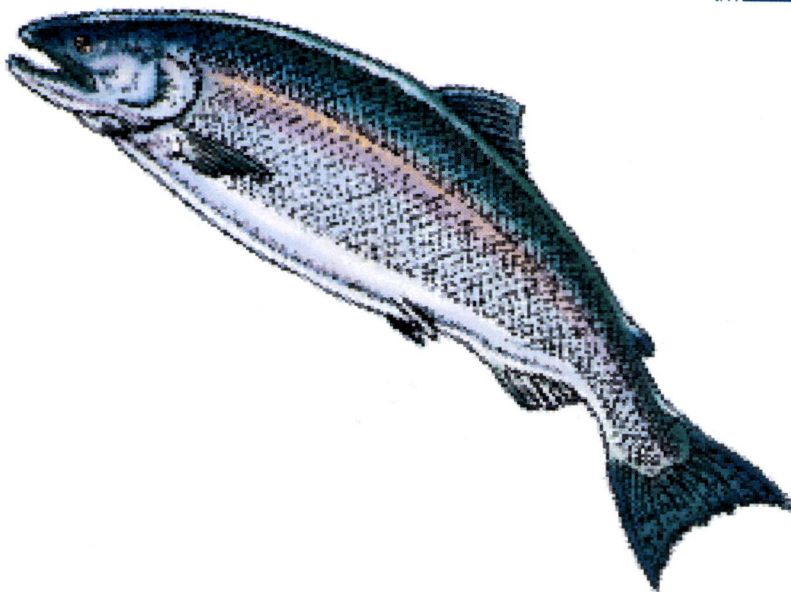


2009

FEMA Region X Annual
Report to NMFS



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RPA Element 1-Notification of Consultation Outcome

On October 21, 2008 FEMA notified the 122 communities that participate in the NFIP and are affected by the Biological Opinion. A sample of the letter sent to the communities is contained in Appendix A. FEMA has also provided interim updates to the communities. Appendix B is a list of all 122 communities affected by the BiOp.

The notification put the communities on notice that they were subject to the interim "take" provisions of the BiOp and would be required to report certain information to FEMA during the implementation period of the BiOp. FEMA has since provided several updates to the communities providing insight into the proposed plan that has been developed to implement the requirements contained in the BiOp.

FEMA has implemented this RPA element to the fullest extent possible and will no longer be reporting on this RPA.

RPA Element 2-Mapping

A. Letters of Map Change:

FEMA has revised the Letters-of-Map-Change (LOMC) process to require Conditional Letters of Map Revision on Fill (CLOMR-F) and Conditional Letters of Map Revision (CLOMR) applications to demonstrate compliance with the ESA. Requestor's are required to provide a Biological Evaluation in order to determine if a Section 7 consultation with NMFS, or the Fish & Wildlife Service, is needed. Currently this is only being implemented statewide in Washington, however it is anticipated that this approach will be implemented nationwide. All other LOMCs will be required to demonstrate compliance with the ESA when the permit is issued by the local government. See RPA Element 3.

B. Mapping Priorities:

FY09 studies were initially identified and prioritized prior to the issuance of the RPA. FY10 studies are in the pre scoping process. FEMA is currently updating the scoping workflow process to include a series of coordination points between the study contractor and the NMFS, among other state agencies with an interest in ESA. This process will be in place prior to the final award of FY10 study funds and will affect how studies are scoped. Our new data inventory will facilitate a more systematic and thorough approach to factoring elements of the RPA into our flood study identification process. It will be applied not only in WA, but in OR, ID and AK as well. A copy of the flood study identification process will be supplied once finalized. At this time, the FY10 flood map study sequencing list is still subject to change. There are no financial commitments for exactly where and how much will be put into the work. Please see Appendix C for a list of the scheduled study starts for FY2009 and proposed for FY2010.

C. Modeling:

Studies have always incorporated the best topographic data available from the community. Under the new RiskMap initiative FEMA intends to purchase topographic data where appropriate, if adequate data is not available locally.

Tier 1 communities contain many of the most complex floodplains to map. FEMA uses the most appropriate model for mapping floodplains as described in Appendix C of the Guidelines and Specifications for Flood Hazard Mapping Partners (<http://www.fema.gov/library/viewRecord.do?id=2206>). The recommended 2-dimensional models have been used in some of the complex systems of the Tier 1 communities.

FEMA's current Guidelines and Specifications for mapping 'future conditions' states:

If community officials request that FEMA show future-conditions flood hazard information on the FIRM, the future-conditions flood insurance risk zone—Zone X (Future Base Flood)—shall be referenced on the FIRM and in the FIS report.

The *FEMA Regional Guidance for NFIP-ESA Hydrologic and Hydraulic Studies* has been distributed to the model ordinance focus group (including NMFS) for their review and comment. The Regional Guidance is intended to augment national guidance to better fit regional conditions, particularly special ESA provisions for Washington State as explained in the BiOp. The BiOp identified three specific areas where mapping techniques could be adjusted to provide better hazard data and floodplain maps. The result of incorporating this guidance into flood hazard mapping will help communities meet the ESA requirements, as spelled out in the BiOp, and to provide for more effective programs to prevent and reduce the dangers and damage caused by floods and migrating stream channels.

The RPA requires FEMA to consider climate change in our mapping program. Currently, FEMA is conducting a comprehensive analysis of potential changes in precipitation intensity and patterns, coastal storms, sea level rise, and other natural processes affecting both riverine and coastal flooding based on source materials from other agencies and researchers versed in climate change studies. The specific study objective is to estimate the influence of climate change on: (a) the location and extent of the US floodplains; (b) the relationship between the elevation of insured properties and the flood water elevations; and (c) the economic structure of the NFIP. Key components of this analysis include: (1) realistic scenarios of future losses under anticipated climatic conditions and expected exposure levels, including both potential budgetary implications (including program and mapping costs) and consequences for continued program operation; and (2) potential mitigation options that the NFIP might use to reduce its exposure to loss. This report will address the NFIP nationwide and it would be premature for FEMA Region 10 to take any steps to address climate change for Puget Sound until after this report. It is currently anticipated for completion in the 3rd Quarter of FY2010.

D. Risk behind levees:

In April 2009, FEMA published a fact sheet (Appendix D) to inform property owners of the residual risk that is associated with living behind levees. This Fact Sheet provides

important information about levee systems for homeowners, business owners, and other citizens who live and work in levee-impacted areas throughout the United States. The *Regional Guidance for NFIP-ESA Hydrologic and Hydraulic Studies* also addresses land use changes in the watershed and the impact on flood levels.

Additionally, FEMA participated in developing the National Committee on Levee Safety's report to Congress recommending a National Levee Safety Commission be established.

RPA Element 3-Floodplain Management Criteria

FEMA has drafted an ESA-compliant model ordinance that will allow communities to demonstrate programmatic compliance with the BiOp. The model ordinance, along with two regional guidance documents, provides recommended limitations and restrictions on development in the entire special flood hazard area (SFHA) with increased restrictions in the 'protected zone' comprised of the floodway, the channel migration zone (CMZ) and the riparian buffer zone that are intended to avoid adverse affects on habitat of listed species. It is the intent of FEMA that any community that adopts and enforces the ESA-compliant model ordinance will have met the requirements contained in the BiOp and will have fulfilled their responsibilities for implementing the NFIP under the Endangered Species Act.

The draft ESA-compliant model ordinance and accompanying guidance documents have been provided to a focus group to provide input from stakeholders and ensure the model ordinance is implementable at the local level. *The FEMA Regional Guidance for NFIP-ESA Hydrologic and Hydraulic Studies (see RPA 2)* provides information on how studies that are required by the model ordinance can be conducted. *The FEMA Regional Guidance for Floodplain Habitat Assessment and Mitigation (see RPA 6)* provides guidance to communities on how to conduct or review habitat assessments and mitigation measures as required by the model ordinance. *The CRS Credit for Habitat Protection Guidebook (see RPA4)* provides an explanation of current activities that receive credit in the CRS program that encourage protection of the species and their habitat.

The focus group was asked to review, and provide comments on, the ESA-compliant model ordinance and the accompanying guidance documents. The focus group includes representatives of 13 of the 122 affected communities that vary in experience, expertise, size, and CRS status. The focus group consists of representatives of 7 counties, 5 cities, 1 tribe, the National Marine Fisheries Service (NMFS), and Washington Department of Ecology. FEMA appreciates NMFS' participation on the focus group to help facilitate a timely release of the model ordinance, and the guidance documents.

Several communities commented early in the process that their floodplain regulations were distributed among several rules or codes and were not neatly contained in a single ordinance. Consequently, FEMA has developed a checklist that can be used by those communities to verify that the additional standards and restrictions incorporated into the ESA-compliant model ordinance are captured within their existing body of building codes and land-use regulations at the local level. This checklist will serve the same

purpose as the model and can be used to assure communities that they will have fulfilled their responsibilities for implementing the NFIP under the Endangered Species Act.

FEMA will provide NMFS with the final version of the model ordinance, checklist and guidance documents. FEMA anticipates that NMFS will concur that the model ordinance and checklist meet the substance and intent of the RPA. Once the documents are distributed to the 122 communities FEMA will hold workshops to roll out the model ordinance, checklist, and guidance to the communities. These workshops are anticipated to start in January 2010. FEMA will be providing technical assistance and visiting communities as necessary to facilitate the adoption of the model ordinance or updates to current ordinances to comply with the checklist as necessary. FEMA will prioritize requests for technical assistance on Tier 1 communities, but will not deny any communities requests for assistance.

RPA Element 4-Community Rating System

The Community Rating System (CRS) Task Force is currently incorporating, and adding credit, for all requirements except sub-element 4G. The CRS Task Force will be presented with a recommendation on how to approach the intent of sub-element 4G at the December Task Force meeting. Implementing of all requirements will occur at a national level, not just Puget Sound.

FEMA has incorporated additional focus on Natural and Beneficial Functions Credits in the national CRS course offered at the Emergency Management Institute and also in field-deployed courses such as the July 2009 offering in Pocatello, Idaho. FEMA has produced draft guidance highlighting the CRS Credits for Natural and Beneficial Functions that are currently in the CRS Program. Additionally, the CRS Natural and Beneficial Functions Credits have been prioritized in the CRS Strategic Plan and are currently under review by the Natural and Beneficial Functions Committee. The *CRS Credit for Habitat Protection Guidebook* is designed for local officials and others who work with the NFIP and its floodplain construction standards, but may not be familiar with the Endangered Species Act and its requirements or the Community Rating System and its benefits. The *CRS Credit for Habitat Protection Guidebook* provides an introductory explanation of the types of habitat that are found in floodplains, a summary of how development adversely affects these habitats, and the many good floodplain management practices that can protect habitat and help reduce and prevent flood damage. Each section identifies where Community Rating System credit can be provided to communities that implement these practices.

RPA Element 5- Levee Vegetation Maintenance and Certain Types of Construction in the Floodplain

FEMA requires communities to meet the performance criteria in 44 CFR 65.10 for accrediting levees; the regulations are silent on vegetation. FEMA has determined that RPA5 sub-elements, A, B and D are outside of FEMA's authority to implement and will not be included in any future reports.

FEMA has been asked to comment on new levee project proposals in several communities throughout the Puget Sound region. FEMA has consistently responded that a levee must meet the performance standards of 44 CFR 65.10 and any new levee must be compliant with ESA under 44 CFR 60.3 (a)(2). Should a community want to ensure that a levee is designed in a manner that is compliant with the ESA, they should look to RPA 5 sub element D as an example. Current levee projects in Tukwila, Burlington, Mount Vernon, and Bothell are examples of communities where FEMA has highlighted RPA 5D for consideration.

While FEMA's five Hazard Mitigation Assistance (HMA) grant programs are not authorized to directly fund ecological mitigation, agricultural issues, environmental protection, or watershed protection, however, a primary eligible project type is acquisition and demolition of floodprone structures. This results in the acquisition and conversion of developed land into permanent open space, in the form of native vegetation/wildlife habitat, active-use parks, and/or multi-use greenways. Such acquired properties are deed-restricted to open space uses resulting in restoration of many natural and beneficial functions of floodplains. While FEMA determines the eligibility requirements and national priorities, the State of Washington establishes their own priorities and chooses which projects receive funding. Historically, a substantial portion of HMA projects proposed by and funded through the State of Washington have been for acquisition, demolition, and conversion of floodprone structures to permanent open space use.

During the time period beginning with issuance of the Biological Opinion on September 22, 2008, FEMA Region X has provided funding to the State of Washington to implement 55 HMA projects in the Puget Sound Watershed. Of those projects, 12 have been for acquisition/demolition of floodprone properties for conversion to permanent open space. The total Federal share dollar value of these projects is \$22.2 million, and a total of 59 floodprone structures have been approved for acquisition. Several of these projects involve multiple contiguous properties in the channel migration zone in Pierce and King Counties returning 31 acres of land to permanent open space.

RPA Element 6-Floodplain Mitigation Activities

The Regional Guidance for Floodplain Habitat Assessment and Mitigation fulfills this requirement by providing technical assistance to the community on how a habitat assessment can be completed as well as suggestions on how mitigation for any affects can be incorporated into the project proposal.

The Regional Guidance for Floodplain Habitat Assessment and Mitigation has also been distributed to the model ordinance focus group, including NMFS, for their review and comment. The Regional Guidance is intended to support the model ordinance and provide details on how a habitat assessment would be conducted within the Regulated Floodplain. A habitat assessment will be required for any flood permit issued within these areas. The assessment is required to address both direct and indirect affects to

species. The guidance includes a requirement to review mitigation alternatives as well as steps to preparing a mitigation plan.

FEMA is also exploring partnering opportunities with state and non-federal entities to provide creative mitigation information to participating communities. We look forward to NMFS assistance in exploring the feasibility of riparian habitat banking as a mitigation opportunity for participating communities.

RPA Element 7-Monitoring and Adaptive Management

FEMA is currently developing an interactive website that will be used to reach out to communities and citizens. The website will contain examples of correspondence that has been sent to the communities, the model ordinance, the checklist, guidance documents, and other useful links for communities and citizens to become more informed on the NFIP and the Endangered Species Act.

FEMA has participated in over 30 public meetings or conferences in which we have reached out to communities, public partnerships, tribes, and other interested parties. NMFS has also participated in several of the events alongside FEMA.

FEMA recommends that the annual reporting date of October 1, as required by the Biological Opinion Reasonable and Prudent Measures be changed to November 30 each year. Moving the reporting allows FEMA and the communities to avoid adding additional workloads during busy times for other program requirements and compile a summary of activities for an entire federal fiscal year.

Appendix E contains the reporting spreadsheet for all responses received from communities to date. 37 communities have responded to date. 567 permits were reported in the Puget Sound region from October 22, 2008 to October 1, 2009. 12 permits included an evaluation of the impacts on salmonid habitat. FEMA will continue to actively pursue reports from any community that has not responded by the date of this report.

Compliance with Section 7A1, ESA

FEMA Region 10 has produced a publication titled, *Engineering with Nature* (Appendix F), in which several alternatives to hard bank armoring (rip rap) are highlighted as real world examples for riverbank stabilization that are more environmentally friendly. This document has been distributed to community officials in Washington and Oregon during disaster recovery activities to help influence their recovery planning decisions and for future planning efforts.

Conclusions

FEMA fully intends to comply with the Endangered Species Act. FEMA continues to believe that being good stewards of the riparian floodplain contributes to the goals of floodplain management. FEMA feels that there have already been tangible changes in the Puget Sound floodplain management community as a result of this consultation. Whatcom County has developed their own checklist addressing ESA in their floodplain development permit review process, Snohomish County has added a habitat assessment requirement to their floodplain permit reviews, and many other communities are actively discussing implementation options. As demonstrated in the community reports, some communities are addressing habitat impacts prior to any FEMA guidance. With added guidance and technical assistance we anticipate more participation from communities on reporting implementation. We will continue to aggressively pursue implementation by communities and appreciate NMFS participation and technical assistance.

Appendices

- A: Examples of correspondence sent to communities
- B. List of 122 communities impacted by the Biological Opinion
- C. Scheduled study starts proposed for FY2009 and FY2010
- D: Fact Sheet: Living Behind Levees
- E: Permit Reporting from Communities
- F: Engineering with Nature