

July 30, 2024



Oregonians for Floodplain Protection

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





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)

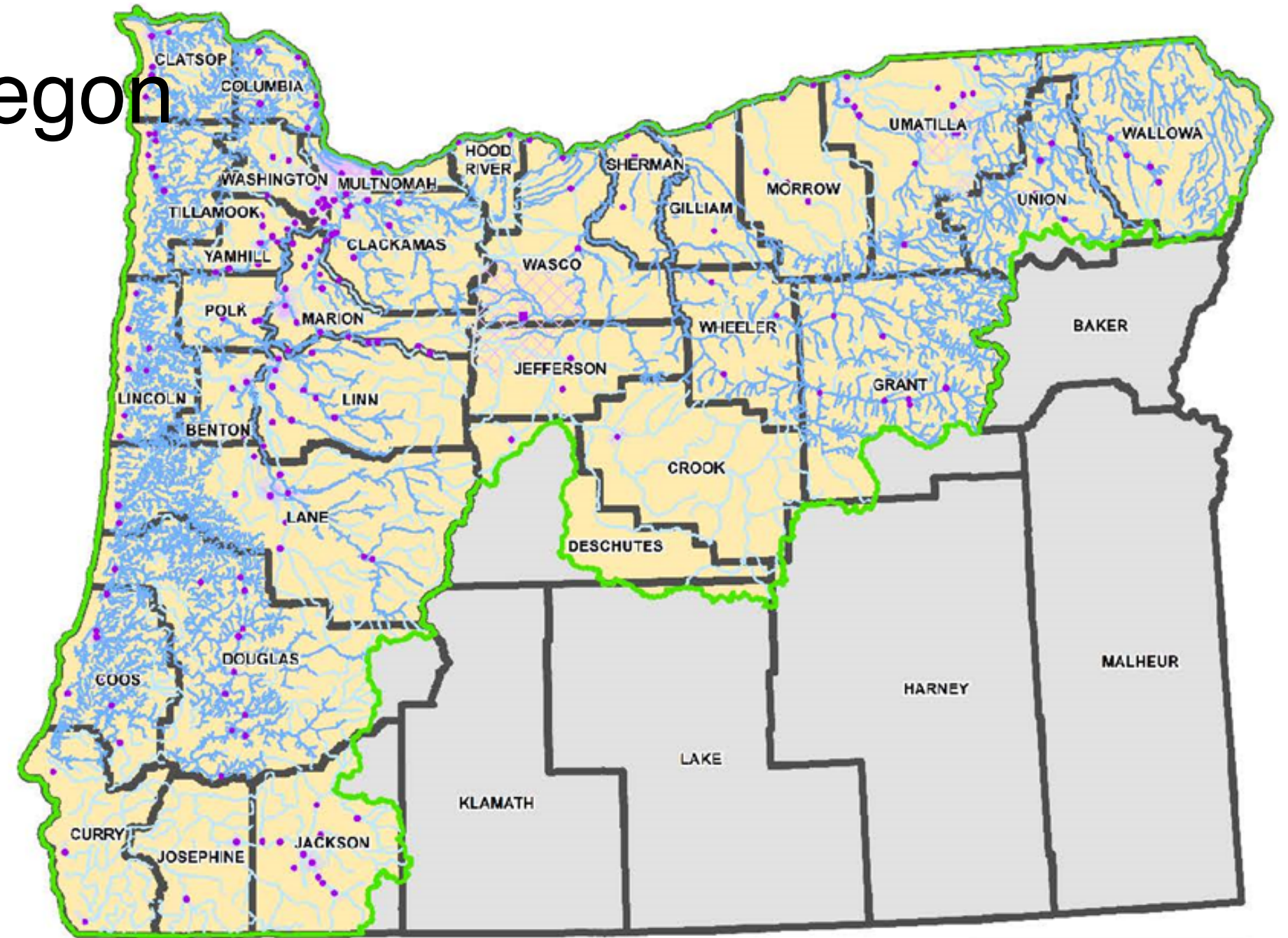
- BiOp includes a six element “Reasonable and Prudent Alternative” (RPA)
- RPA = NMFS’s roadmap to FEMA about how to change its implementation of the NFIP to avoid violating the ESA
- RPA is one option available to FEMA; FEMA may take an alternative course of action if it also avoids jeopardy and adverse 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 230 NFIP-participating communities (counties, cities and towns)



1 in = 60 miles 1:3,801,600

OREGON NFIP BIOP ACTION AREA

2021.09.28

LEGEND

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

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.

*Critical Habitats are via NOAA Fisheries: <https://www.fisheries.ncaa.gov/resource/map/critical-habitat-salmon-and-steelhead-all-west-coast>



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

- 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.
- FEMA's schedule for balance of EIS has slipped
 - Original plan:
 - Draft EIS – Summer 2024
 - Final EIS/ROD – Spring 2025
 - Community Implementation – beginning Fall 2025 with 18 month roll out
 - Revised plan:
 - Draft EIS – “early 2025”
 - Planning 75-day comment/public outreach period
 - No date stated for Final EIS/ROD
- Find FEMA's Quarterly updates at:
 - www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration



Key Concerns with FEMA's Approach

- Consultation between FEMA and NMFS – but resulting requirements imposed on state and local governments
- No regulatory basis for the proposed requirements; FEMA has declined to go through rulemaking
- FEMA eager to shift the burden to local governments irrespective of whether the new standards work with existing Oregon policies and laws
- 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





FEMA's New "Pre-Implementation" Measures

- In response to pressure from lawsuit filed by the Northwest Environmental Defense Center and the Center for Biological Diversity, **FEMA has abandoned its prior commitment to complete EIS before implementing any changes.**
- NFIP participating communities in Oregon must select a PICM option by Dec. 1, 2024. These options include:
 - Adopting a model ordinance that considers impacts to species and their habitat and requires mitigation to a no net loss standard,
 - Choosing to require a habitat assessment and mitigation plan for floodplain development on a permit-by-permit basis, or
 - Prohibiting floodplain development in the Special Flood Hazard Area.
- Communities must report to FEMA on their implementation of interim measures beginning on Jan. 31, 2025.





FEMA's New "Pre-Implementation" Measures

- Additionally, beginning August 1, 2024, FEMA will stop processing applications for Letters of Map Revision based on Fill (LOMR-F) and Conditional Letters of Map Revision based on Fill (CLOMR-F)
 - This will impact owners who seek to have their properties removed from the SFHA after placing fill on a lot to raise the building pad above BFE





FEMA's New "Pre-Implementation" Measures

Key Components of the FEMA's Model Ordinance

- "No Net Loss" standard. Includes:
 - No Net New Fill in areas of the floodplain that could be fish habitat
 - No Net New Impervious Surface in the floodplain
 - If no net increase in impervious surface is "not feasible," impose restrictive stormwater management standards
 - No Net Loss of trees 6" dbh or larger in the floodplain
- Exceptions: Normal maintenance of roads, utilities, levees and other structures (e.g., re-roofing or replacing siding), routine agricultural and silviculture practices. Exception does not include expansion of paved areas.





Major Concerns with FEMA's PICMs

- PICMs exceed FEMA's legal authority and address issues outside the scope of the NFIP
- By implementing the PICMs before completing environmental review under NEPA, FEMA is violating federal law and its commitment to Oregon's 230 NFIP communities
- FEMA is forcing implementation of the PICMs without first evaluating their environmental consequences or hearing from the public or NFIP-participating communities
- PICMs were announced with no warning and no involvement from State or local jurisdictions
- Any of the PICM options will be devastating to housing production, economic development, critical infrastructure and other community development in the floodplain.
- FEMA's model ordinance is untested and is not even publicly available at this point.
- Smaller communities with few resources will be forced in the near term to prohibit all new development in floodplains, compromising the vitality of those communities.





Coalition

Dozens of public and private sector entities have formed the [Oregonians for Floodplain Protection](#) coalition to assist coalition partners in

- Engaging with federal and state elected leaders,
- Supporting NFIP participating jurisdictions in responding to FEMA,
- Increasing awareness among property owners and members of the public, and
- Evaluating options for challenging the NFIP BiOp and FEMA's implementation efforts

Learn more at www.floodplainprotection.org





Have questions or want more information?

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