



FEMA

January 11, 2012

FAQ: How does FEMA intend to ensure community compliance with the Biological Opinion?

The NFIP Biological Opinion for Puget Sound requires FEMA to ensure that communities are fulfilling the requirements of the Reasonable and Prudent Alternative. FEMA intends to ensure compliance with the Biological Opinion through several options available to us. FEMA will conduct community assistance contacts and community assistance visits, continue to use the annual reporting tool, and investigate any reported incidents that may violate the minimum requirements of Title 44 Part 60.3 of the Code of Federal Regulations (44CFR 60.3).

A basic compliance monitoring tool for FEMA in the NFIP is the ability to conduct Community Assistance Contacts (CACs) and Community Assistance Visits (CAVs). A CAC entails a visit with a community which includes a review of their floodplain management ordinances, procedures, and enforcement provisions.. A CAC is intended to monitor low risk communities (i.e. communities with relatively low development pressure, and low potential for impact on ESA-listed species) and determine if technical assistance or additional follow-up is required. For the purposes of compliance with the Biological Opinion, CACs will require a review of the compliance option chosen by a community, and their understanding and implementation of the performance standards that are required for that option. A CAV is a more intensive investigation of the community's floodplain management program, and its knowledge and understanding of the floodplain management requirements of the NFIP. A CAV generally requires a field visit to identify program deficiencies. A meeting is held with the community to discuss any identified deficiencies, offer technical assistance, help remedy any deficiencies (programmatically and individually), and identify good floodplain management practices. In April of 2011, FEMA published a new guidance document, [*FEMA F-776: National Flood Insurance Program \(NFIP\) Guidance for Conducting Community Assistance Contacts and Community Assistance Visits*](#). This document highlights a responsibility to ensure communities are complying with 44CFR 60.3(a)(2) which requires communities to ensure all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law. This can include a Section 7, 4(d), or 10 permit as required by the Endangered Species Act (see FAQ regarding Door 3 for more discussion).

Traditionally FEMA has contacted communities in the State of Washington on a 5-year cycle with the help of the Washington Department of Ecology (WADOE) conducting CACs and CAVs. FEMA may determine that a community needs to be monitored more frequently. The WADOE receives a grant through the Community Assistance Program- State Support Services Element (CAP-SSSE) program to act as an agent of FEMA and help provide floodplain management services including technical assistance and compliance monitoring. The grants provided to the WADOE include line items in which the department will assist FEMA in putting an emphasis on compliance with the provisions of the Biological Opinion when conducting CACs and CAVs each year. CACs or CAVs conducted by the WADOE that have violations that cannot be remedied through their technical assistance will be turned over to FEMA for compliance actions. CAC and CAV priorities are determined based on several factors each year. Those factors include but are not limited to known development pressure, location in relation to



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priority populations of species, past compliance history, date since last contact, and interest in joining the Community Rating System (CRS).

FEMA issues the NFIP-ESA Reporting Tool each year in an effort to collect information regarding the floodplain development permits that are issued in each community through the year. FEMA will continue to issue the annual reporting tool in order to monitor the development activity that is occurring in the Special Flood Hazard Area (SFHA). Communities that participate in the NFIP are required to maintain and make available floodplain development permitting information to FEMA. Communities that fail to report to FEMA will be contacted regarding their floodplain management activities and placed as a priority for a Community Assistance Visit.

A community will also be notified when a potential violation is reported to FEMA for further investigation. FEMA will use their discretion to determine what level of response is required (technical assistance, CAC, or CAV).

FEMA or the WADOE may identify potential violations while conducting a CAC or a CAV. FEMA has a hierarchy for pursuing compliance actions including technical assistance, CRS retrogrades, probation, and finally suspension. Technical assistance provided to a community is often the best approach because it is a chance to provide education and find a programmatic solution that will prevent the violation from happening again. The physical violation will still need to be mitigated to the maximum extent possible, and mitigation actions have to be approved by FEMA.

Compliance actions pursuant to the options present in 44CFR 59.24 (b) and (c) will be taken if any violations are identified and not remedied to the maximum extent possible. Any identified violations of the ESA (Section 9 “take” prohibition or non-compliance with an RPA performance standard) will also be referred to the services for their potential compliance action while FEMA continues to pursue compliance with 44CFR 60.3(a)(2).

A community that participates in the CRS must be fully compliant with the minimum standards of the NFIP to participate in the CRS. A CRS community that is not fully compliant will be provided an opportunity to remedy the violation to the maximum extent possible. If the violation is not remedied the community will be retrograded from the CRS program and steps will be taken towards placing the community on probation.

Probation entails placing a notice in the federal register and a letter to each policy holder explaining to them why there is a \$50 surcharge on their policy. Probation must be in place for a minimum of one year and may be extended. Communities that do not comply while on probation will be eligible for suspension from the NFIP.

Flood insurance is not available from FEMA in communities that have been suspended. Suspension also means the inability to get many forms of disaster assistance when a community suffers a disaster. Lenders will not be able to provide loans backed by the Federal government for property located in the SFHA if a community is suspended from the program.