



Information about:

PERMITS FROM FEDERAL AGENCIES FOR ENDANGERED SPECIES ACT COMPLIANCE IN THE FLOODPLAIN MANAGEMENT DISTRICT

How does the Endangered Species Act relate to development in the Floodplain Management District?

Clackamas County participates in the National Flood Insurance Program (NFIP), which provides owners of property in floodplains with significant benefits, including access to federally backed flood insurance, federal disaster relief funding and federally backed mortgages. As a condition of NFIP participation, the County must regulate development in the Special Flood Hazard Area (SFHA, often referred to as the 100-year floodplain) according to minimum standards established by federal law and overseen by the Federal Emergency Management Agency (FEMA). The County's implementing regulations are found in Zoning and Development Ordinance (ZDO) [Section 703, Floodplain Management District \(FMD\)](#).

As a result of legal action brought against FEMA, National Marine Fisheries Service (NMFS) issued a biological opinion that concluded the NFIP threatens various fish and marine mammal species listed under the Endangered Species Act (ESA) and recommended changes to the standards that apply to development in the SFHA. FEMA is working on a permanent plan to implement these changes, and in the meantime, it directed most communities in Oregon, including Clackamas County, to apply interim protections beginning December 1, 2024.

How is the County responding to the FEMA directive to implement new requirements for ESA compliance?

The County has begun work to amend the ZDO to include the required interim protections; however, this process will take time. Until the amendments are adopted, an alternative is needed to ensure ESA compliance related to protected salmon and steelhead species in the County.

One of the existing approval standards for a Floodplain Development Permit is that an applicant obtains all necessary federal and state permits for their proposed development. The County has concluded that this may include a requirement to obtain a permit from NMFS or the United States Army Corps of Engineers (USACE) related to the ESA. As a condition of approval for a Floodplain Development Permit filed on or after December 1, 2024, the applicant will be required to either obtain a permit from NMFS (or USACE for certain in-water work where a consultation with NMFS is included in the permitting process) or a statement from NMFS that no permit is required for the proposed development. Essentially this will demonstrate that the proposed development is consistent with the ESA.

What is the NFMS or USACE review process?

Review of a federal agency permit is outside of the land use review process of Clackamas County. Please coordinate with the federal agency for information on the review process.

How can I obtain additional information?

For more information on NMFS and USACE permits:

NMFS: <https://www.fisheries.noaa.gov/permits-and-forms/protected-resources>

- For development in the floodplain: [Incidental Take Authorization](#)

USACE: <https://rrs.usace.army.mil/rrs/home/permitting>

- For manmade change to the waterway: [Regional and Programmatic General Permits](#)

For more information on FEMA's integration of the NFIP and the ESA in Oregon, and related changes to development regulations in the SFHA:

<https://www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration>

For more information on the affected species status and distribution in Oregon visit [NOAA's Species and Habitat App](#).

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