

# Permitting in the Floodplain



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- **Complex permit issues in the floodplain driven by requirements to protect:**
  - **Life, health, safety**
    - NFIP, flood hazard permits, building permits
  - **Clean water**
    - Clean water certification, NPDES – clearing, grading and drainage
  - **Fish habitat**
    - GMA, SMA, HPA, Bi-Op/ESA
  - **Economic use and property rights**



- FEMA has provided the NFIP participating communities with three options to achieve or document compliance with the Bi-Op:
  - Adopt the “model ordinance”
  - Submit a Bi-Op checklist illustrating how current programs meet the requirements
  - ESA consult on project-by-project basis



Fisheries biologist Philip Roni holds a male chinook salmon weighing about 60 pounds from the Kitsumkalum River in British Columbia.

Source: *uwnews.org*



Juvenile Chinook

- Unresolved issues with the Model Ordinance:
  - ESA species and habitat protection standards:
    - take, adverse effect, jeopardy vs. “no net loss”, restoration and mitigation
  - Model Ordinance:
    - goes beyond scope and authority of NFIP/FEMA;
    - Some standards cannot be legally supported (*i.e. Ruckelshaus legislation, 65-10 rule*)



- Snohomish County’s approach for Bi-Op compliance:
  - The Bi-Op establishes that the floodplain is a “primary association area” for ESA-listed species
  - County critical area regulations require a Habitat Management Plan for actions proposed in a “primary association area”
  - Development restrictions in special flood hazard areas (*ex. Density Fringe*)



- **Snohomish County's approach for Bi-Op compliance:**
  - Submit checklist to FEMA relying on current regulations
  - Checklist includes references to 14 chapters of county code plus key definitions and applicability language
  - Also includes several supporting legal and scientific documents



- **Checklist**

- Introduction that describes the full range of environmental policies, codes and non-regulatory programs
- Description of how each code chapter applies to the “affected activities”
- Includes hyperlinks to specific code provisions with explanation of how the provision meets the requirement.



- **Key Supporting Documents:**

**Description of regulatory and non-regulatory programs**

- *Natural Environment policies from the GMACP*
- *Shoreline Restoration Element*
- *Critical Area Monitoring and Adaptive Management Plan*



Source: [www.catchingsteelhead.com](http://www.catchingsteelhead.com)

- **Key Supporting Documents:**

**Support for adopted critical area regulations (buffer, CMZ and floodplain provisions)**

- *WDFW's policy concerning wild salmonids (Dec. 1997)*
- *County's adopted BAS document*
- *Maps showing aquifer recharge areas and large lot zoning (both coincide with the SFHA)*



- **Key Supporting Documents:**

**State and local statutory requirements that conflict with requirements in the Bi-Op**

- *Legal FDO's*

- *supporting Snohomish County's CAO; and*
- *overturning the 65-10 rule in King County*



