



## **Questions & Answers on NOAA's Fisheries Service's Biological Opinion on the Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) in Puget Sound**

(September 2008)

### **Q: Why did FEMA consult with NOAA's National Marine Fisheries Service on the National Flood Insurance Program (NFIP) in Puget Sound?**

**A:** Section 7(a)(2) of the Endangered Species Act (ESA) requires federal agencies whose actions are likely to adversely affect listed species to consult with NOAA's Fisheries Service to ensure those actions do not jeopardize the continued existence of those species. FEMA requested consultation with NOAA Fisheries after the court in *National Wildlife Federation, et al vs. FEMA, et al* (345 F. Supp. 2d 1151; 2004 U.S. Dist., Nov. 15, 2004) found that FEMA violated its responsibility to consult under ESA section 7(a)(2).

### **Q: On which parts of the NFIP did FEMA and NOAA Fisheries consult?**

**A:** The court ordered FEMA to consult on the effects of (1) the regulations establishing the minimum eligibility criteria for the NFIP, (2) the mapping of the floodplains, and revisions thereof, and (3) the Community Rating System (CRS) for Puget Sound Chinook salmon. Other animals considered in the consultation include Hood Canal chum salmon, Puget Sound steelhead, and Southern Resident killer whales.

### **Q: What is the result of the consultation?**

**A:** After two years of consultation, NOAA's Fisheries Service determined that the action of implementing (these three sections of the) NFIP causes jeopardy to Puget Sound Chinook and steelhead, and Southern Resident killer whales. Briefly, this means that the environmental effects of the NFIP sufficiently impair the reproduction, numbers, and distribution of these species to appreciably reduce their likelihood of survival and recovery in the wild. NOAA Fisheries also concluded that the NFIP would destroy or adversely modify critical habitat for Puget Sound Chinook and Southern Resident killer whales.

### **Q: How does the NFIP jeopardize the listed species covered in the consultation?**

**A:** NOAA's jeopardy and adverse modification determinations were based on the NFIP's effects on habitat and habitat-forming processes essential to supporting salmon and steelhead life histories in riverine and floodplain portions of the watersheds surrounding Puget Sound.

**Q: What happens when a consultation concludes with a jeopardy determination?**

**A:** When an ESA section 7 consultation concludes with jeopardy or adverse modification determinations (or both), NOAA Fisheries must discuss the availability of a reasonable and prudent alternative (RPA) to the proposed action that the action agency can take to avoid violation of FEMA's ESA section 7(a)(2) responsibilities. Reasonable and prudent alternatives refer to alternative actions identified during formal consultation that 1) can be implemented in a manner consistent with the intended purpose of the action, 2) that can be implemented consistent with the scope of the federal agency's legal authority and jurisdiction, 3) that is economically and technologically feasible, and 4) that the director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

**Q: How does the RPA help FEMA ensure the NFIP does not jeopardize the species covered in the consultation?**

**A:** Since NOAA Fisheries' jeopardy and adverse modification determinations were based on the NFIP's effects on salmon and steelhead freshwater habitat and habitat-forming processes, the RPA addresses the ways in which the action affects those places and the habitat located there. The RPA changes the proposed action to ensure that habitat-forming processes (such as channel migration, side channel formation, formation of edge habitat, wood recruitment, riparian function, and gravel recruitment) are preserved by protecting river channel, floodplain, and estuarine habitat functional processes.