

ESA and the National Flood Insurance Program

Implementing a salmon friendly program.



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NFIP ESA History

Background

- ▶ 2003 - NWF Sued FEMA for failure to comply with ESA
- ▶ 2004 – Court Ruled that FEMA must consult with NMFS
- ▶ 2006 - FEMA provided a Biological Evaluation that stated NFIP may affect but not adversely
- ▶ September 2008 -NMFS issued Biological Opinion with Jeopardy/ Adverse Modification

NMFS offered one Reasonable and Prudent Alternative



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NMFS Biological Opinion

Reasonable and Prudent Alternative



- ▶ **A Reasonable and Prudent Alternative is an action(s) that a federal agency can take to avoid the likelihood of jeopardy. It must identify alternative actions that:**
 - 1) Can be implemented in a manner consistent with the intended purpose of the NFIP,
 - 2) Can be implemented consistent within the scope of the Federal agency's legal authority and jurisdiction,
 - 3) Are economically and technologically feasible.



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Reasonable and Prudent Alternative

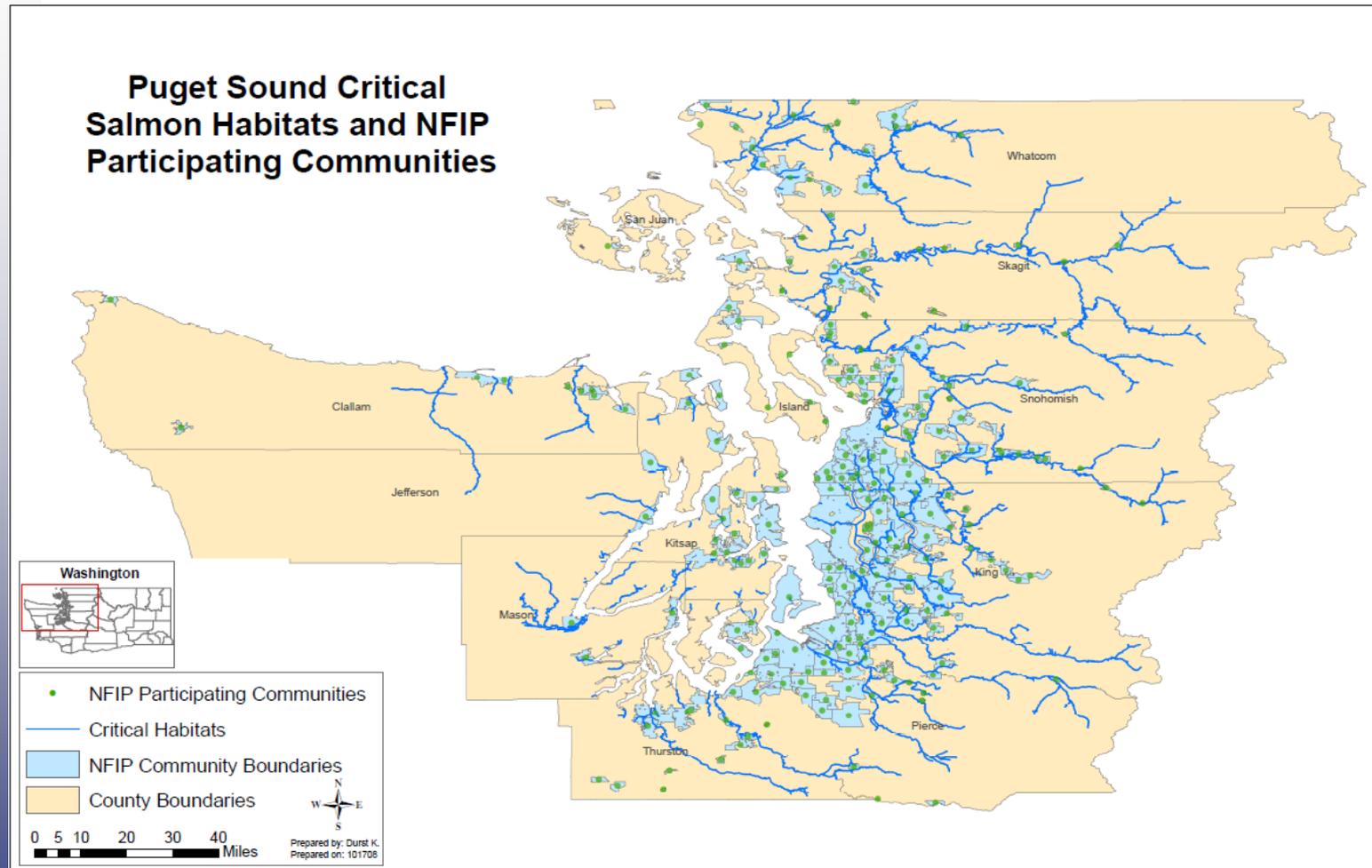
Summary of Elements

1. Notify Puget Sound communities of determination
2. Change mapping procedures to reduce impacts
3. Require communities to consider impacts on fish habitat when issuing floodplain development permits
4. Changes to CRS program
5. Addressing levee vegetation maintenance effects
6. Mitigation to adversely affected habitat
7. Report to NMFS on progress towards meeting requirements



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FPM Performance Criteria: Element 3



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ESA and the NFIP

Implementing a Salmon Friendly Program— FEMA Region 10

FPM Performance Criteria: Element 3

Floodplain Development Permit

No. 1546
Has been issued to Mickey Mouse
For construction of a House
At 1234 Mockingbird Lane, Marysville, WA
Lot 4 Block B Subdivision River Run
Flood County, USA

Donald Duck
Issuing Officer

This notice shall be posted in a conspicuous location at the front of the above described property at the time of commencement of work.

► 44 CFR 60.3 (a) (2) A community shall:

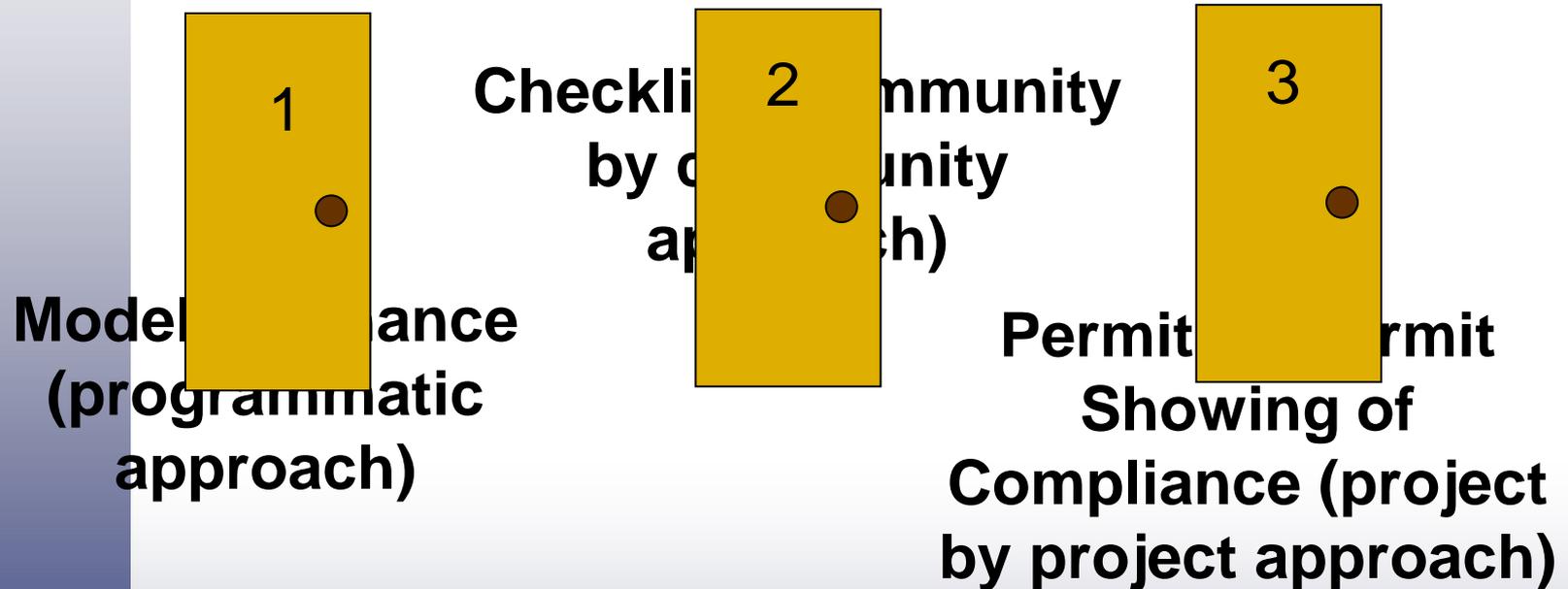
- Assure all necessary permits have been received from State and Federal agencies from which approval is required by Fed/State law.
- Requires a showing of compliance, particularly with CWA 404 permits, but includes ESA Section 10 permits.



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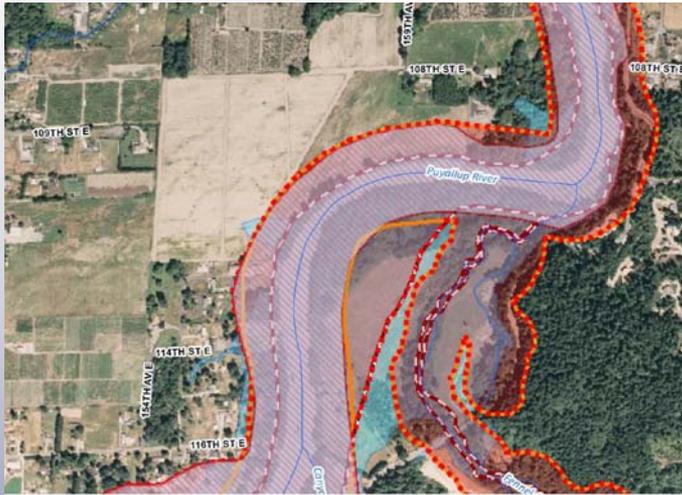
FPM Performance Criteria: Element 3

Three Doors Approach



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FPM Performance Criteria: Element 3



Floodplain Management and the Endangered Species Act

A Model Ordinance

2010



► Model Ordinance (programmatic approach)

- Combines Floodplain requirements (Structural based) with Habitat requirements (species based)
- Written ESA inclusive, not salmon specific
- More than minimally necessary (avoid adverse effect vs. eliminate Jeopardy/Adverse Mod.)
- Not required, but highly encouraged

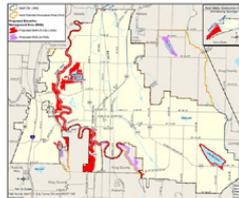
FPM Performance Criteria: Element 3



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Shoreline Master Program Update

On September 15, 2009, the City of Kent adopted its updated Shoreline Master Program (SMP) with a unanimous City Council vote. The updated SMP has been sent to the State Department of Ecology for final review and approval. Upon final DOE approval, the updated SMP will become effective. DOE and City staff estimate an effective date this December or next January. The adopted SMP and ordinance may be downloaded below, in addition to other supporting documents.



[Proposed Shorelines](#)
(click to see full map)

Planning

Hearing Examiner
Land Use and Planning Board
Long range planning
Commercial Zoning
Comprehensive plan
Cottage Housing
Critical areas ordinance
Envision Midway
Shoreline Master Program Update

Maps
Notices of applications
FAQ
Contacts

[What is a Shoreline Master Program?](#)

[What are the shorelines in Kent?](#)

[How will the new SMP affect me?](#)

[How can the public be involved in the update?](#)

[Download the Citizens' Advisory Committee Meeting Minutes](#)

[Download the Scientific Studies](#)

[Download the Updated Shoreline Master Program](#)

Additional information will be posted on this website as it is developed by Planning Services Staff. For more information about the Shoreline Master Program update, please contact Erin George at (253) 856-5436 or egeorge@ci.kent.wa.us.

► Community Checklist (Semi-programmatic)

- Utilizes existing local/state regulations adopted at the local level thus providing flexibility
- Meets the minimum requirements of the Biological Opinion (may be salmon centric)
- Not required, but highly encouraged



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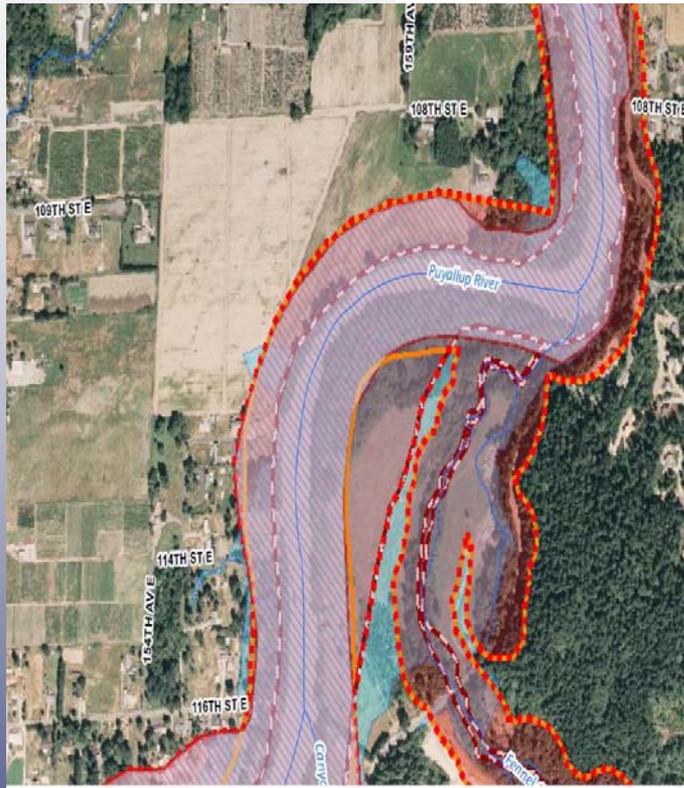
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- ▶ **Permit by Permit demonstration of compliance (individual approach)**
 - **Requires demonstration of compliance on project level basis**
 - **Utilize Sections:**
 - **Section 7 consultation (fed nexus)**
 - **Section 10 Permit (HCP)**
 - **Section 4d approval (NMFS only)**
 - **Required, but not recommended**



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FPM Performance Criteria: Element 3



- ▶ **Regardless of approach, all projects will require some level of assessment:**
 - **Biological Assessment/
Biological Evaluation**
 - **Habitat Conservation Plan**

or
 - **Habitat Assessment Report**



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Regional Guidance



Floodplain Habitat Assessment and Mitigation

Regional Guidance

2010



▶ **Regional Guidance for Floodplain Habitat Assessment and Mitigation**

- **5-step habitat assessment process**
- **4-step mitigation guidance**

Must evaluate for:

- **direct impacts**
- **indirect impacts**
- **cumulative impacts**

Challenges

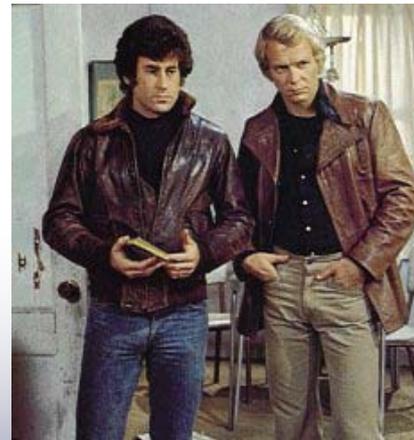
- ▶ **There are a number of challenges that exist to implementing the Bi-Op**
 - **Fish Vs. Flood**
 - **Limitations to what NFIP can do (no land use authority)**
 - **FEMA must be successful through the actions of others**



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Partnerships

- ▶ **FEMA continues to pursue opportunities to partner with other federal agencies, state agencies, local governments and other stakeholders to protect species and critical habitat**



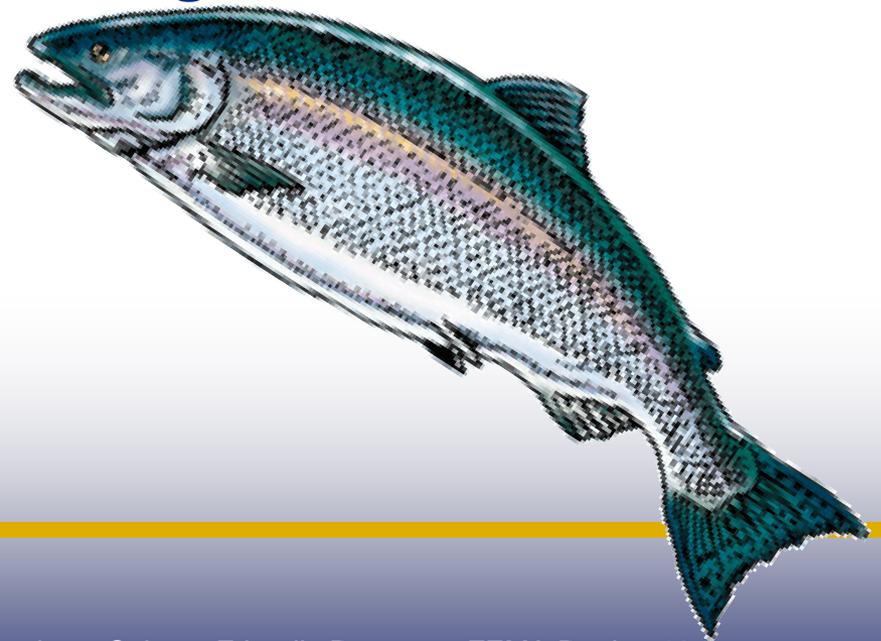
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Conclusions

- ▶ **FEMA feels that land use and flood control practices that protect salmon and their critical habitat also means implementing good floodplain management that will ultimately reduce damages to flood**



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