

# ESA and the National Flood Insurance Program

Implementing a salmon friendly program.



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NFIP ESA Compliance

Implementing a Reasonable and Prudent Alternative – FEMA  
Region 10

# Endangered Species Act

## Purpose:

- ▶ To provide a means to conserve species and the ecosystems upon which they depend.
- ▶ All federal departments and agencies shall utilize their authorities in furtherance of the purposes of the Act.



**Chum Salmon**



**Chinook Salmon**



**Resident Pod  
Killer Whale**

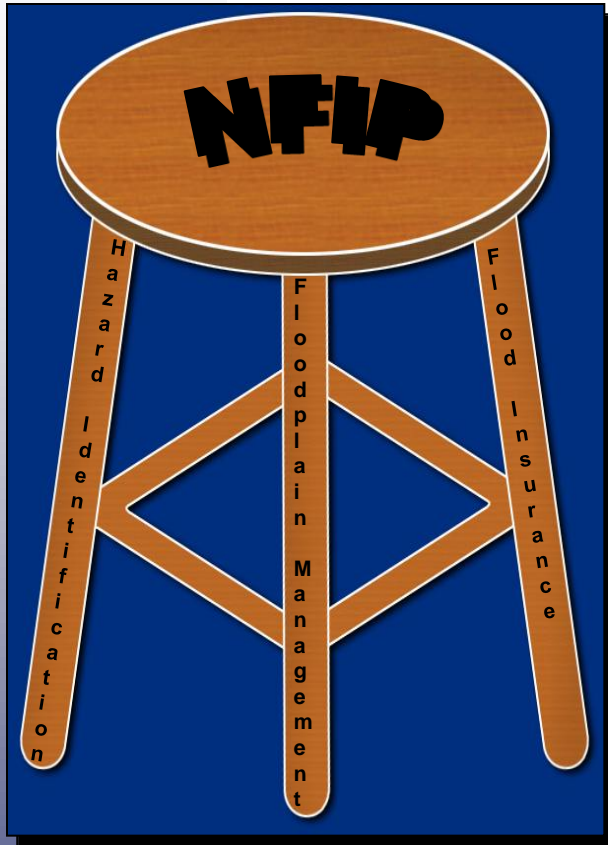


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# National Flood Insurance Program



## Purpose:

- ▶ Better indemnify individuals for flood losses through insurance;
- ▶ Reduce future flood damages through state and community floodplain management regulations; and
- ▶ Reduce Federal expenditures for disaster assistance and flood control.



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# Recognitions

- ▶ **FEMA recognizes the need to protect threatened and endangered salmon species while continuing the successful implementation of the NFIP in the Pacific Northwest.**
- ▶ **FEMA recognizes that the NFIP's core mission of reducing flood risks to life and property can also support the goal of preserving critical salmon habitat.**



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# Intentions

- ▶ **FEMA intends to pursue opportunities to partner with other federal agencies, state agencies and local governments to protect species and critical habitat**



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# NFIP ESA History

## **Background**

- ▶ 2003 - NWF Sued FEMA for failure to comply with ESA
- ▶ 2004 – Court Ruled that FEMA must consult with NMFS
- ▶ 2006 - FEMA provided a Biological Evaluation that stated NFIP may affect but not adversely
- ▶ September 2008 -NMFS issued Biological Opinion with Jeopardy/ Adverse Modification

***NMFS offered one Reasonable and Prudent Alternative***



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# NMFS Biological Opinion

## Reasonable and Prudent Alternative



- ▶ **A Reasonable and Prudent Alternative is an action(s) that a federal agency can take to avoid violation of the ESA. It must identify alternative actions that:**
  - 1) Can be implemented in a manner consistent with the intended purpose of the NFIP,
  - 2) Can be implemented consistent within the scope of the Federal agency's legal authority and jurisdiction,
  - 3) Are economically and technologically feasible.



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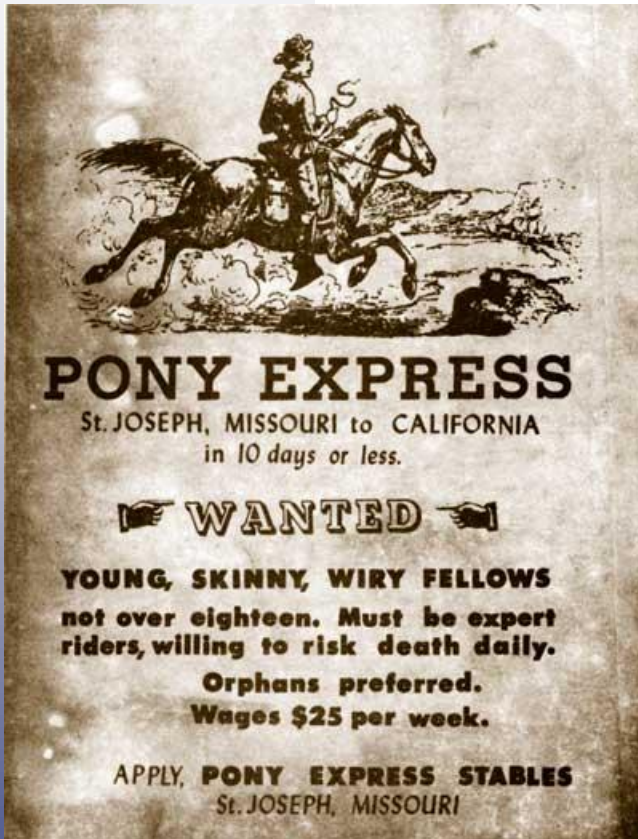
# Reasonable and Prudent Alternative

## Summary of Elements

1. **Notify Puget Sound communities of determination**
2. **Change mapping procedures to reduce impacts**
3. **Require communities to consider impacts on fish habitat when issuing floodplain development permits**
4. **Changes to CRS program**
5. **Addressing levee vegetation maintenance effects**
6. **Mitigation to adversely affected habitat**
7. **Report to NMFS on progress towards meeting requirements**



# Implementation Strategy



## ► Notification: Element 1

- Notify all NFIP participating communities in the Puget Sound area that following existing NFIP regulations may put them in violation of the ESA
- October 21, 2008- letter sent to CEO of 122 affected communities
- Presented options:
  - Moratorium on floodplain development
  - Comply using current laws and ordinances in place already beyond the NFIP (i.e. Critical Areas Ordinance, SEPA, etc...)



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# Implementation Strategy



## ► Mapping: Element 2

- Change LOMC process
  - Conditional Letters of Map Change will require a Section 7 consultation prior to issuance of final letter
  - Other LOMCs will require showing of compliance through other means
- Change sequencing of mapping projects to give priority to streams with tier 1 and tier 2 species
  - Most of Tier 1 and Tier 2 populations already updated in MapMod process
  - Remaining will factor species into prioritization amongst other factors



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# Implementation Strategy



## ► Mapping: Element 2 cont...

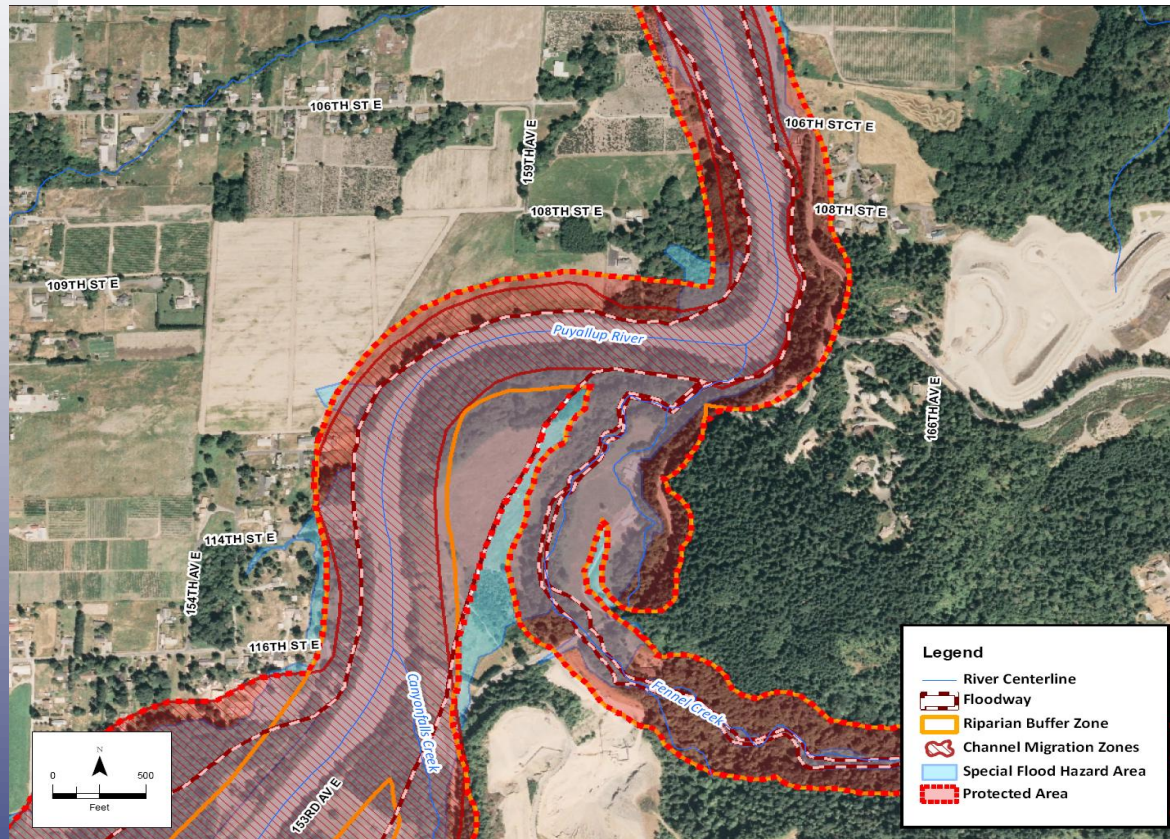
- **Regional Guidance on Floodplain Mapping** has been developed to help gain compliance with remaining portions of this element
  - **Steady State vs. Unsteady state modeling** and how to incorporate habitat considerations
  - **Guidance for communities to develop and submit “predictive land/use cover”** information for depiction on the FIRM
  - **Expected release of Regional Guidance is late fall of 2009.**
  - **Outreach and Educational materials on risks associated with living behind levees**
- **FEMA is engaging on a study to evaluate the impacts of Climate Change on the NFIP (due early 2010)**



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# Implementation Strategy

## ► FPM Performance Criteria: Element 3



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# Implementation Strategy

## ► FPM Performance Criteria: Element 3



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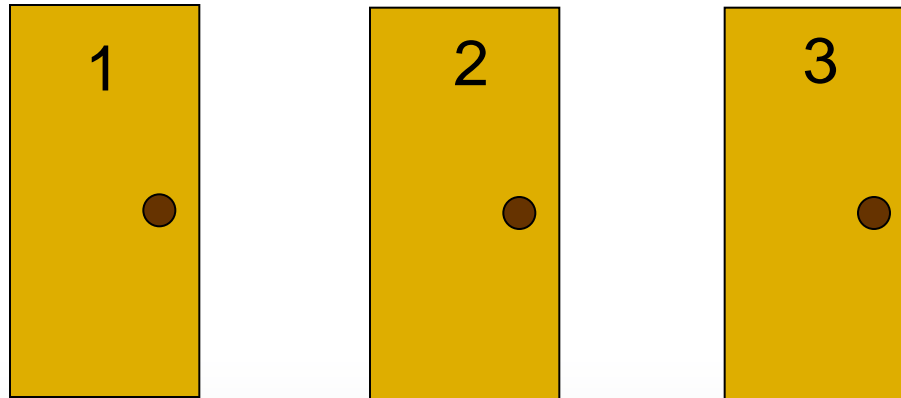
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# Implementation Strategy

## ► FPM Performance Criteria: Element 3

What's behind door number 1?

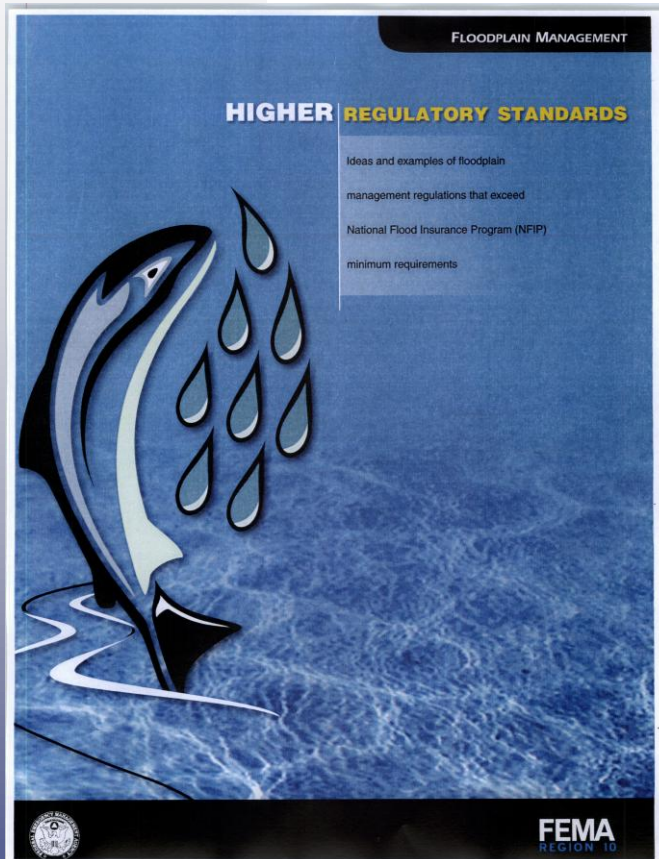


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# Implementation Strategy



## ► Model Ordinance

- **Must meet all performance standards in 44CFR 60.3**
- **Will meet performance standards in RPA Element 3 and Appendix 4 of the BiOp**
- **Adoption and enforcement will provide coverage for administering the NFIP**
- **Expected time of completion is September of 2009**



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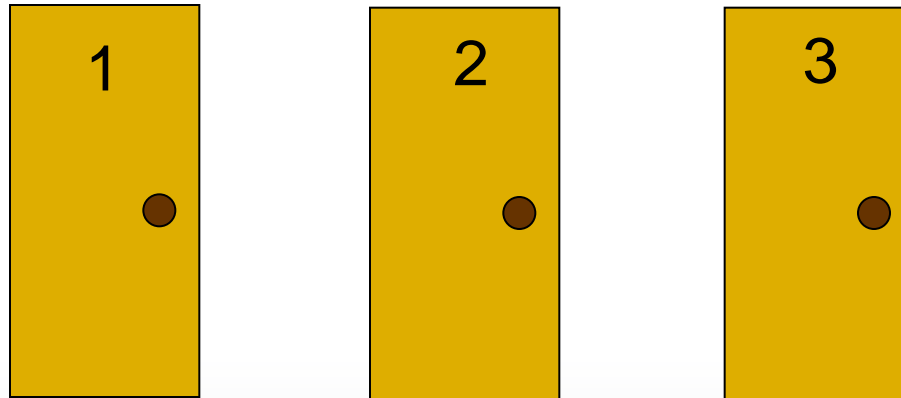
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# Implementation Strategy

## ► FPM Performance Criteria: Element 3

What's behind door number 2?



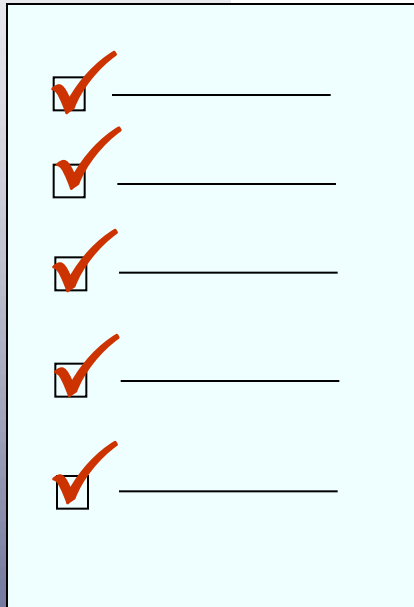
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# Implementation Strategy

## ► NFIP/BiOp Checklist



✓ \_\_\_\_\_  
✓ \_\_\_\_\_  
✓ \_\_\_\_\_  
✓ \_\_\_\_\_  
✓ \_\_\_\_\_

- Use existing regulations to show compliance
- Assessment of current regulations, ordinances, or processes
- If item is missing use model ordinance to add
- Demonstration of compliance with all items will provide coverage for administering the NFIP
- Expected time of completion is September of 2009

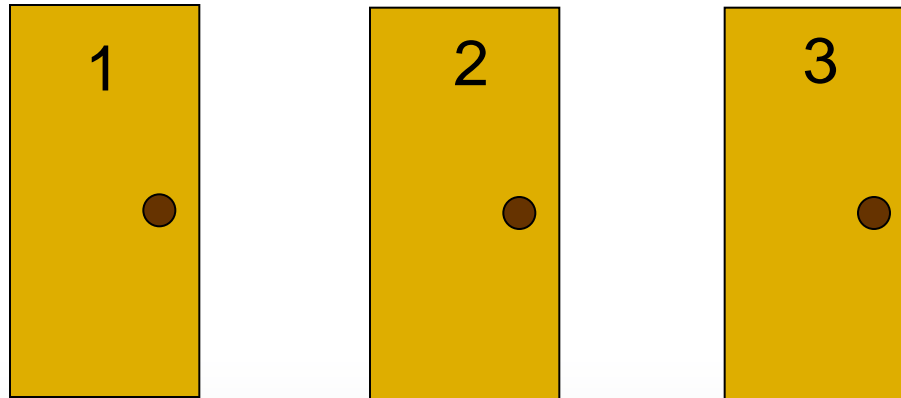


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# Implementation Strategy

## ► FPM Performance Criteria: Element 3

What's behind door number 3?



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# Implementation Strategy

## Floodplain Development Permit

No. 1546

Has been issued to Mickey Mouse

For construction of a House

At 1234 Mockingbird Lane, Marysville, WA

Lot 4 Block B Subdivision River Run

Flood County, USA

Donald Duck  
Issuing Officer

This notice shall be posted in a conspicuous location at the front of the above described property at the time of commencement of work.

- ▶ **Permit by Permit demonstration of compliance**
  - **44 CFR 60.3 (a) (2)**
    - **Assure all necessary permits have been received from State and Federal agencies from which approval is required**
    - **Must insure species and critical habitat is not jeopardized**
    - **Requires a showing of compliance**



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# Implementation Strategy

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## ▶ Permit by Permit demonstration of compliance

- Habitat Assessment Report
- Require mitigation if necessary
- Section 7 consultation (federal nexus)
- Section 10 Permit
- Section 4(d) compliance
- Denial of Permit



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# Implementation Strategy

## ▶ Focus Group

- Consists of 13 of the 122 affected communities
- Communities vary in experience, expertise, size, and CRS status (including tribal)
- NMFS has attended both meetings
- Intended to ensure model is implementable at the local level
- Charged with review of Model Ordinance, Checklist, Guidance Documents

## ▶ Legal Review

- FEMA has also commissioned a legal review of the model ordinance to ensure compliance and limit “takings” claims



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# Implementation Strategy

## ► Next Steps

- **FEMA will collaborate with NMFS on model ordinance and regional guidance documents for compliance with the BiOp after final edits are made with comments from Focus Group.**
- **Distribute model ordinance and regional guidance documents to 122 affected communities**
- **Regional workshops with communities starting in January of 2010.**



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# Implementation Strategy



National Flood Insurance Program  
Community Rating System

Special Hazards Supplement to the  
*CRS Coordinator's Manual*

2006



## ► CRS: Element 4

- Develop strategy for interim and long term
- Work with Task Force to implement long term changes for 2011 Manual
- Develop information for newsletters, updates, etc.
- Conduct training



# Implementation Strategy



- ▶ **Levee Vegetation Maintenance Effects: Element 5**
  - **Unable to comply with recommendations A, B, or D as they are outside of our authority**
  - **Encouraging USACE, NMFS and FEMA to follow-up on commitments made at the USACE Levee Vegetation Symposium from February 2009**
  - **Encourage grantees to use HMA programs for eligible acquisitions that have the secondary benefit of enhancement or protection of habitat**

# Implementation Strategy



- ▶ **Mitigation and Monitoring:  
Element 6**
  - **Provide outreach and technical assistance to communities**
  - **Regional guidance documents**
    - **What is a Habitat Assessment Report?**
    - **What is Habitat Mitigation?**
  - **Goal is to get mitigation at the local level if possible**



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# Implementation Strategy

- ▶ **Reporting Requirements-Element 7**
  - **Create electronic reporting medium for communities to report to FEMA**
  - **Create a website to house all guidance and technical assistance for communities**
  - **Information gathering must be compliant with Paperwork Reduction Act**



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# Challenges

- ▶ **There are a number of challenges that exist to implementing the Bi-Op**
  - **Fish Vs. Flood**
  - **Limitations to what NFIP can do**
  - **FEMA must be successful through the actions of others**



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# Conclusions

- ▶ **FEMA feels that land use and flood control practices that protect salmon and their critical habitat also means implementing good floodplain management that will ultimately reduce damages to flood**



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