

FEMA IMPLEMENTATION OF THE OREGON BIOLOGICAL OPINION

Presented By:

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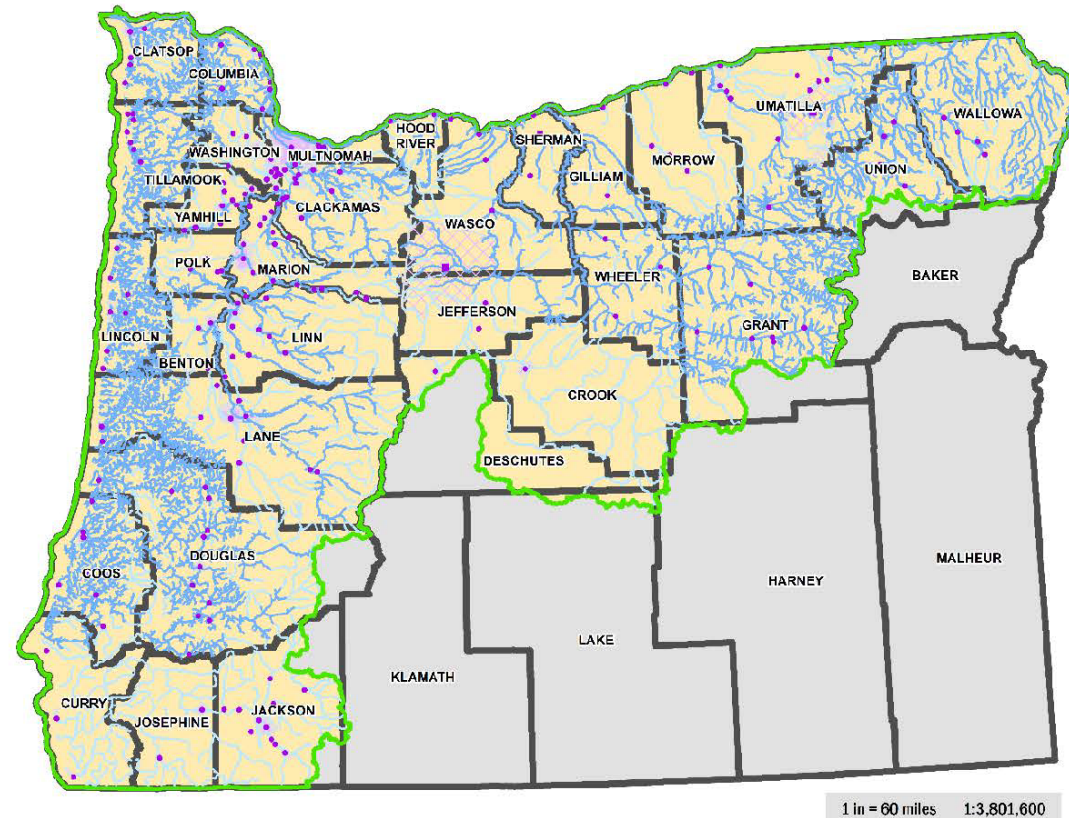
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BACKGROUND

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- 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

Areas subject to Oregon NFIP BiOp

- Applies within 30 of Oregon's 36 counties
- Applies to more than 250 NFIP-participating communities (cities, counties 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 |

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>

BIOLOGICAL OPINION BACKGROUND

- 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
- BiOp is fish-recovery focused; attributes current state of endangered fish species to FEMA’s NFIP
- 2018 Lawsuit; dismissed because FEMA had not yet taken action to implement the BiOp or RPA
- Congress, through Representative DeFazio, extended implementation period three years
- In 2021, FEMA completed Draft Implementation Plan and in 2023, FEMA began NEPA review
- Tillamook County is a Cooperating Agency in NEPA review process

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

TILLAMOOK COUNTY ACTION 2018-2024

- **STATE OUTREACH**

- AOC
- AOC PD
- LOC
- STATE LEGISLATURE
- Governor's Office

- **CONGRESSIONAL OUTREACH**

- EXTENSION ON IMPLEMENTATION
- NACo- BiOp Platform

- **FEMA MEETINGS**

KEY CONCERNS

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.
Results:**

Flood insurance will no longer be available in Oregon causing property owners to default on their mortgages

Communities will not qualify for federal disaster assistance

FEMA LETTER RECEIVED JULY 15, 2024

- In response to pressure from lawsuit filed by 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.*

COMMUNITIES AFFECTED

Neahkahnie, Nehalem, Mohler, Wheeler, Rockaway Beach,
Barview/Twin Rocks/Watseco, Garibaldi, Bay City, Idaville,
Tillamook, Cape Meares, Netarts, Beaver, Hebo, Cloverdale, Tierra
Del Mar, Pacific City/Woods & Neskowin

18 Communities & Cities in Tillamook County

Manzanita, Oceanside, Idaville & Siskeyville

Not affected or minimally affected

INDUSTRIES & AGENCIES IMPACTED

SPECIAL DISTRICTS

- PORTS
- WATER & SEWER DISTRICTS

TILLAMOOK COUNTY
PUBLIC WORKS

ODOT & OPRD

AGRICULTURAL
COMMUNITY

BUSINESSES & OTHER INDUSTRIES

- TIMBER
- WATERSHED & RESTORATION

ACTION UNDERWAY



FEMA MEETINGS UNDERSTANDING PICMs & NEW NFIP MANDATES



GOVERNMENT OUTREACH



COUNTY/CITY COORDINATION



COMMUNITY OUTREACH



ACTION TBD

QUESTIONS & COMMENTS

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