



Oregon

Kate Brown, Governor

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Also via email: mark.carey@fema.dhs.gov

Regarding: Draft Implementation Plan for the Biological Opinion on the National Flood Insurance Program

Dear Mark:

We appreciate that you have given us an opportunity to see the draft implementation plan for the interim measures from Biological Opinion for Oregon (April 14, 2016 from the National Marine Fisheries Service) prior to the review under the National Environment Policy Act (NEPA). Based on our preliminary review, we request that FEMA not initiate NEPA review of these documents for the following reasons:

1. Previous advice from the State of Oregon and local governments has not been incorporated into the draft implementation plan.
2. The draft implementation plan implies that local governments are obligated to comply directly with the reasonable and prudent alternative (RPA) in the BiOp, developed under Section 7 of the ESA.
3. NEPA is not a suitable process for iterative refinement of the model code that is at the heart of the implementation plan.

1. INCORPORATING PREVIOUS ADVICE

Previous advice from the State of Oregon and local governments has not been incorporated into the draft implementation plan. That advice was sent in a [letter on October 18, 2017](#) and multiple reports from [working groups](#).

Our advice was in response to indications from FEMA that they would use the flexibility of the consultation process to diverge from recommendations in the RPA, and craft an implementation strategy that would be effective, efficient, and workable for Oregon local governments. Much time and effort was expended by state, local, and private entities. The details of the RPA were digested, and recommendations for addressing its various shortcomings were identified. The

advice we offered FEMA supported the overall objective of preventing jeopardy to threatened and endangered species, while tailoring the approach to the reality of local governments in Oregon.

Examples of our advice that were not incorporated in the draft implementation plan include:

A. Simplified geographies

The RPA described at least three different geographic boundaries that overlap and intersect in convoluted ways, with different standards for mitigation in each sub-area. We recommended a simpler geographic division using the ten-percent flood hazard area and the remainder of the one-percent flood hazard area.

B. Location dependent uses and linear infrastructure

We recommended that mitigation standards should not compromise the economic and recreational functions of ports, marinas, and other water dependent development. The model code should include thresholds and standards for mitigation specific to linear features such as power, gas, water and sewer lines, and recognize where impact to habitat are temporary and de minimis.

C. Off-site mitigation for lost flood storage

The draft implementation plan does not reflect the comprehensive planning that has already occurred in Oregon to identify areas for future development, primarily inside urban growth boundaries. The RPA interim measures recommend mitigation ratios above 1:1 for lost flood storage. It would be essential that any such standard include options for off-site mitigation, especially on land not designated for development. The draft implementation plan does not address this crucial point.

2. LOCAL GOVERNMENT OBLIGATIONS

The draft implementation plan implies that local governments are obligated to comply directly with the reasonable and prudent alternative (RPA) in the BiOp. In fact, the obligation on local governments is to comply with Section 9 of the ESA, and regulations duly adopted by FEMA. It is FEMA's responsibility to respond to the jeopardy determination in the BiOp.

3. ITERATIVE REFINEMENT

Drafting a code of development regulations for local governments is complicated and detail-oriented. The NEPA review process is not suitable for multiple rounds of iterative refinement to produce a workable model code. We request that FEMA postpone the NEPA process and instead use an open iterative process to refine the model code. Key participants would include:

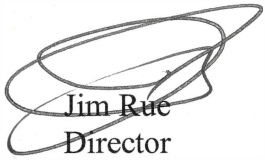
- A. FEMA – to review for consistency with the aims and legal authority of the NFIP
- B. NMFS – to review for adequate habitat protection to prevent jeopardy
- C. DLCD – to review for consistency with Oregon land use

- D. Local governments – to review the practicality of implementing proposed regulations
- E. Advocacy groups – to review impacts to their particular interest
- F. State agencies – to review impacts to their areas of authority

4. CONCLUSION

I hope that you will carefully consider this request, and that FEMA will not immediately initiate NEPA review of the draft implementation plan. If you have any questions please do not hesitate to contact me, or contact Amanda Punton (amanda.punton@state.or.us, 971-673-0961).

Sincerely,



Jim Rue
Director

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