



FEMA

December 19, 2012

FAQ: How does FEMA ensure compliance with the ESA when processing Letters of Map Change?

What is the National Marine Fisheries Service 2008 Biological Opinion?

In 2004, FEMA entered into a consultation with the National Marine Fisheries Service (NMFS) to consult on the effects of implementation of the National Flood Insurance Program (NFIP) on endangered species and critical habitat. In September 2008 NMFS provided a Biological Opinion in which they concluded that development consistent with the NFIP jeopardizes threatened or endangered Chinook salmon, chum salmon, steelhead, and killer whales and adversely modifies critical habitat based on potential take of listed species.

Federal agencies are prohibited by the Endangered Species Act (ESA) from causing jeopardy to endangered species or adverse modification of critical habitat. Once a jeopardy determination is made, NMFS is obligated to provide a Reasonable and Prudent Alternative (RPA), which are measures FEMA can do to avoid jeopardy to endangered species and adverse modification of critical habitat. These measures outline steps FEMA and communities participating in the NFIP can do to minimize harm to Puget Sound Chinook salmon, Puget Sound steelhead, Hood Canal summer-run chum and Southern Resident killer whales.

What are the new species-protective standards that apply to floodplain development permits?

RPA #3 of NMFS' 2008 Biological Opinion requires that FEMA and all of the affected participating communities ensure that any type of floodplain development, as defined by 44 CFR § 59.1, does not have an adverse effect on listed species or their critical habitat. Floodplain development includes any and all activities associated with Letters of Map Change, especially those caused by manmade alterations. Additional FAQ's are available on the FEMA NFIP/ESA website at: www.fema.gov/nfip-and-endangered-species-act. Each of these FAQs are designed to demonstrate how the no adverse effect standard can be met by addressing the implementation of specific performance standards required by the Biological Opinion such as low impact development, vegetation retention, cumulative effects, and compensatory storage.

What are the new species-protective standards that apply to Letters of Map Change?

RPA #2A stipulates that manmade alterations are only allowed when the project proponent has factored in the effects of the alteration on channel and floodplain habitat functions for listed salmon and has demonstrated that the alteration avoids habitat functional changes or the proponent has mitigated for the habitat functional changes resulting from the alteration with the appropriate habitat measures that benefit the affected salmonid populations.



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Letters of Map Change are FEMA's official recognition –on a Flood Insurance Rate Map (FIRM)- of manmade alterations such as filling, levee construction, some levee maintenance activities, channel alterations, dredging and any other type of physical manipulation. Letters of Map Change can be done in two ways: Conditional Letters of Map Revision (CLOMRs) and Letters of Map Revision (LOMRs). Both require full compliance with the ESA; the only difference is timing.

How does FEMA ensure compliance with RPA 2A for CLOMRs?

CLOMRs are conditional approvals sought prior to any project initiation, which provide proponents a way to determine project feasibility before any alteration is started. CLOMR-Fs are conditional approvals for projects placing fill in the floodplain. FEMA has adopted a national policy for all CLOMRs requiring a demonstration of compliance with the Endangered Species Act (ESA). FEMA Region 10's policy is that all CLOMRs in Puget Sound require a Section 7 consultation. FEMA can act as the proponent's representative to the consulting agency, such as the U.S. Fish and Wildlife Service (FWS) or NMFS (collectively "the Services"). Demonstration of compliance with the ESA is required as a result of the Section 7 consultation before FEMA will approve the CLOMR. FEMA expects that the consulting agency will use the 2008 Biological Opinion for the National Flood Insurance Program (NFIP) in Puget Sound as the basis for all such consultations. As such, any projects that apply for a CLOMR that can demonstrate compliance with RPA 3 of the Biological Opinion will be able to receive a concurrence letter from the services without having to enter into formal consultation.

For those CLOMRs and CLOMR-Fs involving new levee construction that constitute floodplain development, project proponents must either comply with the requirements of RPA 5D or obtain an approval from the services under a separate consultation in order to obtain FEMA approval. Failure of the CLOMR application to achieve full compliance with the ESA through the consultation process will serve as the basis for FEMA's denial of the CLOMR. If and when the CLOMR has achieved Section 7 consultation approval through the consulting agency and has shown compliance with ESA, FEMA will approve the CLOMR. An additional FAQ, entitled "How Compliance with Species-Protective Floodplain Development Permit Standards Also Addresses Compliance with Species-Protective Standards for Levee Construction and Maintenance", is available regarding levees and compliance with the ESA.

At the project permitting stage, the desired alternation must adhere to the requirements, conditions, and standards imposed in the preceding Section 7 consultation and the resulting CLOMR approval. The project permit can only be approved at the local government level if it strictly abides by the originating CLOMR approval standards. Once the project has been completed, inspected, and verified by the local government official that the project was built to the exact specifications of the CLOMR requirements, and that it is compliant with conditions of the consultation, the project proponent may proceed to finalize the CLOMR by applying for the LOMR.



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How does FEMA ensure compliance with RPA 2A for LOMRs?

For project proponents opting instead to obtain a LOMR or LOMR-F without first going through the CLOMR process, they must obtain a local government floodplain development permit before floodplain development activities occur. FEMA requires all Puget Sound floodplain development projects be permitted, and only RPA 3 compliant projects may be permitted unless ESA compliance is obtained through a separate consultation. RPA 3 compliance is either done programmatically through local government development regulations which FEMA has pre-approved as being RPA 3 compliant through the programmatic compliance options (Door 1 and 2 approach), or the local government is required to invoke the full suite of RPA 3 requirements for each individual permit, which includes analyzing the cumulative effects of that permit on fisheries resources (Door 3 approach).

Therefore, regardless of whether a project proponent opts to obtain a CLOMR or a LOMR, the project proponent must comply with ESA. If the proponent opts for the CLOMR route, then compliance is achieved through a Section 7 consultation. If the project proponent opts for the LOMR route, then compliance is achieved directly through the floodplain development permitting process (which is required prior to the development activity for which a LOMR would be sought). Regardless of which route a project proponent takes, FEMA and the community will be able to ensure compliance with both RPA 2A and RPA 3 with the processes and procedures that have been put into place.

Do community officials have to certify that Letters of Map Change are ESA-compliant?

All Conditional and formal Letters of Map Revision applications require a Forms 1 – 4 of the MT-2 package be submitted to FEMA. The application package provides the basic information regarding the revision request and requires the signatures of the requester, community official, and engineer. Section D of the *Overview and Concurrence Form* (MT-2 Form 1) is for the signature of the community official. FEMA requires the local community official concur with the proposed map revision or attach a signed statement to the request explaining the reasons or basis for the disagreement. Section D is commonly used by local officials as the last stop in ensuring the applicant has obtained all necessary Federal and State permits related to the revision. All local government officials in Puget Sound must ensure that the map revision comports with the ESA for all CLOMR and LOMR projects before signing Section D of any MT form. Demonstrated compliance with RPA 3 will ensure compliance with the ESA.