

## APPENDIX C: RESPONSE TO COMMENT

On March 9, 2010, FEMA requested and received comments from stakeholders on the model ordinance and regional guidance documents. Over 160 responses were received from a variety of different respondents including; tribes, counties, city governments, ports, environmental groups, industry, and state offices. FEMA's response to comment is sorted using the model ordinance outline.

### Outside FEMA's authority

#### Section 1.4: "Model goes beyond court decision".

- The M.O. is intended to provide ESA coverage for a community. The court decision only addresses salmonids in the Puget Sound. Thus some of the language is optional as indicated in the response sections.
- **Sec 1.4, 2 Regulatory Floodplain: should be revised to include only those areas within the regulated SFHA and the Protected Area within it; otherwise it is outside FEMA authority**
- **Section 3, Regulatory Data, pg 22: FEMA can't require expansion of regulatory authority**
- **Section 3.1 commentary: Exceeds BiOp requirements**
- **Section 3.4: Regulatory floodplain expands beyond FEMA's authority to regulate**
- **Section 3.4.A: Protected Area- Commentary: Clarify application of the Model Ordinance and the NFIP outside the SFHA**
- **Regulates lands outside SFHA**
- **Section 3.5: SFHA, floodway, and channel migration zone are within FEMAs legal authority the Riparian Habitat Zone is not**
- **Riparian Habitat Zone is not within FEMAs authority to administer**
- **Preservation of habitat of listed species is not within the purpose of the FIA**
- **Model ordinance regulatory authority beyond the SFHA can't be required**
- **Goes beyond FEMA's NFIP mandate and authority**
- **Specific: eliminate all sections that reference elements outside of FEMA authority**
- **MO exceeds what existing ESA regulations impose**
- **concern of expansion of the NFIP into non-floodplain areas**
- **model should limit application to flood hazard areas only**
- FEMA's regulatory authority ends at the edge of the Special Flood Hazard Area (SFHA) however, communities still have a responsibility to comply with the Endangered Species Act (ESA), regulated by NOAA and Fish and Wildlife Service. The Biological Opinion (BiOp) and the accompanying Reasonable and Prudent Alternatives (RPA), provided by the National Marine Fisheries Service, provide a path for communities to comply. If a community chooses not to enforce the performance standards of the BiOp outside of the SFHA they leave themselves vulnerable to ESA claims either by NMFS or a third party.

- The ESA requires federal agencies to utilize their authorities to further the Endangered Species Act's purposes and to insure no action jeopardizes species or adversely modifies their habitat. Implementing the Federal Insurance Administrator (FIA) or the National Flood Insurance Program (NFIP) is an agency action.

**Section 7.7 and 7.8: shifting Federal ESA responsibility of ESA effects determinations to local communities is outside of FEMA's authority**

- The minimum NFIP regulations (44CFR 60.3(a) (2)) require that a community ensure that all necessary permits have been received from all Federal and State agencies from which approval is required. The model ordinance is providing a programmatic option for communities to demonstrate compliance without having to go permit by permit.

**MO (and BiOp) improperly modifies the 2005 Critical Habitat Designations. Neither takes economic impacts into account.**

- The Model Ordinance is based on science provided by NMFS in the Biological Opinion.  
The boundaries for critical habitat are designated by the applicable ESA regulatory agency and, are indeed, outside FEMA's authority to change. In this case, the National Marine Fisheries Service would be the correct agency to address concerns about modifying Critical Habitat designations. FEMA has alerted NMFS to these issues.

**Section 4d, ESA takes precedence for local communities, therefore they need only comply with the standards found in section 4d to be in compliance with ESA. FEMA cannot impose greater standards than the 4d rule.**

- Local governments in the State of Washington have not applied for consultation under the 4(d) rule to gain a safe harbor. The coverage is not automatically provided.

## **ESA and Taking**

- **MO exposes local governments to inverse condemnation and substantive due process claims**
- **Model ordinance is a constitutional taking: blanket 250 buffer goes beyond what is necessary to prevent harm**
- **Section 3.4: Reference material doesn't support; subject to legal takings**

### **Sec 5.1 and 5.2: takings**

- **Takings issue for lots partially in FP: Potential takings requiring development in portion outside FP. See Section 5.1 and 5.2**
- **Section 5.2.b.2 causes a conflict with the critical area ordinances use exception for properties with limited developable area. Possible take scenario.**
- **Section 5.2.a.1: Absolute requirement outside FP, if available, is a takings (like septic system needs to perc, but can't build on top of septic)**
- **Section 5.2: Site Design: Should not require buildings to be located outside of floodplain if there is a buildable space.**
  - The Riparian Habitat Zone in the Model Ordinance is based on science found in the Biological Opinion, issued by NMFS, to prevent harm. The community has the option to demonstrate that their science is more applicable to their site conditions through the checklist option, or through the individual site assessments. They do not have to choose to incorporate the Model Ordinance if there is a better way for them to show compliance.
  - If local governments believe that the M.O. would be subject to a constitutional takings claim, then they have the option of demonstrating, through the checklist, how their community is able to comply with the ESA and are adhering to the performance standards of the BiOp. Otherwise a demonstration of compliance permit by permit will be required.

## **Science behind the BiOp and Model Ordinance Requirements**

### **Section 7: What are functioning habitats?**

- See discussion in the BiOp on effects of development on habitats for the listed species.

**FEMA nor Communities have the authority to determine what salmon habitats are functioning. FEMA nor Communities have the authority to de-designate Critical Habitat. Allowing local governments to limit habitat protection in areas that don't contain function needs to be removed.**

- Communities make similar determinations already under SEPA and their SMP programs. If the science presented is consistent with industry standards and has been peer reviewed FEMA is willing to accept the science.

### **General comments received regarding the science used for the Biological Opinion;**

- **Don't agree with science and BiOp**
- **BiOp is bad science**
- **Science: not substantiated in BiOp**
- **Uses hodgepodge riparian science approach**
  - As mentioned under the "exceeds authority" response, the BiOp was written by NMFS. If there is a question regarding the validity of the science, it needs to be addressed by NMFS. FEMA is implementing the Biological

Opinion based on the information provided to us by NMFS. FEMA has alerted NMFS regarding this issue.

**Not all of the Special Flood Hazard Area is critical Habitat**

- Correct. Not all SFHA has been designated critical habitat, however, the biological opinion determined that development in the SFHA may have an adverse affect on species and therefore must be avoided. In the Protected Area the project must avoid the impact or redesigned to avoid the adverse affect. In the remaining SFHA the adverse affect may be mitigated through other traditional means of mitigation.

**Would request the model ordinance to only apply to listed species identified in BiOp**

- The model ordinance is designed to provide coverage under the Endangered Species Act. This may include species other than those listed in the biological opinion. However, the community checklist approach provides a programmatic way for communities to comply with the biological opinion in a manner that only takes into account the impacts on the biological opinion species.

**Rural vs. Urban interface within the Biological Opinion**

- **Section 1.4: RHZ need to reflect urban densities**
- **Model ordinance in general is geared towards rural environments not urban landscapes**
- **Existing urban areas should be treated differently than undeveloped rural areas**
- **Fails to provide for the built environment**
- **The BiOp and model ordinance need to recognize developed areas**
- **Model ordinance fails to distinguish between urban and rural floodplains**
- **Section 3.4: Riparian Habitat Zone ignores the urban landscapes**
- **MO should recognize existing developed areas and provide reasonable avenues to maintain and redevelop those areas; they could integrate features that could improve habitat**
- **RHZ is inconsistent with developed conditions within cities**
- **Sec 5.2.a, 7.4, App 4a,5b: regs need to explicitly authorize and address redevelopment requirements in existing urban properties**
- **Sec 3.4.c.1: DOE will be working with every community to apply the best science, including an assessment of shoreline conditions and land use trends to come up with protective buffers and other standards. One size fits all is inconsistent with SMA.**
- **Sec 3.4.c.1.d: Riparian zone for nonsalmonid perennial and seasonal streams with unstable banks is listed as 225 ft. Excessive**
- **Sec 3.4.c.1.e: 150 feet for type N streams is 100ft further than most local statutes; should be determined by prevailing foliage and land use**
- **Section 7 implies that remaining habitat in urban areas have no intrinsic value to the protection of species**

- The Riparian Habitat Zone and the Model Ordinance are based on the science used by the Biological Opinion. The community has the option to demonstrate that their science is more applicable to their site conditions through the checklist option, or through the individual site assessments.

### Open Space requirements

- **Sec 7.2.d: How could open space and recreational facilities realistically be developed without so much as a sign? How could a trail be constructed without fill or grading?**
- **Section 5.1 commentary on open space yet we don't define FP open space**
- **Sec 7.2.d: Eliminate – how do develop open space?**
- **Section 5.1: Subdivisions should set aside open space, requirement or guidance?**
- **Section 5.1.B: Subdivisions: Specify criteria for open space preservation**
- **Sec 5.1.B and C: Request that the subdivision and open space lot requirements be deleted. If other provisions are met, outright prohibition of new lots in reg FP unnecessary burden.**
  - The requirement to set aside open space in subdivisions is guidance located in the commentary to section 5.1B and in the Biological Opinion in Appendix 4, Section 3.11. Open space is allowed to have limited development such as small trails that allow for shorelines access as required under the Shorelines Management Act. The development of these trails may require activities that require a floodplain development permit and should demonstrate no adverse affect.

### Buffer Requirements

- **Habitat Zone: Does it extend 250 from shorelines of the state or 150 from lakes?**
- **Section 3.4: Stream types exceed BiOp and expands NMFS jurisdiction without justification**
- **Buffers for non-fish bearing streams (ditches) are excessive**
- **Increase in the Buffers from the BiOp to the Model Ordinance**
- **Buffers are larger than currently required under the Washington State law**
- **Section 3.4.C.1: dimensions for don't match May 14 errata ltr and App E of the Model**
- **Sec 3.4.c, 7.4.c, 7.7, App F 5.c, 5D: Allowing submittal of delineation procedures and the science it is based upon is workable**
- **Sec 3.4.c.1: Applying 250' RBZ on lakes would result in very wide areas becoming nonconforming and subject to the permit**
- **Sec 3.4.c.1: (a) states 250 feet from marine where (b) states 200 feet. Shoreline versus fish bearing shoreline?**
- **Sec 3.4.c.1: Doesn't match May 14, 09 addendum: 250 shoreline streams, 200 marine shorelines, 150 lakes.**
- **Sec 3.4.c.2: Appears to extend zone of coverage to up to 550 ft from Type S waterbody; 450 ft from a Type N(which can include some roadside ditches).**
- **Sec 3.4: PA could extend beyond 250 ft because of undefined CMZ**

- **Buffers may not be justified in science**
- **Section 3.4.c.1.a-e: unreasonableness of the buffer (RHZ)**
- The stream buffers were amended by NMFS via an errata sheet issued on May 14<sup>th</sup>, 2009 and can be found here:
  - [https://pcts.nmfs.noaa.gov/pls/pcts-pub/pcts\\_upload.summary\\_list\\_biop?p\\_id=29082](https://pcts.nmfs.noaa.gov/pls/pcts-pub/pcts_upload.summary_list_biop?p_id=29082)
- The model ordinance and the guidance documents reflect the buffer requirements in the May 14<sup>th</sup> errata sheet.
- The buffers may exceed the minimum buffer required under Washington State law. However, a community may be able to justify smaller buffers through the programmatic checklist option.
- FEMA cannot determine the extent of NMFS jurisdiction for implementing the ESA. Contact NMFS to determine the bounds of their jurisdiction.

### Native Vegetation

- **Pg 43 Sec 7.1.b: Clarify vegetation removal to avoid jeopardizing overhead electric utilities**
- **Pg 43, Sec 7.1.d: Clarify the maintenance of overhead utility facilities. Drop the “public”. Add “poles” (see example)**
- **Confirmation that if no native vegetation, then outside the protected area, development would be exempt from veg criteria**
- **Section 7.4.b: exposes legal claims for restrictions in excess of a project's impacts?**
- **Mandating 65% native vegetation retention is not permitted under WA law**
- **Section 7.4: Native Vegetation: No removal of Native Vegetation in an RHZ could be considered a taking, since there is no mitigation option.**
- **Prohibition on removing native vegetation in the RHZ may keep new terminals from built and precludes maintenance activities if a native species grows in a developed area**
- **35% limit on native vegetation removal outside protected area could result in sprawling development**
- **Need guidance on how to apply vegetation requirements over an expanded timeframe**
- **Section 7.4: Native Vegetation: 65 % of native Vegetation should apply to rural areas not urbanized areas**
- **Sec 7.4.B: Does not reflect the language in 5b of the checklist**
- **Sec 7.4: MO mandates that property owners set aside 65% of their land containing native vegetation as no development zones**
- **Sec 7.4: How does leaving 65% of the surface area of the portion of the property in the fp in an undeveloped state affect property in the fp that is already developed.**
- **Sec 7.4a and b: Add “except as provided in subsection C, below,” to allow habitat assessment drive limitations on veg removal.**
- **Sec 7.4: Absolute requirements on vegetation, which is counter to CAO, which is determining impacts/mitigation based on habitat function and value such as vegetation.**

- **Sec 7.4: Define density of native vegetation to qualify for leaving undisturbed. Single plant id should not be sufficient to alter the proposed project**
- **Sec 7.4: Can require transplantation of native vegetation to project mitigation areas to establish or enhance target species**
  - The model ordinance states the requirement to leave 65% of the native vegetation in the inverse (remove no more than 35%) in order to better clarify the requirement. Vegetation can be removed if it can be demonstrated that there would be no adverse affect. Lots that do not have vegetation or have been previously developed cannot be expected to retain vegetation that has been lost, only to preserve the vegetation that still exists.

## Process

Respondents input regarding **the process for developing the Model Ordinance, suggesting inadequacies and concerns over implementation of the RPA.**

### Rulemaking procedures

- **Need to follow the Federal Administrative Procedures Act**
- **Was a regulatory flexibility act analysis followed?**
- **Section 7.8: Have NMFS Guidance document and FEMA modifications gone through rulemaking?**
- **Ordinance requires rulemaking – didn't follow rule making procedures**
- **FEMA must use rule making to modify its minimum criteria to address ESA listed species**
- **Recommend amend 44 CFR Part 60.3**
  - FEMA believes that 44CFR 60.3 (a)(2) provides a sufficient requirement that all necessary permits (a section 10 Incidental Take Permit may be a necessary permit) be obtained prior to permitting a development. FEMA is not changing the regulations, just enforcing the regulations as they currently exist. Therefore, developing the model ordinance and checklist does not qualify as rulemaking nor is it considered to be a modification to the action as described in the EIS of 1976.
  - FEMA Headquarters is currently involved in discussions regarding NFIP reform. Environmental standards are being evaluated for inclusion in the reform effort. Included in this reform would be both legislative and regulatory adjustments that would require APA procedures.

### NEPA process

- **Was the NEPA process followed?**
- **Not complied with NEPA**
- **Need to do NEPA**
- **Model Ordinance should be subject to NEPA**
- **Programmatic changes proposed by the model ordinance trigger a NEPA review. FEMA should use NEPA to identify alternatives to the RPA**

- **EIS is essential to understanding, communicating and mitigating impacts**
  - FEMA is not changing the regulations, just enforcing the regulations as they currently exist. Thus it does not qualify as rulemaking nor is it considered to be a modification to the action as described in the EIS of 1976, hence there is no trigger for applying the NEPA process.

## Certification

### **FEMA has not described the process for certifying communities compliant with the BiOp.**

- Communities will submit their packets of information to FEMA's regional office. FEMA will review the packets against the model ordinance or the checklist (whichever is appropriate) to determine if the communities rules, regulations, ordinances, etc... are compliant with the performance standards of the BiOp. FEMA will provide a letter of compliance to communities once the review is complete.

## **FEMA's Focus Group and public involvement**

- **Step back from current approach and create an open process for resolving these issues.**
- **Request involvement when revising the focus group products and developing other BiOp related policies and products.**
- **Rural communities were inadequately represented**
- **Coordinate better with local government**
- **Insufficient stakeholder involvement**
- **Insufficient outreach and community involvement**
- **Public involvement insufficient to reaching a constructive solution within this complexity. Ready to support and engage with FEMA and NMFS and others.**
  - FEMA believes that the Focus Group of local communities who administer the National Flood Insurance Program provided the best range of stakeholders. Local communities responsible administering the rules and regulations had the most insight and understanding of the NFIP and were able to help develop a model ordinance and guidance documents that would best meet their needs and enable them to understand and interpret the implementation plan and choose options best suited for them.
  - FEMA's Focus Group represented a cross section of the affected communities. All of the counties represented have large rural areas as well as urbanized areas and FEMA believes they adequately represented the rural communities in the Focus Group discussions.
  - FEMA is always willing to have discussions and meet with stakeholders regarding the implementation plan. However, the biological opinion provides specific deadlines for compliance and FEMA must move forward in order to meet those deadlines.

Extend the comment period and Tier maturation dates

- **Need more time to review**

- **Request extension to comment period and opportunity to review with FEMA officials**
- **Request extension of comment period another 60 days'**
- **Encourage more time for comments**
- **Please provide Tier 1 communities at least 6 more months to get to full implementation**
  - FEMA is working hard to meet the implementation deadlines for communities set by the Biological Opinion. Because of the impending deadline FEMA cannot extend the comment period.
  - However, FEMA has recently requested an extension of 1 year for all tiers in order to allow FEMA to work with local communities and gain more compliance with the Biological Opinion.

## Implementation

### Options

Model Ordinance as an option for local communities

- **BiOp doesn't allow for a model ordinance approach**
- **Model ordinance does not protect citizens or the environment**
- **Don't comingle FEMA NFIP standards with BiOp based standards**
- **Model should address only future development and require mitigation for that only**
- **Section 7 commentary: why in the commentary and not in the body of ordinance?**
- **MO does not meet the RPA**
- **Model ordinance is one size fits all. Should recognize differences within FP and PA and provide flexibility to achieve the BiOp goals**
- **Model ordinance has many excellent provisions that will increase protection of critical riparian and floodplain areas**
- **How do you plan to utilize the model ordinance?**
- **What is impact if community doesn't adopt model?**
- **MO should clarify intention to protect natural floodplain function where it exists, not restore developed floodplains**
  - The model ordinance is a piece of technical assistance provided by FEMA to use the performance standards that are provided in the BiOp and create a programmatic approach for compliance in a familiar format. A community may choose to use all or part of the model ordinance to address the areas of the biological opinion that they are unable to meet using their current regulatory framework. The model ordinance is designed to guide development away from the floodplain and therefore out of sensitive habitat areas. However, since the Federal government cannot prohibit development in certain areas, performance standards are placed on areas that may be sensitive to development.
  - A community may decide to provide their best available science to demonstrate that the buffers should be less in their community. This would be an example of a community using the checklist option to demonstrate compliance.

- A community has two other options to choose from; a programmatic approach using the checklist or permit by permit demonstration of compliance. If a community is unable to prove either programmatic or permit by permit compliance then FEMA will provide technical assistance to help the community comply. If the community continues to fail to comply, they may be placed on probation or even suspension from the NFIP.

Checklist as an option for the local communities:

- **Section 3.4.c: Model Ord doesn't provide approval criteria for community submitted alternative mapping**
- **Section 7: What level of documentation is required**
- **Option to negotiate a fourth route for compliance (Programmatic Flood Zone Permit)**
- **How will the checklist be used?**
  - The Biological Opinion checklist will be used by FEMA to evaluate a community's submittal of their rules, regulations, ordinances, procedures, etc... to determine if they meet the performance standards of the biological opinion. The process is similar to the process currently used to compare local NFIP ordinances against the performance standards of the NFIP. If a community falls short of a performance standard, yet they believe the current regulatory environment provides adequate protection meeting the intent of the performance standard, then the community may submit their alternative approach for FEMA to evaluate.
    - For example:
      - A community may submit alternative "science" to provide evidence that the buffers should be less than those that are contained in the BiOp. The "science" must be consistent with industry standards and preferably been peer reviewed.

Permit by Permit determinations for local communities:

- **Sec 1 Intro: permit by permit will cause additional expenses and delays and should be considered before implementing this MO; Page 2: Explanation requested on Option 3 (permit by permit);**
- **Projects may require a consultation without a federal nexus. This will stall projects already planned.**
- **NMFS has no process to respond to permit by permit**
- **Will increase workload on the Services and slow the process**
- **Permit by permit will create backlog and permitting delays, including non FP permits (indirectly)**
- **BiOp does not provide for permit by permit option of implementation plan.**
  - Permit by permit is the default for communities to demonstrate compliance with the ESA when issuing floodplain development permits. 44CFR 60.3 (a)(2) states that a community must ensure that all other necessary federal, state, local permits have been obtained when issuing a floodplain development permit. A section 10 Incidental take permit may be a necessary permit and therefore a community must demonstrate that each permit issued is compliant with the ESA. The Biological Opinion outlines many aspects that should be

considered in reaching that determination of impact. FEMA has developed guidance on conducting that assessment to also help communities with this requirement. If a community receives a habitat assessment that determines the project will not cause an adverse effect then a permit may be issued, if there is an adverse effect or likely to adversely effect, then the project must have undergone consultation in order for a permit to be issued.

- This is not FEMA's nor is it NMFS' preferred option, however Section 10, ESA allows for non-federal parties to consult on projects that may affect an endangered species. The M.O. and the Checklist are two programmatic options for communities to be able to demonstrate that any floodplain development permit issued by the community will be compliant with the ESA and therefore not require a permit by permit consultation.
- FEMA expects that NMFS will be consistent with the Biological Opinion when consulting on projects within the floodplain under other sections of the ESA.

Requirement to obtain a Permit from NMFS:

- **There is no ESA permit, so 60.3.a.2 is not valid**
- **No ESA permit is required from NMFS**
  - Successful consultation under section 10 of the ESA provides the applicant with an Incidental Take permit. This permit may be necessary for a project, in order for it to be completed in an area outside the protected areas that is environmentally sensitive and cannot avoid adverse effects. Mitigation measures may be required, to obtain an Incidental Take Permit.

Model Ordinance allowing an adverse effect:

- **Model Ordinance allows adverse effects in the Protected Area**
  - The M.O. was revised so that no adverse effects are allowed in the Protected Area. Those projects that are determined to have an adverse effect are required to be redesigned so there is no adverse effect.

Requirements outside of protected area but within the Special Flood Hazard Area

- **Sec 3.4.c commentary: only allows exclusion from definition of PA as part of the RBZ. But it is still in SFHA and subject to all BiOp based development regs in model Ord.**
  - May be determined to be outside of the Protected Area, but SFHA requirements still apply. If outside of PA, then the project may be allowed to use other mitigation techniques as spelled out in the BiOp and explained in the Regional Guidance Document on Habitat Assessment and Mitigation.

Potential expansion to rest of WA

- **Request involvement if expanding this beyond Puget Sound communities**
- **Application of the MO outside PS would require a Biological Assessment**
- **Statewide Consultation**
- **Model Ordinance should state applicability to Puget Sound communities only**

- FEMA has provided a BA for the entire state of Washington to NMFS and requested consultation statewide. NMFS has only issued phase 1 of the Biological Opinion thus far. When the NMFS provides the second phase of the Biological Opinion FEMA will conduct a similar implementation plan for the rest of the state of Washington
- The current M.O. is intended to address the requirements for Puget Sound communities that wish to demonstrate compliance with the ESA. However, FEMA believes communities that are outside of the Puget Sound will be able to use this ordinance to demonstrate compliance with the ESA since the M.O. is not based on just salmonids.

## Jurisdictions

BiOp addresses FEMA actions and not the local communities:

- **BiOp is directed at FEMA not local jurisdictions**
- **Model Ordinance fails to address basis upon which FEMA can ask local communities to use the model ordinance**
  - The NFIP is fundamentally administered at the local level, therefore is not the directly responsible for issuing permits or taking action. However, how the actions are taken and the CRS status earned by local communities in the NFIP and participating Tribes, are directly influenced by FEMA, resulting in a co-responsibility to ensure compliance with ESA. Consequently the BiOp does not just address FEMA alone. The model ordinance provides voluntary technical assistance to local communities as a way to programmatically demonstrate compliance with the ESA. The model is recommended but it is not required. Everyone has a responsibility to comply with the ESA. 44CFR 60.3 (a) (2) requires communities to demonstrate that all necessary permits have been received.

## Climate Change

- **Model Ordinance does not consider Climate Change**
  - FEMA is currently working on a national study to determine the effects of climate change on the NFIP. The results of which were originally due at the end of 2010. Due to changing science and legislation, delays in the study have occurred, moving the completion date to the end of 2011. Recommendations from this study will be considered for the NFIP reform initiative currently underway at FEMA HQ.

## NFIP Reauthorization

- **Authority of FEMA to administer the NFIP with lack of reauthorization**
  - The NFIP was reauthorized on June 30, 2010 and we anticipate that the program will continue to be reauthorized in the future.

## Minimum NFIP requirements

### Don't have to meet 60.3A if they are a B-E community

- The regulations contained in 44CFR 60.3 build upon themselves like a staircase. 44CFR 60.3 (b)(2) states a community must comply with the standards of 44 CFR 60.3 (a) (2) through (6). 44 CFR 60.3(c), (d), and (e) all contain similar provision.

### Sec 7.5: MO should allow independent H&H evaluation by a professional engineer to determine the effect of fill placed within the regulatory fp, but outside the PA.

- Section 7.5 applies to the floodway and therefore will always be part of the Protected Area per the definition of the Protected Area.

### Sec 6: Should allow multi use projects to utilize floodproofing

- Non-residential structures are allowed to use floodproofing techniques under the minimum NFIP.

60.3(a)(2)

### Sec 4.2.F: Omit "...or letters stating that a permit is not required..." Requires local permitting agencies to determine permit necessity in writing

- Local communities are required to ensure that all other permits have been received under 44CFR 60.3 (a)(2) and therefore are and should be able to make that call as to whether a permit is required or not.

60.3(c)(10)

- **Sec 7.5.b: Does all other past and future similar developments based upon 10% limitation or the 35% veg removal limitation? This is a FEMA or local responsibility to predict future development patterns.**
- **Better understanding between 60.3.c.10 and compensatory storage requirements of the model ordinance.**
  - In communities in which there is a detailed study, however no floodway has been established the minimum NFIP regulations (44CFR 60.3 (c) (10)) require the local community to demonstrate the cumulative effect of proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community. Therefore it is the community's responsibility to determine future development, which they are already required to do based on state laws such as GMA and other planning requirements.

Requirement to permit Grading and Filling

- **Sec 7.2.C: Remove the words grading and filling as it conflicts with Sec 7.6. enhancing natural functions of FP should be allowed, proviso net improvement.**

- **Sec 7.2.c: Meaningless – remove the words grading and filling to make sense. Grading and filling to create wetlands is still filling.**
- **Sec 7.2.c: Great until you add grading and filling as it relates to creating, enhancing, restoring**
- **Sec 7.2.d: allow some quantities of grading or filling or specify no net fill.**
- **Sec 7.2.c: Omit grading to allow removal of overburden to enhance hydrology in creating wetland mitigation sites ( or exclude wetland mit sites)**
- **Sec 7.2.c: It is impossible to create, restore or enhance natural functions without grading or filling.**
  - Grading and filling are considered development per FEMA regulations, thus the requirement for a floodplain permit and habitat assessment.

### Substantial Improvement

#### **Sec2 Definitions: Substantial Improvement is too limiting: Different than the checklist pg B13**

- The first paragraph is standard NFIP language. As indicated in the commentary the second paragraph is an optional higher regulatory standard.

#### **Section 7.2.a is not clear on why non-substantial improvements are required a FP development permit**

- A substantial improvement is considered a new structure under minimum NFIP regulations and therefore requires a floodplain development permit, however, a habitat assessment is not required unless the substantial improvement exceeds the 10% expansion of the structure beyond the footprint of the structure or the 10% impervious surfaces performance standards from the Biological Opinion.

### Variance requirements

- **Section 4.9: Variance over burdensome**
- **Section 4.9: prohibits consideration of economic impacts for variances**
- **Sec 4.9.a.11: provision nullifies the variance authorization**
- **Sec 4.9.b.1: Absent a showing that the development will have an adverse effect on habitat, no basis for such avoidance**
- **Sec 4.9.a.7 (Var Criteria): Growth management regulations should be expanded to read growth management regulations, critical area regulations, the SMP)**
- **Sec 4.9.b.1: Change to read development project cannot be reasonably and practically be located outside the regulated floodplain**
- **Sec 4.9 B.2 and 4: Delete criteria since not required by the BO. These are general variance provisions unrelated to FP issues and local jurisdictions should be free to adopt “reasonable use” provisions**
  - Other than the requirement to ensure compliance with the ESA, this section comes directly from the NFIP regulation 44CFR 60.6.

- The Biological Opinion requires that the development occur outside the SFHA when there is room to do so.

## Permitting

### Timelines for permit expiration

- **Section 4.3: Bldg permits should be 5 years to expiration**
- **Section 4.3: too short of time**
- **Time for constructing project after FP permit process is too short**
- **Sec 4.3: Should allow 1 year to begin work due to contracting constraints**
- **Sec4.3: allow for a 5yr expiration, analogous to a landuse/environmental permit, similar to state statute for subdivisions (RCW 58.17.140)**
- **Sec 4.3: allow as long as project design and impacts do not change or permit conditions should be reviewed and letter confirming no changes if don't start w/ 180 days**
  - The definition of start of construction under 44CFR59.1 states that the permit expires if construction is not started within 180 days. A permit can be renewed or reissued if the community wishes to allow this to occur.

### Requirement to permit projects beyond the SFHA.

- **Sec 3.2.b: MO should be modified to clarify that an applicant must submit a FP permit application to confirm that its property is outside the PA and above BFE**
- **Section 4.1: Many normal activities will be requiring a permit**
- **Section 4.1: Expansion of permitting requirements exceeds BiOp requirements Do not need a new “flood permit” for shorelines outside mapped floodplains.**
- **There does not need to be a new “flood permit,” for land use activities outside the mapped flood hazard area.**
  - FEMA is not requiring a new flood hazard permit for areas outside the SFHA. FEMA is providing a programmatic way for communities to demonstrate compliance with the ESA and the NFIP at the same time. Communities should weigh the risk of administering the performance standards outside the SFHA with the risk of action from NMFS or a third party.
  - A floodplain development permit is required to be submitted for any proposed project within the SFHA. The community will be responsible for determining if the project is susceptible to the rest of the requirements of the ordinance during the permit application submittal review process.
  - Since FEMA’s authority ends at the boundary of the SFHA, the expansion of the area requiring permits is optional and intended to help ensure that local communities that want to ensure compliance with the ESA are permitting activities in the Protected Area outside the SFHA.

### Permit application package requirements.

- **Sec 4.2.a.2: List separately or include a statement that limits the requirement of listing only waterbodies w/ 300 ft of the proposed project (implies all other features must also be identified).**

- **Sec 4.2.a.2: Limit to those features recognizable or derived from a standard USGS map**
- **Sec 4.2.a.7: Id of wetlands must only be required for the site plan, otherwise can be interpreted to include all wetlands within 300 ft.**
  - All of these comments are under consideration.

Requirement to permit structures on existing impervious surfaces and the storage of equipment and materials

- **Sec 7.1: Existing impervious areas and storage yards should not need a permit as that is not the intent of the BO or the definition of development**
  - Temporary storage of equipment and materials is in the minimum definition of development. A community may issue a programmatic permit that is issued to the applicant yearly for a specific quantity of storage. If the applicant exceeds the allowed storage then a new permit must be issued.
    - Structures built on existing impervious surfaces still require a permit and must meet the requirements of the NFIP including a habitat assessment if required by the ordinance.

Requirement to permit remodeling projects

- **Sec 7.2.a: Repairs and remodels could be forced into the permitting arena**
- **Sec 7.2.a: Could force repair and remodel projects into the permitting arena**
  - Repairs and remodels of structures in a Special Flood Hazards Area do require floodplain development permits under the minimum NFIP in order to determine if the project is a substantial improvement. Substantial improvements are required to bring the structure into compliance with the current building standards as if the structure was a new structure.
  - Repairs and remodels of structures in a Special Flood Hazards Area do require floodplain development permits under the minimum NFIP in order to determine if the project is a substantial improvement. Substantial improvements are required to bring the structure into compliance with the current building standards as if the structure was a new structure.

**Section 7.7 and 7.8 should be reflected in 4.2**

- Good suggestion, will consider how to accomplish this

## Site Design

**Section 5.2: 10% limitations difficult for commercial/industrial to meet (steering residential away, therefore we are steering commercial/industrial into the FP)**

- The goal is to steer all development away from the floodplain. Not just residential. The use of Low Impact Development is one way for developers to meet the no more than 10% impervious surface standard.
- **Sec 5.2.A: Doesn't reflect language in Checklist 5.f or BiOp (?)**

- **Sec 5.2: delete habitat after the phrase: “sited in the location that has the least impact on habitat by locating...**
  - The language in the model ordinance was a compromise for locations in which the highest ground possible may not be the area farthest away from the flooding source. The language in the checklist is directly from the Biological Opinion.

### 5 acre/50 lot rule

Requirement for an applicant with a development greater than 5 acres or 50 lots to develop data:

- **Sections 3.4 and 3.5: BiOp requires no adverse affect in Protected Area regardless of delineation or size of development. Example of a non mapped floodway allowing 4.99 acres of FP to be developed. Should develop alternative approach to delineating the CMZ.**
- **40. Sec 3.5.d, Sec 3.4.b, Sec4.2.a.3, sec 4.2.a.4: requires mapping by individuals and result in defacto moratorium on 5 acres or more**
  - NFIP requirements for development of a BFE in unnumbered A zones. A No The size limit for requiring additional studies brings the requirement in line with standard Adverse Effect call requirement in the Protected Area, The thresholds set reasonable limits on when the floodway would also be required to be delineated.

### Insurance

Flood insurance rates

- **Concerned about the increase associated with this ordinance, including flood insurance costs**
  - Insurance rates are not increased based on the provisions of this ordinance. Many of the provisions will allow for CRS credit and therefore will provide for a lower insurance rate in many communities.

### Recreational vehicles in the floodplain

- **Concerns about minimum standards affecting water quality, particularly with rec vehicles and accessory structures.**
  - This is the same under the minimum NFIP.

### FIRM Mapping

Flood Insurance Rate Maps

- **Old FIRM maps**
- **Old FIRM maps**
- **Old maps in San Juan County**

- FEMA has embarked on an effort to update the nation's floodmaps. FEMA is currently sequencing the Region X efforts and the San Juan county maps are scheduled to be updated beginning in the FY 2011 cycle.

## Habitat Assessments Requirements

Habitat assessment requirements in Model Ordinance and BiOp

**The BiOp and Model Ordinance should not require a both/and analysis: Requiring owners to conduct habitat assessment if they meet development standards of the model ordinance is inappropriate**

- **Section 7.7: If complying with Section 5, why do 7.7?**
- **Model requires comply with development regs and prepare habitat assessment which is duplicative. It requires restorative actions below baseline conditions**
- **Development in the SFHA but well away from a RHZ should not be required to do a habitat assessment.**
  - The model ordinance has been revised to allow a project that meets the minimum performance standards to avoid the requirement for a habitat assessment.
  - A community may develop a communitywide assessment that demonstrates that development in certain areas in the SFHA but outside the Protected Area does not cause indirect adverse affects. The community may submit that information as part of their checklist option similar to submitting best available science to reduce the buffer widths in the Riparian Buffer Zone.

**Sec 7.7.D: Request a streamlined format for the habitat analysis (see USACE BE)**

- The format found in the Model Ordinance is guidance, not a requirement. Other formats that address the pertinent elements of the assessment would be acceptable.

**If applicant consulted with NMFS, should be exempt from all BiOp based provisions of the MO – not just prep of a habitat assessment**

- FEMA expects NMFS to be consistent with their determination of No Adverse Affect and require performance standards at least equal to those in the Model Ordinance and the Biological Opinion when they are consulting on projects within the SFHA.

**Habitat assessment required regardless of critical habitat designation will add time/expense and delays**

- The community has a responsibility to ensure that all necessary permits have been received under 44CFR 60.3 (a)(2) and therefore must demonstrate that the project is compliant with the ESA. The model ordinance and checklist approaches provide 2 programmatic approaches for ensuring compliance the

ESA. The time and cost associated with developing in the floodplain should be weighted in the decision to move forward with the development.

**Sec 7.7: Exemptions should be granted for sites characterized with existing development and impervious surfaces.**

- Areas with existing structures and impervious surfaces may still provide some other forms of functionality to the floodplain (i.e. storage, and refuge) and therefore conducting a habitat assessment will ensure that no further function of the floodplain is lost if a site is redeveloped.

**Sec 7.7.d.1: Insert “Critical Habitat is designated” for “a species is listed as threatened or endangered” should read, “The primary constituent elements identified when a species Critical Habitat is designated, “**

- Modified to address other comments.

**ESA decision making in the Flood Plain should be an objective evaluation and assessment of resource conditions**

- FEMA has provided guidance on conducting habitat assessments in which an assessment is conducted on site to determine the affects a project might have on environmental functions.

**Mitigation and Sequencing**

- **There is no clarity regarding sequencing: Mitigation is not clear on sequencing (avoid, minimize, rectify, compensate). See MO: 5.2.b.2; HA Section 5**
- **Why should a property owner have to avoid if no habitat or where he can full mitigate any impacts?**
- **Poor Mitigation planning: Mitigation should be an option everywhere, not just outside the protected area.**
- **Section 7.8 and Step 5 of HA Guide: Sequencing should not be required in areas without Critical Habitat. Development should not be required to produce equal or better habitat.**
- **Section 7.8.a.2: change to clarify that an applicant for development in the Protected Area must proactively demonstrate no adverse affects. Allowing for appropriate measures to mitigate for development does not meet RPA.**
- **MO is internally inconsistent with regard to Sequencing**
  - The Biological Opinion calls for a No Adverse Effect standard in the Protected Area and therefore traditional mitigation techniques such as minimization and restoration are not available. The only mitigation technique available in the Protected Area is avoidance. In the SFHA outside the Protected Area minimization and restoration are available. However sequencing provides the greatest level of protection to the environment.

**Sec 7.8.b: Does not make sense, self evident to the ordinance purpose**

- This section provides certainty that the mitigation plan is made to be a condition of the permit.

### **Section 7.9: Why isn't there an ESA requirement for alteration?**

- A watercourse alteration will require a LOMR. While processing the LOMR a demonstration of compliance with the ESA is required. A CLOMR, when required or requested, will undergo Section 7 consultation and can be used as the demonstration of compliance for the LOMR request.

### **Bluffs**

- **Sec 3.4.c.1 commentary: Many bluffs and steep slopes are critical to supply of beach material, resulting in a vital function for PFC habitat in the nearshore.**
- **High Bluffs are not in the flood zone**
  - High Bluffs may not be in the SFHA by elevation. However, due to the scale of FEMA's mapping often bluffs are not detailed enough in the topography to be shown as out of the SFHA. However, many of these bluff areas provide materials to nourish areas that provide refugia to species and environmental impacts should be considered before development occurs on or near the bluffs edges.

## **Regulatory Environment**

### **State Laws**

#### **How does the model ordinance incorporate state and local regulatory requirements and how can they be made consistent**

- The model ordinance does not take into account many of the local and state regulatory laws because many of those programs have not been consulted on with NMFS and therefore are not programmatically compliant with the ESA. This does not mean that the current regulatory framework is not ESA compliant in many communities. This is why FEMA decided to provide the opportunity for local communities to submit their rules, regulations, ordinances, procedures, etc... to us in order to compare them to the performance standards set forth in the biological opinion.

#### **FEMA should accept critical area ordinances as assurance that the Protected Area is being addressed per the BiOp standards**

- FEMA believes that many critical areas ordinances already contain provisions that would meet the performance standards of the biological opinion. However, programmatically the CMA process has not been consulted on and therefore cannot be automatically considered compliant with the biological opinion standards. A community that believes they already have the standards

in place to demonstrate compliance with the biological opinion should use the checklist option.

**Doesn't allow public access in shoreline area**

- FEMA has designed the model ordinance to be compliant with the biological opinion and the minimum NFIP as well as the state floodway development standards. The SMP and GMA have not been through formal consultation and local communities must determine the best path forward in order to comply with all applicable laws and regulations.

**Biological Assessments add time and money, SEPA could be used**

- FEMA has found that many communities exempt smaller projects such as single family structures from the SEPA requirement. SEPA could be used as a screening tool if such exemptions were removed.

Many respondents were concerned regarding the use of the current regulatory landscape for demonstrating programmatic compliance with the Biological Opinion

- **May require cities to exceed requirements of the NFIP, Washington Law, or the BiOp**
- **Model ordinance does not allow for communities to demonstrate that the current regulatory landscape is sufficient.**
- **The Model Ordinance is disconnected from the Shoreline Master Program and the GMA CAO process and their Best Available Science requirements**
- **GMA Plans and Critical Areas should be considered sufficient**
- **The habitat portions of the model ordinance will be helpful to communities that have not enacted GMA**
- **Using materials and standards of a state resource agency is considered Best Available Science**
- **Model Ordinance is duplicative of current State requirements**
- **City Regulations currently prohibit structures in the 100 year floodplain and only allow limited development to occur (i.e. recreation trails, boat launches)**
- **WAC citation should be updated for Fish and Wildlife Habitat Conservation Areas. Should use these local determinations to regulate buffer requirements**
- **Allow SMPs approved by DOE under the new guidelines as acceptable alternative.**
- **More restrictive than SMA or CAO.**
- **Concepts are supported by SMP and CAO**
- **Model may conflict with SMP**
- **Roadblocks to best available science – supercedes CAO particularly when no species present**
- **MO doesn't recognize public access, which is a recognized exception to many current ESA regulations**
- **Updating regulations is out of sync with state requirements and does not provide resources**
- **MO commentary should acknowledge that the expectation is that no changes should be required if a designated CAO.**

- **MO commentary and checklist should discuss that water dependent commercial and industrial uses are a preferred use of the shoreline, according to SMA.**
- **Encourage a more seamless integration with state polices and programs (GMA, SRP, PSP, NPDES, SMP)**
- **Section 3.2.a and b: SMP already has FP plus 200 feet**
  - This why FEMA has provided option 2 using a programmatic checklist for communities to compare their current regulatory landscape and determine if they meet or exceed the performance standards of the biological opinion.

**Allowed uses should include bridges that support public access**

- Bridges are allowed as long as they are able to be constructed in a manner that has no adverse affects. Bridge b=projects should at least go through a habitat assessment or a consultation under section 7 (federal nexus) or section 10 (HPA).

**Current Washington laws do not sufficiently protect resources and habitat**

- FEMA recognizes that the many of the current rules and regulation under Washington State law have not undergone consultation with NMFS and therefore cannot be determined to be programmatically compliant. However, local applications of these laws and programs may provide adequate protection and thus may meet the performance standards of the biological opinion.

**Tribal Zoning allows no development in riparian zones and riparian and floodplain habitats are mostly intact**

- Tribes have the authority to place whatever restrictions they deem necessary on lands under their jurisdiction. However, FEMA cannot prohibit development in an area; FEMA can only set performance standards that must be met in order to allow for some economic use of the property.

**MO should allow in limited areas within the UGA shoreline armoring with mitigation outside the UGA**

- FEMA recognizes that some communities may require shoreline protection measures, especially during a flooding event. FEMA expects that any of these measures will be conducted with minimal impacts to the environment and that any affects from activities during a flood fight will be mitigated as a condition of the required floodplain development permit. For shoreline protection measures that occur outside of a flooding event a floodplain development permit would be required and thus must be compliant with the ESA. FEMA has also produced a booklet that highlights alternative techniques to hard amouring for shoreline protection. The booklet is title, *Engineering with Nature* and is available from the FEMA regional office.

## Stream and Water Typing

### **Section 2: Water Typing definition: should these criteria be applied to SFHA that does not contain listed species or habitat?**

- Yes, but it would not be necessary for ESA compliance, just for ease of application.

### **Water Typing: Use of WADNR forest practices is improperly used, field visits are required to determine appropriateness of the stream buffer requirement**

- The WADNR science was used by NMFS when writing the BiOp. The intention of section 7 of the model ordinance is to allow the community/ developer to demonstrate that the specific conditions of the site allow for less or more restrictive requirements than called for in the BiOp based on the individual site assessment.

### **Sec 3.4: Type N streams should not be included because their description does not place them in the FP and they are not salmon bearing**

- Stream typing does not have a bearing on SFHA mapping. Type N streams may be delineated on the FIRM or may not be.

### **Section 4.1, 4.2: Duplicative requirement with CAO permitting**

- FEMA has traditionally and will continue to allow communities to integrate the floodplain management permitting requirements into other permits, however they need to be able to demonstrate how their permitting process ensures that they are meeting the current NFIP requirements including permitting for development other than a structure.

## Local laws and regulations

local processes for creating regulations

- **Section 1.3.J: description doesn't reflect Everett landscape**
- **Model ordinance bypasses City planning process**
- **FEMA cannot usurp City's rulemaking process regarding buffers**
- **Allow local jurisdiction to id and exclude areas in regulatory FP that is not Critical Habitat, but still meet min NFIP**
  - The model ordinance provides technical assistance to local communities that allows a community to comply with both the ESA and the minimum NFIP standards. The local community must follow their state and local rules and regulations for adopting an ordinance if they choose to adopt the ordinance. A community that feels their

current buffers provide adequate protection for species may submit their best available science to FEMA for review and concurrence.

## Stress on Local Communities

### Staffing

- **Section 7.7 and 7.8 would be burdensome to staff resources**
- **Concerned about reviewing habitat mitigation plans, assessing and reporting impacts with impacts on staffing**
- **Sec 7.7.D: Who provides concurrence with the conclusions? Individual Communities?**
- **Concerned about the level of analysis and review for proposed development and impacts on staff/consultants**
- **Sec 3.4.c commentary: MO should allow jurisdictions to determine habitat areas, etc..**
- **Section 4.6: FP administrators may not have expertise to address ESA**
- **Limited expertise at local level to review assessments.**
  - Communities may need to hire resources, pass the cost of a third party review on to the applicant, or work out an agreement between communities to provide a review of the Habitat Assessments and Mitigation Plans. The nature of the NFIP program is to provide guidance and technical assistance to communities on how to administer the program. The Regional Guidance on Habitat Assessment and Mitigation Guidance is intended to help communities start being able to make those determinations.

**Sec 7: FEMA, not local communities, have the authority to determine what salmon habitats are functioning or not. The Tribe maintains that the majority of their treaty watersheds are entirely restorable**

- Direct Quote from NMFS response to Approved Salmon Recovery Plans on page 28 and about local communities making similar calls for their SMP updates: “NMFS expects state and local governments will use the best scientific information available as they amend their management programs and land use regulations to ensure salmon habitat is protected, consistent with the Recovery Plan’s strategies and actions.”

## Economic Impacts

**Section 7.7: Adversely affects home prices and availability of homes to low incomes**

- Low income families can be considered an “at risk” population and should consider the risks and costs associated with living in the floodplain before choosing to live in a floodplain. Communities should look to their catastrophic planning when determining where lower income housing might be situated within the community.

**Section 7.7: Habitat Impact Assessment: Should not be done in a manner reflecting Section 7 consultation. Assessments could be too costly to allow small projects to be developed.**

- Communities and individuals are familiar with Section 7 through USACE and other federal activities. Mimicking Section 7 minimizes confusion. Training and a variety of technical tools will be developed by both FEMA and NMFS to assist local communities when conducting habitat assessments to help ensure efficiencies and effectiveness.
- **Concerns that it will cost jobs and stifle economic recovery in some important commercial and industrial areas (no specifics)**
- **RBZ would cause severe financial impacts in all ready developed shorelines;**
- **Economic impacts from permitting delays, including delays in habitat improvement projects**
- **Disproportionately burdensome to smaller ports and communities**
- **MO makes port expansion impossible by prohibition or exorbitant costs for mitigation**
- **Concern about cost and burden of documenting**
- **No recognition of economic impacts**
  - Communities and ports must weigh the impacts of economic development with the inherent responsibility to develop in an environmentally responsible way. The ESA applies to everyone not just federal agencies and therefore all development should consider its impact on the environment whether it occurs in the floodplain or not.

**Exempt Projects List**

**Section 7.1 and 7.2: Small project exemption should be aligned with SEPA process**

- Often times the SEPA bar is set too low and allows many types of development to slip through that bar, such as single family residential structures. A community may choose to modify their SEPA process to capture other types of development that may not currently require a SEPA checklist.

**Routine paving as a development activity**

- **Section 7.1: Routine paving should not be a development activity**
- **Routine major maintenance of port facilities, such as repaving needs to be permissible without compensatory mitigation**
  - 7.1 E states that re-paving is not a development activity; however, paving new areas not only meets the standard definition of floodplain development but is also discouraged in the Biological Opinion if the paving will increase the impervious surfaces by more than 10%.

**Section 7.1: Exempt Activities: Limited list**

- The list is intended to demonstrate that there is still limited use of the property without a floodplain development permit or a habitat

assessment. Activities that are beyond the performance standards set in the Biological Opinion will require a habitat assessment or a concurrence letter from the services before a floodplain development permit is issued.

**7.1.g: Farm practices would be considered development after effective date of ordinance. Also farming in riparian areas is harmful. Should remove the designation for farming in riparian areas.**

- New farms would require floodplain development permits and habitat assessments; however farms already in existence will be allowed to continue to farm their land.

**Lacks exemptions for small projects with no/min impact and for routine maintenance**

- See Section 7.1

**MO should support habitat restoration projects as non-development activities.**

- FEMA's definition of development is found in 44 CFR Part 59. Restoration projects are considered development for purposes of floodplain management. See Section 7.2C.

**Sec 7.1: Add new subsection (H) "Routine use, maintenance and re-surfacing of existing impervious surfaces used for outdoor storage."**

- Covered under 7.1 E. (may clarify language to include existing impervious surfaces) not just road maintenance).
- **Sec 7.1.e: include 'installing guardrail' along with signs and traffic signals (minor safety improvements)**
- **Sec 7.1 commentary: limits the list to that which is specified in 7.1.**
  - The list provided in section 7.1 is not meant to be inclusive and local communities may decide if an activity is small enough that it should be exempted from the floodplain development permitting requirements.

**Sec 7.1, 7.2: Commentary on page 44 contradicts use of word "example" in Sec 7.1. Either recognize that items not listed may fall into the non-development category or provide an exhaustive list that is exempted.**

- The example is intended to demonstrate that a project may meet the non-development activities list in one manner; however another aspect of the project may still require an assessment.

**Sec 7.2.b: second part of sentence after comma is a relic from sec 7.2.a and should be deleted?**

- Agreed. Should read: , *provided the expansion is not a substantial improvement.*

**Section 7 commentary: What is a fully developed community**

- A fully developed community is intended to be a community which is considered highly urbanized with substantially completed infrastructure and may have limited habitat.

## Replacement of Utilities

### 6. Section 5.1: Utilities and roads can't be required for retrofitting

- This section requires all **proposals** for utilities and roads to minimize or eliminate flood damage. It does not call for utilities and roads to be retrofitted.

### 32. Pg 42, Sec 6.7: Provides new additional language for utilities, including poles as not fill (CWA)

- This is the same under the minimum NFIP.

Ability to “dig up and replace” existing utilities.

- **Sec 7.1.d commentary: should read “digging up and replacing...” Replacing old wire with new could not possibly impact habitat because it works entirely within self contained environment.**
  - Digging up utilities that have been underground and now have vegetation that is beneficial to species growing over top of it can have a detrimental effect. The replacing is not the issue but the action of digging and removing the vegetation is what needs a closer look.

## Hazardous Materials

- **Section 5.3: Broad prohibition beyond FEMA/NMFS authority (hazmat)**
- **Section 5.3: Need to define Haz Mat, ports need to be allowed this activity**
- **Section 5.3: Hazardous Materials: BiOp requires only in the RBZ, MO requires in the Regulatory Floodplain**
- **Hazardous Materials: How does this affect existing farms or businesses in the floodplain?**
- **Definitions: Hazardous materials is not well defined to address port activities**
- **Sec 5.3, App 4e: Affect on existing development within the PA needs to be clarified**
- **Sec 5.3: Haz materials in new developments limits functionally dependent uses like ports**
- **Sec 5.3: Revise to allow loading and unloading of all types of cargo in the FP.**
- **Sec 5.3: Definition of Haz mat precludes the operation of vehicles and movement of goods in the FP**
  - Hazardous Materials prohibition is taken directly from the Biological Opinion. FEMA agrees that the Model Ordinance as written is unreasonable and will revise the language to allow for limited storage and uses within the Regulatory Floodplain.

## Higher Regulatory Standards

### Critical Facilities

- **Section 5.4.a-b: Too prescriptive causing undue expense on taxpayers**
- **Section 5.4.b.1: poorly defined and add considerable time and expense**
- **Definition of Critical Facility contradicts the prohibition on hazardous materials**
- **Sec 5.4.B: Request be permitted at 1 foot.**
  - This is a recommendation for a higher regulatory standard in from the RPA. This element is optional and can provide points under the community ratings system but is not a required element to be implemented.

## LID

### Requirements to use LID for storm water in the floodplain

- **Section 5.2 doesn't recognize the applicability or inapplicability of LID in various locations nor does it account for NPDES permit requirements.**
- **Section 5.2.b.1: needs to recognize urban environments, change shall to should**
- **LID is required, but the Model Ordinance needs to specific which LID techniques to use**
- **Sec 5.2.b.1: LID should be coordinated with NPDES program**
- **Sec 5.2.b.1: contradicts Puget Sound Partnership guidance manual on low impact development which states "a project should not be considered low impact development if it is located in the 100 yr fp or cmz.**
  - This is a recommendation for a higher regulatory standard from the RPA. This element is optional and can provide points under the community ratings system but is not a required element to be implemented.

## Stormwater

### Storm water management requirements

- **Section 5.2.b.2: New DOE Stormwater manual should adequately meet that requirement**
- **Section 5.2: Stormwater Management: Recent Department of Ecology regulations conflict with the storm water aspects of the model ordinance.**
- **Sec 5.2.B.2: Recognize DOE Storm water Management manual as compliant with requirement**
- **Sec 5.2.b: expand to address consistency with DOE Stormwater permits**
- **Sec 5.2.b commentary: acknowledge that compliance with WSDOE applicable Municipal Stormwater Permit may be sufficient to comply with the MO in lieu of Sec 5.2.b.1 and 2.**

- This is a recommendation for a higher regulatory standard from the RPA. This element is optional and can provide points under the community ratings system but is not a required element to be implemented.

**Section 7.4: Ordinance exceeds NPDES permit requirements – overly onerous and inflexible**

- Noted

Dry-land Access

**Sec 5.1.E: Elevating roads would actually create flooding problems in many situations. Add exceptions if shown that elevations would create/worsen flooding or other environmental problems**

- Agree, thus this provision is optional and provided as a life safety recommendation, communities may choose to enforce this provision, however, they still must demonstrate that the project is compliant with ESA.

**Sec 5.1.E: Change to “where feasible” as elevation of roads is not possible**

- Good Suggestion, under consideration. Especially considering, this provision is optional and provided as a life safety recommendation, communities may choose to enforce this provision, and however, they still must demonstrate that the project is compliant with ESA.

Water Dependent uses

**Section 5.2.b.1: Premature to DOE requirements causing stalling of projects**

- This is a recommendation for a higher regulatory standard from the RPA. This element is optional and can provide points under the community ratings system but is not a required element to be implemented.

Recognition of water dependent uses

- **Section 5.2.a.1: doesn’t allow for water dependent use**
- **Section 5.2.a: Doesn’t allow water dependent uses**
- **Sec 5.2 Site Design: Does not recognize functional dependent uses, such as docks and should include related utilities**
  - A section allowing for water dependent uses will be added.

Impervious Surfaces

**Sec 3.4.c: does not consider or exempt areas of existing impervious surface or development where the habitat functions and values of the site are negligible**

- The Riparian Habitat Zone is based on the science used by the Biological Opinion. The community has the option to demonstrate that their science is more applicable to their site conditions through the checklist option, or through the individual site assessments.

## Tribal Coordination

Coordination with tribes when issuing a floodplain development permit:

- **Model/guidance and checklist must require coord with affected tribes and salmon recovery plans]**
- **Model Ordinance should require a notification to tribes for floodplain development**
  - The issuance of a floodplain development permit is a local action and should be coordinated with tribes the same as any other local actions and decisions.

Requests for tribal consultation

- **Request Tribal Consultation**
- **FEMA should consult with the Commission's member tribes (other than the Lummi). Requests that FEMA initiate consultation, starting with the Tulalip and Swinomish.**
- **General: Failed to consult and requests meaningful consultation regarding the model ordinance and guidance**
- **Fail to consult after requested by the tribe**

FEMA acknowledges receipt of the Tribes request and will continue to engage them in meaningful conversation to address their concerns.

## Port Coordination

Consultation with the Ports

- **Request FEMA consult with the Ports**
- **FEMA should consult with ports and OFA prior to final MO to address dredging spoils**
- **Request consultation with PNWA and member ports.**
- **Request consult with Ports on navigation maintenance issues prior to finalizing ordinance**
  - FEMA has engaged in conversations with the NWPA as well as the WPPA. FEMA considers the Ports an important user of the floodplain and as such should consider their impacts on the environment when expanding the port facilities, dredging the ports and navigation channels, and conducting other business in the floodplain.

## Channel Migration Zones

### **CMZ requirements discourage CMZ mapping**

- If state law identifies that CMZ must be mapped under SMP requirements, then CMZ will be mapped where required. FEMA does not have the legal authority to map CMZ.

### **Sec 3.4.d: Creates a perverse disincentive to mapping CMZ's. Should support mapping. General CMZ mapping and consideration of CMZ management is a required part of SMP updates.**

- This is still under consideration for revision.

### **CMZ: doesn't apply to Everett**

- Each community needs to determine whether CMZ applies to their community and demonstrate how they have addressed CMZ requirements.

## Levees

### **Extent of the Channel Migration Area is unclear, esp. in areas protected by levees**

- The extent of the CMZ in areas protected by levees is determined by the methodology chosen by the community to delineate the CMZ.

### **FEMA should implement RPA element 5**

- An RPA must be within the regulatory authority of the action agency. Much of RPA element 5 is beyond FEMA's authority. FEMA has determined that if a community chooses to build a new levee; a floodplain development permit is required and therefore must be compliant with the ESA. RPA element 5 provides a set of design criteria that would be ESA compliant.

### **RPA Element 5 should be addressed to help communities get out of the Federal triangulation**

- FEMA is fully aware of the situation that local communities find themselves in. FEMA is willing to help contribute to the conversation; however, the issue is between the USACE and the NMFS.

### **Levees in the lower Green River should be set back**

- Setting back levees is a local decision to be made by local community officials. FEMA does encourage communities to consider ways to protect both lives and property in a way that does not cause adverse effects to the environment.

### **The Model Ordinance does not consider environmental impacts if a levee fails**

- Impacts from a levee failure should be part of a community’s catastrophic planning process and would not be appropriate to address in the model ordinance.

## Compensatory Storage

### **Section 7.6: Comp storage exceeds state regulatory requirements from WDFW; may cause more stranding in areas not designed for fish usage**

- The Biological Opinion is not restricted to the state standards and provides a path forward for communities to demonstrate compliance with the Endangered Species Act. A community may have to alter their current ordinances, written procedures, or regulations in order to meet the performance standards in the Biological Opinion.
- Section 7.6 D requires that newly created storage areas do not create fish stranding areas.

### **Section 7.6: How does comp storage benefit salmon?**

- During a flood salmon (along with other species) often use the expanded floodplain as a refuge from the increased velocities that can occur in and adjacent to the stream. In addition fill placed in the floodplain can also increase velocities associated with a Base Flood. Compensatory storage creates areas in which the community can provide refuge during these flood events and potentially offset the effects of the fill on flood velocities.

### **Section 7.6: Comp storage is a burden with dredge spoils for navigation purposes**

- There is not a requirement to dispose of dredge spoils in the floodplain.

### **Section 7.6: Compensatory Storage: Should only be required in the SFHA. Matching of volume at elevation should read “if possible”.**

- Noted

- **Compensatory Storage: Dredge disposal would now have to be outside of the SFHA, could prevent in water disposal of the dredge materials.**
- **High water tables prevent compensatory storage in floodplains.**
- **H&H engineer should be allowed to determine if comp. storage is required outside the PA**
- **Compensatory Storage requirement will reduce the areas in which economic development could occur.**

- Noted

Compensatory storage requirements in areas that it may not be applicable

- **Section 7.6: Compensatory Storage: Urbanized areas have little capacity to provide comp. storage**
- **Sec 7.6: Reads that Comp storage is required for all new development. Request a scientific (see HH Guidance) or conceptual level (see SMP for Urban shorelines) exception be added.**

- **Sec 7.6 impossible to accomplish for properties completely in the FP. Allow for off site regional compensatory storage program**
  - A habitat assessment could be provided that demonstrates that the loss of refuge and flood storage will not cause an adverse affect.

**Sec 7.6: the approach of comp flood storage only where development displaces flood storage volumes should be duplicated throughout the MO**

- Not necessary

**Sec 7.6: not consistent: one permits one foot rise (no floodway) while the other mandates zero rise. Comp storage renders every FP a zero rise FP.**

- In communities in which there is a detailed study, however no floodway has been established the minimum NFIP regulations (44CFR 60.3 (c) (10)) require the local community to demonstrate the cumulative effect of proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- Compensatory storage is required whenever storage is lost in the floodplain. A community enforcing 60.3 (c)(10) should not have a problem meeting the requirement based on fill if they are enforcing the compensatory storage requirements, however, other development still may cause a rise and therefore must be evaluated for cumulative effects on the BFE.

**Sec 7.6: Compensatory storage is problematic in some areas, like tide flats.**

- Tide flats may not be the appropriate place for development. A habitat assessment could be provided that demonstrates that the loss of refuge and flood storage will not cause an adverse affect.

**Sec 7.6: reduces developable areas for Port activities/economic expansion**

- Water depended uses will be addressed. Ports still have a responsibility to comply with the ESA even while meeting their mission of economic expansion.

**Sec 7.6: H&H eval should be allowed to determine need for compensation.**

- A habitat assessment could be provided that demonstrates that the loss of refuge and flood storage will not cause an adverse affect.

**Appendix E. The Biological Opinion**

- **Appendix E is not mentioned in the Model Ordinance.**
- **Appendix E suggests specific one size fits all requirements, Lacey may have buffers that are greater or less than those proposed**
- **App 4, sec 1 pg E8, last para: Clarify veg removal to avoid jeopardizing overhead utilities. Drop public.**

- Appendix E is the Reasonable and Prudent Alternative directly from the Biological Opinion except where amended by an Errata sheet.

## Checklist

### **Checklist: No requirement to ensure that only activities with no adverse affects be authorized in the Protected Area**

- Activity 5 (c) of the checklist prohibits any development in the floodway, CMZ, or the RHZ unless a no adverse affect is demonstrated.

### **Checklist: FEMA’s approach does not provide sufficient oversight to ensure no adverse affects in Protected area**

- Local communities are responsible for their permitting actions. FEMA will review the annual reports and will conduct CAVs in the affected communities to ensure that the communities are not permitting projects that allow an adverse affect.

### **Checklist: no requirement that ensures only activities with no adverse affects be authorized.**

- Activity 5 (c) of the checklist prohibits any development in the floodway, CMZ, or the RHZ unless a no adverse affect is demonstrated.

### **Checklist: Who is responsible for tracking and assessing the effects of the FP development**

- The community is responsible for tracking and reporting their permitting activities to FEMA. FEMA is responsible to reviewing the annual reports in order to ensure compliance with the RPA.

### **Checklist: For projects not resulting in an HMP, who is responsible for conducting the assessment?**

- Communities may need to hire resources, pass the cost of a third party review on to the applicant, or work out an agreement between communities to provide a review of the Habitat Assessments and Mitigation Plans.

### **Checklist 5.a: references Sec 7.2.B which is not does not reflect RPA 3.A.4 as referenced.**

- Disagree. They both reference the expansion of a structure no more than 10% in the Protected Area.

### **Doesn’t allow any flexibility from the model ordinance**

- Should be clarified with new version of the checklist.

### **Should allow a city to show that it can provide equivalent level of protection**

- Should be clarified in the new version of the checklist

**FEMA does not describe the process to determine if jurisdictions actually comply.**

- Additional guidance will be provided in a stand- alone version of the checklist.

**No consideration of how the code is applied, particularly with the issue of exemptions and exceptions**

**Most useful tools for the community**



- **Checklist Sec 5.e: we interpret this to be an extra credit under CRS and not a minimum requirement**
- **Checklist Sec 5.g: if it is not a requirement, then should not be part of the checklist**
- **Checklist Sec 5.h: New road crossings is not a requirement as evident by the Note 2. Why single out road crossings from all development?**
  - Modified language to reflect a requirement to obtain a concurrence letter or a habitat assessment that demonstrates no adverse affect will be included in the next version of the model ordinance.

## **Regional Guidance Documents**

### **Regional Guidance on Hydrologic and Hydraulic Studies**

**How does H&H guidance relate to the Model Ordinance?**

- H&H guidance provides information for communities that wish to develop the mapping products necessary for implementing the model ordinance (i.e. CMZs or when the use of 2 dimensional modeling might be appropriate for floodplain mapping and habitat mapping.) This is only recommended guidance and communities may follow their own methodologies if they choose.

**HH Guidance: Language should be changed to state communities are obligated to comply with the ESA and BiOp and that this guidance will help them.**

- Noted

**Pg4-5 HH Guidance: Flood studies can and should address precipitation trends and the future risk of flooding. See references for sufficient information to include climate change driven trends for precipitation and sea levels in flood studies.**

- FEMA is addressing this in its Effects of Climate Change on the NFIP study that is due to be released in the late summer of 2010.

**Pg6 HH Guidance: The two situations for exceptions have no basis in the BiOp**

- These 2 exceptions are based on the determination that analyzing future conditions can be expensive and time consuming and with little anticipated change to the conditions there is no need to conduct the study.

**H&H guide pg 14: Limiting CMZ before this date (sep 22, 2008) would be counterproductive to using all existing info in protecting riparian habitat. General CMZ mapping to be conducted as part of the state funded SMP updates. Suggest using an approach that uses all “available” CMZ mapping, rather than what has been adopted.**

- Will be addressed in the next version of the guidance.

### **Regional Guidance on Habitat Assessments and Mitigation**

- **There is no clarity regarding sequencing: Mitigation is not clear on sequencing (avoid, minimize, rectify, compensate). See MO: 5.2.b.2; HA Section 5**
- **Why should a property owner have to avoid if no habitat or where he can full mitigate any impacts?**
- **Habitat Assessment Guidance is too general.**
- **Habitat Mitigation Guidance is too general and should be a more in-depth discussion relating quantifiable measures to impact.**
- **Format allows for an easy assessment**
- **Mit Guidance: None of the listed mitigation strategies result in no adverse affects in the Protected Area.**
- **Mit Guidance: Should be crafted to emphasize compliance with RPA and thereby allow no adverse affects in the Protected Area**
- **Mit Guidance: doesn’t require avoidance nor provide framework for making decisions about what areas to avoid**
- **Mit Guidance: Must be some standard for types of mitigation that works.**
- **Mit Guidance: Must hold local govts accountable for unsuccessful mitigation**
- **No process for following mitigation actions to evaluate the effectiveness of mitigation**
- **Pg 18; 22 (section 6.1) Habitat Guidance: allows adverse impacts in the protected area “mitigation within Protected Areas.” Should be changed to emphasize no adverse affects. Mitigation and no net loss of habitat does not meet the no adverse affect standard.**
  - FEMA is working to make the documents consistent and meet the no adverse effect standard.

## **Terminology and Definitions**

Many respondents asked for clarification of terminology or definitions:

**“liberally construed in favor,” “disclaimer of liability”**

- This is standard language from FEMA’s model ordinances, community may delete if they feel it is not necessary

**Sec 2 Definitions: need definition of grading and filling**

- Grading and filling are commonly used in other development regulations and have a common generally understood definition for planning and development purposes.

**Section 1.8: Eliminate second sentence ref to deed restriction, easements or covenants**

- Language is intended to provide community with the ability to use more restrictive language if the M.O. or a deed restriction, etc... conflicts with the ordinance.

**Critical facility should be termed “essential public facility”**

- Noted. Community can change if they choose

**Need to define non-conformity**

- This is unrelated to the NFIP or the ESA. See definition of non-conforming in other planning uses.

**Structure should include roads, flood control berms, etc.**

- M.O. uses the standard NFIP definition

**Base flood - Remove 100 year flood phrase**

- Clarifies what is being defined into common phrase that lay people understand.

**Development: storage of equipment or materials and alteration of natural site characteristics need to be further defined – too vague**

- The need for this will be considered for future guidance documents

**Water Typing: Modify to reference state code as the typing system is not allowed for referencing under State law.**

- Noted for further consideration

**Sec 2 definition: Should define native vegetation to include a minimum 20% areal coverage of a given area as a standard for plant density for mapping purposes (avoid id individual plants)**

- Noted

**Section 4.2: Define lakes, water bodies, waterways, and drainage facilities**

- When a term is used and not specifically defined it is to be construed to have the definition in the common vernacular or as defined in a dictionary.
- **Sec 4.3: Initiation of grading activities would not qualify as start of construction. Difficult to meet. Should amend to include initial grading and excavation for a project.**
- **Sec 4.3: Revise so that grading and the installation of streets and utilities are sufficient to trigger the Start of Construction.**
- **Definitions Start of Construction: revise to clarify that grading and the installation of streets and utilities are sufficient to trigger “start of construction”**
  - The definition of start of construction under 44CFR59.1 specifically excludes these items from the definition.

**Section 7.6 refers to “new development”, which is not defined. Should be revised to explain its explanation to specific types of new development.**

- New development: Anything that was not in existence prior to the project being permitted that meets the definition of development.

#### **Define Construction season**

- The construction season is meant to be within the same year as the project is commenced in order to ensure that the fill is not in place without compensatory storage during a typical flood season (October 1-May 1).

#### **Pg 18, Sec 2 Definitions: Add Utility definition (example provided)**

- Noted for further consideration

**Sec 1.3.f: The term “sound use” should be clarified with respect to the meaning of preferred use under the SMA**

- Will consider for commentary section

**Sec 2: Definition of “threat to water quality” should be provided to distinguish prohibited activities from every day operations**

- Noted

**Definitions cont...**

#### **RBZ vs. RHZ**

**BiOp uses Riparian Buffer Zone, Model Ordinance uses Riparian Habitat Zone**

- FEMA’s intention is to get away from the word “Buffer” as it implies that the area is a “no development” zone. Some limited development can occur in the area if it can be demonstrated that the project does not cause an adverse affect. FEMA reworded the BiOp language to bring

attention to the area, but lessen the confusion regarding the requirement that the RBZ be a “hard buffer.”

## Regulatory Floodplain

### **Sec 1.4, 3.4: Definition of regulatory floodplain is too expansive, exceeds intent of the BiOp without explanation of authority**

- **Section 2, Definition of Regulatory Floodplain: explanation that some cases the SFHA will not exceed the RBZ**
  - The term “Regulatory Floodplain” is intended to simplify the M.O. to demonstrate where performance standards from the BiOp would apply to areas both within and outside of the SFHA. The M.O would provide a degree of compliance with ESA for communities that choose to adopt it. The authority lies with the local government to determine best how they intend to comply with the ESA outside the SFHA and the M.O provides a way, but not the only way.

## Development

### **Model ordinance fails to distinguish between redevelopment and new development**

- **Development should include docks, piers, floats, boat launches**
- **Development: impossible to regulate port and industrial uses for storage of equipment and materials**
- **Pg 13, Sec 2 Definitions- Development: Change to distinguish between temporary and permanent site impacts (see example)**
- **Regulates non insurable development activities (dredging, filling, etc.)**
- **Sec 2 Definitions Development: could be construed to include repaving of existing impervious surfaces and storage of any equipment or materials. Definition should clarify that repaving of existing surfaces, beyond simply the repaving of roads will not require fp permit, such as Port storage yards.**
- **Sec 2 Definition: development will require FP permit and habitat assessment for small projects, which will be prohibitively expensive**
- **Sec 2 Definitions: PA and regulatory FP should be amended to exempt development activities that occur on existing impervious surfaces within the regulatory fp, similar to CAO (Vancouver).**
  - The standard definition (44CFR 59.1) of Development is used in the model ordinance with the addition of the phrase: “ subdivision of land, removal of more than 5% of native vegetation on the property, or alteration of natural site characteristics.”
  - The standard definition of development does not specifically include docks, piers, floats, and boat launches, however, these are all examples of development that should be permitted. Development is not limited to insurable structures and therefore filling and grading are required to obtain

floodplain development permits. Redevelopment is also considered development in the floodplain and should also be permitted.

- Storage of equipment and materials may require a programmatic permit be issued that allows an activity to occur to a certain limit and then a permit should be revisited on a periodic basis in order to ensure that the community is tracking the activities that occur in their floodplain.
- Section 7 of the M.O. provides for a programmatic variance to permits for small projects to be exempted from a permit or the need for a habitat assessment.

## Protected Area

### Protected area needs to be clarified

- **Section 3.4.A: Protected Area: need to quantify how No Adverse Impact**
- **Section 3.4.C: Protected Area- Commentary: Clarify what limited development is allowed.**
- **Section 3.4 commentary: need elaboration on demonstrating smaller areas**
  - The Protected Area is the greater of the Floodway, Channel Migration Zone, or the Riparian Habitat Zone based on the Washington State Department of Natural Resources stream typing system as identified in the Biological Opinion. The Protected Area is meant to be a no disturbance zone in which limited activities can occur if an applicant can demonstrate that there is No Adverse Affect to species. Section 7 of the Model Ordinance provides clarification on what limited development may occur in the Protected Area. The model ordinance and habitat assessment guide provide a methodology to determine impacts. More specificity would not accommodate a programmatic approach, given the infinite site specific situations.

## CRS Credit for Habitat Protection Guidebook

No Comments Received