- Additional measures the Service may require as necessary or appropriate for the purposes of the conservation plan, such as an Implementing Agreement that spells out the roles and responsibilities of all parties.

The Oregon Department of Forestry (ODF) is negotiating an HCP for timber harvest activities in the Tillamook State Forest.

## **Clean Water Act**

The Clean Water Act contains two important sections that require federal consistency reviews. Section 319 coordinates nonpoint source programs and Section 401 certifies federal activities in waters of the state.

***Section 319 Nonpoint Management Plan.*** Section 319 of the Clean Water Act requires states to prepare a nonpoint pollution control plan. A portion of that plan requires a review of federal actions that could contribute to the nonpoint loading of waters within the state. In the Tillamook Bay Watershed, Oregon Department of Environmental Quality (DEQ) is preparing a Total Maximum Daily Load (TMDL) plan for the basin. DEQ staff have actively participated on the TBNEP Management Committee and coordinated their activities with other relevant agencies. The Management Conference expects DEQ to complete a TMDL in 1999. The program will be reviewed by all agencies under the Tillamook County Performance Partnership.

***Section 401 Certification.*** Section 401 of the Clean Water Act requires states to certify that federal activities comply with the state's water quality requirements. It requires that applicants for federal licenses or permits obtain a certificate from the state if a proposed activity may result in any discharge to navigable waters. Actions covered include filling wetlands (Section 404 of the Clean Water Act); activities in navigable waters (Sections 9 and 10, Rivers and Harbors Act of 1899); and point source discharge permits (Section 402 of the Clean Water Act). In Oregon the process is the responsibility of the Department of Environmental Quality.

## **National Environmental Policy Act**

The National Environmental Policy Act (NEPA) contains two review elements of interest. Section 309 charges EPA with reviewing and commenting in writing on federal actions that have potential for significant environmental impacts.

Section 1502.16 (c) of NEPA also requires

Environmental Impact Statements (EISs) to include a discussion of possible conflicts between the proposed action and the objectives of federal, regional, state and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.

## **Office of Management and Budget (OMB) A-106**

The A-106 process requires federal agencies to identify federal facilities that are not in compliance with pollution abatement standards and develop plans to bring the facilities into compliance. The EPA reviews and recommends to OMB any necessary changes.

## **National Historic Preservation Act (P.L. 89-665)**

Under the National Historic Preservation Act, federal agencies must review projects for potential impacts to cultural, archeological, and historical resources. The process requires a review by a State Historic Preservation Officer (SHPO).

## **Inventory and Review of Federal Programs**

This section provides an initial assessment of federal assistance programs and mandates relevant to the TBNEP CCMP. The assessment includes a review of the *Catalog of Federal Domestic Assistance* for funding programs available from, and permits and/or licenses required by the federal government. The review includes all federal programs identified in the *Base Programs Analysis* along with other programs that have the potential to affect natural resource management in the Tillamook Bay Watershed. The review identifies specific programs that may conflict with each other and it highlights federal mandates that will require close coordination.

### **Criteria for review**

Any federal action providing financial assistance or taking direct action relevant to the CCMP is subject to federal consistency review under CWA Section 320. In general, a federal program, action, permit or license will be reviewed for consistency if:

- It is located within the estuary program study area; or
- It may significantly affect the water quality, habitat, sedimentation, and/or flooding within the Tillamook Bay Watershed.

A program or action selected for review will be found to be *consistent* with the CCMP if it will:

- Preserve and enhance water quality within the Watershed and estuary;
- Protect and restore the biological integrity of the Bay and Watershed;
- Decrease sediment and bacteria loading to water bodies;
- Support policies, targets, and/or actions in the CCMP;
- Contribute to the implementation of the CCMP; or
- Result in significant economic/social benefits consistent with CCMP policies, targets, and actions.

Any federal action providing financial assistance or taking direct action relevant to the Comprehensive Conservation and Management Plan (CCMP) which may affect ESA listed species would also be subject to ESA Section 7 consultation.

### **Federal Assistance Programs**

The 1997 Catalog of Federal Domestic Assistance (Catalog) lists 1,328 separate programs provided by the federal government. Fifty-one agencies are responsible for administering these programs. From this group, TBNEP initially identified 134 programs administered by 12 agencies that have the potential to affect the actions included in the management plan.



The remaining 1,194 programs are judged to have no effect on the actions included in the management plan. Most of the 134 assistance programs are likely to have positive, rather than negative, effects.

### **Relevant Federal Programs**

The programs judged to have the potential of affecting the management plan are listed below by agency, catalog number, and title.

#### **Department of Agriculture - 27 programs**

- 10.215 Sustainable Agriculture Research and Education
- 10.500 Cooperative Extension Service
- 10.054 Emergency Conservation Service
- 10.055 Production Flexibility Payments for Contract Commodities
- 10.069 Conservation Reserve Program
- 10.664 Cooperative Forestry Assistance
- 10.670 National Forest—Dependent Rural Communities
- 10.062 Water Bank Program
- 10.064 Forestry Incentives Program
- 10.072 Wetlands Reserve Program
- 10.901 Resource Conservation and Development
- 10.902 Soil and Water Conservation
- 10.904 Watershed Protection and Flood Prevention
- 10.906 Watershed Surveys and Planning
- 10.912 Environmental Quality Incentives Program
- 10.913 Farm Land Protection Program
- 10.914 Wildlife Habitat Incentives Program
- 10.769 Rural Development Grants
- 10.771 Rural Cooperative Development Grants
- 10.766 Community Facilities Loans
- 10.760 Water and Waste Disposal Systems for Rural Communities
- 10.761 Technical Assistance and Training Grants
- 10.762 Solid Waste Management Grants
- 10.763 Emergency Community Water Assistance Grants
- 10.764 Resource Conservation and Development Loans
- 10.765 Watershed Protection and Flood Prevention Loans
- 10.770 Water and Waste Disposal Loans and Grants

#### **Department of Commerce - 20 programs**

- 11.400 Geodetic Surveys and Services
- 11.407 Interjurisdictional Fisheries Act of 1986
- 11.417 Sea Grant Support
- 11.419 Coastal Zone Management Administration Awards
- 11.426 Financial Assistance for Ocean Resources Conservation and

Assessment Program

- 11.427 Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program
- 11.429 Marine Sanctuary Program
- 11.434 Cooperative Fishery Statistics
- 11.436 Columbia River Fisheries Development Program
- 11.437 Pacific Fisheries Data Program
- 11.438 Pacific Salmon Treaty Program
- 11.439 Marine Mammal Data Program
- 11.441 Regional Fishery Management Councils
- 11.443 Short Term Climate Fluctuations
- 11.454 Unallied Management Projects
- 11.455 Cooperative Science and Education Program
- 11.462 Hydrologic Research
- 11.463 Habitat Conservation
- 11.472 Unallied Science Program
- 11.473 Coastal Services Center

**Department of Defense - 12 programs (includes USCOE)**

- 12.100 Aquatic Plant Control
- 12.101 Beach Erosion Control Projects
- 12.102 Emergency Rehabilitation of Flood Control Works or Federally Authorized Coastal Protection Works
- 12.103 Emergency Operations Flood Response and Post Flood Response
- 12.104 Flood Plain Management Services
- 12.105 Protection of Essential Highways, Highway Bridge Approaches, and Public Works
- 12.106 Flood Control Projects
- 12.107 Navigation Projects
- 12.108 Snagging and Clearing for Flood Control
- 12.109 Protection, Clearing and Straightening Channels
- 12.110 Planning Assistance to States
- 12.111 Emergency Advance Measures for Flood Prevention

**Department of Housing and Urban Development - 4 programs**

- 14.218 Community Development Block Grants/Entitlement Grants
- 14.219 Community Development Block Grants/Small Cities Program
- 14.228 Community Development Block Grants/State's Program
- 14.859 Public and Indian Housing - Comprehensive Grant Program

**Department of Interior - 15 programs**

- 15.252 Abandoned Mine Land Reclamation (AMLR) Program
- 15.605 Sport Fish Restoration

- 15.608 Fish and Wildlife Management Assistance
- 15.611 Wildlife Restoration
- 15.614 Coastal Wetlands Planning, Protection and Restoration Act
- 15.615 Cooperative Endangered Species Conservation Fund
- 15.616 Clean Vessel Act
- 15.617 Wildlife Conservation and Appreciation
- 15.618 Administrative Grants for Federal Aid in Sport Fish and Wildlife Restoration
- 15.808 Geologic Survey - Research and Data Acquisition
- 15.977 State Partnerships
- 15.916 Outdoor Recreation - Acquisition, Development and Planning
- 15.918 Disposal of Federal Surplus Real Property for Parks, Recreational, and Historical Monuments
- 15.919 Urban Park and Recreation Recovery Program
- 15.921 Rivers, Trails, and Conservation Assistance

**Department of Transportation - 20 programs**

- 20.001 Boating Safety
- 20.005 Boating Safety Financial Assistance
- 20.006 State Access to the Oil Spill Liability Trust Fund
- 20.007 Bridge Alteration
- 20.106 Airport Improvement Program
- 20.205 Highway Planning and Construction
- 20.217 Motor Carrier Safety
- 20.218 Motor Carrier Safety Assistance Program
- 20.219 National Recreational Trails Funding Program
- 20.301 Railroad Safety
- 20.303 Grants-in-Aid for Railroad Safety - State Participation
- 20.312 High Speed Ground Transportation
- 20.500 Federal Transit Capital Improvement Grants
- 20.505 Federal Transit Technical Studies Grants
- 20.507 Federal Transit Capital and Operation Assistance Formula Grants
- 20.509 Public Transportation for Nonurbanized Areas
- 20.515 State Planning and Research
- 20.700 Pipeline Safety
- 20.703 Interagency Hazardous Materials Public Sector Training and Planning Grants
- 20.801 Development and Promotion of Ports and Intermodal Transportation

**General Services Administration - 2 programs**

- 39.002 Disposal of Federal Surplus Real Property
- 39.003 Donation of Federal Surplus Personal Property

**Environmental Protection Agency - 28 programs**

- 66.651 Sustainable Development Challenge Grants
- 66.419 Water Pollution Control - State and Interstate Program Support
- 66.432 State Public Water System Supervision
  
- 66.433 State Underground Water Source Protection
- 66.438 Construction Management Assistance
- 66.454 Water Quality Management Planning
- 66.456 National Estuary Program
- 66.458 Capitalization Grants for State Revolving Funds
- 66.460 Nonpoint Source Implementation Grants
- 66.461 Wetlands Protection - Development Grants
- 66.463 National Pollutant Discharge Elimination System Related State Program Grants
- 66.467 Wastewater Operator Training Grant Program (Technical Assistance)
- 66.468 Capitalization Grants for Drinking Water State Revolving Fund
- 66.470 Hardship Grants Program for Rural Communities
- 66.508 Senior Environmental Employment Program
- 66.606 Surveys, Studies, Investigations and Special Purpose Grants
- 66.604 Environmental Justice Grants to Small Community Groups
- 66.700 Consolidated Pesticide Enforcement Cooperative Agreements
- 66.701 Toxic Substances Compliance Monitoring Cooperative Agreements
- 66.708 Pollution Prevention Grants Program
- 66.710 Environmental Justice Community/University Partnership Grants
- 66.801 Hazardous Waste Management State Program Support
- 66.804 State Underground Storage Tanks Program
- 66.805 Leaking Underground Storage Tank Trust Fund Program
- 66.808 Solid Waste Management Assistance
- 66.810 CEPP Technical Assistance Grants Program
- 66.811 Brownfield Pilots Cooperative Agreements
- 66.951 Environmental Education Grants

**Federal Emergency Management Agency (FEMA) - 4 programs**

- 83.011 Hazardous Materials Training Program for Implementation of the Superfund Amendment and Reauthorization Act (SARA) of 1986
- 83.100 Flood Insurance
- 83.505 State Disaster Preparedness Grants
- 83.551 Project Impact

**Corporation for National and Community Service - 2 programs**

- 94.006 Americorps
- 94.007 Planning and Program Development Grants

## **Possibly Inconsistent Funding Programs**

The following 11 could negatively affect actions in the management plan. These programs will require additional attention and/or clarification from the Management Conference and Tillamook County Performance Partnership.

### ***Department of Agriculture***

- 10.765 Watershed Protection and Flood Prevention Loans  
Emergency Watershed Protection Program

### ***Department of Defense***

- 12.101 Beach Erosion Control Projects
- 12.102 Emergency Rehabilitation of Flood Control or Coastal Protection Works
- 12.103 Emergency Operations Flood Response and Post Flood Response
- 12.107 Navigation Projects
- 12.108 Snagging and Clearing for Flood Control
- 12.109 Protection, Clearing and Straightening Channels
- 12.111 Emergency Advance Measures for Flood Prevention

### ***Department of Transportation***

- 20.205 Highway Planning and Construction
- 20.801 Development and Promotion of Ports and Intermodal Transportation

### ***Federal Emergency Management Agency (FEMA)***

- 83.100 Flood Insurance

## **Potential Conflicts with Federal Agency Mandates**

Federal mandates, direct actions, and/or permits present a different set of circumstances than most federal funding programs. While funding programs are often discretionary, mandates require a non-discretionary obligation of an agency. This means that the responsible agency must meet federal rules, standards, and/or procedures.

### ***Federal Laws***

Important federal laws outlining agency mandates include the following:

- Wild and Scenic River Act (16 U.S.C. 401)
- Rivers and Harbors Act of 1899 (33 U.S.C. 401)
- Rivers and Harbors Act of 1899 (33 U.S.C. 403)
- Rivers and Harbors Act of 1899 (33 U.S.C. 404)
- Rivers and Harbors Act of 1899 (33 U.S.C. 407)
- Rivers and Harbors Act of 1899 (33 U.S.C. 408)
- Marine Protection, Research and Sanctuaries Act of 1972,  
as amended (16 U.S.C. 1413)
- Marine Protection, Research and Sanctuaries Act of 1972,  
as amended (16 U.S.C. 1432)

Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1456(c))  
 Clean Water Act (33 U.S.C. 1341)  
 Clean Water Act (33 U.S.C. 1342)  
 Clean Water Act (33 U.S.C. 1344)  
 Coastal Barrier Resource Act (16 U.S.C. 1301-1305)  
 Coastal Zone Management Act of 1972 as amended (16 U.S.C. 1451-1464)  
 Endangered Species Act (16 U.S.C. 1531 et seq.)  
 Fish and Wildlife Coordination Act (16 U.S.C. 661-666c)  
 Fish and Wildlife Act of 1956 (U.S.C. 16 U.S.C. 742a et seq.)  
 Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.)  
 Migratory Marine Game-Fish Act (16 U.S.C. 760a-760g)  
 Transportation Equity Act  
 Water Resources Development Act 1999 (pending authorization)

### Federal agency coordination

In the Tillamook Bay Watershed, diverse federal agencies implement and/or oversee relevant laws and mandates. Important federal mandates that will require close coordination through the Tillamook County Performance Partnership include:

| Federal Agency               | Program Mandate                             |
|------------------------------|---------------------------------------------|
| USDA-National Forest Service | Forest Planning and Harvest Decisions       |
| NOAA                         | Coastal Zone Management Act                 |
| NOAA                         | Coastal Zone Act Reauthorization Amendments |
| NOAA-NMFS                    | T&E Species Listing                         |
| NOAA-NMFS                    | T&E Consultations and HCP Development       |
| USA-COE                      | 404 Permits                                 |
| USA-COE                      | Dredge Plans                                |
| USA- COE                     | Reservoir Operations                        |
| DOI-USF&WS                   | T&E Species Listing                         |
| DOI-USF&WS                   | T&E Jeopardy Opinions                       |
| DOI-USF&WS                   | Refuge Planning and Management              |
| USDOT-CG                     | Oil Spill Response                          |
| USDOT-CG                     | MARPOL Regulations                          |
| EPA                          | Establishing Water Quality Criteria         |
| EPA                          | NPDES Permits                               |
| EPA                          | Dredge and Fill Discharge Regulations       |
| EPA                          | CERCLA Regulations                          |
| EPA                          | Registration and Licensing of Pesticides    |
| EPA                          | NEPA                                        |
| EPA                          | National Estuary Program Approval           |

## **Federal Consistency Review Strategy:**

### **The Tillamook County Performance Partnership**

Serving as the Management Conference, the Tillamook County Performance Partnership will coordinate all federal programs through a collaborative process that includes all local, state, and federal stakeholders.

To strengthen this process, Tillamook County formally adopted Resolution A98-15 on April 22, 1998 as a Memorandum of Understanding (MOU) "...to encourage and facilitate cooperation among federal, state, and local entities to implement an outcomes-oriented approach to ecosystem restoration in Tillamook County." The Resolution solidifies the County's commitment to greater government coordination. It serves as a milestone in the State of Oregon's broader initiatives to streamline government services under Vice President Al Gore's National Performance Review (NPR). An Oregon Watershed MOU: Reinvention Lab Agreement signed by the Vice President and Governor Kitzhaber on July 1, 1998, partners the State with 10 federal agencies in their commitment to greater cooperation and innovation.

The State of Oregon has not formally adopted a review process that completely addresses Executive Order 12372. Oregon has, however, developed a process for interagency and public review of permit applications for Department of State Lands Removal/Fill permits and USCOE section 404 permits. This process is commonly referred to as the Joint Permit Application for Fill and Remove permits. The State and the Corps developed a joint permit application form and circulate completed applications to agencies and the public for review. This system provides a model for review that the Performance Partnership may choose to adopt locally.

DLCD, as the State's designated coastal management agency, also has a federal consistency review process with which the Performance Partnership will coordinate. DLCD reviews involve consultation with local governments, state agencies, federal agencies, and other interested parties in determining project consistency with the Oregon Coastal Management Plan (OCMP). Federal permits, licenses, and financial assistance grants cannot be issued if the State objects based on project inconsistency with the OCMP. Direct federal activities inconsistent with the OCMP cannot proceed unless federal law specifically prohibits federal agency compliance. However, DLCD objections are rare, averaging only 2-3% of total projects reviewed for the last several years.

The Tillamook County Performance Partnership will call upon individuals within the Partnership to form task forces for the purpose of reviewing and coordinating all federal activities and to identify possible conflicts, overlaps, and redundancies in program funding and mandates. Performance Partnership Bylaws (see Appendix L) specifically commit the organization to review and coordinate federal programs in Article 1 Section 3(B) and Article V Section 2 (A). The signatories to an Implementation Agreement (most federal, state, and local agencies involved in the Tillamook area; see Appendix K) will be expected to help raise and resolve any potential conflicts between planned activities and the goals of the CCMP. The Scientific-Technical and Management Committees have dissolved under the TBNEP framework, and the members of those committees have been invited to participate in two task forces to deal with implementation issues. These new task forces have been named the Implementation Oversight Task Force and Implementation Task Force, respectively.

These task forces include local, state, and federal representatives who are able to identify and resolve conflicts or inconsistencies in federal financial assistance and development programs as well as with issues surrounding local and federal mandates. They will meet monthly throughout the implementation phase of the estuary project; more often as needed. Conflicts and/or inconsistencies will be resolved every 30 days when possible.

***Example of Conflict Resolution.*** During the winter of 1998, repetitive flooding of the lower Wilson River prompted local citizens to request emergency measures to clear a growing logjam where the river enters the Bay. A task force was convened for the purpose of reviewing the proposed project and working out any potential conflicts that would arise as a result of the work. This task force consisted of individuals from Oregon Department of Fish & Wildlife, Tillamook County Flood Group (citizen group), Tillamook County Department of Emergency Management, USCOE, Tillamook County Soil & Water Conservation District, Oregon Division of State Lands and landowners adjacent to the project area.

This effort resulted in an emergency response project that was acceptable to all federal, state, and local stakeholders.

***Conclusion.*** Efforts such as this by members of the Management Conference (now Tillamook County Performance Partnership) and county and State government will ensure close coordination of all government programs and meet the intent of Executive Order 12372.