

July 16, 2012

Regulatory Affairs Legal Division
Office of Chief Counsel
Federal Emergency Management Agency
Room 835
500 C Street SW.
Washington, DC 20472-3100

**Re: National Flood Insurance Program Programmatic Environmental
Impact Statement (Docket ID FEMA-2012-0012)**

Dear Sir or Madam:

These comments are submitted on behalf of the Pacific Rivers Council (PRC) and the Northwest Environmental Defense Center (NEDC) in response to the Federal Emergency Management Agency's (FEMA) Notice of Intent to prepare a draft Programmatic Environmental Impact Statement (DEIS) for the National Flood Insurance Program (NFIP) as it is currently operated and for potential future changes to the program. The Pacific Rivers Council is a non-profit conservation organization dedicated to the development and implementation of science-based public policies that protect and restore aquatic ecosystems and the species that depend on them. The NEDC is an independent, non-profit organization working to protect the environment and natural resources of the Pacific Northwest. NEDC provides legal support to individuals and grassroots organizations with environmental concerns, and engages in litigation independently or in conjunction with other environmental groups.

We are pleased that FEMA is proposing modifications to the NFIP to enhance floodplain management standards and address endangered species and their habitats. We believe that this effort is necessary to focus program efforts on discouraging development in floodplains and to otherwise promote the recovery of wild salmon and steelhead in the Pacific Northwest listed as threatened or endangered under the Endangered Species Act (ESA).

Pacific salmon and steelhead rely on floodplain habitats to escape the high water velocities during high flows and for spawning.¹ Juvenile salmon and steelhead also forage and rear in productive shallow water habitats provided

1 NAT'L MARINE FISHERIES SERV., ENDANGERED SPECIES ACT SECTION 7 FORMAL CONSULTATION AND MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT ESSENTIAL FISH HABITAT CONSULTATION FOR THE ON-GOING NATIONAL FLOOD INSURANCE PROGRAM CARRIED OUT IN THE PUGET SOUND AREA IN WASHINGTON STATE. HUC 17110020 PUGET SOUND, NMFS TRACKING NUMBER 2006/000472 144 (Sept. 22, 2008) [hereinafter 2008 BiOp].

by inundated floodplains, other off-channel features, and channel margins. The NFIP may result in impairment of salmon and steelhead habitat by reducing the availability of floodplain habitat by enabling floodplain development and levee construction and maintenance.² Many activities subject to or incentivized by the NFIP, such as bank armoring, vegetation removal, placement of fill in floodplains, creation of impervious surfaces, modification of channel alignment, and isolation of functioning habitat, are likely to adversely affect salmon and steelhead habitat.³ Currently, the NFIP creates incentives for floodplain encroachments that damage habitat because the NFIP lacks strong provisions to guide development away from floodplains, does not emphasize the protection of natural and beneficial floodplain functions, does not map areas with floodplain resources that should be preserved, does not account for cumulative effects of floodplain development, and utilizes the 100-year event standard in a way that is inadequate and inappropriate for long-term protection from flooding and the protection of natural resources.⁴

We recommend that the DEIS propose and analyze alternatives which incorporate standards and measures from the NMFS' 2008 Biological Opinion, including informing communities that development under the NFIP may jeopardize listed species, improving floodplain mapping, improving requirements for floodplain management, improving the Community Rating System (CRS), addressing the effects of levee vegetation maintenance and floodplain construction, requiring mitigation for loss of floodplain function and habitat, incorporating a robust monitoring and adaptive management function, minimizing take of listed species, revising criteria for floodplain acquisition, including environmental services and other public trust values in benefit/cost analysis, encouraging riparian zone protection, improving hydrographic modeling, and revising NFIP regulations.⁵

The measures recommended in the 2008 BiOp largely reflect recommendations made in 2006 by the NFIP Evaluation Final Report Working Group. The DEIS should also develop alternatives based on the recommendations made in the 2006 Evaluation, such as modifying the program to discourage floodplain development and protect the natural functions of floodplains, encouraging local programs to adopt higher regulatory standards, restoring natural floodplain functions where they have

2 2008 BiOp, *supra* note 1, at 146-47.

3 Letter from William W. Stelle, Jr., Regional Administrator, Northwest Region, National Marine Fisheries Service, to Kenneth Murphy, Regional Administrator, Region X, FEMA, Re: Implementation Standards for the NFIP Biological Opinions's Reasonable and Prudent Alternative (Sept. 26, 2011).

4 FRENCH WETMORE ET AL., AN EVALUATION OF THE NATIONAL FLOOD INSURANCE PROGRAM, FINAL REPORT. AMERICAN INSTITUTES FOR RESEARCH (2006), *available at* <http://www.fema.gov/business/nfip/nfipeval.shtm>.

5 2008 BiOp, *supra* note 1, at 151-87.

been lost, considering environmental impacts and cumulative effects of fill on natural values and floodplain function when reviewing and issuing Letters of Map Revision, revising flood mapping criteria such that areas of large claims, areas with repetitive claims, areas protected by levees, and areas with small watersheds in which flooding would damage existing buildings are required to purchase flood insurance and so that areas with natural values and functions are displayed.⁶

Finally, the DEIS should describe a FEMA process for initiating and timely completing formal consultation under the Endangered Species Act when developing criteria for State and local measures, mapping, and implementing the CRS when these activities may harm ESA-listed species or effect their habitat.

The PRC and NEDC appreciate the opportunity to provide these scoping comments for the proposed revisions to the NFIP. Please direct contacts to Greg Haller, PRC Conservation Director, by phone at (503) 228-3555 and by email at <mailto:greg@pacificrivers.org> greg@pacificrivers.org, and Andrew Hawley, NEDC Staff Attorney, by phone at (503) 768-6673 and by email at hawleya@nedc.org.

Sincerely,



John Kober, Executive Director

On behalf of:

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