National Wildlife Federation
PACIFIC REGIONAL CENTER — SEATTLE OFFICE
Inspiring Americans to protect wildlife for our children's future.

A GUIDE TO FLOODING IN PUGET SOUND

In Washington's Puget Sound area, thousands of homes are in flood-prone areas, resulting in flood disasters that have cost the region too much money and far too many lives. And this development threatens the survival of salmon and orca also.

Highway 20, 2003. Seattle Municipal. Archive

National Wildlife Federation, together with attorneys at Earthjustice, is working to press the federal government to ensure that FEMA's National Flood Insurance Program protects public safety, prevents property damage and no longer harms endangered species.

FAQ: WHAT YOU NEED TO KNOW

Q. Why did the National Wildlife Federation (NWF) sue FEMA?

A. Federal agency experts at National Marine Fisheries Service (NMFS) have determined that FEMA's National Flood Insurance Program is encouraging dangerous and harmful development in floodplains. Not only are these areas important to protect for people, but they are important habitat for endangered species like salmon. Scientific studies have demonstrated that floodplains are critical foraging and rearing habitat for salmon. Salmon that can't access food-rich floodplains have lower growth rates and lower survival potential than salmon that can. Development and levees often prevent access to these important habitat areas.

Although federal law requires FEMA to update its flood insurance program to avoid these impacts, FEMA continues to encourage risky development in flood-prone areas of Puget Sound. This increases the flood risks—and the flood costs—for all of us, and threatens the survival of salmon and other species.

NMFS found that FEMA's flood insurance program significantly influences whether and how development occurs in floodplains. FEMA was given three years to update its insurance

program. During that time, FEMA has made few, if any changes. On September 22, 2011 the deadline passed and FEMA had still failed to make the required changes.

Cities and Counties were put on notice long ago of their responsibilities. In October 2008, FEMA sent letters and later sent follow-up letters to all 122 jurisdictions with information of the pending changes to the flood insurance program and their responsibility to comply with the Endangered Species Act. Additionally, FEMA claims to have held more than 400 meetings with municipalities in Puget Sound and to have consulted with each municipality at least once.

Taxpayers should know that FEMA is a major underwriter of flood insurance policies in the U.S. There are about 42,000 policies in force in Puget Sound.

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Q. How long has this case been going on?

A. About 9 years.

In 2003, NWF filed the initial lawsuit against FEMA's National Flood Insurance Program in Puget Sound, claiming that the NFIP encouraged development in floodplains and harmed salmon. NWF requested that the judge order FEMA to consult with NMFS under Section 7 of the Endangered Species Act to determine if the NFIP was harming salmon.

In 2004, a federal judge agreed with NWF and ordered FEMA to consult with NMFS.

In 2008, NMFS issued its analysis and decision in a document known as a Biological Opinion. The Biological Opinion stated that the NFIP was harming salmon and orca in violation of the Endangered Species Act. NMFS concluded that if the NFIP continued unchanged, it would lead to the extinction of Puget Sound Chinook and orca. The Biological Opinion identified changes to key parts of the NFIP (mapping, floodplain management, levees, and others) that must change so that the NFIP no longer harms salmon. NMFS gave FEMA three years to implement the required changes.

In September, 2011, the deadline for FEMA to make the required changes passed. Because FEMA had not made the required changes and continued to implement the NFIP in violation of the ESA, NWF filed a notice of intent to sue.

In December, 2011, NWF filed the formal lawsuit and a request for Preliminary Injunction to prevent further irreparable harm to salmon habitat.

Q. How big is the flooding problem in Washington?

A. The costs of flooding in Western Washington have been severe. Since 1990--

- Puget Sound has experienced 16 federally declared flood disasters
- 58 lives have been lost.[i]
- More than $1.4 Billion in flood damages have been paid by taxpayers.
- Levees were overtopped, damaged or failed in 10 of the 16 floods, costing $125M in repairs to over 200 sites.
- 833 homes in the Puget Sound Area have flooded repeatedly (three times or more), and cost taxpayers $71 Million in insurance claims. [ii]
- Interstate 5 has been closed four times, costing an estimated $181 million. Iii

Q. Are current state and local regulations sufficient to protect floodplains and salmon habitat?

A. No.

According to the NMFS NFIP Biological Opinion, approximately 10 square miles of floodplains are lost each year in Puget Sound due to development

According to a recent report by NOAA, most populations of Puget Sound Chinook salmon have declined in abundance since their last status review in 2005. Widespread loss and degradation of habitat is sited as a key factor in their continuing decline.

And according to a recent Puget Sound Partnership report—

- ✓ 90% of floodplains and wetlands in Puget Sound lowlands have been lost
- ✓ 71% of Washington's floodplains are in poor condition
- ✓ 73% of Coho habitat loss is due to ditching, installing dikes and dredging

Q. What have the plaintiffs asked the Court to do?

A. NWF has asked the Court to find that FEMA's actions violate federal law. Until the case is resolved, NWF has asked the Court to issue a "preliminary injunction" to temporarily halt federal flood insurance policies for new floodplain developments in the most important salmon habitat areas of Puget Sound. This essentially means a temporary "time out" on new flood insurance until this issue can be resolved.

The preliminary injunction does not affect all of Puget Sound. It only affects the communities with the most sensitive salmon habitat—about half of the 122 jurisdictions.

Q. Will this block all development in Puget Sound floodplains?

A. No. The preliminary injunction will not stop development. The injunction applies to FEMA, not individual communities or developers. What would be temporarily blocked is new federal flood insurance, which studies show acts as an incentive to development in dangerous and sensitive areas. Developers are allowed to build without flood insurance if they choose and communities can choose to withdraw from the federal flood insurance program, although new floodplain development would likely be reduced in either case. NWF has also asked the judge to apply the injunction only in the most sensitive areas and authorize projects that have undergone adequate environmental review.

Q. What happens next?

A. A hearing on the Preliminary Injunction motion has been scheduled for March 27, 2012. The case will be heard by Judge Ricardo Martinez in Seattle. NWF is represented by attorneys Jan Hasselman and Todd True of the non-profit law firm Earthjustice.

Q. Does flooding affect all Washington residents?

A. The costs of flooding touch everyone, from federal, state and local governments to businesses, builders, farmers, homeowners and taxpayers. Flood disasters have affected every county in the state and have cost taxpayers more than $1.4 billion since 1990. These costs include emergency response, disaster relief, clean up, levee repair, and rebuilding. All too often, damaged structures are rebuilt in the same flood-prone location and then damaged again in future floods. Many of the flood-related deaths occur when people attempt to drive their car through flooded roadways. And flood-damaged roads prevent commerce and access to work, causing millions in economic losses for businesses and workers.

Q. Which jurisdictions are affected by the Preliminary Injunction, and which are not?

A. Tier 1 and 2 jurisdictions (as defined by the NFIP BiOp) are affected by the Preliminary Injunction because their floodplain habitat is the most valuable for salmon survival. Tier 3 jurisdictions are not affected by the Preliminary Injunction.

Puget Sound Communitites by Tier as Identified in the NFIP-Puget Sound Biological Opinion (9-22-2008)

Tiers 1 and 2 are affected by the Preliminary Injunction ***Tier 3 is NOT affected by the Preliminary Injunction***

Tier 1		Tier 2		Tier 3	
COMMUNITY	**COUNTY**	**COMMUNITY**	**COUNTY**	**COMMUNITY**	**COUNTY**
CLALLAM COUNTY *	CLALLAM COUNTY	AUBURN, CITY OF	KING COUNTY	PORT ANGELES, CITY OF	CLALLAM COUNTY
LOWER ELWHA KLALLAM TRIBE	CLALLAM COUNTY	BURIEN, CITY OF	KING COUNTY	ALGONA, CITY OF	KING COUNTY
SEQUIM, CITY OF	CLALLAM COUNTY	CARNATION, CITY OF	KING COUNTY	BEAUX ARTS VILLAGE, CITY OF	KING COUNTY
COUPEVILLE, TOWN OF	ISLAND COUNTY	DUVALL, CITY OF	KING COUNTY	BELLEVUE, CITY OF	KING COUNTY
ISLAND COUNTY *	ISLAND COUNTY	KENT, CITY OF	KING COUNTY	BLACK DIAMOND, CITY OF	KING COUNTY
LANGLEY, CITY OF	ISLAND COUNTY	NORTH BEND, CITY OF	KING COUNTY	BOTHELL, CITY OF	KING COUNTY
OAK HARBOR, CITY OF	ISLAND COUNTY	RENTON, CITY OF	KING COUNTY	CLYDE HILL, CITY OF	KING COUNTY
JEFFERSON COUNTY *	JEFFERSON COUNTY	SEATTLE, CITY OF	KING COUNTY	COVINGTON, CITY OF	KING COUNTY
PORT TOWNSEND, CITY OF	JEFFERSON COUNTY	SKYKOMISH, TOWN OF	KING COUNTY	DES MOINES, CITY OF	KING COUNTY
ENUMCLAW, CITY OF	KING COUNTY	SNOQUALMIE INDIAN TRIBE, TRIBE OF	KING COUNTY	FEDERAL WAY, CITY OF	KING COUNTY
KING COUNTY*	KING COUNTY	SNOQUALMIE, CITY OF	KING COUNTY	ISSAQUAH, CITY OF	KING COUNTY
PACIFIC, CITY OF	KING COUNTY	TUKWILA, CITY OF	KING COUNTY	KENMORE, CITY OF	KING COUNTY
MASON COUNTY*	MASON COUNTY	WOODINVILLE, CITY OF	KING COUNTY	KIRKLAND, CITY OF	KING COUNTY
BUCKLEY, CITY OF	PIERCE COUNTY	BAINBRIDGE ISLAND, CITY OF	KITSAP COUNTY	LAKE FOREST PARK, CITY OF	KING COUNTY
EATONVILLE, TOWN OF	PIERCE COUNTY	BREMERTON, CITY OF	KITSAP COUNTY	MEDINA, CITY OF	KING COUNTY
FIFE, CITY OF	PIERCE COUNTY	KITSAP COUNTY *	KITSAP COUNTY	MERCER ISLAND, CITY OF	KING COUNTY
MILTON, CITY OF	PIERCE COUNTY	PORT ORCHARD,	KITSAP	NORMANDY PARK, CITY	KING COUNTY

PIERCE COUNTY*	PIERCE COUNTY
PUYALLUP, CITY OF	PIERCE COUNTY
ROY, TOWN OF	PIERCE COUNTY
SUMNER,CITY OF	PIERCE COUNTY
TACOMA, CITY OF	PIERCE COUNTY
BURLINGTON, CITY OF	SKAGIT COUNTY
HAMILTON, TOWN OF	SKAGIT COUNTY
LA CONNER, TOWN OF	SKAGIT COUNTY
LYMAN, OWN OF	SKAGIT COUNTY
MOUNT VERNON, CITY OF	SKAGIT COUNTY
SAUK-SUIATTLE TRIBE	SKAGIT COUNTY
SEDRO- WOOLLEY, CITY OF	SKAGIT COUNTY
SKAGIT COUNTY *	SKAGIT COUNTY
DARRINGTON, TOWN OF	SNOHOMISH COUNTY
SNOHOMISH COUNTY *	SNOHOMISH COUNTY
THURSTON COUNTY *	THURSTON COUNTY
YELM, CITY OF	THURSTON COUNTY
BELLINGHAM, CITY OF	WHATCOM COUNTY
EVERSON, CITY OF	WHATCOM COUNTY
FERNDALE, TOWN OF	WHATCOM COUNTY
LUMMI INDIAN RESERVATION	WHATCOM COUNTY
LYNDEN, CITY OF	WHATCOM COUNTY
WHATCOM COUNTY *	WHATCOM COUNTY

CITY OF	COUNTY
POULSBO, CITY OF	KITSAP COUNTY
SKOKOMISH INDIAN TRIBE	MASON COUNTY
ORTING, TOWN OF	PIERCE COUNTY
SOUTH PRAIRIE, TOWN OF	PIERCE COUNTY
WILKESON, TOWN OF	PIERCE COUNTY
CONCRETE, TOWN OF	SKAGIT COUNTY
ARLINGTON, CITY OF	SNOHOMISH COUNTY
EVERETT, CITY OF	SNOHOMISH COUNTY
GOLD BAR, CITY OF	SNOHOMISH COUNTY
GRANITE FALLS, CITY OF	SNOHOMISH COUNTY
INDEX, TOWN OF	SNOHOMISH COUNTY
LAKE STEVENS, CITY OF	SNOHOMISH COUNTY
MARYSVILLE, CITY OF	SNOHOMISH COUNTY
MONROE, CITY OF	SNOHOMISH COUNTY
SNOHOMISH, CITY OF	SNOHOMISH COUNTY
STANWOOD, CITY OF	SNOHOMISH COUNTY
SULTAN, CITY OF	SNOHOMISH COUNTY

OF	
REDMOND, CITY OF	KING COUNTY
SAMMAMISH, CITY OF	KING COUNTY
SEATAC, CITY OF	KING COUNTY
SHORELINE, CITY OF	KING COUNTY
SHELTON, CITY OF	MASON COUNTY
BONNEY LAKE, CITY OF	PIERCE COUNTY
EDGEWOOD, CITY OF	PIERCE COUNTY
FIRCREST, CITY OF	PIERCE COUNTY
GIG HARBOR, TOWN OF	PIERCE COUNTY
LAKEWOOD, CITY OF	PIERCE COUNTY
RUSTON, TOWN OF	PIERCE COUNTY
STEILACOOM, TOWN OF	PIERCE COUNTY
UNIVERSITY PLACE, CITY OF	PIERCE COUNTY
SAN JUAN COUNTY*	SAN JUAN COUNTY
ANACORTES, CITY OF	SKAGIT COUNTY
BRIER, CITY OF	SNOHOMISH COUNTY
EDMONDS, CITY OF	SNOHOMISH COUNTY
LYNNWOOD, CITY OF	SNOHOMISH COUNTY
MILL CREEK, CITY OF	SNOHOMISH COUNTY
MOUNTLAKE TERRACE, CITY OF	SNOHOMISH COUNTY
MUKILTEO, CITY OF	SNOHOMISH COUNTY
BUCODA, TOWN OF	THURSTON COUNTY
LACEY, CITY OF	THURSTON COUNTY

i FEMA: Washington State Disaster History." FEMA | Federal Emergency Management Agency. Web. 09 May 2011. Available online at: http://www.fema.gov/news/disasters_state.fema?id=53

ii National Wildlife Federation. Washington State Flood Damage Data. 9 June 2011. Raw data. National Wildlife Federation, Pacific Regional Center, Seattle.

iii National Wildlife Federation. Washington State Flood Damage Data. 9 June 2011. Raw Data. National Wildlife Federation,