# National Flood Insurance Program - Flood Plain Management Standards/Assessment of Impact on Threatened/Endangered Species: Federal Emergency Management Agency Request for Information



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The United States Department of Homeland Security Federal Emergency Management Agency ("FEMA") published a Request for Information ("RFI") related to the National Flood Insurance Program ("NFIP") in the October 12th Federal Register. See 86 Fed. Reg. 56713.

The RFI seeks information regarding:

- Possible revision of floodplain management standards for land management and use regulations and how the NFIP can better promote protection of and minimization of any adverse impacts to threatened and endangered species, and their habitats

The NFIP is a federal program that provides flood insurance in the states and communities. Participating states and communities must agree to adopt and enforce floodplain management ordinances in order to reduce future flood risks. While the NFIP is a voluntary program, utilization of the NFIP is contingent upon compliance with the FEMA floodplain management regulations.

FEMA notes in the October 12th Federal Register preamble that it does not:

. . . regulate land use and does not haves authority over local development. Rather, it requires participating communities to adopt the minimum NFIP requirements through zoning codes, subdivision ordinances, and/or building codes or adopt special purpose floodplain management ordinances and encourages communities to exceed those requirements and improve long-range land management and use of flood prone areas.

The Association of State Floodplain Managers and the Natural Resources Defense Council submitted a petition on January 5th seeking revisions to the current floodplain management standards for land management and use regulations. The petition argued that FEMA has not comprehensively amended the minimum criteria for construction and land-use in flood-prone areas since the early 1970s.

The petition also argued that FEMA has not:

- Developed maps that depict the true extent of the 1 percent and 0.2 percent chance floodplains in the nation
- Updated flood risks and residual risks associated with levies, dams, and flood control structures
- Addressed future flood risks due to climate change

The organizations requested that FEMA initiate a rulemaking pursuant to the National Flood Insurance Act, as amended, 40 U.S.C. § 4001, et seq. to revise the NFIP regulations.

As a result, FEMA is issuing an RFI to seek information from the public on the agency's current floodplain management standards.

FEMA is also seeking input on what measures the NFIP can take to further protect and minimize any adverse impacts to threatened and endangered species and their habitat.

The requirement of the Endangered Species Act to protect threatened and endangered species by preserving the ecosystems in which they live and protecting species from harm is noted. Specifically cited are the following sections of the Endangered Species Act:

- 7(a)(2) – requiring a consultation process between a federal agency that will undertake an action, including implementing the program, and either the U.S. Fish and Wildlife Service or the National Marine Fishery Service to ensure that action does not jeopardize the continued existence of endangered or threatened species or result in the adverse modification of critical habitat
- 7(a)(1) – mandating federal agencies use their authorities to conserve threatened and endangered species and minimize any adverse impact

FEMA states that the NFIP floodplain regulations provide an additional opportunity to also work toward the conservation of federally threatened and endangered species and critical habitat. For example, the agency states:

. . . Conserving the natural and beneficial functions of the floodplain and reducing flood risk can work in tandem with the ESA requirement of conserving T&E species and critical habitat. Often, measures taken to conserve T&E species and their habitat in the floodplain benefit people by reducing the risk of flooding and the harm that can result to their person and property, while also conserving the natural and beneficial functions of the floodplain. The agency is seeking input from the public on the floodplain management standards that communities should adopt to result in safer, stronger, and more resilient communities and also to promote protection of T&E species and their habitats.

A copy of the Federal Register Notice can be downloaded here.