



**Oregon NFIP Biological Opinion,
FEMA's Implementation Plan, and
Impacts to Communities and
Property Owners**



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Background on Oregon NFIP Biological Opinion

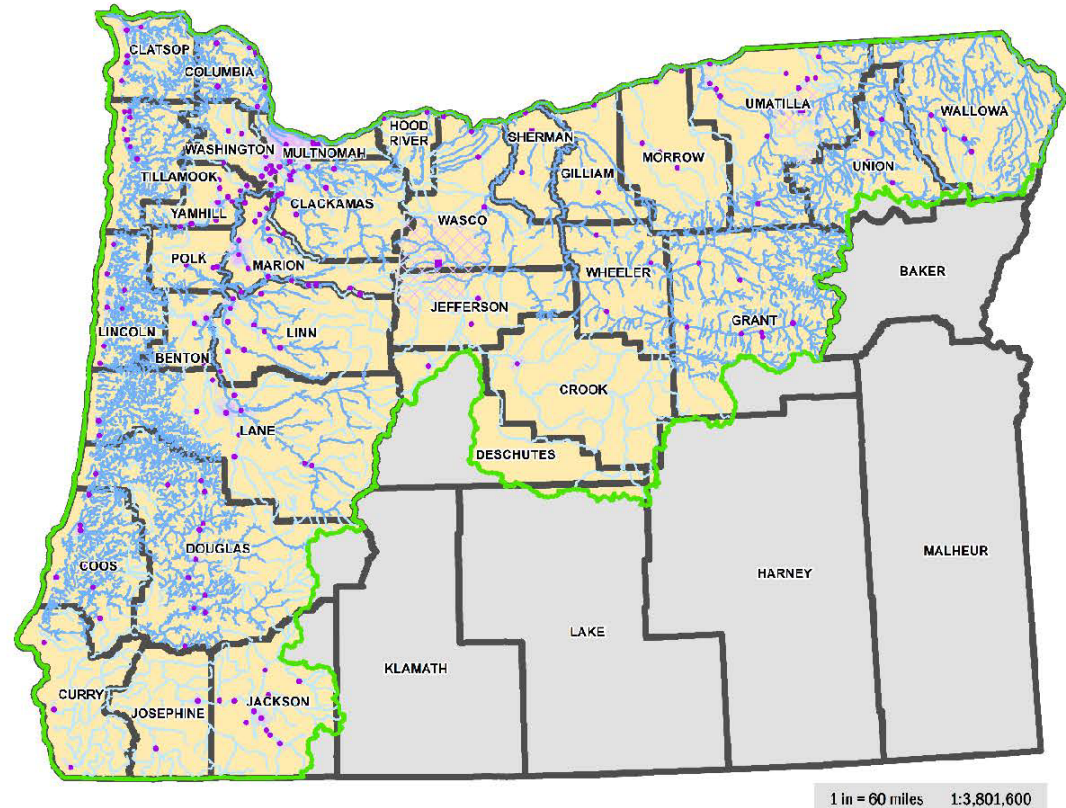
- In 2009, FEMA was sued by the Portland Audubon Society and several environmental groups in Oregon
- In 2010, FEMA settled; agreed to consult regarding the effects of the NFIP in Oregon on T&E species and designated critical habitat
- In April 2016, NMFS issued the Oregon NFIP Biological Opinion (BiOp)
- The BiOp concluded FEMA's implementation of the NFIP in Oregon jeopardizes the continued existence of T&E species and adversely modifies designated critical habitat

Oregon NFIP BiOp (April 2016)

- BiOp includes a six element “Reasonable and Prudent Alternative” (RPA)
- RPA = NMFS’s roadmap to FEMA about how to change its implementation of the NFIP to avoid violating the ESA
- RPA is one option available to FEMA; FEMA may take an alternative course of action if it also avoids jeopardy and adverse modification
- Original deadline for action (not requiring regulatory change) in response to the BiOp was 2018
- Congress, through Representative DeFazio, extended implementation period three years

Areas subject to Oregon NFIP BiOp

- Applies within 30 of Oregon's 36 counties
- Applies to more than 250 NFIP-participating communities (cities and towns)



OREGON NFIP BIOP ACTION AREA

2021.09.28

LEGEND

- | | |
|---------------------------------------|--------------------------------|
| OREGON NFIP ACTION AREA | COUNTIES |
| CRITICAL HABITATS (SALMON/STEELHEAD)* | NFIP PARTICIPATING TRIBES |
| MAJOR STREAMS | NFIP PARTICIPATING COMMUNITIES |

*Critical habitats are via NOAA Fisheries: <https://www.fisheries.ncaa.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.

FEMA's Draft Implementation Plan

- In October 2021, FEMA issued its Draft Implementation Plan
- Draft Plan varies from RPA and focuses on preserving and restoring three main floodplain functions:
 - Flood storage => limit new fill or require compensatory flood storage to offset any new fill
 - Water Quality => limit new impervious surface and heightened stormwater requirements (LID and non-structural approaches)
 - Riparian Vegetation => restrict removal within 170-feet of a water feature
- Draft Plan includes direction to avoid new non-water dependent development in the floodplain
 - Restricts future land divisions in floodplain
 - Allowance for one unit per existing parcel to avoid takings claims *provided* preserve three floodplain functions

FEMA's Draft Implementation Plan

- Draft Plan is vague and incomplete. Plan focuses more on the “how” and acknowledges that more is needed on the “what”
 - No Model Ordinance provided
 - No technical guidance provided
 - *FEMA identified eight other documents needed for implementation that are not yet available*
- In March 2023, FEMA began the NEPA process to evaluate the impacts of its Draft Plan
- FEMA elected to prepare an EIS recognizing that the impacts of its Plan are likely significant to NFIP-participating jurisdictions and floodplain property owners

Key Concerns with FEMA's Approach

- Consultation between FEMA and NMFS – but resulting requirements imposed on state and local governments
- BiOp itself is fundamentally flawed – looks backwards rather than ahead to impacts
- Entirely new and undefined regulatory metrics that are not defined by NFIP or ESA: “No Net Loss” and “Beneficial gain” standard
- No regulatory basis for the proposed requirements and FEMA has declined to go through rulemaking
- Fails to take into consideration existing state and local regulations and programs

Key Concerns with FEMA's Approach

- FEMA eager to shift the burden to local governments irrespective of whether the new standards work with existing Oregon policies and laws
- Proposed requirements remain very vague/ambiguous => lots of confusion about what will be required
- Unclear whether NMFS will accept FEMA's Implementation Plan
- Communities who decline to adopt the new standards will be removed from the NFIP. Result:
 - Property owners who rely on NFIP for flood insurance required by their mortgages will be in default
 - Community will not qualify for federal disaster assistance

Question or for more information:

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