

Bonnie Shorin

- Currently - Program Analyst with the National Marine Fisheries Service.
- 11 years at Washington State Department of Ecology - Shoreline Management, Coastal Zone Management, Section 401 of the Clean Water Act, and Floodplain Management.
- Juris Doctorate from University of Oregon School of Law, certificates in Natural Resources Law and in Ocean and Coastal Law

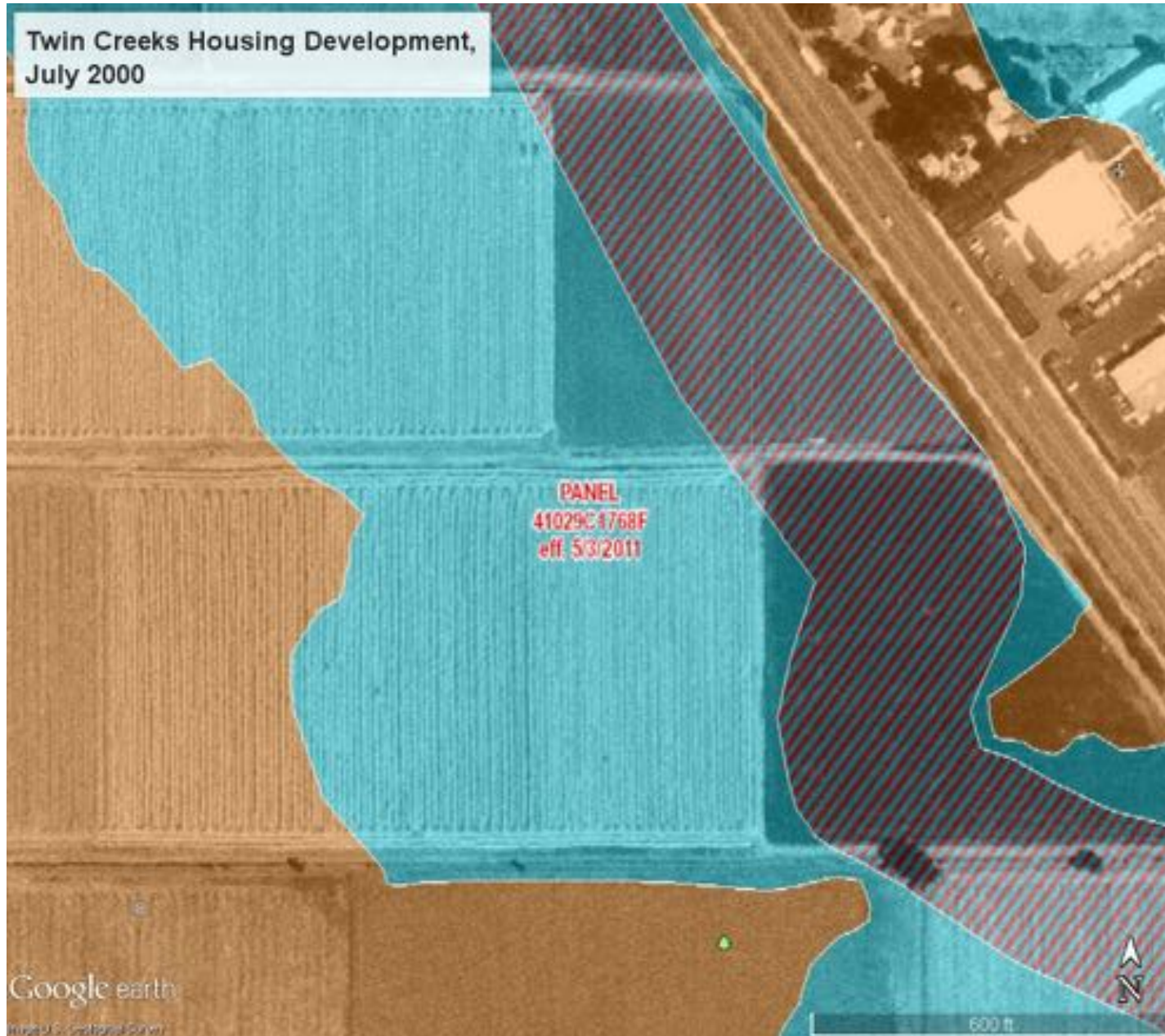
The Oregon RPA – Opportunity and Obstacles for Healthy Floodplains



Healthy Floodplains...



Central Point, Oregon



Twin Creeks Housing Development,
July 2014



PANEL
41029C-1768F
eff. 5/3/2011

Yolo Basin, CA



Puyallup River, WA



Agricultural floodplains can be pretty good habitat

Industrial floodplain are pretty bad habitat

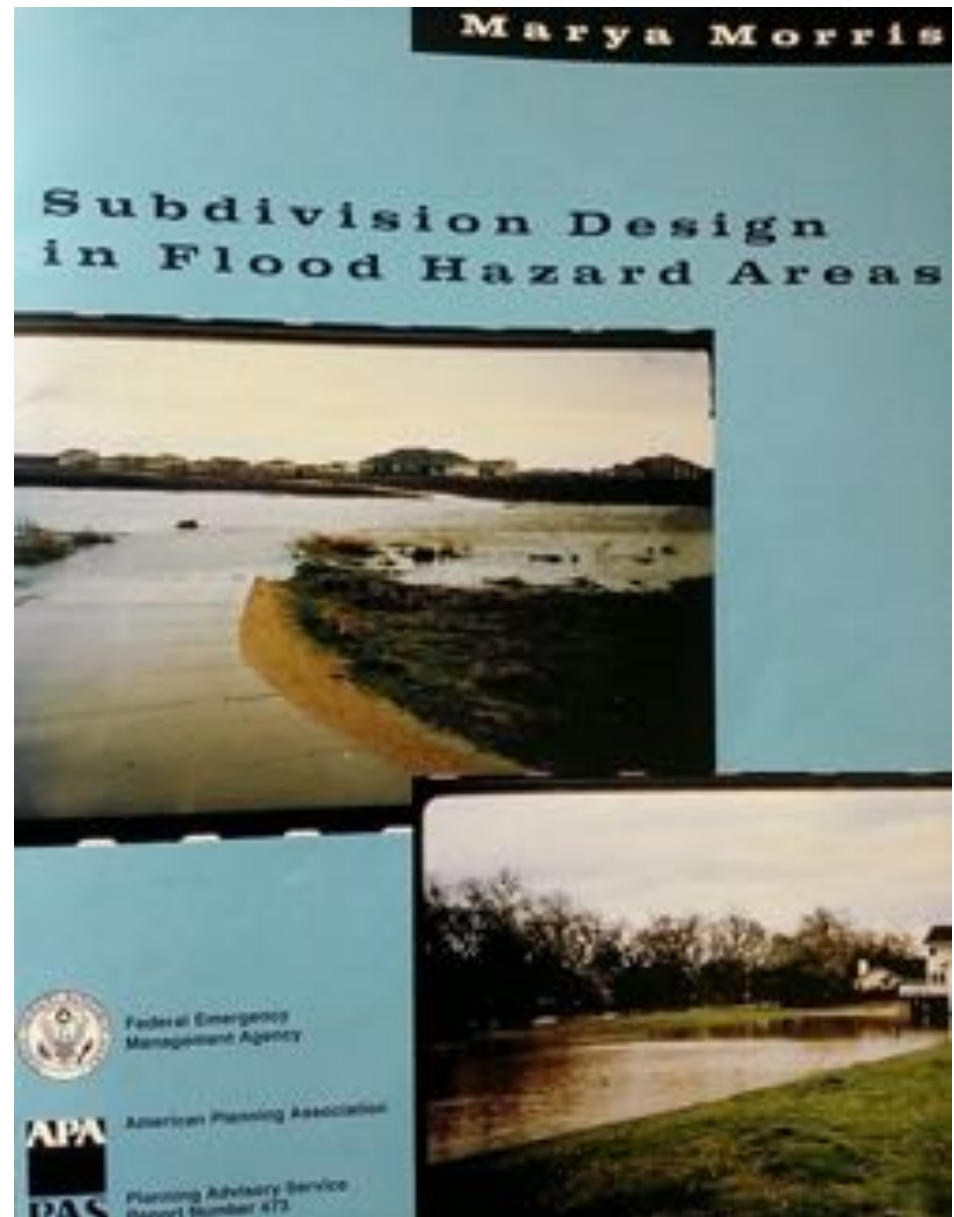
Juvenile Chinook
mainstem rearing
floodplain rearing



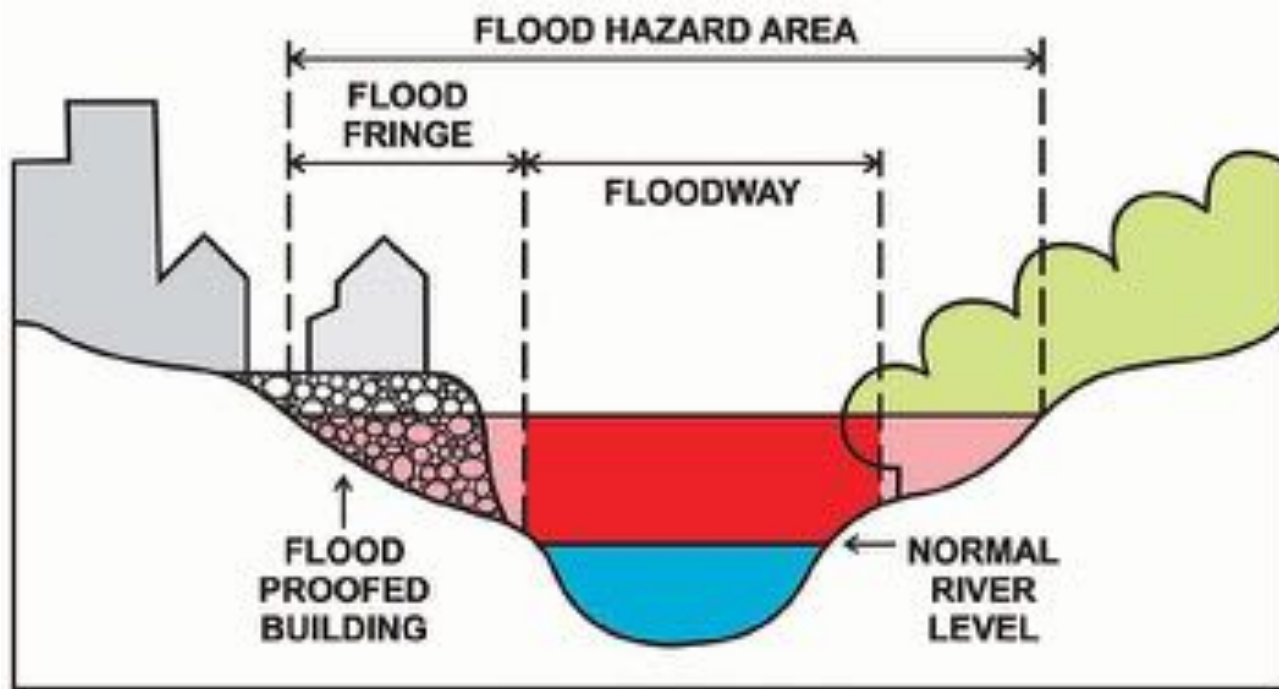
Fig. 7 Comparison of a single enclosure of fish reared in intertidal river habitat below floodplain (left) and a single enclosure of fish reared in the floodplain vegetation (right) after 54 days in respective habitats at the end of the second year of the study

Photo from "Ephemeral floodplain habitats provide best growth conditions for juvenile Chinook salmon in a California river" Jeffres et al 2008

In Oregon, as in 22,000 other NFIP participating communities, floodplain development proceeds under this basic regulatory construct: locally adopted codes, and the federal standards that require them, found at 44 CFR part 60 – “Criteria for Land Management and Use”



NFIP standard: communities can fill the flood fringe with development, until the base flood increases by 1 foot.*



* 44 CFR 60.3(c)(10)

Today's Floodplain Is Not Necessarily Tomorrow's Floodplain



If large areas of the floodplain are filled, then there will be an increase in the land area needed to store flood waters.
This means your home or business may be impacted.

It was a review of the NFIP's standards, not State or Local regulations, that lead NMFS to conclude the program floodplain standards, when implemented locally, **jeopardize species and adversely modify critical** habitat, in both the Puget Sound Region, and in Oregon – because the program allows, or even incentivizes, development in floodplains.

Opportunity: an RPA that adds protection for floodplain habitat values into the NFIP



Under ESA, when a Federal action Jeopardizes listed species, or Destroys or Adversely Modifies habitat designated as critical for that listed species, the Service provides its recommended **Reasonable and Prudent Alternative** to that action.

“Here, *FEMA has the authority* in its administration of the NFIP, as discussed above, *to prevent the indirect effects* of its issuance of flood insurance *by, for example, tailoring the eligibility criteria* that it develops *to prevent jeopardy to listed species*. Therefore, its administration of the NFIP is a relevant cause of jeopardy to the listed species.”

Key Deer v Paulison, 11th Circuit Court of Appeals, 2008

What do NMFS RPA's recommend?

Oregon RPA – 8 years

- More Accurate Mapping
- Limited Development in “High Hazard Area” (floodway or cmz)
- Mitigate Impacts of Development*
- Collect Development Data and Report
- Give CRS points for communities with early RPA compliance

*Clear and Objective Regulatory standard applies uniformly

Puget Sound RPA – 3 years

- More Accurate Mapping
- No Adverse Effects* in “Protected Area” (250 feet)
- Mitigate Impacts of Development in Flood Fringe
- Collect Development Data and Report
- Change CRS points for open space protection
- Only accredit levees that retain vegetation

*Performance based standard

Obstacles: Misunderstanding

[REDACTED] Blasts Changes to Floodplain Management, Says It Will Stifle Economic Growth in Oregon

Sep 21, 2016 | Press Release

Committee hearing included witnesses from the State of Oregon and the city of Beaverton

Today, in a House Committee on Transportation and Infrastructure hearing, Ranking Member [REDACTED] blasted changes to the National Flood Insurance Program (NFIP) in Oregon that threaten to stifle economic growth and prevent development or redevelopment in over 230 Oregon communities. The following issues were raised in testimony at today's hearing:

Obstacles: Misinformation

New flood plain regulations hurt Oregon communities and lack common sense (Opinion)

By Guest Columnist
on July 23, 2016 at 2:00 PM

The program's new regulations go beyond preventing new construction in pristine, irreplaceable and undeveloped areas to protect endangered species habitat. They prohibit improvements in already developed areas.

Obstacles: Inaccuracy

SHUSTER:

Thank you, Mr. Chandler and again, this is an important issue anytime that the federal government tries to expand an agencies powers without congressional authority and go beyond the mission of FEMA and it's troubling and just the last word you said there Mr. Chandler is very, very damaging to development, the economy, the job creation which is important to all of us.

FEMA's Authorities

“ Congress knew this was not a sound actuarial program but agreed to take that risk *only because we could get land use.*”
Statement of Mr. Bernstein, p 36 “We are encouraged that the administration proposal continues a firm position with respect to adequate and responsive *land use control measures.* *We consider such requirements to be absolutely essential to the long-range success of the flood insurance program.* Without such provisions to control future development of flood-prone area, continuance of a viable flood insurance program could very well be in jeopardy.”

Statement of Robertson Mackay, Chairman, National Flood Insurers Association. Excerpted from Hearings on the Expansion of the National Flood Insurance Program, May, 1973.

FEMA's Authorities

42 USC 4102(c) ...*develop comprehensive criteria designed to encourage, where necessary, the adoption of adequate state and local measures which, to the maximum extent feasible, will (1) constrict the development of land which is exposed to flood damage where appropriate, (2) guide the development of proposed construction away from locations which are threatened by flood hazards*

Real opportunity

- NFIP can be retooled to include standards that protect areas that have highest risk of flood damage from development – preservation of natural floodplain functions and values
- NFIP can be retooled to include a mitigation of impacts standard – restoration of floodplain functions and values.

Underpinning of Puget Sound RPA – 2008

And of Oregon RPA - 2016

Real, but dwindling, opportunity



The Natural & Beneficial Functions Of Floodplains

Reducing Flood Losses By Protecting And Restoring The Floodplain Environment




June 2002

A Report For Congress By The Task Force On The Natural And Beneficial Functions Of The Floodplain

**A UNIFIED NATIONAL PROGRAM
FOR
FLOODPLAIN MANAGEMENT
1994**

The conceptual framework of this update focuses on the need for (1) reducing the loss of life, disruption, and damages caused by floods, and (2) preserving and restoring the natural resources and functions of floodplains. It reflects a recognition that the protection of the natural resources of floodplains deserves a level of consideration equal to that given to reducing damages to human systems. A new operating principle of "wise use" has been introduced to provide a conceptual target for management. Finally, this update emphasizes that protecting natural resources is not just an end in itself, but an effective means of reducing human losses as well.



Frank H. Thomas
Federal Emergency Management Agency
Chair, Federal Interagency Floodplain Management Task Force

**A UNIFIED NATIONAL PROGRAM
FOR
FLOODPLAIN MANAGEMENT
1986**

This report seeks wise decisions and management for the Nation's floodplains to reduce losses of life and property from flooding and losses of natural and beneficial floodplain values from unwise land use. A conceptual framework is set forth to provide general guidance for the decisionmaking processes of Federal, State, and local officials as well as for private parties. The strategies and tools for flood loss mitigation and for the preservation and restoration of natural floodplain values are presented in detail. Actions are recommended to facilitate the coordination of management programs dispersed among all levels of governments.



Frank H. Thomas
Chairman, Federal Interagency
Task Force on Floodplain Management

Natural and Beneficial Values

Executive Order 11988 signed by President Carter in 1977, states:

*Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to **restore and preserve the natural and beneficial values served by floodplains** in carrying out its responsibilities...*

The perceived obstacles are also not new...

If future development or redevelopment is not allowed, a program must be devised that would provide some Federal assistance to cities of current and historical value. The extra expenses of complying with the Federal objective of protecting Federal investments in flood prone areas should be made with Federal dollars.

Changes that modify or restrict building and zoning regulations also could create severe financial hardships for the flood-prone communities as a result of potentially increased building costs, losses in property tax revenues and other indirect economic effects.

Some cities' inability to comply with the land management criteria means that they must forfeit future Federal aid and, in addition, make local citizens ineligible to purchase flood insurance or receive disaster assistance from the Federal Government.

Statement of Hon. Robert Blackwell, Mayor Highland Park Michigan, May 9, 1973



Questions?

Bonnie.Shorin@noaa.gov. NMFS Oregon-Washington Coastal Office
510 Desmond Drive, Lacey WA 98503. (360)753-9578.

FEMA's Authorities

42 USC 4121(c) the term “flood” shall also include the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels...

