



Clatsop County
Board of Commissioners

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October 20, 2022

Senator Jeff Merkley
531 Hart Senate Office Building
Washington, DC 20510

Representative Kurt Schrader
2431 Rayburn House Office Building
Washington, DC 20515

Senator Ron Wyden
221 Dirksen Senate Office Building
Washington, DC 20510

Representative Earl Blumenauer
1111 Longworth House Office Building
Washington, DC 20515

Representative Cliff Bentz
1239 Longworth House Office Building
Washington, DC 20515

Representative Peter DeFazio
2134 Rayburn House Office Building
Washington, DC 20515

Representative Suzanne Bonamici
2231 Rayburn House Office Building
Washington, DC 20515

Dear Senators and Congresspeople,

As the Clatsop County Board of Commissioners, we respectfully request your help in delaying implementation of the NOAA-NMFS Biological Opinion now part of the National Flood Insurance Program in the State of Oregon (Oregon NFIP BiOp or BiOp) (NWR-2011-3197). This Oregon BiOp concludes that FEMA's implementation of the NFIP in Oregon is causing jeopardy to numerous ESA-listed fish species and/or the destruction or adverse modification to their designated critical habitat in Oregon.

We are writing to you now to ask for your help. Efforts to implement this BiOp have been ongoing for more than 6 years. Over that time, FEMA and NMFS have rolled out three different implementation plans – none of which address the fundamental errors and deficiencies in the BiOp's analysis and conclusions. Amongst those errors and deficiencies are the BiOp's failure to consider existing regulations and programs in Oregon that address and/or mitigate many of the concerns laid out in the BiOp.

FEMA has not adequately engaged local governments in the development of these new rules. FEMA has not considered how local governments are already acting to protect endangered species and their habitats, but instead proposes a one-size-fits all/ top-down mandate regarding how local

governments comply with the ESA. FEMA will also not allow credit for existing regulatory floodplain programs and habitat restoration projects. Since FEMA expects local governments to implement these new standards, local government should be directly and substantially involved in their development. In addition, it must be acknowledged that local governments do not have the resources for implementation of these standards, but will be held accountable nonetheless.

The consequences of not following this BiOp are extreme...suspension from NFIP, loss of the availability of NFIP policies, and no consideration for disaster relief funding. In addition, local governments will be faced with issues of property takings and inverse condemnation claims. The expense of defending against these claims will be financially devastating to local government and will ultimately undermine participation of the NFIP. Equally worrisome, many of the program changes that FEMA has signaled will become mandatory, are inconsistent with existing Oregon land use priorities and programs and threaten the viability of many of our communities. FEMA has never been a regulatory agency, yet this BiOp mandates they become one.

Implementation of this BiOp has been a long-standing dark cloud hovering over Oregon communities for 6 years, with counties and property owners unsure of what rules apply to their communities, and of the potential consequences of proceeding with projects now that FEMA or NMFS may deem violations later. Farmers, in particular, are concerned that implementation of the restrictions set forth in the BiOp will further undermine the viability of their enterprise.

FEMA now says that it will start a NEPA process to evaluate the environmental impacts of the latest implementation plan. This process will almost certainly take another three to five years, all the while counties are left wondering about the potential consequences and unable to sufficiently plan for their futures. At the same time, FEMA has started a parallel effort at the national level that seems likely to lead to wholly different results than what has been threatened in Oregon.

We need your immediate help. Please add or support language in the December Omnibus bill that will delay the implementation of this BiOp in Oregon until the national approach is resolved. Congressman DeFazio has been a champion on this issue, but we need additional support. We also need your help asking FEMA and NMFS to allow NFIP participating communities – the cities and counties that FEMA will expect to implement the results of their planning – to participate *directly and continuously* in the development of any nationwide approach to integrating the ESA into the NFIP. Otherwise – as is the case with the Oregon BiOp – FEMA and NMFS will once again develop a plan that does **not** work for the communities that are required to implement it. The NFIP is unique amongst federal environmental programs. While the insurance program is operated federally, the burden of implementing the NFIP's development regulations is put on local planners whose jurisdictions participate in the NFIP. This is a unique circumstance which warrants a unique approach.

Please help us navigate this important issue.

Sincerely,



Mark Kujala, Chair, District 1



John Toyooka, District 2



Lianne Thompson, Vice Chair, District 5



Courtney Bangs, District 4