

Modifications to the Implementation of the National Flood Insurance Program in Oregon

Floodplain Managers Pre-Scoping Meeting | March-June 2023

Updated May 25, 2023



FEMA





Oregon Implementation Plan for NFIP-ESA Integration

FEMA's response and proposed implementation
approach for the 2016 Biological Opinion on the
National Flood Insurance Program in Oregon

DRAFT, October 2021



Agenda

- Meeting Purpose
- Background on the NFIP
- Overviews of the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA)
- Oregon NFIP Implementation
- NEPA Process
 - Schedule
 - Proposed Action
 - Purpose and Need
 - Alternatives
 - Potential Impacts
- Providing Comments



Purpose of today's floodplain managers' meeting

1

Inform floodplain managers about the National Environmental Policy Act (NEPA) review for upcoming changes to implementation of the National Flood Insurance Program (NFIP) in Oregon

2

Describe the Environmental Impact Statement (EIS) process, including the Proposed Action, Purpose and Need, and Alternatives

3

Receive comments on the Proposed Action and Alternatives



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Congress created the NFIP via the National Flood Insurance Act (NFIA) of 1968, following devastating flooding in the 1960s

- The NFIP reduces future flood damage by requiring minimum floodplain management standards and provides protection for property owners against potential flood losses through insurance
- The purpose of the NFIP is to minimize the long-term risks to persons and property from the effects of flooding, and reduce the escalating costs of flood damages to taxpayers
- The NFIP is administered by the Federal Emergency Management Agency (FEMA)



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Today, flooding continues to be the single greatest source of damage from natural hazards in the United States

- The NFIP serves as the foundation for national efforts to reduce the loss of life and property from flood disasters, both through insurance and key “noninsurance activities” including mapping flood hazards, disseminating flood-risk information, and setting minimum floodplain management standards
- Implementation of the NFIP is estimated to save the nation roughly \$1.6 billion annually through avoided flood losses



NFIP from the National Flood Insurance Act (NFIA) of 1968

- Quid pro quo program
- FEMA makes flood insurance available if
 - Communities voluntarily agree to regulate development in the floodplains using the minimum floodplain management standards
- Over 22,500 communities participate (states, Tribes, cities, towns, counties)
- FEMA does not regulate local land use; the Constitution reserves that right for the states



Federal Role

- Updated maps
- Establish development/ building standards
- Provide flood insurance coverage
- Oversee programmatic implementation of the NFIP including training, technical assistance, and enforcement

Community Role

- Establish higher regulatory standards (opt)
- Adopt/enforce local floodplain management ordinances
- Issue or deny development/building permits
- Development oversight



When do I need a permit under the NFIP?

1. Is the project happening in the Special Flood Hazard Area (SFHA) / i.e., Regulatory Floodplain?



2. Does the project meet the definition of Development?

44 CFR 59.1 *Development* means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.



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Overview of the Endangered Species Act (ESA)

Section 7(a)(1) of the ESA requires Federal agencies to use their authorities to carry out programs that protect and conserve endangered and threatened species and their habitats

Section 7(a)(2) of the ESA requires Federal agencies to ensure that any action they authorize, fund, or carry out is unlikely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of their habitat

The ESA is implemented by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS).



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Oregon ESA consultation history

Biological Opinion (BiOp)

- Document issued by the Services reviewing the proposed action
- NMFS has completed two BiOps in FEMA Region 10 regarding implementation of the NFIP (WA & OR)
- Both resulted in jeopardy determinations



Reasonable and Prudent Alternatives (RPA)

- Additional report issued with a BiOp when a jeopardy opinion is made
- Describes alternatives to implementing the proposed action that meet ESA compliance
- Each WA & OR BiOp included an RPA as guidance to FEMA on alternative methods for implementing the NFIP locally

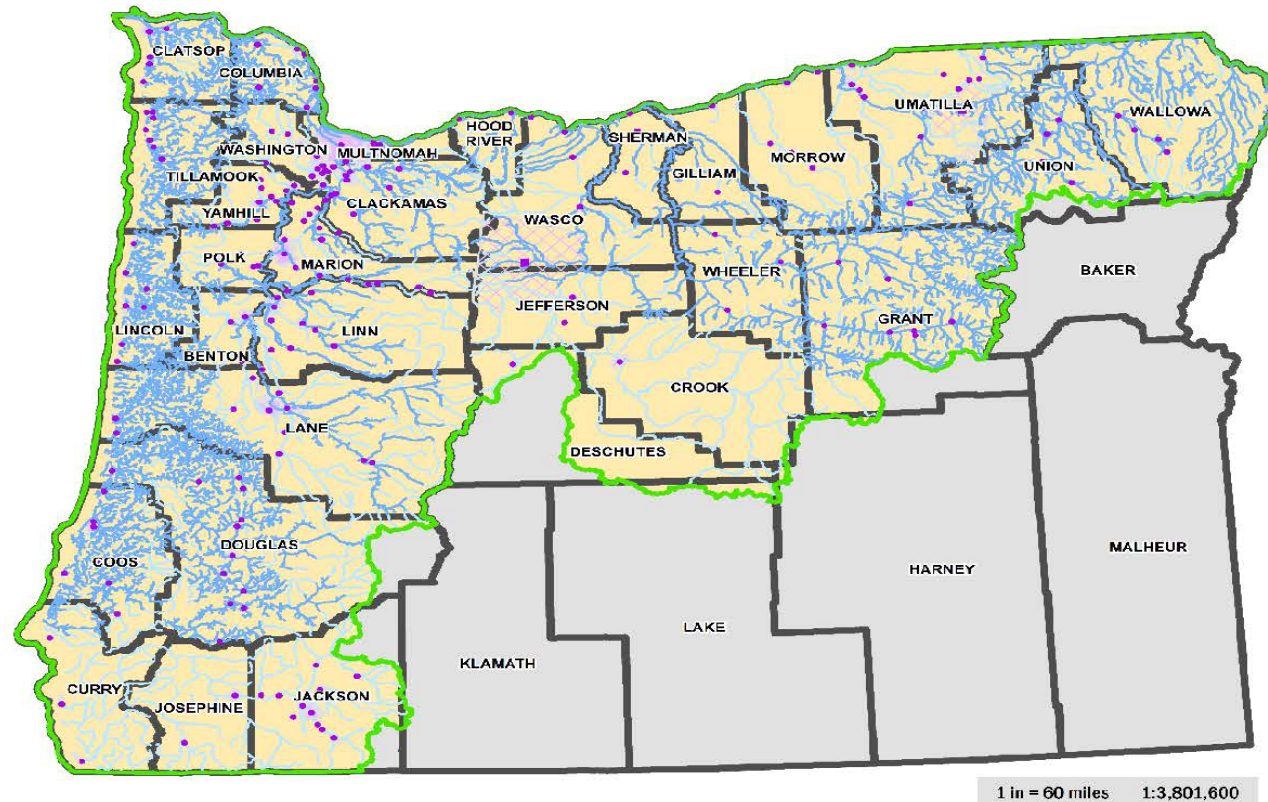
Overview of 2016 NMFS NFIP jeopardy finding for Oregon

- In 2016, NMFS released a Biological Opinion (BiOp) on the NFIP's effects on threatened or endangered species in Oregon's watersheds (Action Area)
 - State of Oregon, two tribal nations, and 260 communities across 36 counties
 - The BiOp tasked FEMA to modify **NFIP implementation in Oregon such that development actions in the floodplain result in “no net loss” to key habitat functions**
 - Flood storage
 - Water quality
 - Riparian vegetation
- “No Net Loss” means mitigate on-site, within the same reach, or in the same watershed with different mitigation ratios*
- 2019-2021, FEMA—with DLCD and other stakeholders—developed the **2021 Oregon Implementation Plan for NFIP-ESA Integration**



Implementation (Action) area

- Overlap: Six Salmon and Steelhead Recovery Domains
- NFIP current or future participating communities
- Mapped or future mapped Special Flood Hazard Area



OREGON NFIP BIOP ACTION AREA

2021.09.28

LEGEND

- OREGON NFIP ACTION AREA
- CRITICAL HABITATS (SALMON/STEELHEAD)*
- MAJOR STREAMS

- COUNTIES
- NFIP PARTICIPATING TRIBES
- NFIP PARTICIPATING COMMUNITIES

*Critical Habitats are via NOAA Fisheries: <https://www.fisheries.noaa.gov/resource/map/critical-habitat-salmon-and-steelhead-all-west-coast>

ABOUT

This map displays the Oregon NFIP BIOP Action Area where critical habitats for salmon and steelhead (and areas upstream of those habitats) are displayed in relation to NFIP participating tribes and jurisdictions. Most NFIP-participating communities within Oregon have all or a portion of land within the BIOP Action Area, with the exception of Baker, Harney, Klamath, Lake, and Malheur Counties.



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The Plan outlines the actions FEMA plans to take to ensure Oregon NFIP implementation is compliant with the ESA and 2016 BiOp...

FEMA's development of the Oregon Implementation Plan included stakeholder input throughout the process:

- Large stakeholder workshops
- Small discussion groups
- Briefings with state & federal agencies

Actions include changes to:

- Information provided to communities
- Mapping products
- Reporting requirements for participating communities



FEMA plans to analyze the Oregon Implementation Plan under NEPA via an EIS to evaluate its potential impacts



...as well as four paths communities can take to meet the “no net loss” standard

A

Adopt a **model ordinance** that contains the required elements

B

Complete and submit to FEMA an **ordinance checklist** to demonstrate that new and/or existing local policies address the required elements

C

Complete and implement an **approved community compliance plan**, developed by the local community and approved prior to implementation by FEMA (in coordination with NMFS) as meeting the “no net loss” goal at the community level (e.g., ESA 4(d) limit)

D

Complete and implement a **community-level habitat conservation plan**, as outlined in Section 10 of the ESA



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Clarifications

- Does not require a floodplain development permit where not previously required.
- Does not apply to agriculture, dairy, silviculture, and other forest practices that do not involve filling, grading, or construction of levees or structures.
- Does not prohibit development in the SFHA.
- No restriction or mitigation for maintenance, repair, or remodel of existing buildings, facilities, and utilities *within their existing footprints*.
- Not a one-size fits all solution; each community can select one or more pathways today and can change in the future.
- Pathways B and C allow for a community-specific analysis to account for local floodplain values, different buffer zones, and other unique local conditions .

Oregon Implementation Plan timeline

Litigation to Planning

2009: Audubon Society et al. vs FEMA

2016: Jeopardy opinion, ESA BiOp RPA

2018: DRRRA extension (3 yrs)

2019 to 2021: Implementation Planning

Moving toward Implementation

Spring 2021: Draft approach & stakeholder input

Fall 2021: Final draft Implementation Plan & feedback

2022-2024: NEPA Review Process

Est. 2025+: Community Implementation



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Federal Emergency Management Agency



Overview of the National Environmental Policy Act (NEPA)

- Requires Federal agencies to evaluate potential environmental impacts as part of their planning and decision-making process
 - Prepare an Environmental Impact Statement (EIS) for actions that have the potential for significant effects on the natural, physical, or human environment
 - Effects include ecological, aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative
- FEMA is preparing an EIS for the Implementation Plan as impacts to communities will likely be significant

The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose

Sec. 2 [42 USC § 4321]. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential



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Purpose and need

Per the BiOp, FEMA must implement the NFIP within the Action Area so as not to jeopardize listed species and their critical habitats

- To align with the BiOp's intent, FEMA developed an Implementation Plan outlining the actions the agency will take in Oregon to ensure NFIP implementation is consistent with the ESA
- The actions outlined in the Implementation Plan are the “**Proposed Action**” that FEMA plans to analyze under NEPA to determine its impacts



Alternatives

- FEMA will also consider **Alternatives** to the Proposed Action that could meet the Purpose and Need, as well as a “**No Action**” **alternative** to outline what would occur if no changes were made to the program
- Each alternative analyzed will contain measures and actions (options) that allow communities to meet the no net loss standard

FEMA welcomes comments from the public and stakeholders on potential alternatives or options to consider in this process.

Note that the No Action alternative is insufficient to meet the Purpose and Need but must be analyzed per NEPA regulations.



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FEMA is seeking input on information, studies, and analyses concerning impacts that may result from the Proposed Action or alternatives

Specifically, FEMA requests comments on:

1. Potential adverse or beneficial effects that the Proposed Action could have on **biological resources, including species and their habitats**
2. Potential adverse or beneficial effects that the Proposed Action could have on **physical resources and floodplain functions**
3. Potential adverse or beneficial effects that the Proposed Action could have on **socioeconomics**
4. Other **possible reasonable alternatives to the Proposed Action** that FEMA should consider to achieve the no net loss of floodplain function performance standard



*All comments must be postmarked
by **June 26, 2023***

Providing comments

- Provide verbal comments during today's meeting, or future scoping meeting
- Provide written comments via the Federal eRulemaking Portal at <https://www.regulations.gov>; search for FEMA-2023-0007 and follow the instructions for submitting comments
- Submit written comments by mail to: **Ms. Science Kilner, Regional Environmental Officer**
FEMA Region 10
130 228th Street SW
Bothell, WA 98021
- A summary of the scoping comments will be included in the Draft EIS
- Visit <https://www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration>



Next steps

Notice of Intent – Mar 2023



Scoping Process – Mar-Jun 2023

Draft EIS – Jan 2024

Public Comment on Draft EIS

Final EIS / ROD – Dec 2024

Finalize / Publish Plan – Jan – Mar 2025

Community implementation - Sep 2025






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Achieving no net loss requires mitigation for development

Under the draft Implementation Plan, any development actions that result in a “loss” to one or more of the BiOp’s key floodplain functions must either be mitigated for or avoided:

Floodplain Function	Examples of Potentially Harmful Development Activities
 Flood Storage	<i>Placement of fill</i>
 Water Quality	<i>Addition of impervious surface</i>
 Riparian Vegetation	<i>Removal of existing vegetation</i>

FEMA conducted preliminary analyses of the potential impacts of additional mitigation or avoidance to three ‘model’ Oregon Communities:

-  Urban
-  Suburban
-  Rural









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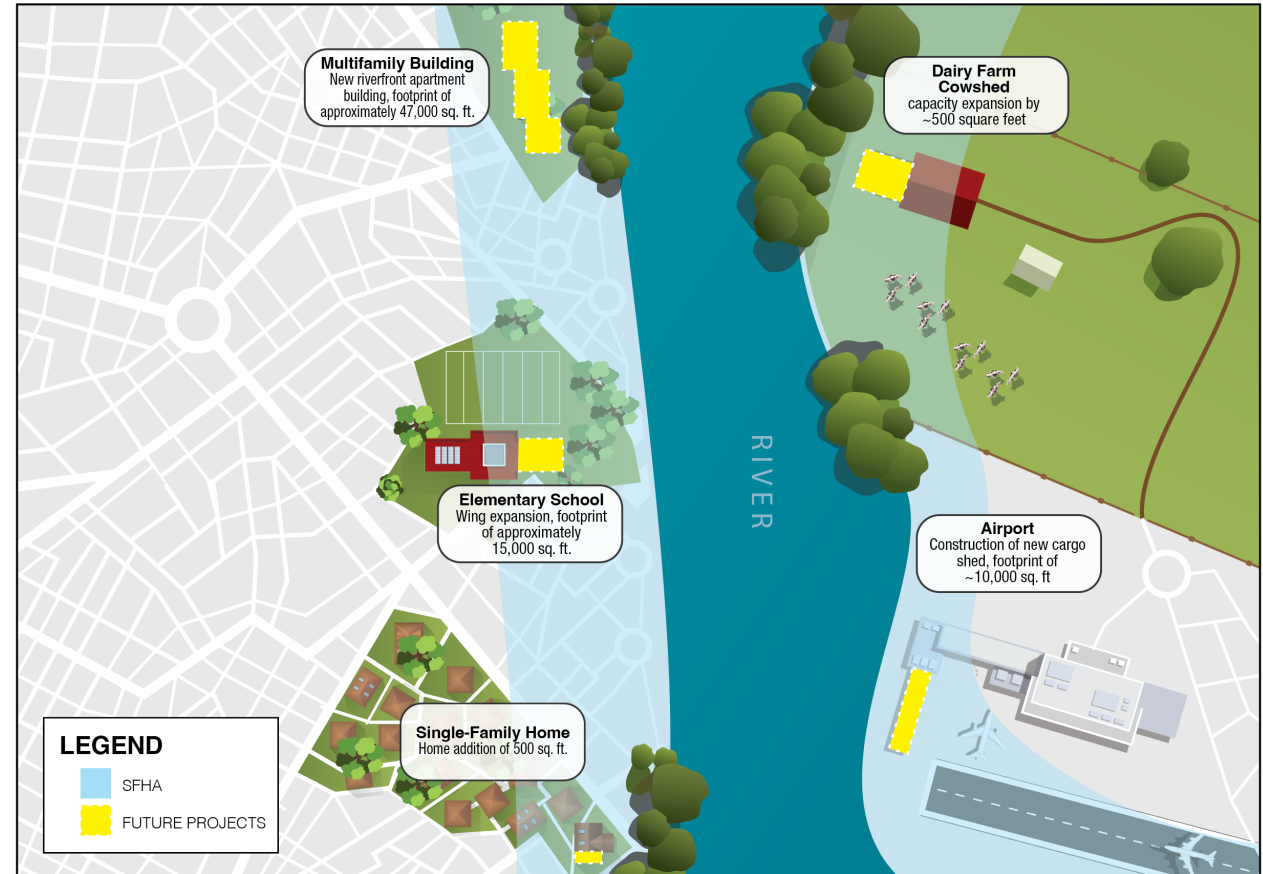
Sample model community analysis – urban community

COMMUNITY CHARACTERISTICS

-  Urban
-  Population: >90,000
-  Area: ~15,000 acres
-  Average Income: \$87,000
-  Approximately 30% of the Developable SFHA not yet Developed
-  Minimal overlap between SFHA and established Urban Growth Areas

...consider development activities for:*

- Dairy farm cowshed expansion
- Multi-family building expansion
- Elementary school wing expansion
- Single family home expansion
- Airport cargo shed construction



* Does not include normal ag & forestry practices; maintenance, repair, road resurfacing; lawn care, gardening, removal of hazard trees & noxious weeds, as long as no filling, grading, or construction of levees or structures.



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Potential Model Ordinance Provisions (Pathway A) and Checklist Requirements (Pathway B)

- Appendix A of the 2021 Draft Implementation Plan
- Detail on measures proposed to be included in model ordinance and ordinance checklist
- Examples drawn from existing code in Oregon Communities: Coastal, Rural, Portland Metro, & non-Portland Metro
- Avoidance measure(s) to steer new development away from part or all of the SFHA (3 recommended options)
- Requirement to use structural elevation rather than fill in the floodplain, where possible, and to mitigate all development impacts to flood storage
- Implementation of binding stormwater policies and/or programs
- Creation of a Riparian Buffer Zone for all aquatic features with mapped SFHA

Significant Impacts (From the published Notice of Intent)

Based on the Oregon NFIP BiOp, the DLCD stakeholder work groups, and the Oregon NIFIP Implementation Planning Group process, FEMA initially expects the proposed action to benefit natural floodplain functions, threatened and endangered species habitat, and essential fish habitat.




FEMA also **initially expects** the proposed action to **potentially significantly impact communities, individuals, and businesses** that intend on developing in the floodplain.

FEMA anticipates that there **may be adverse indirect impacts** to community land use planning, economics, social structures, development plans, minority, low-income populations, Tribes, infrastructure, agriculture, aquaculture, energy production and transmission, and transportation.



Food for thought when considering what input to provide:

- How would the need to ensure no net loss of the 3 floodplain functions affect program administration?
- How might the Plan affect your community?
- Would some demographic groups be impacted more than others?
- Considering impacts on different stakeholders, what other impacts does FEMA need to consider?

Floodplain Function	<i>Examples of Potentially Harmful Development Activities</i>
 Flood Storage	<i>Placement of fill</i>
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 Riparian Vegetation	<i>Removal of existing vegetation</i>



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NFIP-ESA-Integration Plan Website

<https://www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration>



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