

HOW IMPLEMENTATION OF THE FEMA BiOp MAY AFFECT YOUR PROPERTY

IF YOU PLAN TO DEVELOP OR OWN PROPERTY WITHIN THE SPECIAL FLOOD HAZARD AREA (SFHA), PLEASE CONTACT THE CITY OF ROCKAWAY BEACH PLANNING DEPARTMENT FOR MORE INFORMATION:

City of Rockaway Beach
Land Use Planning Department
276 S. Highway 101 / PO Box 5
Rockaway Beach, OR 97136
(503) 374-1752

[Email](#)

M-Th: 8:00AM-4:30PM

- **Effective December 1, 2024, the regulations for developing in the Special Flood Hazard Area (SFHA, commonly known as the "floodplain") will be changing.**
- **The changes are required by FEMA for jurisdictions that wish to continue to participate in the National Flood Insurance Program**
- **The changes are intended to protect endangered and threatened species and habitat by requiring "no net loss" of habitat functions. Those functions are:**
 - **Flood storage** (impacts from placing fill in the SFHA)
 - **Water quality** (impacts from adding new impervious surface in the SFHA that creates pollutant runoff)
 - **Riparian habitat** (impacts from removing vegetation near rivers and streams)
- **On July 15, 2024, the City of Rockaway Beach was notified that it must choose and implement one of three Pre-Implementation Compliance Measures (PICM).** The three options are:
 1. Prohibit all new development within the SFHA
 2. Adopt a model ordinance that incorporates the requirements of the Endangered Species Act (ESA) into the City's floodplain code
 3. Require applicants on a permit-by-permit basis to prepare a Habitat Assessment to verify that no net loss of floodplain functions will occur as part of their proposed development
- **FEMA is also expanding the definition of what is considered "development". The expanded definition includes almost any type of activity.**
 - **Development:** Any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

- **The Oregon BiOp extends that definition to include:** Subdivision of land; Removal of vegetation; Other alteration of natural site characteristics (including any remnant natural characteristics existing in a degraded site); Substantial repairs and improvements; Maintenance, repair, or remodel of existing buildings, facilities, and utilities when their existing footprint is expanded or if there is additional encroachment into the floodplain
- **Projects that create impacts on floodplain function, will be required to mitigate for those impacts. Removal of trees over 6" DBH (measured 4.5' above grade) will require mitigation.**
- The guide for creating habitat assessments was released by FEMA on August 13, 2024. FEMA released the model ordinance on August 14, 2024. Both documents can be found at the bottom of this page under "Supporting Documents".

BACKGROUND

- **1968:** National Flood Insurance Program (NFIP) created
- **1978:** The City of Rockaway Beach Adopted Flood Insurance Rate Maps (FIRMs)
- **2009:** Lawsuit filed by Portland Audubon Society
- **2010:** Negotiated settlement reached
- **2011:** FEMA submits Programmatic Biological Assessment (starts formal consultation process for state listed species and critical habitat)
- **April 4, 2016:** National Marine Fisheries Service (NMFS) issue BiOp
- **October 2021:** FEMA issues Draft Implementation Plan to address BiOp issues
- **Spring 2023:** FEMA Notice of Intent to prepare an Environmental Impact Statement (EIS)
- **December 1, 2024:** Jurisdictions must choose and implement a Pre-Compliance Implementation Measure (PICM)
- **January 31, 2025:** Jurisdictions must begin to collect data for reports to FEMA
- **Early 2025:** FEMA to issue draft EIS
- **January 31, 2026:** Mandatory FEMA reporting begins
- **2027:** Implementation of final plan

BIOLOGICAL OPINION OVERVIEW

- **Consists of the Biological Opinion (BiOp) and Reasonable and Prudent Alternative (RPA)**
- **BiOp concluded that continuing the current NFIP implementation would:**
 - likely jeopardize the continued existence of 16 anadromous fish species and the Southern Resident Killer Whale
 - result in the destruction or adverse modification of designated or proposed critical habitat for the 16 anadromous fish species

- **RPA recommendations focus on new floodplain development and redevelopment**
- **Goal is to obtain “no net loss” of three habitat functions essential to the survival of ESA-listed species identified in the BiOp. Three key functions include:**
 - **Flood storage** –impacts from placing fill in the SFHA
 - **Water quality** – impacts from adding new impervious surface in the SFHA
 - **Riparian habitat** – impacts from removing vegetation near rivers and streams
- **To achieve “no net loss”, RPA emphasizes 3 priorities to protect endangered species and critical habitat:**
 1. Avoid adverse effects (Ex: prohibit development)
 2. Minimize adverse effects (Ex: riparian buffer areas, possibly up to 170’ in width)
 3. Mitigate adverse effects (Ex: compensatory storage)
- Based on BiOp, FEMA will need to make several significant changes to the NFIP requirements
- Local jurisdictions will need to adopt new measures to ensure that its development meets the “no net loss” standard
- **Draft Implementation Plan provides 4 paths to jurisdictions to achieve compliance:**
 - Adopt a **model ordinance** (yet to be developed)
 - Ordinance **checklist** – verifies which existing regulations comply and which need to be added
 - FEMA-approved **community compliance plan** – “community-designed” and “locally-appropriate” approach; could be developed through cooperation of multiple local jurisdictions to steer development, restoration and mitigation actions in the floodplain
 - **Habitat Conservation Plan** – demonstrates consistency with Section 9 and 10 of the ESA; plan reviewed and approved by NMFS (likely most costly option)

Supporting Documents

- [July 15, 2024 Notice to Communities](#)
- [Biological Opinion \(BiOp\)](#)
- [Model Ordinance](#)
- [Habitat Assessment and Mitigation Guide - August 2024](#)
- [DLCD Pre-Compliance Implementation Measures FAQ Sheet](#)