

# Status of ESA NFIP Implementation



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FEMA Region 10- Status of Implementation  
Shoreline Planners- Washington October 27, 2011

“There is nothing wrong with change, if it is in the right direction.”

Winston Churchill



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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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# 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**



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# FPM Performance Criteria: Element 3

- 44 CFR 60.3 (a) (2) A community shall:
  - Assure all necessary permits have been received from State and Federal agencies from which approval is required by Fed/State law.
  - Requires a showing of compliance, particularly with CWA 404 permits, but includes ESA Section 10 permits.

**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.



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# FPM Performance Criteria: Element 3

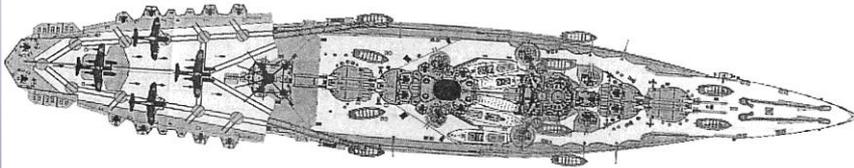
► **Compliance with the ESO in the NFL/FIP**

- **In the CFB since 1968-1982**
- **No change to the rule**
- **Step up enforcement of the rule**
- **Changing the culture of football in management**



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# Changing the Culture of Floodplain Management

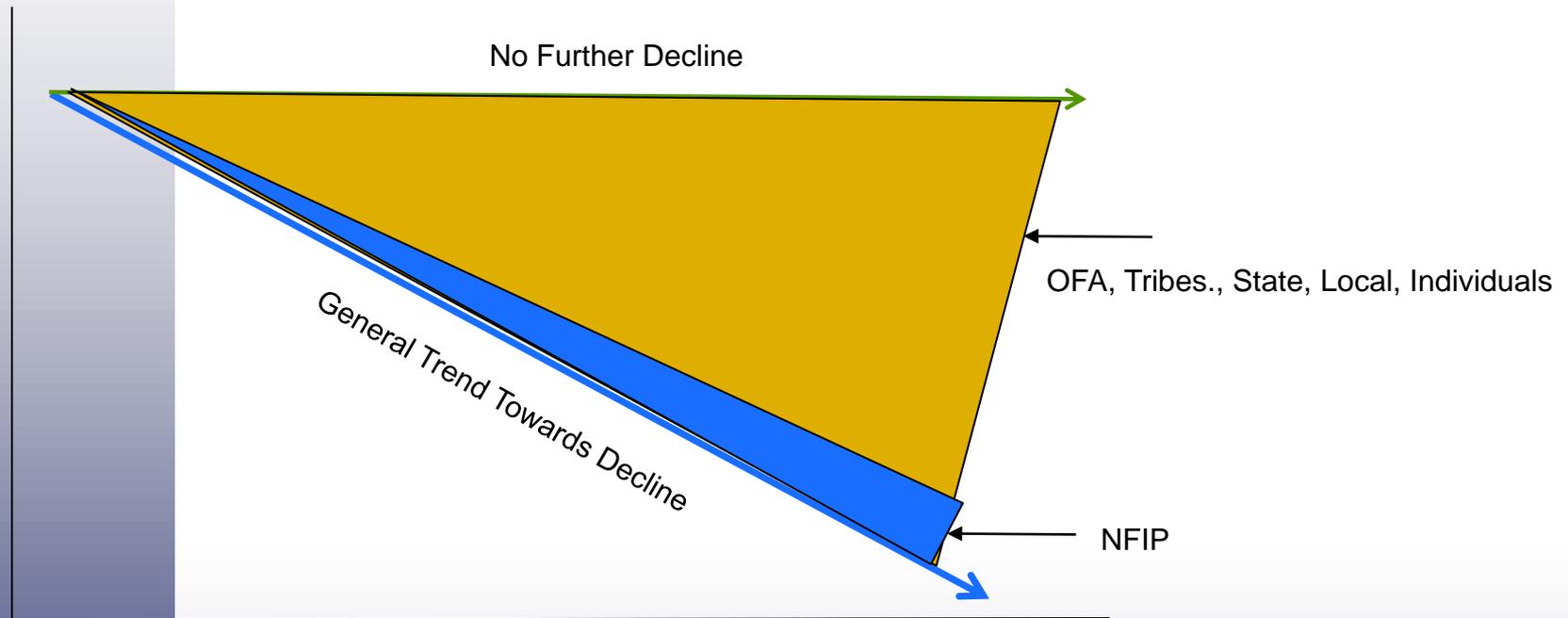


- ▶ **Communities are making changes**
  - **3 years ago vs. now**
  - **Communities are already changing**
- ▶ **FEMA is changing the way we do business**
  - **Pursuing National ESA implementation into NFIP**
  - **National NFIP Reform**
  - **Risk MAP**



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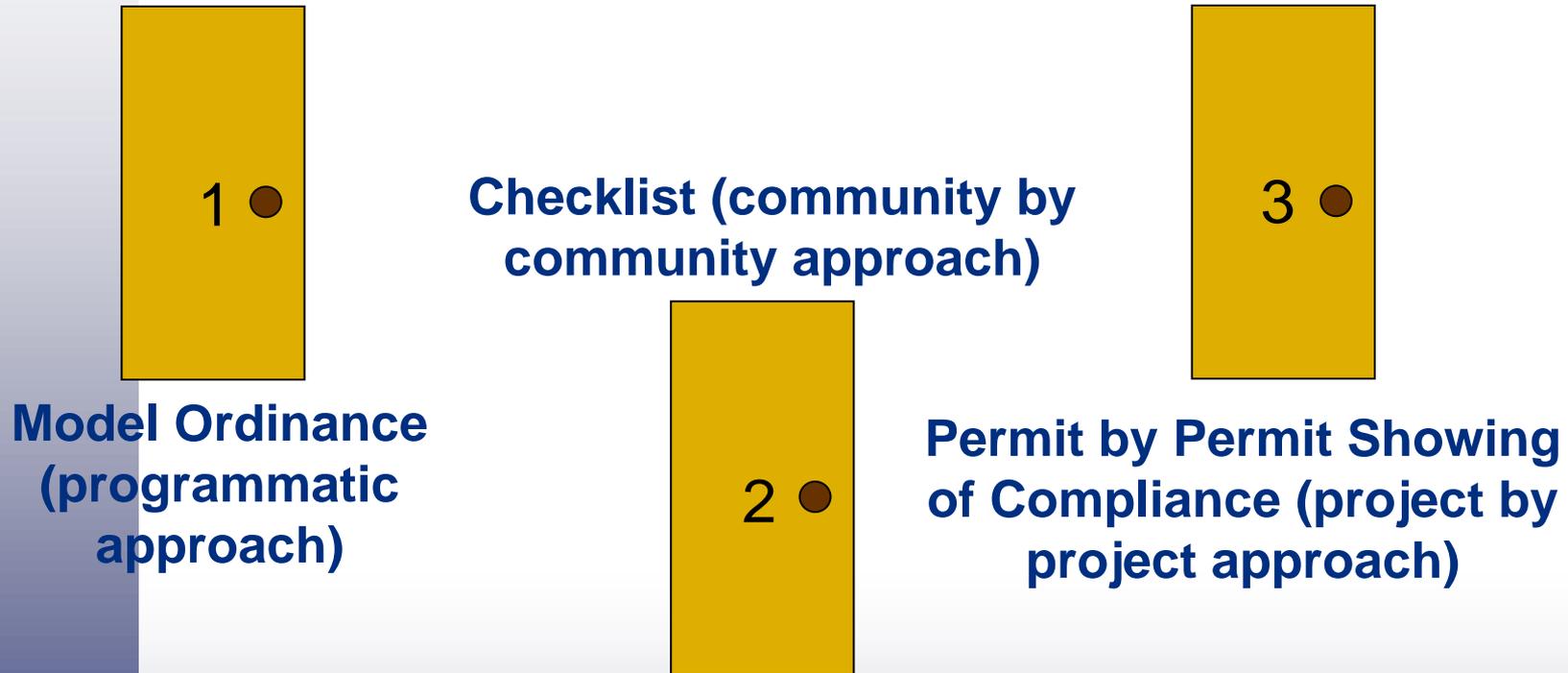
# Role of the RPA



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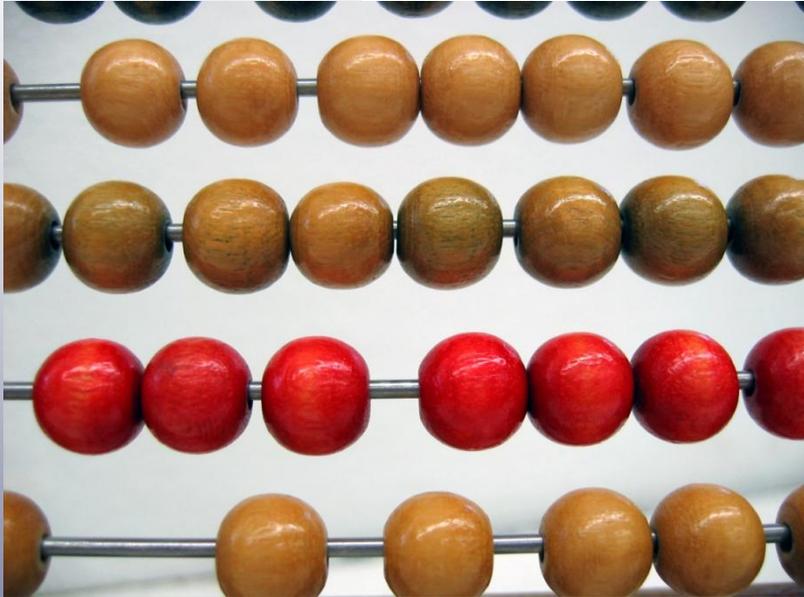
# Compliance Options

## Three Doors Approach



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# What's the Count?



## ► To date:

- **Door 1: 4 communities adopted Model Ordinance**
- **Door 2: 36 submitted; 5 approved Regulations**
- **Door 3: 82 communities have committed to a permit by permit approach\***
- **Response from 121 of 122 communities**



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# How to be Successful in Door 2



## ► Use checklist

- Identify what's missing
- Use Model Ordinance to supplement existing language
- Use Critical Areas Ordinance
  - Critical Areas Reports
  - Frequently Flooded Areas
  - Geologically Hazardous Areas
- Shoreline Master Programs
  - Floodway +200 feet may include the entire protected area in many communities



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# Clarifications



- ▶ RPA only applies to the mapped Special Flood Hazard Area
- ▶ Requirement is to not adversely affect the existing functions
- ▶ Low Density Requirement
- ▶ Low Impact Development



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# Common Deficiencies



- ▶ Riparian Buffers
- ▶ Mitigation in the Protected Area
- ▶ Vegetation Retention
- ▶ Channel Migration Zone



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# Compliance Date



Mon	Tue	Wed	Thr	Fri	Sat	Sun
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

- ▶ Incidental Take Statement expired on September 22, 2011
- ▶ Those not programmatically compliant default to Door 3
- ▶ Those conditionally approved will default to Door 3 until changes are made



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# So I'm in Door 3...



## **Floodplain Habitat Assessment and Mitigation**

Regional Guidance

2010



- ▶ Community must require a habitat assessment for floodplain development
  - Low Impact Projects do not need a habitat assessment (Model Ordinance Section 7)
  - Projects covered by another consultation are do not need a new habitat assessment
    - Section 7
    - Section 4(d)
    - Section 10
  
- ▶ Regional Guidance available

# Habitat Assessments



- ▶ Community is responsible to review the assessment
- ▶ Make the call
  - No Effect (NE)
  - May Affect, Not Likely to Adversely Affect (NLAA)
  - Likely to Adversely Affect (LA)



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# Adverse Alterations



- ▶ Removal of vegetation
- ▶ Bank Armoring
- ▶ Channel straightening
- ▶ Habitat Isolation
- ▶ Reduced storage capacity
- ▶ Degraded water quality
- ▶ Construction effects (noise and turbidity)



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# Technical Assistance



- ▶ Suggested Ways a Community can Review Habitat Assessments and Mitigation Plans
  - Qualified Consultants
    - Ordinance Language
    - Maintain a List
  - Require Public Comment Periods
  - Third Party Review
  - Review Checklists
- ▶ FEMA
  - Low levels of development : 1 on 1
  - Moderate to high: Habitat Assessment Training



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# From Implementation to Compliance



- ▶ **Community Assistance Visits (CAV)/Community Assistance Contacts (CAC)**
- ▶ **Failure to Enforce**

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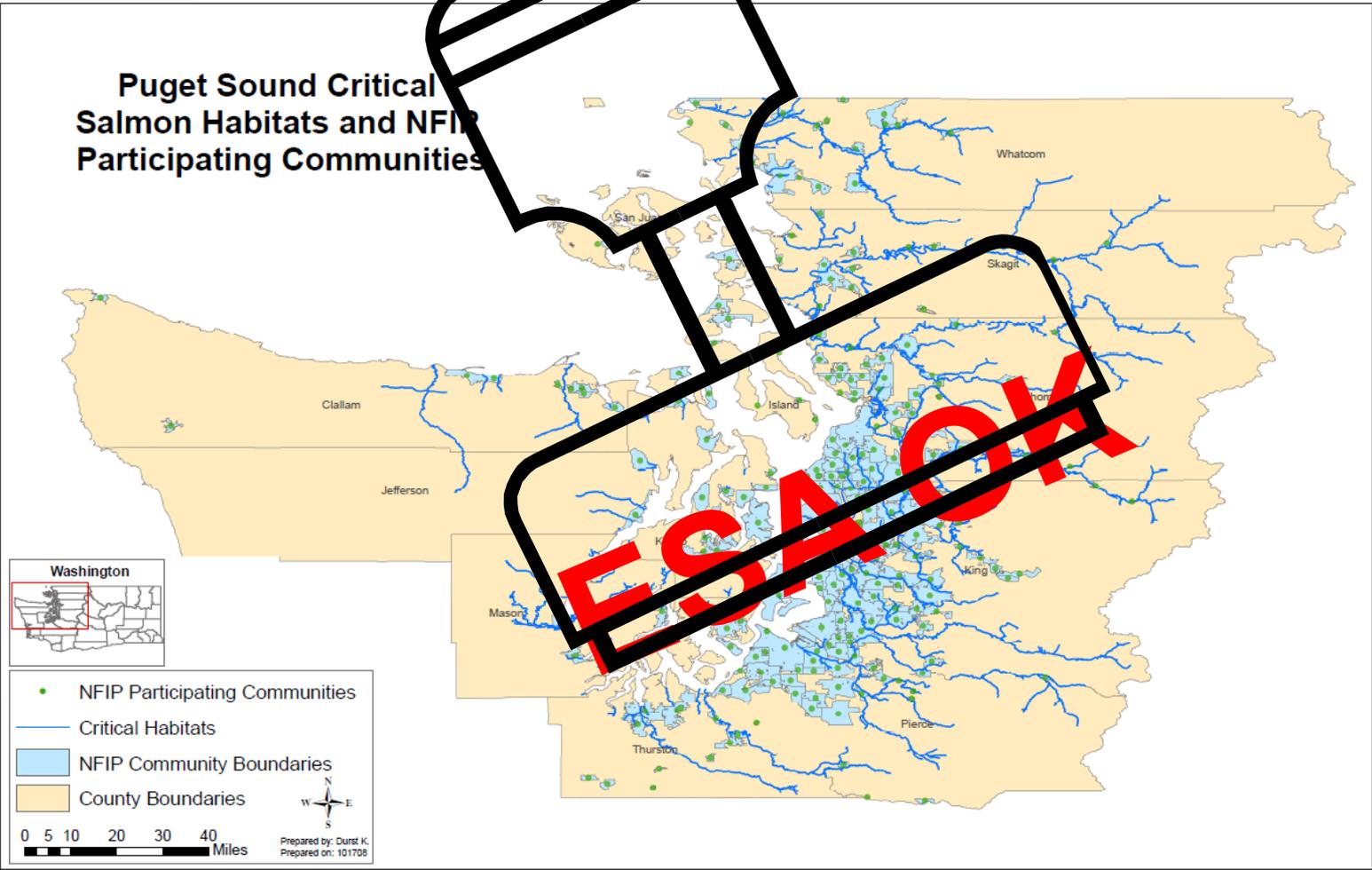
# Reporting

- ▶ FEMA is required to report to NMFS every year
- ▶ Communities are asked to report to FEMA every year on their permitting activities
- ▶ This year's reporting tool will be out soon (1-2 weeks)



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# Puget Sound Critical Salmon Habitats and NFIP Participating Communities



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# More Information

<http://www.fema.gov/about/regions/regionx/nfipesa.shtm>

or

[www.fema.gov](http://www.fema.gov) and search for ESA



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