FEMA Fact Sheet

National Flood Insurance Program Request for Information and Effects of the Endangered Species Act

FEMA posted in the Federal Register a Request for Information (RFI) that contains a list of questions about the National Flood Insurance Program's minimum floodplain management standards. This notice also requests comments on how the National Flood Insurance Program could better promote the conservation of threatened and endangered species and their habitats consistent with the Endangered Species Act in its floodplain management standards.

List of Questions

The below non-exhaustive list of questions is meant to assist members of the public in the formulation of comments and is not intended to restrict the issues that commenters may address.

(1) FEMA has addressed risk to existing or non-conforming construction (buildings not constructed to current minimum floodplain management standards) in the regulations through the "substantial improvement/substantial damage" requirements. These requirements have largely been tied to the definitions of "substantial improvement" and "substantial damage." Is "substantial improvement/substantial damage" the best way to address risk for non-conforming buildings? If so, should FEMA consider the use of cumulative "substantial improvement" and/or "substantial damage" requirements over a given time period as a requirement? Should "substantial improvement" and/or "substantial damage" use an assessment cost value or a replacement cost value, or are there other valuation methods that may be more appropriate? Should the regulations provide more detail on how the "substantial improvement" and/or "substantial damage" determinations should be made?

(2) The elevation of structures above expected base flood levels, called "freeboard," is an important precept of floodplain management. "Freeboard" is usually expressed in feet above a base flood elevation for purposes of floodplain management. NFIP communities must require new, "substantially improved," or "substantially damaged" structures in the SFHA to be elevated to the height of the one percent annual chance flood level, also referred to as the Base Flood Elevation or BFE. Some States and communities require newly constructed buildings to be built higher than the base flood elevation to further reduce the risk of flood damage with freeboard requirements set to a specific height to provide the additional margin of risk reduction above the BFE. The NFIP has strongly encouraged but not required higher elevation standards, such as those included in the I-Codes and ASCE 24. Should FEMA update flood elevation requirements for SFHAs by setting higher freeboard levels? If so, what should FEMA consider

for the higher elevation levels for freeboard? What data exists to support higher elevation levels for freeboard or methods that provide a more consistent level of protection? Will freeboard elevation generally raise the market value of properties in SFHAs and if so how would the increase in market value compare to the cost of elevation? Are there other technology advancements or building standards in design and construction that should be considered beyond freeboard levels? If so, do they address other floodplain management criteria (*e.g.,* reasonably safe from flooding; adequately anchored; methods and practices that minimize or are resistant to flood damage; water load values; wind load values; substantially impermeable)?

(3) FEMA has not developed higher minimum floodplain management standards for structures and facilities that perform critical actions as defined in 44 CFR 9.4. These structures and facilities must currently comply with the same minimum requirements as non-critical structures and facilities except for structures and facilities that are covered by Executive Order (E.O.) 11988, Floodplain Management.[16] Should FEMA develop higher standards for these structures and facilities? If so, why? Should FEMA consider differences between certain structures and facilities, such as use, occupancy, operational size, or public and private operators in developing higher standards? Should FEMA consider differences such as use, occupancy, operational size, or public and private operators in developing higher standards for structures and facilities performing critical actions?

(4) Recurring flooding events provide evidence that areas adjacent to the SFHA experience significant flooding and unacceptable levels of disaster suffering, yet the NFIP minimum floodplain management standards do not extend to these locations. How can the NFIP take a more risk-informed approach to defining flood hazard? Is there a need for FEMA's NFIP minimum floodplain management standards to be extended by establishing specific requirements for the areas immediately adjacent to the SFHA? If so, what specific floodplain management standards could be successful to reduce losses and hardship? What approaches would be effective for identifying these areas for communities to regulate? Would new zones or overlays depicted with the SFHA via the National Flood Hazard Layer (NFHL) [17] serve this need Start Printed Page 56717 or are there other tools that could be more effective? Should FEMA expand the SFHA generally from the 1 percent annual chance flood area to a 0.2 percent or a 0.1 percent area, and what decision rule should FEMA use to choose the appropriate area? Should the SFHA be expanded from a certain percent annual chance area to the flood of record (or whichever is higher)? Similarly, what standards or restrictions should be considered for high risk flood areas that are within the SFHA (*e.g.,* flash flood, mudslide, erosion prone, high velocity)? Alternatively, should FEMA be aware of and/or use a different metric to identify flood risk?

(5) In the past 30 years, 1 of every 6 dollars paid out in NFIP claims has gone to a building with a history of multiple floods.[18] What steps should FEMA take to reduce the disproportionate financial impact the multiple loss properties have on the NFIP? Should FEMA consider regulatory changes for properties that have repetitive losses? [19] If so, what should the minimum NFIP floodplain management standards be for those properties? Should these properties be targeted for managed retreat? How should the NFIP consider issues of equity when deciding how to address these properties?

(6) FEMA must ensure that the implementation of the NFIP does not jeopardize T&E species and does not result in the destruction or adverse modification of their designated critical habitats. FEMA must also ensure the NFIP is

effective in meeting its goals of providing flood insurance, mitigating flood loss, reducing flood risk, and encouraging responsible development. What additional considerations should FEMA incorporate into the NFIP minimum floodplain management standards to promote the protection and conservation of T&E species and their designated habitat? In what ways could the NFIP minimum floodplain management standards be amended to more explicitly or comprehensively protect the natural and beneficial functions of floodplains to recognize their intrinsic value and benefits to floodplain management, T&E species, and the environment generally? How do current Federal environmental requirements and standards work within NFIP participating State, local, Tribal, and territories to identify and address impacts to T&E species and their habitats? If there are State-specific environmental requirements and/or standards, how could changes to the NFIP support or interfere with the current State regulatory environment?

(7) How could one or more of the following specific changes to the NFIP minimum floodplain management standards benefit T&E species and their habitats while furthering the goal of improving resilience to flooding? What would the potential impact be on the NFIP participating communities?:

(a) Limiting construction in any identified riparian buffer zone;

(b) Requiring compensatory storage to have no net increase in projected flooding levels for all development in the SFHA;

(c) Requiring a more restrictive regulatory floodway standard; [20]

(d) Requiring compensatory conservation credits/areas for all development in portions of the SFHA that provide natural and beneficial functions;

(e) Requiring low impact development standards and/or permeable surfaces that may benefit T&E species and habitat; and/or

(f) Prohibiting or limiting construction in any portion of the SFHA.

How should the suggested changes listed above be prioritized to best benefit T&E species while also furthering the goals of the NFIP? Are there additional changes that should be considered and if so, what are they and what is their prioritization in comparison to the changes listed?

(8) NFIP participating communities can also improve protection of T&E species and their critical habitats through their floodplain management activities. In what ways can NFIP participating communities demonstrate to FEMA that permitted floodplain development does not adversely impact T&E species and their habitats? What changes are required to existing NFIP minimum floodplain management standards to allow NFIP participating communities to better demonstrate no adverse impact? What ways, such as technical assistance or other means, could FEMA assist NFIP participating communities to help protect T&E species and their habitats?

(9) Local floodplain managers are often tasked with enforcement of NFIP minimum floodplain management standards. In what ways can FEMA strengthen the NFIP participation and increase enforcement of NFIP minimum floodplain management standards to build community resilience? How can FEMA better assist communities to mitigate flood loss and reduce risk? In what ways could FEMA better support local floodplain managers to effectively enforce the NFIP minimum floodplain management standards?

(10) While the NFIP minimum floodplain management standards are broadly applicable nationwide and provide a sound basis from which communities can improve their floodplain management programs, there may be floodplain uses, occupancies, and flooding characteristics that call for more specific regulatory initiatives. Are there any NFIP minimum floodplain management standards that currently cause hardship, conflict, confusion or create an economic or financial burden? If so, what are they and how can they be modified to reduce the burdens while still meeting the objectives of mitigating flood loss and reducing risk? Some structures in a community may be exempted from the NFIP minimum floodplain management standards through a variance. Are there changes that can be made to variance requirements to help reduce the burdens while still meeting the objectives of mitigating flood loss and reducing risk? Are there specific types of development or uses that should be considered for exemption from NFIP minimum floodplain management standards or should different standards apply? If so, what are they, why should specific types of development or uses be considered for exemption, and what different standards should be applicable?

(11) There have been recent proposals regarding disclosure of flood risk,[21] recommending development of an affirmative obligation on the part of sellers or lessors of residential properties to disclose information about flood risk to prospective buyers or lessees. These proposals would require States and communities to establish flood risk reporting requirements for sellers and lessors as a condition of participation in the NFIP. Should States and/or local governments be required to establish minimum flood risk reporting requirements for sellers and lessors as a condition for participation in the NFIP? Should there be an affirmative obligation on the part of sellers and/or lessors of residential properties to disclose information about flood risk to prospective buyers or lessees? If so, Start Printed Page 56718 what is the most effective way to require this disclosure? Should the process be modeled on requirements for sellers to disclose details on environmental hazards, such as lead-based paint hazards? What details should be included in the disclosure, such as knowledge of past floods and/or flood damage, a requirement to maintain flood insurance, knowledge the property is located in a SFHA at the time of offering, and the cost of existing flood insurance?

(12) The United States is experiencing increased flooding and flood risk from climate change.[22] Climate change may exacerbate the risk of flooding to homeowners. Should FEMA base any NFIP minimum floodplain management standard changes on future risk and specifically on projections of climate change and associated impacts, such as sea level rise? What equity considerations should be factored into such decisions if climate change disproportionately harms underserved and vulnerable areas? What other considerations should be factored into an analysis involving climate change? Should the NFIP better distinguish NFIP minimum floodplain management standards between riverine and coastal communities? Should the NFIP minimum floodplain management standards incorporate pluvial (surface/urban) flooding concerns? Are there specific measures and standards that should be taken to ensure structures can withstand the greater intensity, duration, frequency and geographic distribution of

flooding events? If so, what are they and how can those measures and standards ensure structures and communities can readily adapt and increase resilience to the impacts of climate change?

(13) The current NFIP minimum floodplain management standards can be found at 44 CFR part 60 subpart A—Requirements for Floodplain Management Regulations. As part of this Request for Information seeking input on new and even transformative reforms to the NFIP minimum floodplain management standards, FEMA also is exploring potential revisions to current regulatory provisions that are unnecessarily complicated, create unintended inequities or could be streamlined. Are there current regulatory provisions that create duplication, overlap, complexity, or inconsistent requirements or unintended inequities with other FEMA or other Federal programs? Are there current regulatory provisions that present recurring difficulties for local and State officials implementing NFIP minimum floodplain management standards and if so, what improvements should be made?

(14) Are there technological advances, building standards, or standards of practice that could help FEMA to modify, streamline, or improve existing NFIP minimum floodplain management standards? If so, what are they and how can FEMA leverage those technologies and standards to achieve the agency's statutory and regulatory objectives?

(15) FEMA recognizes the vital role that State, local, Tribal, and territorial governments play in floodplain management and that they may have innovative solutions to complex floodplain management challenges. What successful mitigation policies, building design standards, building construction standards, T&E species protections, and/or other floodplain management approaches to mitigate flood loss and reduce risk have been taken by State, local, Tribal, and territorial governments? In what ways do the current NFIP minimum floodplain management standards present barriers or opportunities to the successful implementation of those approaches? What capabilities and capacity impacts should FEMA address as it considers changes to the NFIP minimum floodplain management standards and to strengthen NFIP protection of T&E species and their habitats?

(16) As FEMA undertakes an analysis of potential effects of the NFIP on T&E species, the agency must consider the NFIP's effect on floodplain development and the extent to which NFIP actions influence land development decisions. “Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures; mining; dredging; filling; grading; paving; excavation, or drilling operations; or storage of equipment or materials.[23] Is information available on the NFIP's influence on floodplain development? If so, provide or identify any data or materials identifying the NFIP's influence. How can FEMA measure the NFIP's effect on floodplain development? Are there specific NFIP regulations, policies and/or development standards that currently influence State, local, Tribal, and/or territorial governments in their development decisions that may have a positive or negative impact on T&E species and their habitats? If so, what are they and how do they influence development decisions that impact T&E species and their habitats? Are there changes to those regulations, policies and/or standards that, if made, would have a positive impact on T&E species and their habitats? If so, what are those changes?

(17) FEMA is developing a national programmatic framework for nationwide compliance with the ESA and is re-examining the extent to which NFIP actions may have adverse effects on T&E species and their habitats. Should FEMA reconsider its mapping practices, including the issuance of Letters of Map Revision based on Fill (LOMR-Fs)?

Should the placement of fill material, defined as material used to raise a portion of a property to or above the Base Flood Elevation within the SFHA, be prohibited by NFIP minimum floodplain management standards? What would the impact of this change be on T&E species and NFIP participating communities?

(18) Hazard mitigation planning reduces loss of life and property by minimizing the impact of disasters, including floods. It begins with State, local, and Tribal governments identifying natural disaster risks and vulnerabilities that are common in the area and then developing long-term strategies for protecting people and property from similar events. Mitigation plans are key to breaking the cycle of disaster damage and reconstruction. How should FEMA consider integrating mitigation planning with other Federal, State, or local mitigation planning such as community planning, economic planning, coastal zone planning, and other types of planning activities to improve the overall effectiveness of mitigation planning and floodplain management activities? Are there planning best practices, processes, or data that could better inform planning decision-making and the development and implementation of floodplain management standards?