Overview of Compliance Options
“Insanity: doing the same thing over and over again and expecting different results”

Albert Einstein
Reasonable and Prudent Alternative

Summary of Elements

1. Notify Puget Sound communities of determination
2. Change mapping procedures to reduce impacts
3. Require communities to consider impacts on fish habitat when issuing floodplain development permits
4. Changes to CRS program
5. Addressing levee vegetation maintenance effects
6. Mitigation to adversely affected habitat
7. Report to NMFS on progress towards meeting requirements
44 CFR 60.3 (a) (2) A community shall:

- Assure all necessary permits have been received from State and Federal agencies from which approval is required by Fed/State law.

- Requires a showing of compliance, particularly with CWA 404 permits, but includes ESA Section 10 permits.
FPM Performance Criteria: Element 3

- Compliance with the ESA in the NFIP
- In the CFR since 1968
- No change to the rule
- Step up enforcement of the rule
- Changing the culture of floodplain management
Changing the Culture of Floodplain Management

► Communities are making changes
  ▪ 3 years ago vs. now
  ▪ Communities are already changing

► FEMA is changing the way we do business
  ▪ Pursuing National ESA implementation into NFIP
  ▪ National NFIP Reform
  ▪ Risk MAP
Compliance Options

Three Doors Approach

1. Model Ordinance (programmatic approach)
2. Checklist (community by community approach)
3. Permit by Permit Showing of Compliance (project by project approach)
Model Ordinance

- Programmatic approach
- Combines Floodplain requirements (Structural based) with Habitat requirements (species based)
- Written ESA inclusive, not salmon specific
- More than minimally necessary (avoid adverse effect vs. eliminate Jeopardy/Adverse Mod.)
- Technical Assistance
- Not required, but highly encouraged
Ordinance Review Process

- FEMA reviews the submittal against the model ordinance
- FEMA will provide a comment letter to community
- When approved FEMA will send a letter to the community
- Technical Assistance meetings available
- Future changes need to be reviewed again
Community Checklist

- Programmatic approach
- Utilizes existing local/state regulations adopted at the local level thus providing flexibility
- If item is missing use model ordinance to add language
- Meets the minimum requirements of the Biological Opinion (may be salmon centric)
- Not required, but highly encouraged
Community Checklist

► Building Blocks
  ▪ SMP
  ▪ GMA
  ▪ Critical Areas Ordinances
  ▪ Flood Damage Prevention Ordinances
  ▪ Salmon Recovery Plans

► We need to do more
  ▪ Enact the recovery plans
  ▪ Lower SEPA thresholds
  ▪ Higher regulatory standards
Community Checklist Review Process

- FEMA reviews the submittal against the checklist
- FEMA will provide a comment letter to community
- When approved FEMA will send a letter to the community
- Technical assistance meetings available
- Changes need to be reviewed
Permit by Permit

- Individual approach
- Requires demonstration of compliance on project level basis
- Habitat Assessment required for each project (requires a look at cumulative effects)
- Utilize ESA Sections:
  - Section 7 consultation
  - Section 4d approval
  - Section 10 Permit
- Default option
Choosing Your Door

- **Door #1 Model Ordinance**
  - Provide a copy of the ordinance and proof of adoption
  - Similar to Flood Damage Prevention ordinance process currently in place

- **Door #2 Checklist**
  - Provide a copy of the checklist with cross references and copies of appropriate local ordinances or written procedures
  - Detailed explanation on why community thinks that the cited regulation meets the performance standard

- **Door #3 Permit by Permit**
  - Provide a letter stating that your intention is to not permit any projects in the SFHA unless project demonstrates compliance with ESA
  - Explain how this is set in code, policy, or procedure
Enforcement

► Community Assistance Visits (CAV)/Community Assistance Contacts (CAC)

► Failure to Enforce
   .
   .
   .
   .
Habitat Assessment Workshops

- FEMA and NMFS will conduct 4 workshops this spring
  - North Sound
    - Burlington- April 21
  - Mid-Sound
    - Snohomish County
  - South Sound
    - Lacey/Tacoma
  - Olympic Peninsula
    - Bremerton- April 22
Contact Information

John Graves, CFM
130 228th Street SW
Bothell, WA 98021
425-487-4737
john.graves1@dhs.gov
More Information

http://www.fema.gov/about/regions/regionx/nfipesa.shtm

or

www.fema.gov and search for ESA