

ESA and the National Flood Insurance Program

Implementing a salmon friendly program.



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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

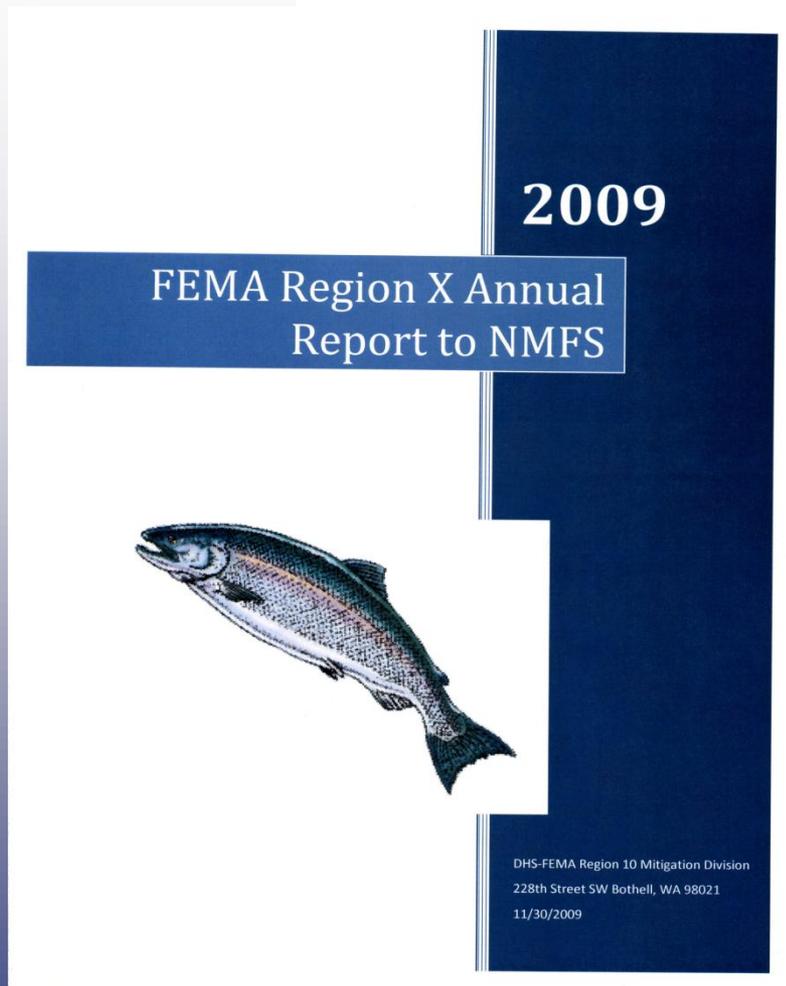
Summary of Elements

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



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2009 Annual Report to NMFS



Notable Elements

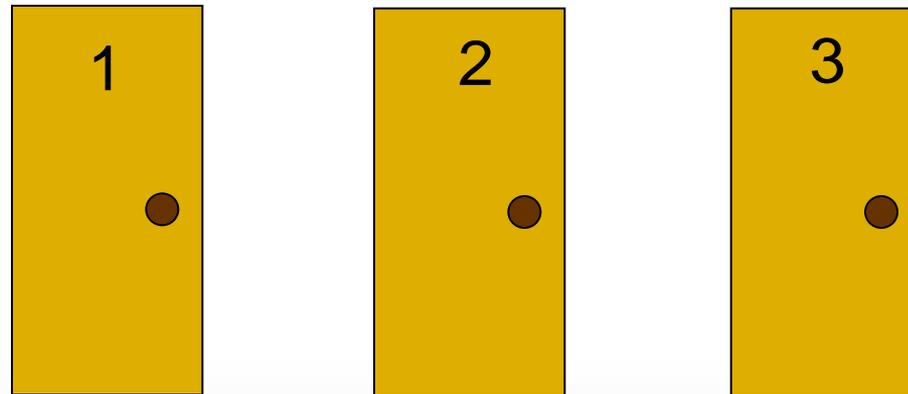
- Update on each RPA Element
- RPA 4 is being reviewed by CRS Natural and Beneficial Function Committee
- RPA 3 highlights the development of a model ordinance, checklist and guidance documents



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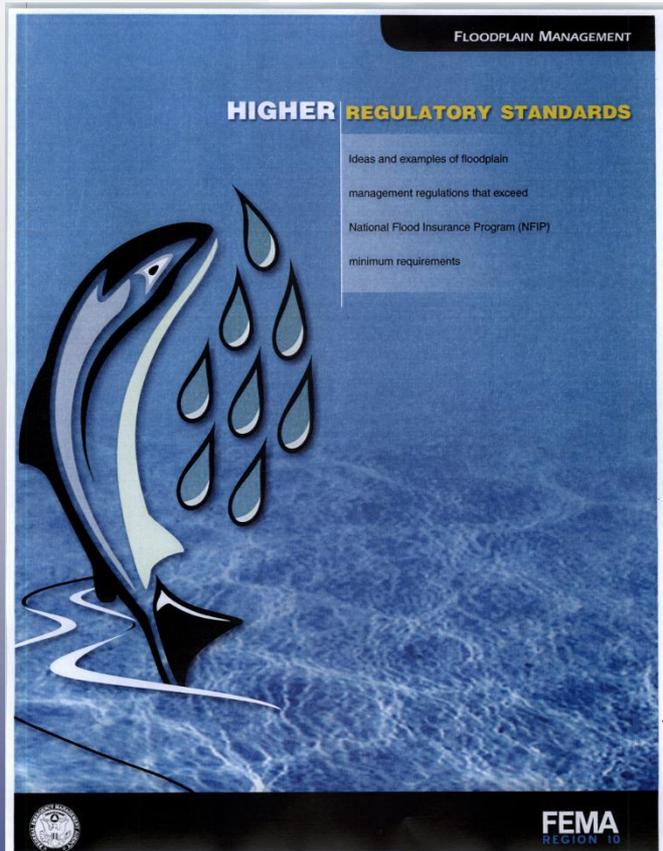
FPM Performance Criteria: Element 3

Three Doors Approach



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FPM Performance Criteria: Element 3



- ▶ **Model Ordinance**
- ▶ **Checklist**
- ▶ **Permit by Permit Showing of Compliance**



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ESA and the NFIP

Implementing a Salmon Friendly Program– FEMA Region 10

FPM Performance Criteria: Element 3

► 44 CFR 60.3 (a) (2)

- Assure all necessary permits have been received from State and Federal agencies from which approval is required
- Requires a showing of compliance

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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- ▶ **Permit by Permit demonstration of compliance**
 - **Habitat Assessment Report**
 - **Require project modification if necessary**
 - **Section 7 consultation (federal nexus)**
 - **Section 10 Permit (HCP)**
 - **Section 4d consultation**
 - **Denial of Permit**



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Regional Guidance



▶ **Regional Guidance for Floodplain Habitat Assessment and Mitigation**

- **5-step habitat assessment process**
- **4-step mitigation guidance**
 - **For direct impacts**
 - **For indirect impacts**
 - **For cumulative impacts**



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Regional Guidance



► Regional Guidance For NFIP ESA Hydrologic and Hydraulic Studies

- Guidance for communities to develop and submit “predictive land/use cover” information for depiction on the FIRM
- Steady State vs. Unsteady state modeling and how to incorporate habitat considerations
- Channel Migration Zones

FEMA is engaging on a study to evaluate the impacts of Climate Change on the NFIP (due early 2010)



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Regional Guidance

- ▶ **CRS Credit for Habitat Protection**
 - **Identifies activities already in CRS that communities can undertake that also protect habitat**



National Flood Insurance Program
Community Rating System

Special Hazards Supplement to the
CRS Coordinator's Manual

2006



Implementation Strategy

▶ Focus Group

- Consists of 13 of the 122 affected communities
- Communities vary in experience, expertise, size, and CRS status
- NMFS has attended meetings
- Intended to ensure model is implementable at the local level

▶ Legal Review

- A legal review of the model ordinance has been commissioned to ensure legal compliance with NFIP, ESA, and limit “constitutional property takings” claims



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Implementation Strategy



► Next Steps

- **Send model ordinance and regional guidance documents to focus group for final comments**
- **FEMA will seek concurrence from NMFS that the model ordinance and regional guidance documents for compliance with the BiOp**
- **Distribute model ordinance and regional guidance documents to 122 affected communities**
- **Regional workshops with communities**



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Partnerships

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



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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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