

# FEMA's NFIP ESA Consultation in Oregon

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# Terms and Acronyms



- **NMFS: National Marine Fisheries Service** is a division of NOAA Fisheries,
- **BO/BiOp: Biological Opinion** on the NFIP issued by NMFS
- **RPA: Reasonable and Prudent Alternative** that NMFS believes necessary to achieve ESA (Endangered Species Act) compliance
- **NFIP: National Flood insurance Program**
- **SFHA: Special Flood Hazard Area**. Area where regulations of the NFIP apply. Commonly known as the “100 year floodplain”

# Overall Objective of ESA Compliance

- **Under the ESA, Section 7, all federal agencies are required to consult with NMFS to ensure that any action that is authorized, funded or carried out by that agency does not jeopardize the continued existence of endangered species or result in the destruction or adverse modification of the critical habitat of such species.**



# How the NFIP works

**FEMA agrees to make flood insurance available within a community when that community agrees to adopt and enforce floodplain management regulations.**



# NFIP in Oregon- ESA History



- **2009 – Lawsuit filed by Audubon Society of Portland et al, for FEMA’s Failure to Consult.**
- **2010 - Settlement agreement reached**
  - **Require that habitat impacts be avoided or mitigated as a condition of processing CLOMR-Fs**
- **2011 – FEMA requested informal consultation with NMFS**
- **2012 – FEMA began formal consultation with NMFS requiring Program Level Biological Assessment (BA)**
- **2013 – BA last amended – NMFS produced draft BiOp with Jeopardy Determination and draft RPA**
- **April 14, 2016 – Oregon BiOp issued - Jeopardy/Adverse Modification with RPA – after extensive negotiations between NMFS and FEMA staff.**

# Oregon Affected Communities



Affects 251 of  
271 Oregon  
Communities

All river sub-basins in Oregon that contain ESA listed Salmon, Steelhead & Eulachon fish (excludes shaded green area)

# Oregon RPA

RPA	Summary	Timeframe
1. Notification	<b>Notice, education, and outreach to NFIP communities in Oregon regarding the outcome of FEMA’s consultation with NMFS on the implementation of the NFIP in Oregon.</b>	<b>60 days (June 14, 2016) for letter, and September 15, 2016 for everything else</b>
2. Interim Measures	<b>Interim measures that FEMA and its NFIP participating communities must promptly implement to mitigate the impacts of floodplain development on natural floodplain functions needed to support listed species. These interim measures, which include extensive reporting requirements, are to be implemented prior to the implementation of the permanent elements of the RPA.</b>	<b>March 15, 2018</b>
3. Mapping Criteria	<b>Required use of more extensive and expensive mapping protocols and methodologies for the stated purpose of improving the identification of special hazard areas. Mapping a number of new areas including the future conditions floodplain through 2100, erosion zones, and channel migration zones (the RPA also requires FEMA to regulate to these new and expanded zones as well).</b>	<b>3A &amp; 3E March 15, 2018</b>  <b>3B, 3C, 3D, 3F &amp; 3G are due September 15, 2019</b>

# Summary of Oregon RPA

- **All 251 Affected Communities will be remapped based on higher standards**
- **All communities will be required to revise/adopt local regulations with these more restrictive standards for development in the Floodplain**
- **If communities fail to comply with the RPA, FEMA will have no choice but to apply existing NFIP enforcement actions**



# FEMA's View on Oregon RPA

- **FEMA will work toward implementation of the RPA requirements within our legal authority**
- **Or we will search for alternative methods of implementation to meet the overall goal of the RPA – working with the State, communities, Tribal Nations, and stakeholders**

# Path Forward (Year 1 - planning)



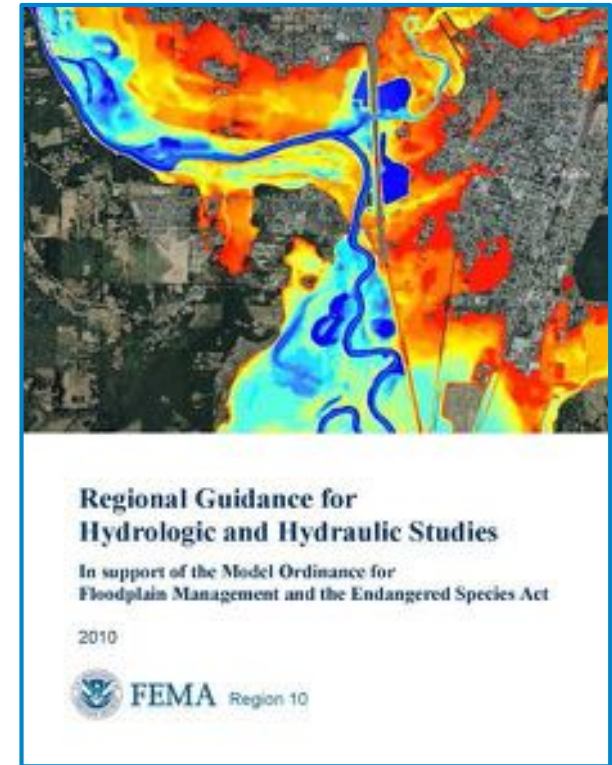
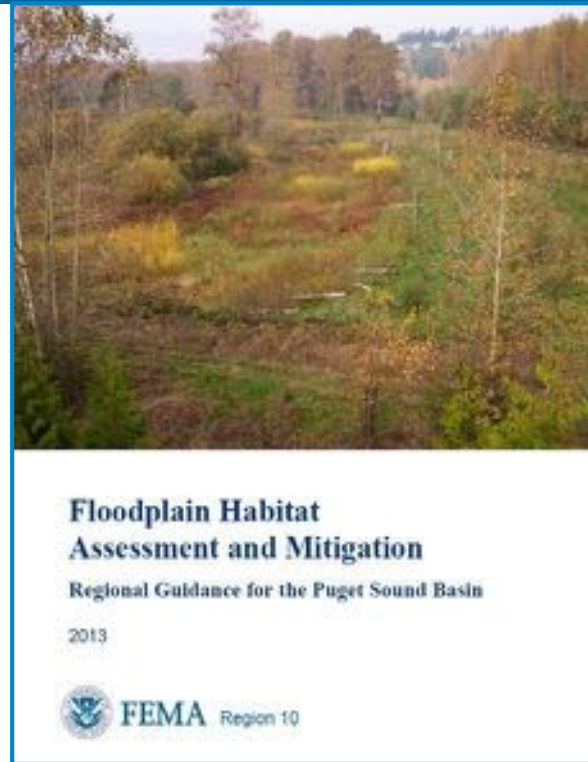
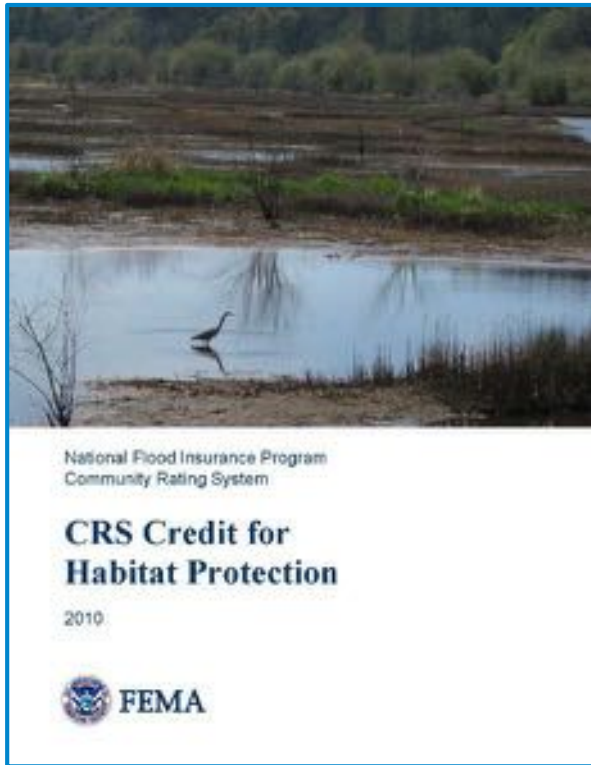
## Strategic and programmatic partnership with Oregon DLCD

- DLCD will receive funding through our CAP-SSSE Grant for FY16 for technical assistance and to serve an advisory role to FEMA
- Inclusive of state goals and land use principals
- Conduct outreach/workshops
- Provide information to local floodplain administrators and biological consultants
- Coordinate work groups
- Provide clarification and help develop guidance materials/tools/data

# Path Forward (Year 2 Implementation)

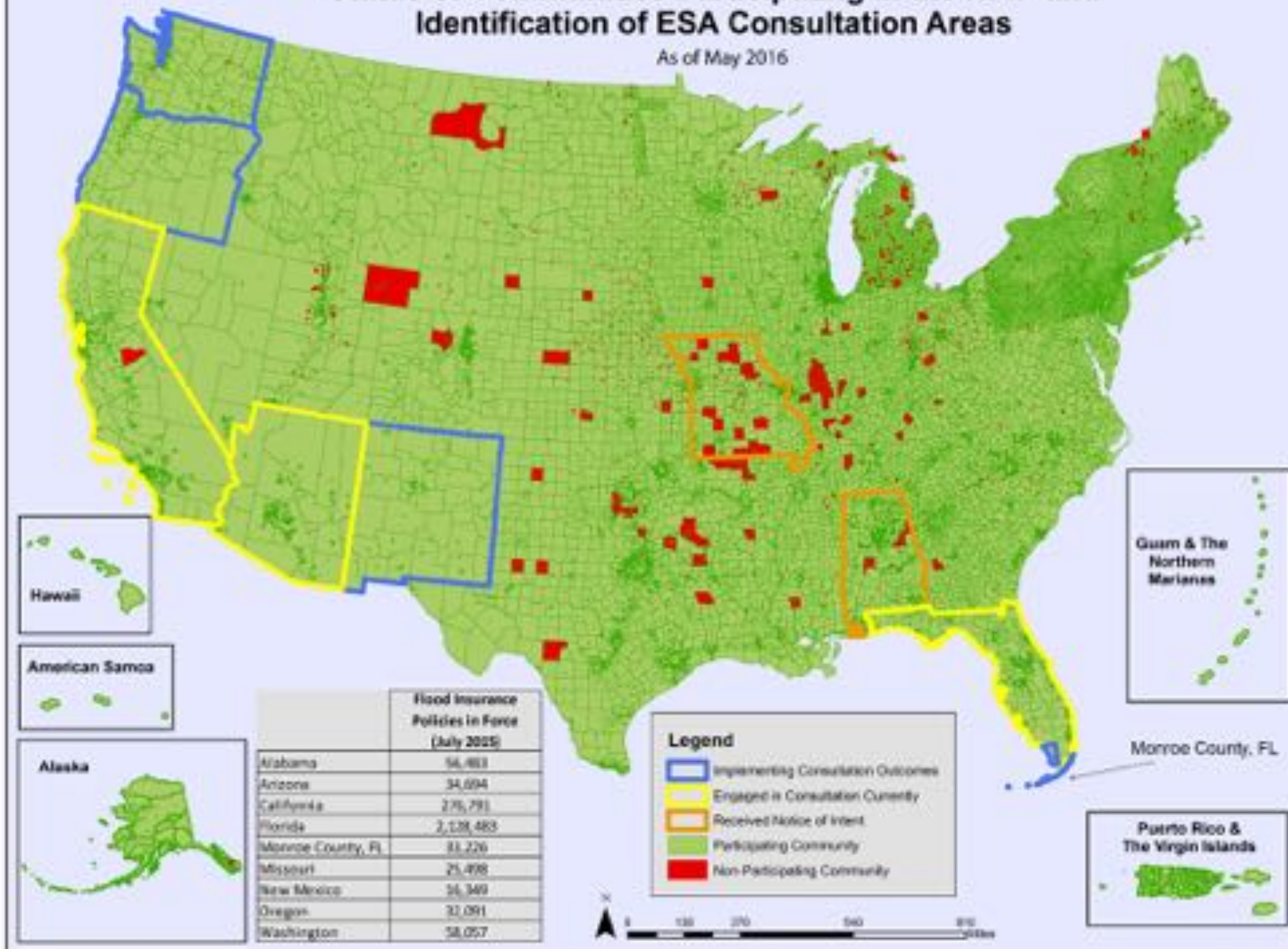
- **FEMA will create implementation plan based on Tribal, State and local government input**
- **Model ordinance, guidance and other tools**
- **Offer technical assistance**
- **Communities adopt new ordinances**

# Examples of Region X WA Guidance



# Status of Communities Participating in the NFIP and Identification of ESA Consultation Areas

As of May 2016



# Questions

## Resources

- DLCD website [http://www.oregon.gov/LCD/Pages/NFIP\\_BiOp.aspx](http://www.oregon.gov/LCD/Pages/NFIP_BiOp.aspx)
- FEMA ESA comment email address

[FEMA-R10-ESAccomments@fema.dhs.gov](mailto:FEMA-R10-ESAccomments@fema.dhs.gov)

## Contact information

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# Conditional Letter of Map Revisions (CLOMR-F)



- **The requestor must submit written documentation with *analysis* showing ESA compliance**
- **Take (harm and harass) cannot occur**

# Oregon RPA

RPA	Summary	Timeframe
<b>4. Revised Floodplain Management Criteria</b>	<p><b>Revised floodplain management criteria to:</b></p> <ul style="list-style-type: none"><li>• <b>Include a generally applicable ESA performance standard;</b></li><li>• <b>Prohibit almost all development in an area known as the High Hazard Area - HHA (floodway, V-Zone, LiMWA, erosion zone);</b></li><li>• <b>Prevent the re-drawing floodway to accommodate floodplain development (will drastically limit development in floodway);</b></li><li>• <b>Require a 60 year erosion setback area with very limited uses (agricultural, open space, temporary structures);</b></li><li>• <b>Expand definition of SFHA to include future conditions floodplain; and</b></li><li>• <b>Significantly restrict subdivisions of lots.</b></li></ul> <p><b>There are extensive and prescriptive compensatory mitigation requirements that apply in the entire SFHA, including the future conditions floodplain.</b></p>	<b>January 1, 2019 for components that FEMA determines do not need a regulation change</b>



# Oregon RPA

RPA	Summary	Timeframe
<b>5. Data Collection and Reporting</b>	<b>Data collection and reporting requirements needed to accurately track floodplain development impacts and RPA implementation.</b>	<b>March 15, 2018</b>
<b>6. Compliance and Enforcement</b>	<b>Compliance and enforcement strategies to ensure that effects of floodplain development pursuant to the NFIP are avoided or reduced throughout the action area.</b>	<b>March 15, 2019</b>

**Timeframe Note: Components of the RPA that require regulatory revisions – January 1, 2021**

# Summary : The Next 2 years

## Tribal and Local Government can expect:

- A seat at the table and input to the process
- **By approximately April 2018**, the NFIP in Oregon will look different than it does today

# Workshops

## First Series – more workshops and workgroups to follow

- Please visit DLCD’s website for up-to-date schedule at [http://www.oregon.gov/LCD/Pages/NFIP\\_BiOp.aspx](http://www.oregon.gov/LCD/Pages/NFIP_BiOp.aspx)
- Below schedule as of July 12, 2016

<b>Albany</b>	June 27, 1:00 - 4:00 p.m.	Albany City Hall, 333 Broadalbin St SW
<b>North Bend</b>	June 28, 1:00 - 4:00 p.m.	North Bend Library, 1800 Sherman Ave
<b>White City</b>	June 29 , 1:30 - 4:30 p.m.	Jackson County Roads, 200 Antelope Rd
<b>Tillamook</b>	July 14, 1:00 - 4:00 p.m.	Oregon Department of Forestry, 5005 Third St
<b>Oregon City</b>	July 15, 9:00 a.m. - noon	Clackamas County Development Services Building, 150 Beaver creek Road
<b>Portland</b>	July 25, 1:00 - 4:00 p.m.	Bureau of Planning and Sustainability, 1900 SW 4th Ave
<b>Salem</b>	July 26, 9:00 a.m. - noon	Marion County Public Works, 5155 Silverton Rd NE
<b>Springfield</b>	July 26, 2:00 – 5:00pm	Springfield Justice center, 2 <sup>nd</sup> floor, 230 4 <sup>th</sup> street, Springfield OR
<b>The Dalles</b>	July 27, 2:00 - 4:30 p.m.	Columbia Gorge Community College
<b>La Grande</b>	July 28, 9:00 a.m. - noon	Eastern Oregon University , One University Boulevard