



Tillamook County Board of Commissioners

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October 3, 2025

NFIP OR-EIS

FEMA, Region 10

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Bothell, WA 98021

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Re: Comments on FEMA's DEIS regarding the ESA-NFIP Integration
Implementation Plan in Oregon

Tillamook County submits this letter commenting on the analysis contained in FEMA's Draft Environmental Impact Statement (DEIS) regarding its Draft Oregon Implementation Plan for NFIP-ESA Integration (August 2025).

Tillamook County acknowledges and appreciates the effort that FEMA has put into preparing the DEIS analysis, including FEMA's acknowledging the significant adverse impacts on communities and property owners/businesses that FEMA anticipates will result from its Implementation Plan. At the same time and based in part of the results of the DEIS, Tillamook County is disappointed by FEMA's apparent intent to continue moving ahead with the Implementation Plan that, by FEMA's own analysis, is destined to create substantial harm, without stopping to consider other options. FEMA repeatedly heralds its outreach and engagement efforts with Tillamook County, other NEPA Cooperating Agencies, as well as other NFIP participating communities and tribal representatives. Based on Tillamook County's experience, however, FEMA has largely failed to integrate our collective feedback or adjust its Plan in any meaningful way. For several years Oregon communities have continuously explained to FEMA that the Implementation Plan is not reasonable or feasible, yet FEMA continues down same path. The DEIS affirms our concerns.

FEMA has had years to consider and develop other alternatives that rely on *FEMA's actions* and place the burden of ESA compliance *on FEMA*. Instead, FEMA continues to advance an Implementation Plan that shifts the burden to NFIP-participating communities - and now has issued an EIS that concludes these burdens will be significant and major - meaning "impacts would be difficult for property owners or NFIP participating communities to absorb." (DEIS, p. 4-26). On top of that, FEMA now effectively asserts that it cannot do anything else because implementation needs to be completed by 2027. (DEIS, p. 3-2). FEMA had more than a decade to work collaboratively with local jurisdictions on a feasible implementation plan, but instead has continued down a path that jurisdictions have consistently stated is not reasonable or feasible.

AN EQUAL OPPORTUNITY EMPLOYER

This is beyond disappointing; it is deplorable for an agency that calls itself a partner to local governments. Put simply, there must be another way that does not have significant adverse impacts on our land use, economic development and public infrastructure.

Many commenters are suggesting that FEMA select the No Action Alternative - and Tillamook County urges FEMA to select No Action as well. We anticipate that FEMA will respond that it cannot select the No Action Alternative because it is not ESA compliant and, therefore, does not meet FEMA's purpose and need. But the fact of the matter is that none of the Alternatives are legally or practically defensible. Tillamook County asks FEMA to go back and look for other options – options that work for its partners, rather than attempting only to satisfy National Marine Fisheries Service (NMFS).

We see several options that FEMA has not seriously considered and/or has wrongly discarded. Here are a few:

- Instead of treating all floodplains the same – as though they all provide equivalent habitat value, which they do not – consider ways to preserve floodplains with the highest value to ESA-listed species. This would include considering frequency of flooding (i.e., areas that are inundated every few years provide substantially more habitat value than areas that are inundated once every 15 to 30 years), existing habitat value (i.e., differentiating between largely developed urban floodplains that provide limited or negative habitat value and relatively undeveloped or pristine floodplains that offer high habitat value), and considering the relative effect of fill on the remaining floodplain (i.e., fill on the coast line or larger river systems has little or no effect on water volume or velocity in the remainder of the floodplain). There is simply no good reason to treat the entire 100-year floodplain as a monolithic block, and recognizing variations could allow FEMA to develop a more workable plan for NFIP participating jurisdictions. It is not feasible or reasonable to go back and undo past development. Instead, shift focus to preserving habitat value where it actually exists. The vast majority of SFHA areas in Oregon are undeveloped or undevelopable. (DEIS, p. 4-15). Preserving these areas and leaving the 10% of Oregon's floodplains that are subject to more intense development might yield a more tenable plan.
- Utilize the “no take” approach adopted by FEMA as part of its nationwide programmatic approach to ESA compliance. See FEMA's explanation of requirements for “documentation of compliance” with the ESA in its Final Nationwide Programmatic Environmental Impact Statement for the National Flood Insurance Program (Sept. 2017), p. 2-12 and 2-13. FEMA has experience using a similar approach as part of CLOMR and LOMR submittals since 2016. (DEIS, p. 1-12). Tillamook County acknowledges that this may not fully address NMFS's concern regarding cumulative impacts, but individual projects and property owners cannot legally be required to mitigate more than their actual impacts. Tillamook County adopted this approach in response to FEMA's PICMs. See November 27, 2024, letter from Tillamook County to FEMA. A no take standard is easy to apply and does not expand the burden on local communities and individual property owners beyond the boundaries of their ESA obligations (Section 9 absent a federal nexus). It also avoids the concern raised by FEMA in the DEIS of imposing region-specific standards on entire country (DEIS, p. 3-27, 3-28).

- Prioritize grant and other funding awards to projects or programs that protect ESA-species and preserve habitats while also reducing flood risk and restoring damaged areas. While FEMA may not construct its own projects, it does fund a large number of projects in Oregon and could work with communities to prioritize funding for projects that also protect ESA species and habitat. FEMA attempts to assert in the DEIS that this is not a feasible alternative, yet FEMA sent a letter to Oregon's Department of Emergency Management asking ODEM to prioritize funding requests for projects that protect and restore salmonid habitat. See May 31, 2024, letter from Kristen Meyers, Director, Mitigation Division, FEMA Region 10. Further, the DEIS explains that FEMA has spent more than \$182 million through various hazardous mitigation assistance programs in Oregon since 2012 (DEIS, p. 4-28). FEMA granted \$3.225 million to Tillamook County through its Public Assistance program in 2015 for the Southern Flow Corridor Project which restored approximately 500 acres of tidal wetlands and 13 miles of channel habitat. See [Socio-Economic Impacts of the Southern Flow Corridor Restoration Project](#). FEMA could address its ESA obligations by granting funds to projects that preserve and improve conditions for ESA-listed species and habitat.

It is frustrating. These ideas have been voiced to FEMA for years, decades even (if one considers efforts under the Puget Sound BiOp), but FEMA has never seriously undertaken or rebutted them. From Tillamook County's perspective, FEMA seems content to shift the burden to NFIP-participating jurisdictions to do the hard work, rather than digging in and doing it themselves. These options are viable; they are just more difficult and put more burden on FEMA than the local communities. Tillamook County asks FEMA to pick the No Action Alternative and to reinitiate consultation with NMFS to find another way that will not cripple numerous Oregon communities.

I. FEMA's Implementation Plan (August 2025) remains critically flawed.

While FEMA may decline to state it directly, it seems that FEMA shares some of the County's views regarding the Implementation Plan. FEMA comments in the DEIS that "[t]he primary purpose and objective of the NFIP is to provide access to federally underwritten flood insurance," (DEIS, p. 1-3), and explains that "[t]he intent of [the minimum floodplain development] standards is to reduce flood risk and loss of life and property" (DEIS, p. 1-14). No where does the NFIP – aside from as part of the fully voluntary Community Rating System – mention preserving habitat. As a result, the Implementation Plan has no foundation or justification in the NFIP.

FEMA's effort to explain the Implementation Plan as part of 44 CFR 60.3(a)(2) is indefensible. In the DEIS, FEMA asserts that "[u]nder 44 CFR 60.3(a)(2), a community must ensure that all other federal, state and local permits have been obtained when permitting a project in the SFHA. As such, a local community must ensure that an 'incidental take permit' under Section 10 of the ESA is **not** required." (DEIS, p. 1-23, emphasis added). As an NFIP-participating jurisdiction, Tillamook County can say definitively that FEMA has never before required permit applicants to prove the negative – that they do not need a particular permit. This is a fundamental shift in FEMA's implementation of the NFIP that it has applied to only one program, the ESA. While we regularly require applicants to document that they have received necessary permits, we have not before asked them to confirm or prove that their project did not require a wetland fill permit or other state or federal clean water permit. FEMA's effort to justify the Implementation Plan relies on a wholly new interpretation of the minimum floodplain development standards that required rulemaking before FEMA could implement it.

Even if FEMA's rationale were defensible, the "no net loss" mitigation standard advanced by the Implementation Plan exceeds the requirements that would apply to an individual project to achieve "no take" under the ESA. FEMA's attempt to equate the "no net loss" standard with "no take" is contortion of ESA statute. It requires individual project applicants to assume responsibility for mitigating more than the effects of their project. No part of the ESA's Section 9 requires applicants to take on responsibility for cumulative impacts across the entire Plan Area.

As Tillamook County has previously stated, Tillamook County does not believe that FEMA's "no net loss" standards as implemented through Pathway A or B are reasonable or feasible. See Tillamook County's November 27, 2024, comment letter regarding the PICMs. Tillamook County recognizes that Pathway C is intended to offer communities some flexibility. The DEIS outlines a number of ways that NFIP participating communities could use Pathway C to modify the standard "no net loss" mitigation measures (e.g., DEIS, p. 3-16 through 3-18). Each of these ideas, however, places 100% of the burden on the local government to do the analysis, develop the plan, and then play "bring me a rock" with FEMA. Tillamook County attempted to develop a community specific plan with FEMA and NMFS for 2 years between 2021 and 2023 with substantial effort but no success. FEMA represents this as viable option, but where other than King County, Washington, has this been effectively accomplished? And even there, at what cost both in time and financial resources?

Even if Pathway C were viable for communities, we are suspect that FEMA will have adequate resources to process dozens of Pathway C community plans between FEIS/ROD in 2026 and 2027 "deadline." While FEMA asserts that it has had ample resources this year, we know that to be untrue as FEMA cut back the number and format of DEIS comment meetings and has had very limited staff to assist with the PICMs. The DEIS states that FEMA anticipates even fewer resources if it elects to proceed with the Implementation Plan. (DEIS, p. 3-26).

Further, Pathway D is illusory. Tillamook County is unaware of any Habitat Conservation Plans (HCP) approved by NMFS or USFWS for a community wide program that authorizes a wide variety of activities from single family residences to commercial and industrial development. FEMA failed to provide any examples of where the HCP approach has worked for any activities comparable to a community implementing a floodplain permitting program.

Also, the exemptions in the Implementation Plan are not broad enough. (DEIS, p. 3-19 and 3-20). As one example, exemptions should apply to restoration projects that achieve more than the "sole purpose of restoring habitat for ESA-listed species." Both FEMA and Tillamook County know from the Southern Flow Corridor Project that restoration projects can and should serve multiple benefits to justify their expense. Similarly, the exemption for public infrastructure must be broadened to include standard infrastructure maintenance that includes impacts on contours, uses and culverts. Without that flexibility, communities will be effectively foreclosed from maintaining their infrastructure by the additional cost of "no net loss" mitigation. Rather than improving conditions for ESA-listed species, this will result in harm as roads, campgrounds, boat ramps, and myriad other components of public infrastructure deteriorate in place since jurisdictions cannot afford the added costs of the "no net loss" mitigation. Space within the right of way is limited, so mitigation for nearly all road projects would need to be located off-site, typically doubling the cost.

Tillamook County encourages FEMA to include the permit-by-permit approach in any final implementation plan. While Tillamook County does not support the permit-by-permit approach

because it still relies on the “no net loss” standard and places a substantial burden on applicants and planning departments/project reviewers, we do recognize that it is somewhat better than the current plan because it at least recognizes existing conditions and only requires applicants to mitigate for the impacts of their projects, not to mitigate for assumed habitat. If it is not permitted as its own pathway, it should be accepted as part of Pathway C

Finally, Tillamook County does not support FEMA’s mitigation ratios above 1:1. FEMA attempts to justify higher ratios based on assumed failure of mitigation measures. (DEIS, p. 3-7). Instead of requiring applicants to double mitigate for perceived impacts and removing otherwise usable land from areas planned and zoned for development (as recognized by the DEIS), FEMA should use monitoring and reporting to ensure that mitigation measures are implemented.

II. The Alternatives in the DEIS are inadequate. They do not meet the NEPA requirements that they be reasonable and feasible.

The alternatives included in the DEIS need to be overhauled. First, the alternatives are too narrowly drawn. As FEMA knows from its experience in the Puget Sound, it is not required to implement NFMS’s RPA from the NMFS Oregon Biological Opinion (BiOp). FEMA can implement other measures that it believes are sufficient to avoid jeopardy and adverse modification. (See list on p. 1 above of alternative ideas).

Second, Alternatives 2 and 3 do not meet FEMA’s own definition of a reasonable alternative. The DEIS explains that “[i]f a proposal is so costly that it could not be practically implemented or would necessitate expenditures that would far exceed potential benefits in relation to other proposed alternatives, it would not be economically or financially feasible.” (DEIS, p 3-2). As the DEIS itself explains, both Alternatives 2 and 3 would be financially infeasible for communities to implement and cause critical public infrastructure to become unaffordable. Further, both undermine Tillamook County’s land use and planning systems. See Declaration of Sarah Absher filed Jan. 2, 2025 in *Oregonians for Floodplain Protection v. U.S. Dept of Commerce, et al.*, D.D.C. 1:25-cv-39. The DEIS acknowledges in its land use analysis that both Alternatives 2 and 3 are inconsistent with several of Oregon’s local land use requirements, as well as individual community’s land use goals and objectives. As such, they cannot be practically implemented.

With regard to financial feasibility, Tillamook County acknowledges that FEMA may respond to this concern by stating that it is financially feasible and practicable *for FEMA* to implement these Alternatives. But when FEMA intends to rely on NFIP-participating communities for 90% of the implementation efforts and expenses, the impacts to those communities must also be included in the feasibility equation. As the DEIS recognizes, the cost of implementation for communities is substantial and unfunded.

Third, the DEIS’s description of the impacts of the No Action alternative is inconsistent and indefensible. In the DEIS, FEMA explains that the No Action Alternative means no change to the current implementation of the NFIP in Oregon and the continued availability of the NFIP benefits. (DEIS, p. 3-4). Correspondingly, FEMA gently characterizes its enforcement protocols with statements like: “FEMA’s compliance approach focuses on encouraging and promoting compliance, rather than threatening to penalize communities for non-compliance.” (DEIS, p. 1-17). In direct communications with Tillamook County and other NFIP-participating jurisdictions in the Plan Area, however, FEMA has stated that failure to comply with the Implementation Plan will result

in removal from the NFIP per the June 2016 letters from FEMA to Oregon NFIP participating jurisdictions. Thus, the No Action is not “no change.” It is elimination of the benefits of the NFIP in Oregon communities, including the loss of federally backed flood insurance and multiple forms of federal financial support. The consequences of such loss would be devastating both to individual property owners no longer able to meet the requirement to carry flood insurance as stated in their mortgages and to local communities who would forego millions in federal grants and aid (\$182 million in Oregon since 2012).

Further, it seems that FEMA conceded to pressure from NMFS and adopted the BiOp’s view of a No Action future. FEMA, however, has consistently contested the accuracy of the BiOp. See numerous letters from FEMA to NMFS from 2013-2023 regarding the BiOp. NEPA requires that the lead agency confirm the accuracy and adequacy of the analysis in the DEIS. FEMA seems to have subverted that obligation when it accepted a vision of the future under the current NFIP that it has never before embraced.

Finally, Alternative 3 feels like a foil, created exclusively to attempt to make Alternative 2 seem reasonable. It is not legally defensible for FEMA to knowingly adopt a program that requires an applicant to mitigate for the same impact twice, first through the standard ESA Section 7 consultation process and second through implementation of the “no net loss” mitigation standard as part of a local floodplain permit. Alternative 3 should simply be removed from the FEIS.

III. The DEIS analysis includes numerous flaws that need to be corrected, some requiring issuance of a Supplemental DEIS.

As an initial comment, Tillamook County incorporates by reference all comments previously submitted to FEMA through scoping, as part of its role as a cooperating agency, and with regard to the PICMs. (FEMA has previously received these, so we are not attaching them a second time here.) Most of these comments have not been addressed or incorporated by FEMA into the DEIS analysis.

Tillamook County appreciates the analysis of the impacts to land use and economics included in the DEIS. We, as well as several other cities and counties, noted that many of the numbers regarding the Plan Area communities in Appendix F are inaccurate. In at least some circumstances these inaccuracies skew the numbers so that the floodplain acreages and number of people/businesses within them appear to represent a smaller percentage of the community than they actually are. Tillamook County, for example, is closer to 700,000 acres, not 2.9 million acres. Also, the acreage of SFHA in the table (136,275 acres) far exceeds the County’s data. Similarly, Appendix F states that there are 99,456 households in Tillamook County. Our own data shows fewer than 20,000 households. See data provided via email by Tillamook County to Harvey Economics in Feb. 2024. These are substantial errors affecting the analysis. We do not see the source for these data clearly referenced in the DEIS. The County requests that FEMA recheck all the numbers in Appendix F and confirm their data with each community. Based on the size of the errors, this may necessitate issuing a Supplemental DEIS.

It is notable that even downplaying the size of the areas affected, the EIS still concludes that the impacts to communities, property owners, and public infrastructure will be significant and adverse. Due to these significant adverse impacts, Alternatives 2 and 3 are more likely to effectively freeze in place the existing development in the floodplain than to result in new development implementing

the “no net loss” mitigation requirements. The lack of available land for “no net loss” mitigation and the increased cost will make it infeasible or impractical for both communities and private property owners to develop or redevelop in the floodplain. While the DEIS touches on this topic, it fails to analyze the reasonably foreseeable effects of this likely outcome.

Also, the DEIS repeatedly notes that implementation of Alternatives 2 and 3 are likely to lead to more development just outside the current floodplain boundary. As FEMA knows, floodplain boundaries change periodically, often expanding to include adjoining areas previously considered by the outside the floodplain. The DEIS should have evaluated the likelihood that some development that might be incentivized to move outside of the SHFA by Alternatives 2 and 3 will in subsequent years be considered floodplain development as FEMA completes remapping and those areas are newly mapped into the SFHA.

Tillamook County appreciates the DEIS acknowledging the myriad other federal, state and local programs/requirements that apply to development within the floodplain (DEIS, p. 1-18). Tillamook County raised this issue as part of its prior cooperating agency comments. FEMA does not, however, seem to have understood the point. FEMA and the DEIS continue to fail to integrate the effects of those other laws and programs into Existing Conditions and the No Action Alternative. Instead, the DEIS suggests that individual communities may choose to include them in Pathways B or C. This approach carries forward a substantial error from BiOp into the DEIS (failure to acknowledge the role of other programs in creating or remedying the alleged impacts to ESA species and habitat) and attributes significant impacts to the NFIP that are not related to floodplain management and are the specter of other programs (e.g., Clean Water Act NPDES requirements and state water quality requirements). Alternatively, the effects of these programs could be analyzed as part of the effect of the NFIP based on FEMA’s assertion in the DEIS that 44 CFR 60.3(a)(2) effectively integrates all other programs into the NFIP. (DEIS p. 1-19). Either way, the effect of these other programs – both positive and negative – on ESA species and habitat needs to be isolated and captured in the EIS, rather than perpetuating the myth that only the NFIP controls the effects of development in the floodplain.

Also, as part of the land use analysis, FEMA repeatedly asserts that it simply did not have the data available to accurately predict likely development in the floodplain in the future. Tillamook County acknowledges that NEPA does not call for FEMA to speculate. But FEMA has access to all local floodplain permitting information in the Plan Area. (Indeed, FEMA regularly collects and reviews this data as part of its CAC and CAV processes.) Tillamook County understands that analyzing this amount of data would have been a significant undertaking, but it is necessary to provide a reasonably accurate analysis for the EIS, and it is inaccurate for FEMA to suggest that this information is not available to it to complete its environmental review.

Tillamook County notes that all of the model projects used for the DEIS are unrealistic because they assume the availability of on-site land for mitigation. This assumption is particularly problematic for development in the RBZ since the Implementation Plan provides that all impacts within the RBZ must be mitigated in the RBZ, as well as for compensatory flood storage since the Implementation Plan provides that compensatory storage must be provided at the same elevation as the fill. These conditions make finding qualifying mitigation sites extremely difficult and in some cases effectively impossible – yet the DEIS simply assume their availability. As a result, even though the DEIS found significant impacts, it still actually underestimates the impacts of Alternatives 2 and 3. The model

project analyses need to be updated to consider the accurate cost and availability of mitigation sites, rather than simply assuming their availability.

If a project proponent cannot find viable, affordable land for the required “no net loss” mitigation, the project will not go forward. This is true for water-dependent port development projects, low-income housing development, and critical public infrastructure alike. The DEIS includes too little recognition of that impact in the analysis and should further evaluate how currently thriving communities will fare under new regulations that effectively freeze the existing development in place because the cost of redevelopment or expansion under the new standards is simply too great.

Tillamook also disputes the DEIS’s conclusion that Alternatives 2 and 3 will increase the value of property within the SFHA. (DEIS, p. 4-35). Based on our experience, this assertion is absurd. Properties in the SFHA will become *less valuable*, both those developed and those undeveloped, as potential buyers become aware of the staggering restrictions and corresponding costs associated with meeting FEMA’s “no net loss” mitigation standards. Admittedly, there may be a few buyers who will unwittingly purchase property subject to these restrictions, or others who will see a bargain in SFHA land that can no longer be economically improved or redeveloped, but overall Tillamook County’s Assessment and Taxation staff anticipate that implementation of either Alternative 2 or 3 will result in long-term devaluation of all properties within the SFHA.

Finally, FEMA continues to misunderstand the concept of cumulative impacts. The DEIS asserts that because it considers the impacts from the Implementation Plan across the Plan Area, it has considered cumulative impacts. But cumulative impacts are not the effects *of the proposed action*. Cumulative impacts include the effects of other projects in the Plan Area that occur irrespective of the Implementation Plan – for example, projects not in, but perhaps immediately outside of, the floodplain. Had FEMA done an accurate cumulative impacts analysis, it might have seen how other projects in the Plan Area contribute both positively and negatively to impacts on ESA listed species and their habitat. Even under the recent changes to NEPA, the effects of these other projects should have been included in Existing Conditions and the No Action alternative, so that their effects are isolated from the alleged effects of the NFIP.

IV. The DEIS highlights numerous errors in the BiOp analysis. It is time for FEMA to reinitiate consultation with NMFS.

The BiOp’s jeopardy and adverse modification conclusions are based on NMFS’s finding that significant amounts of development have occurred in the SFHA that are attributable to the NFIP. The DEIS land use analysis demonstrates that NMFS’s assumptions about the level of floodplain development were significantly overstated and simply wrong – and thus, NMFS’s conclusion that floodplain development in Oregon is causing jeopardy and adverse modifications warrants review. While the DEIS concludes that implementation of Alternatives 2 and 3 would cause significant adverse land use impacts throughout the Plan Area, the data suggests *much less* ground disturbing activities in floodplain than NMFS assumed in BiOp. See DEIS Tables 4.1, 4.2 and 4.6. For example, Table 4.6 concludes that only 1,567.5 acres of floodplain were converted to developed status in the Plan Area in last 10 years, including only 484.5 acres in UGB. From 2011-2021, the proportion of the

SFHA within a UGB that converted to developed land cover types was approximately 0.5 percent. This is significantly less floodplain development than NMFS assumed in BiOp analysis.

Further, the BiOp wrongly attributes past development to NFIP. The BiOp discusses floodplain development generally and does not differentiate between development that occurred before and after the implementation of the NFIP in Oregon. Based on FEMA's Community Status Book Report, most Oregon communities received their first Flood Hazard Boundary Maps in the 1970s. Those maps showed basic floodplain boundaries, but not base flood elevations. Thereafter, in the late 1970s continuing through the first decade of the 2000s, FEMA produced Flood Insurance Rate Maps (FIRMs) for most Oregon NFIP participating communities. Development that occurred before the issuance of the first FIRMs and local adoption of the NFIP's minimum standards simply cannot be attributed to the NFIP, but the BiOp includes no differentiation between pre- and post-NFIP floodplain development.

In addition, NMFS seems to assume that all development currently in the floodplain was within the floodplain when it was developed. As FEMA knows, floodplain boundaries change – and typically expand – over time. As a result, many structures that are now considered to be located in the floodplain were not in the floodplain at the time they were constructed; instead, the floodplain boundaries were expanded after their construction to include those structures. (These are recognized as pre-FIRM structures in FEMA's nomenclature). Yet NMFS also attributes the impacts of these structures to the NFIP, although the NFIP standards were not applicable to them at the time these were built.

In addition, the DEIS explains “[o]nce a community adopts a higher standard than the minimum standard, the higher standard takes precedence and must be enforced (44 CFR 60.1(d)).” (DEIS, p. 1-15). The BiOp, by comparison, does not acknowledge, much less include in its analysis, the various ways in which NFIP participating communities have adopted more restrictive standards. Instead, the BiOp assumed that only the minimum standards from 44 CFR 60 applied in the Plan Area. Thus, the BiOp underestimated the existing restrictions on floodplain development.

Also, in concluding that floodplain development under the NFIP causes jeopardy and adverse modification, NMFS elected to consider only development that has a negative impact on floodplain habitat and did not consider the various restoration projects – such as the Southern Flow Corridor Project and Salmon SuperHwy in Tillamook. Those projects have restored more than 500 acres of tidal wetlands and 132 miles of stream habitat for fish. The BiOp simply does not acknowledge these types of activities. FEMA's Record of Decision for the Southern Flow Corridor Project can be found at [Southern Flow Corridor Project](#). Details regarding the Salmon SuperHwy can be found at [The Salmon SuperHwy](#). Such restoration projects are also subject to local floodplain permitting under the NFIP, and thus should have been considered as part of an analysis of the alleged effects of the NFIP. Notably, these projects rely on the cooperation of many private property owners. Tillamook County is finding that private property owners are substantially less interested and willing to participate such restoration projects since learning of the “no net loss” mitigation standard in FEMA's Implementation Plan.

To date, FEMA has responded to the BiOp primarily by explaining that many of the RPAs proposed by NMFS are beyond FEMA's authority under the NFIP. FEMA needs to take this further and explain the myriad errors in NMFS's analysis which resulted in NMFS's erroneous jeopardy and adverse

modification conclusion. With corrected information and analysis, NMFS should concur with FEMA's original conclusion that the NFIP is not likely to adversely affect ESA-listed species and habitat. At a minimum, NMFS should substantially dial back its Reasonable and Prudent Alternative to something that FEMA can reasonably implement without causing significant adverse effects within NFIP participating communities.

V. Conclusion

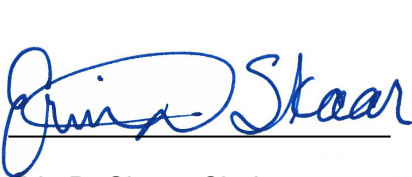
Tillamook County acknowledges that FEMA is in a difficult position. FEMA has always taken the position that the NFIP does not cause floodplain development and thus does not cause adverse effects to ESA-listed species in the floodplain. At the same time, NMFS has wrongly concluded that implementation of the NFIP in Oregon causes jeopardy and adverse modification to ESA listed species and their habitat. FEMA's solution to this difficult position, however, is untenable. Rather than either calling out the errors in NMFS's analysis or looking for ways that it can reasonably change the implementation the NFIP within the boundaries of the NFIA, FEMA has elected a path that shifts the burden for FEMA's alleged ESA non-compliance to local NFIP-participating jurisdictions. As the DEIS concludes, the burden from this shift is going to be significant and adverse to communities' land use, economies and public infrastructure. This cannot be accepted or advanced further by FEMA.

Tillamook County asks FEMA to select the No Action Alternative and to go back and develop alternatives that are in fact reasonable and feasible and do not cause significant adverse impacts to Oregon or reinitiate consultation with NMFS.

Tillamook has referenced several other documents in this comment. These documents are all either in FEMA's possession or easily accessible to FEMA. We request that all referenced documents also be included in the record for this EIS. If FEMA has any difficulty finding any of the referenced documents, please let us know and we can provide them.

Sincerely,

BOARD OF COMMISSIONERS FOR TILLAMOOK COUNTY, OREGON



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Mary Faith Bell, Commissioner