



November 16, 2022

Senator Ron Wyden
221 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Jeff Merkley
531 Hart Senate Office Building
Washington, D.C. 20510

Representative Suzanne Bonamici
2231 Rayburn House Office Building
Washington, D.C. 20515

Representative Cliff Bentz
1239 Longworth House Office Building
Washington, D.C. 20515

Representative Earl Blumenauer
1111 Longworth House Office Building
Washington, D.C. 20515

Representative Peter DeFazio
2134 Rayburn Office Building
Washington, D.C. 20515

Representative Kurt Schrader
2431 Rayburn House Office Building
Washington, D.C. 20515

Dear Oregon Congressional Delegation,

We are writing as representatives of Deschutes County to request your assistance in delaying implementation of the National Marine Fisheries Service (NMFS) Biological Opinion (BiOp) which is now part of the National Flood Insurance Program (NFIP) in the State of Oregon (Oregon NFIP BiOp or BiOp) (NWR-2011-3197).

This Oregon BiOp concludes that the Federal Emergency Management Agency's (FEMA) implementation of the NFIP in Oregon is causing jeopardy to 17 Endangered Species Act (ESA) listed species and adverse modification of critical habitat for 16 of those species. In the intent to propose next steps toward determining specific actions FEMA could require of Oregon communities a Reasonable and Prudent Alternative (RPA) was outlined in the BiOp. The RPA approach to avoid jeopardy and adverse modification of critical habitat requires FEMA to ensure that NFIP participating communities do not allow unmitigated impacts to certain natural functions of floodplains from new development in the Special Flood Hazard Area (SFHA).

We are writing to you now to ask for your help. The BiOp was issued April 2016, and 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 discussion of development of these new rules. FEMA has not considered how local governments are already acting to protect endangered species and their habitats, and instead has proposed a one size fits all, top-down approach on how local governments must require ESA compliance. Nor will FEMA allow credit for existing regulatory floodplain programs and habitat restoration projects. FEMA will expect local governments to implement these new standards, so local governments should be directly and substantially involved in their development. In addition, local governments do not have the resources for implementation of these standards yet will be held responsible for insufficient administration of this program.

The consequences of not following this BiOp are extreme and include 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 in the NFIP. Additionally, 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 Oregon's communities.

Please consider adding language in support of delaying the implementation of the Oregon BiOp in the December Omnibus bill until a national approach has been resolved. We also request your consideration of asking FEMA and NMFS to allow NFIP participating communities to participate directly and continuously in the development of a nationwide approach to integrating the ESA into the NFIP. Without the direct participation of affected communities in developing a national approach FEMA and NMFS could again develop a plan that does not work for those communities.

Thank you for your ongoing support and consideration.

Sincerely,

BOCC