

Court ruling: Protect floodplain habitat

The Federal Emergency Management Agency (FEMA) is responsible for setting minimum standards for developments in floodplains. Recently, the U.S. District Court ordered FEMA to change its current National Flood Insurance Program. The court ruled changes are needed to reduce environmental impacts on species protected under the federal Endangered Species Act (ESA).

The National Marine Fisheries Service (NMFS), the federal agency responsible for protecting endangered Puget Sound chinook salmon and orca whales, found FEMA's current floodplain development standards do not effectively protect chinook salmon and orca whales. This determination is called a "Biological Opinion."

Effects on local governments

FEMA told the 12 Washington counties bordering Puget Sound and the 121 incorporated cities in the region they may need to change their development practices and procedures for floodplain areas to protect habitat critical to salmon and orca survival.

FEMA is deciding whether to put new federal processing procedures in place to address ESA issues. The Washington Department of Ecology (Ecology) believes local governments would have to follow the new procedures before they could approve developments in 100-year floodplains within their jurisdiction.

FEMA's decision could affect local governments' ability to issue shoreline, building, and fill and grade permits, and other decisions. A change in procedures also would likely mean more federal monitoring and reporting requirements.

Next steps

FEMA is developing guidance to help local governments decide proper actions and implementation methods. Ecology will help local governments with outreach and technical support to help them comply with FEMA's new standards.

MORE INFORMATION

What is a Biological Opinion?

The federal Endangered Species Act (ESA) requires that any federal agency proposing to do anything that might affect an ESA-listed species – issue a permit, spend its money on a project, take a direct action, etc. – must first consult with the National Marine Fisheries Service (NMFS) about such effects. After this consultation, NMFS formally responds with a "Biological Opinion" to ensure that a listed species isn't put at risk of extinction by the federal action. Although the document is called an "opinion," it actually has the force of a decision document: the federal agency whose actions it governs must comply with it. A Biological Opinion can include conservation recommendations to minimize or avoid possible adverse effects on listed species or their critical habitat. It can also impose reasonable and prudent measures necessary to minimize any harmful impacts, and can require monitoring and reporting to ensure adequate species-protection compliance.

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Meanwhile, local governments probably should review their existing floodplain regulations, policies, and procedures to determine whether the measures comply with NOAA Fisheries' recent Biological Opinion such as regulations governing:

- Permitting for development in floodplains.
- Flood damage prevention ordinances
- Shoreline Master Programs.
- State Environmental Policy Act (SEPA) procedures.
- Critical areas ordinances for key habitat and frequently flooded areas.

More information

To view the NMFS biological opinion please go to: <http://www.nwr.noaa.gov>

For more information about floodplain management and ESA issue, please visit:
<http://www.nwr.noaa.gov/Salmon-Habitat/ESA-Consultations/FEMA-BO.cfm>