

TO: City Council and Planning Commission

FROM:

DATE: September 10, 2024

RE: FEMA's Oregon National Flood Insurance Program Endangered Species Act Integration Pre-Implementation Compliance Measures

Summary

To remain in good standing in the National Flood Insurance Program, City of Gearhart must amend the Gearhart Zoning Ordinance Flood Hazard Overlay Zone standards to protect endangered species. This report summarizes the alternative approaches to meeting the requirements and outlines a draft schedule for meeting the requirements. Based on City Council and Planning Commission direction in the joint work session September 17th, 2024, staff will prepare zoning ordinance amendments and schedule hearings.

Background

City of Gearhart regulates development in its floodplains to reduce flood risks to life and property, and to maintain its participation in the National Flood Insurance Program administered by FEMA and compliance with State Land Use Planning Goal 7. In response to a National Marine Fisheries Service Biological Opinion (BiOp) FEMA is creating the Oregon Implementation Plan for NFIP-ESA Integration (the Plan) to ensure that the floodplain management practices it oversees will not jeopardize threatened and endangered species. While the Plan will involve changes to floodplain management in Gearhart in the next few to several years, a relatively immediate part of the Plan is requiring local governments to implement "Pre-implementation Compliance Measures" (PICM).

The City must implement PICM's to maintain its good standing in the National Flood Insurance Program. Local governments that do not participate in the National Flood Insurance Program are not eligible to receive certain federal grants and loans for projects in floodplains and they and their citizens do not receive federally subsidized flood insurance and are not eligible to receive federal disaster assistance following flood disasters. In July 2024 FEMA announced that cities throughout most of Oregon, including Gearhart are required by December 1, 2024 to commit to one of three regulatory pathways that will protect threatened and endangered species habitat in floodplains.

Summary of Pre-Implementation Compliance Measures

FEMA identified three alternative approaches that cities such as Gearhart may use:

- Prohibit all new development in the floodplain. To follow this approach, the City would amend the GZO to prohibit all development in the floodplain.
- Adopt a model ordinance that achieves no net loss of habitat functions in floodplains. ([Link to Model Floodplain Ordinance](#)). The model ordinance focuses on protecting three habitat characteristics: 1) undeveloped space 2) pervious surfaces and 3) trees.

The Model Ordinance protects undeveloped space that fish may occupy during floods, prohibiting reduction in the volume of undeveloped space within the floodplain. The Model Ordinance protects the water quality and water runoff quantity/velocity functions provided by pervious areas, prohibiting a net increase in impervious surfaces within the floodplain. The Model

Ordinance protects the water quality, water quantity, and in-stream habitat functions provided by trees in the floodplain, prohibiting a net loss of trees greater than 6 inches measured at breast height. For each of the standards, the ordinance provides for mitigation as an alternative to rigid compliance, and provides for variances.

To follow this approach, the City would amend the GZO, replacing the text of the existing Flood Hazard Overlay Zone (FHO) with the text of the Model Ordinance, modified with basic particulars for City of Gearhart.

- Require permit applicants to develop a Floodplain Habitat Assessment demonstrating “no net loss” of habitat functions in floodplains. ([Link to FEMA’s Habitat Assessment Guidelines](#)). To follow this approach, the City would amend the GZO FHO to require habitat assessments to demonstrate no-net-loss of ecological functions. The Habitat Assessment Guidelines linked above describe what must be included in a Habitat Assessment. Overall a Habitat Assessment describes the project area and its habitat, describes the project, assesses the project impacts on habitat, describes alternative approaches to avoid, minimize, and mitigate the impacts, and includes a mitigation plan where compensatory mitigation is required.

In addition to the above measures, as of August 1, 2024, FEMA is temporarily suspending processing applications for Letters of Map Revision based on Fill (LOMR-Fs) and Conditional Letters of Map Revision based on Fill (CLOMR-Fs) to avoid potentially negative effects on ESA-listed species. These temporary suspensions do not require a response from the City.

Information Available from FEMA

FEMA hosted information sessions in July and August 2024. Recordings of these sessions and written information is available at the following linked webpage: [National Flood Insurance Program – Endangered Species Act Integration in Oregon | FEMA.gov](#). The attached bulletin and letter to the City, and linked Model Floodplain Ordinance, and Habitat Assessment Guidelines provide additional information.

Alternative Approaches for the City of Gearhart

As summarized above, the City may choose from either of the three compliance pathways offered by FEMA: 1) Prohibit all floodplain development 2) Adopt Model Ordinance 3) Require Habitat Assessments demonstrating no net loss of floodplain functions for all floodplain development permits. Additionally, the City may consider mixing the above alternatives. Following are staff comments on alternatives.

- 1) Prohibition. The City already prohibits most development in significant wetlands, riparian areas, and beach and dune overlay areas subject to ocean flooding. This options provides the least flexibility to floodplain property owners and may not be compliant with State Land Use Planning Goals. Staff recommend focusing on the other options below.
- 2) Model Ordinance. This alternative provides relative certainty and objectivity to the floodplain development permit process, at the expense of flexibility and sensitivity to site specific conditions.
- 3) Habitat Assessments. This alternative provides relative flexibility and sensitivity to site specific conditions, at the expense of certainty and objectivity in the floodplain development permit process.
- 4) Hybrid Model Ordinance and Habitat Assessments. The City would adopt the model ordinance with modifications to allow applicants to follow the Habitat Assessment process as an alternative. The alternative provides property owners with the widest range of options for meeting requirements.

Potential Adoption Schedule

Amending the Gearhart Zoning Ordinance is a City Council decision preceded by a Planning Commission Hearing and City Council Hearing and associated public notices. Following is a draft schedule for completing the amendment process.

- Planning Commission Hearing - November 14, 2024
- City Council Hearing - December 4, 2024
- Changes take effect - January, 2024

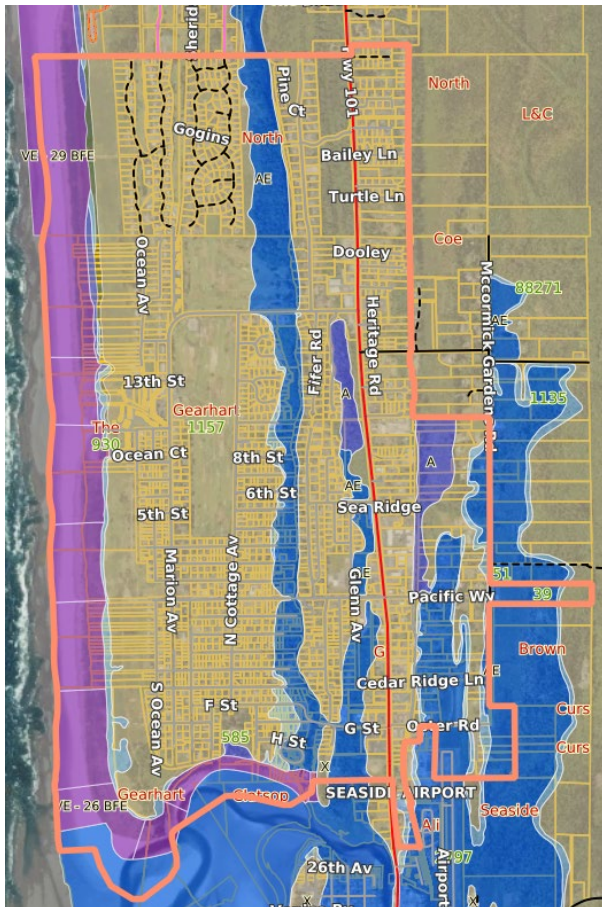
While it is not practical for Gearhart or other local governments to meet FEMA’s December 1st deadline, attempting to follow the above schedule would probably avoid any jeopardy to the City’s standing in the National Flood Insurance program.

Effect of Changes on Gearhart Citizens

Pre-implementation Compliance Measures could most directly effect owners of property in Gearhart’s floodplains. All three pathways that the City is supposed to choose from can be described as increasing regulation on floodplain property owners.

Generally, the new requirements could result in:

- Floodplain property being less developable or there being a smaller range of development options on floodplain property.
- Higher costs and longer timelines for applicants to prepare and staff to review permit applications, and
- Less certainty for applicants on whether their proposals will be permitted.



Most City of Gearhart citizens would not be directly affected in the ways described above, in that most do not own property in the floodplain. See Figure 1. Development is already prohibited or restricted in some floodplain areas that overlap resources such as significant wetlands, riparian areas, and beaches and dunes that are protected by State Land Use Planning Goals.

Gearhart citizens could be indirectly affected in both negative and positive ways by PICM in a variety of ways not summarized here.

Request

Staff requests City Council’s and Planning Commission’s direction on which of the four alternatives to follow.

Figure 1: Gearhart Floodplains in blue, purple and pink



FEMA

July 15, 2024

Kery Smith
City Hall
P.O. Box 2510
Gearhart, Oregon 97138

Dear Kery Smith:

The purpose of this letter is to announce the start of the United States Department of Homeland Security's Federal Emergency Management Agency's (FEMA) Pre-Implementation Compliance Measures (PICM) for National Flood Insurance Program (NFIP) participating communities in Oregon. The intent of PICM is to ensure the continued existence of threatened or endangered species in compliance with the Endangered Species Act (ESA). These measures include coordination with communities to provide appropriate technical assistance, help identify available resources, deliver trainings, and facilitate workshops to ensure on-going community participation in the NFIP. These pre-implementation compliance measures will assist communities in preparing for the Final NFIP-ESA Implementation Plan by helping them develop short and long-term solutions to ensure their on-going participation in the NFIP.

FEMA is currently conducting a National Environmental Policy Act (NEPA) evaluation of impacts associated with the Oregon NFIP-ESA Implementation Plan. FEMA developed this plan, in part, due to a Biological Opinion in 2016 from National Marine Fisheries Services. The Biological Opinion recommended specific measures for FEMA to take to avoid jeopardizing endangered species, including interim compliance measures. The release of the Final Implementation Plan (Plan) is anticipated by 2026, following the Record of Decision in the Environmental Impact Statement (EIS) process, then FEMA will fully implement the Plan in 2027.

FEMA has heard concerns from several communities regarding challenges they are facing to meet the expectations of this Plan. To provide communities with the support needed to incorporate ESA considerations to their permitting of development in the floodplain, FEMA will inform, educate, and support our Oregon NFIP participating communities through the PICM before the Final Implementation Plan is released.

NFIP participating communities in Oregon must select one of the PICM pathways which include the following: (1) adopt a model ordinance that considers impacts to species and their habitat and requires mitigation to a no net loss standard; (2) choose to require a habitat assessment and mitigation plan for development on a permit-by-permit basis; or (3) putting in place a prohibition on floodplain development in the Special Flood Hazard Area (SFHA). Communities must pick a PICM pathway by December 1, 2024. If a community fails to inform FEMA of its selection, they will default to the permit-by-permit PICM pathway. Communities will be required to report their floodplain development activities to FEMA beginning in January of 2025. Failure to report may result in a

compliance visit.

As a part of the PICM, FEMA will implement a delay in the processing of two types of Letters of Map Changes in the Oregon NFIP-ESA Implementation Plan area, specifically Letters of Map Changes associated with the placement of fill in the floodplain: Conditional Letter of Map Revision Based on Fill (CLOMR-F) and Letter of Map Revision Based on Fill (LOMR-F) requests. This action was specifically requested by NMFS in their 2016 Biological Opinion and serves to remove any perceived programmatic incentive of using fill in the floodplain. This delay in processing will begin on August 1, 2024, and will be in place until the Final Implementation Plan is released.

Your community's ongoing participation in the NFIP is critical, as it provides access to flood insurance for property owners, renters, and businesses. In City Of Gearhart there are currently 143 of NFIP policies in force representing \$43401000 in coverage for your community.

FEMA will be conducting informational virtual webinars this summer to provide an overview and status update for the Oregon NFIP-ESA integration, introduce the Pre-Implementation Compliance Measures, and provide an opportunity for Oregon NFIP floodplain managers to ask questions of FEMA staff. In the fall, FEMA will hold workshops to provide in-depth opportunities for local technical staff to work with FEMA technical staff, to understand and discuss issues relating to the PICM.

The webinars will be held virtually over Zoom. The information at each webinar is the same so your jurisdiction only needs to attend one. You can register for a webinar using the links below.

- Wednesday, July 31 at 3-5pm PT: <https://kearnswest.zoom.us/meeting/register/tZEkc-murjstGdPJiFioethjRk-id8N-k0hj>
- Tuesday, August 13 at 9:30-11:30am PT: <https://kearnswest.zoom.us/meeting/register/tZAod-isrTsqGN0KqckRLPPeaZuu4rv96lcR>
- Thursday, August 15 at 2-4pm PT: https://kearnswest.zoom.us/meeting/register/tZlqcOGpqDojHtTXaa946aI9dMpCTcJIH_zt
- Wednesday, August 21 at 12:30-2:30pm PT: <https://kearnswest.zoom.us/meeting/register/tZYqcuGsrD8rH9DZO22vG0v9KrNzVeUZA9gY>

FEMA will also develop a questionnaire to allow communities to identify how they currently incorporate or plan to incorporate ESA considerations, both in the short-term and long-term. To assist communities in making this determination, FEMA will be offering guidance on the potential pathways that help ensure current compliance. Communities will also be asked to help identify what technical assistance and training would be most beneficial. Feedback from this questionnaire will drive FEMA's engagement and outreach.

Upon completion of the Environmental Impact Statement review and determination, the Final Implementation Plan will be distributed along with several guidance documents and a series of Frequently Asked Questions. FEMA will also be starting NFIP Compliance Audits, in which we will be reviewing permits issued by communities for development in the floodplain and will expect the community to be able to demonstrate what actions are being taken to address ESA considerations.

If you have any questions, please contact us through our project email address fema-r10-mit-

Smith
July 15 2024
Page 3

PICM@fema.dhs.gov. Thank you for your community's on-going efforts to reduce flood risk in your community and for your support as we worked toward these milestones.

Sincerely,

A handwritten signature in blue ink, appearing to read "Willie G. Nunn", with a horizontal line extending to the right.

Willie G. Nunn
Regional Administrator
FEMA Region 10

cc: ChadSweet, City Of Gearhart
John Graves, Floodplain Management and Insurance Branch Chief
Deanna Wright, Oregon State National Flood Insurance Program Coordinator

Enclosure: Pre-Implementation Compliance Measures Fact Sheet

Pre-Implementation Compliance Measures Overview

Beginning this summer, FEMA will assist communities with coming changes to the National Flood Insurance Program (NFIP) in Oregon.

Why are the changes needed?

As the result of a Biological Opinion issued by the National Marine Fisheries Service, communities are required to demonstrate how floodplain development is compliant with the Endangered Species Act in Special Flood Hazard Areas. Changes are needed to protect the habitat of several species of fish and the Southern Resident killer whales to comply with the Endangered Species Act (ESA). FEMA outlined these changes in the [draft Oregon NFIP-ESA Implementation Plan](#).

Current status

FEMA is evaluating proposed changes to the NFIP outlined in the Implementation Plan through an environmental impact statement (EIS), in compliance with the National Environmental Policy Act (NEPA).



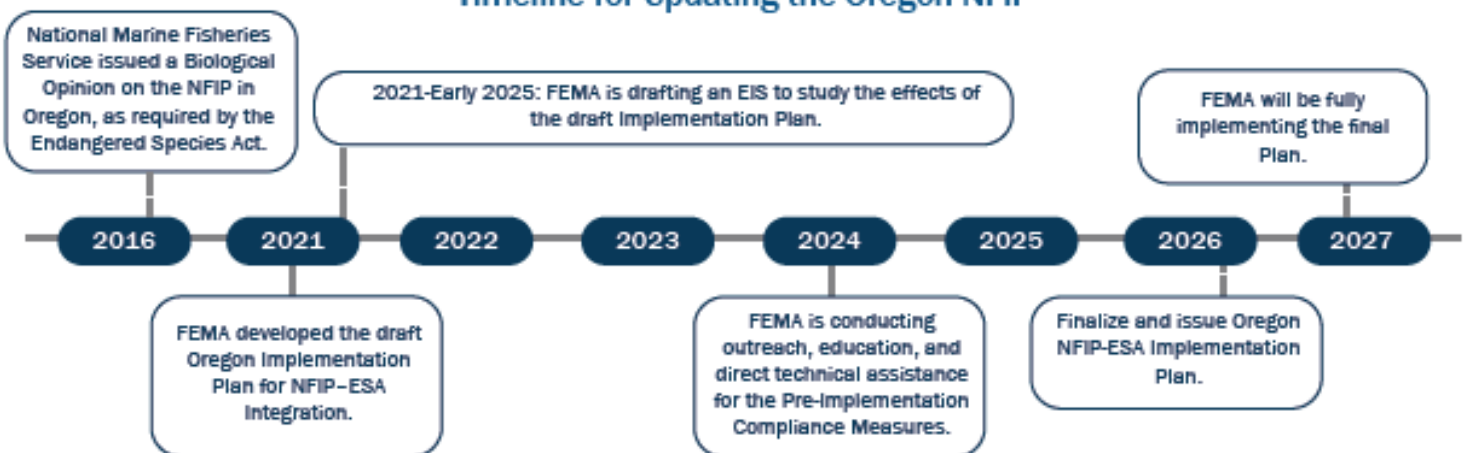
The National Flood Insurance Program serves to protect lives and property, while reducing costs to taxpayers due to flooding loss.

What is “no net loss”?

Any development action resulting in negative impacts to one or more key floodplain functions that are then mitigated or avoided to offset said impacts.

The Final Implementation Plan is anticipated by 2026 following the Record of Decision in the EIS process, then FEMA will fully implement the plan in 2027. Until then, communities need to begin taking action to protect habitat and achieve “no net loss.” FEMA is offering several resources for communities to learn more and implement interim measures, called Pre-Implementation Compliance Measures (PICMs).

Timeline for Updating the Oregon NFIP



What can communities do to comply with these changes?

Oregon communities participating in the NFIP can take short-term measures to comply with ESA requirements, known as PICMs. FEMA developed these measures in response to concerns from communities about the time and resources needed to meet requirements and ensure their future good standing in the NFIP. By implementing these measures now, communities will be better prepared for compliance audits, which will begin when the Final Implementation Plan is in place.

Communities can select one of the following three PICMs:

- Prohibit all new development in the floodplain.
- Incorporate the ESA into local floodplain ordinances.
- Require permit applicants to develop a Floodplain Habitat Assessment documenting that their proposed development in the Special Flood Hazard Area will achieve “no net loss.”

Communities must report to FEMA on their implementation of interim measures.

In addition to the above measures, as of August 1, 2024, FEMA is temporarily suspending processing applications for Letters of Map Revision based on Fill (LOMR-Fs) and Conditional Letters of Map Revision based on Fill (CLOMR-Fs) in NFIP communities to avoid potentially negative effects on ESA-listed species.

FEMA is here to support your community.

FEMA is offering several resources to assist communities in preparing for the Oregon NFIP-ESA Implementation Plan.

- **Informational Webinars (Summer 2024):** Learn about what FEMA is doing to revise the Implementation Plan and receive an introduction to the PICMs.
- **Questionnaire (Summer 2024):** Share what floodplain management measures your community is currently implementing to comply with the ESA, which PICMs you’re most interested in, and what support you need. Your feedback will help us plan the fall workshops and identify needs for technical assistance.
- **Workshops (Fall 2024):** Get an in-depth look at PICMs and talk through questions and concerns with FEMA staff.
- **Technical Assistance (Begins in Fall 2024):** Get support from FEMA to begin implementing PICMs.

Learn more and participate

Visit www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration to read the latest information about NFIP-ESA Integration in Oregon.

You can also contact us at FEMA-R10-MIT-PICM@fema.dhs.gov

Pre-Implementation Compliance Measures Overview

Beginning this summer, FEMA will assist communities with coming changes to the National Flood Insurance Program (NFIP) in Oregon.

Why are the changes needed?

As the result of a Biological Opinion issued by the National Marine Fisheries Service, communities are required to demonstrate how floodplain development is compliant with the Endangered Species Act in Special Flood Hazard Areas. Changes are needed to protect the habitat of several species of fish and the Southern Resident killer whales to comply with the Endangered Species Act (ESA). FEMA outlined these changes in the [draft Oregon NFIP-ESA Implementation Plan](#).

Current status

FEMA is evaluating proposed changes to the NFIP outlined in the Implementation Plan through an environmental impact statement (EIS), in compliance with the National Environmental Policy Act (NEPA).



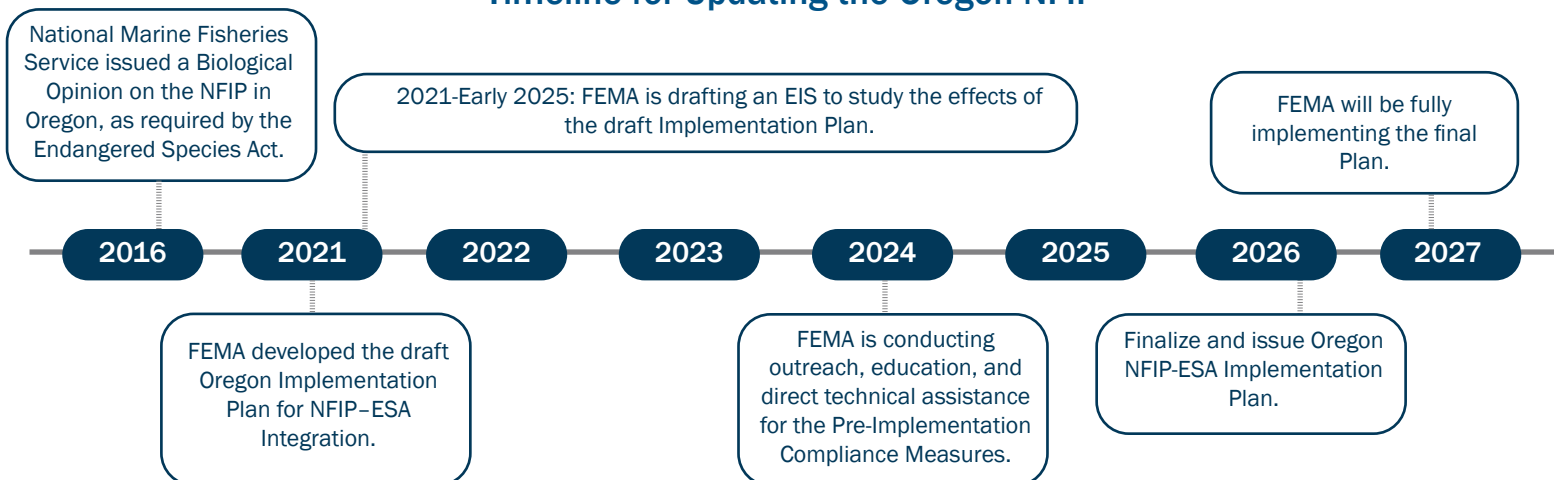
The National Flood Insurance Program serves to protect lives and property, while reducing costs to taxpayers due to flooding loss.

What is “no net loss”?

Any development action resulting in negative impacts to one or more key floodplain functions that are then mitigated or avoided to offset said impacts.

The Final Implementation Plan is anticipated by 2026 following the Record of Decision in the EIS process, then FEMA will fully implement the plan in 2027. Until then, communities need to begin taking action to protect habitat and achieve “no net loss.” FEMA is offering several resources for communities to learn more and implement interim measures, called Pre-Implementation Compliance Measures (PICMs).

Timeline for Updating the Oregon NFIP



What can communities do to comply with these changes?

Oregon communities participating in the NFIP can take short-term measures to comply with ESA requirements, known as PICMs. FEMA developed these measures in response to concerns from communities about the time and resources needed to meet requirements and ensure their future good standing in the NFIP. By implementing these measures now, communities will be better prepared for compliance audits, which will begin when the Final Implementation Plan is in place.

Communities can select one of the following three PICMs:

- Prohibit all new development in the floodplain.
- Incorporate the ESA into local floodplain ordinances.
- Require permit applicants to develop a Floodplain Habitat Assessment documenting that their proposed development in the Special Flood Hazard Area will achieve “no net loss.”

Communities must report to FEMA on their implementation of interim measures.

In addition to the above measures, as of August 1, 2024, FEMA is temporarily suspending processing applications for Letters of Map Revision based on Fill (LOMR-Fs) and Conditional Letters of Map Revision based on Fill (CLOMR-Fs) in NFIP communities to avoid potentially negative effects on ESA-listed species.

FEMA is here to support your community.

FEMA is offering several resources to assist communities in preparing for the Oregon NFIP-ESA Implementation Plan.

- **Informational Webinars (Summer 2024):** Learn about what FEMA is doing to revise the Implementation Plan and receive an introduction to the PICMs.
- **Questionnaire (Summer 2024):** Share what floodplain management measures your community is currently implementing to comply with the ESA, which PICMs you’re most interested in, and what support you need. Your feedback will help us plan the fall workshops and identify needs for technical assistance.
- **Workshops (Fall 2024):** Get an in-depth look at PICMs and talk through questions and concerns with FEMA staff.
- **Technical Assistance (Begins in Fall 2024):** Get support from FEMA to begin implementing PICMs.

Learn more and participate

Visit www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration to read the latest information about NFIP-ESA Integration in Oregon.

You can also contact us at FEMA-R10-MIT-PICM@fema.dhs.gov