

# OVERVIEW

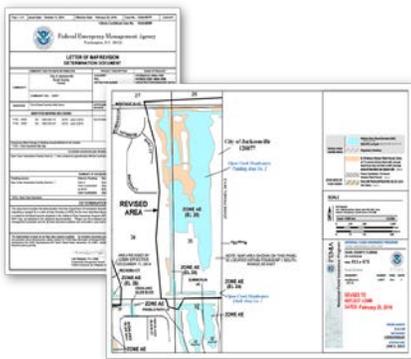
## ENDANGERED SPECIES ACT COMPLIANCE for Conditional Letters of Map Change

The Endangered Species Act (ESA) of 1973 protects threatened and endangered species by preserving the ecosystems in which they live. The U.S. Department of Interior's Fish and Wildlife Service (FWS) and the U.S. Department of Commerce's National Marine Fisheries Service (NMFS), collectively known as "the Services," share the responsibility for administering the Act. The Federal Emergency Management Agency (FEMA) requires documentation of compliance with the minimum ESA requirements for Conditional Letters of Map Change (CLOMCs).

### ESA Compliance for CLOMCs

FEMA requires documentation of ESA compliance for a proposed project before it will process Conditional Letters of Map Revision (CLOMRs) or Conditional Letters of Map Revision based on Fill (CLOMR-Fs) request, but it is not FEMA's role to assist with accomplishing ESA compliance for private actions or non-FEMA federal actions. Private individuals and local and state jurisdictions are required to comply with the ESA independently of FEMA's process. Therefore, FEMA has no involvement in securing the required documentation or in obtaining or providing authorization for the proposed project.

CLOMRs are FEMA's comments on whether a construction project, if built as proposed, would impact a floodplain and therefore warrant a change to National Flood Insurance Program (NFIP) flood hazard maps. FEMA also issues CLOMR-Fs, which comment on whether a parcel of land or proposed structure, if elevated by fill as proposed, would be inundated by a base (1-percent-annual-chance) flood.



### Endangered Species Act

The purpose of the ESA is to conserve threatened and endangered species and the ecosystems upon which they depend.

Species at risk of extinction are considered endangered, whereas species that are likely to become endangered in the foreseeable future are considered threatened. The ESA prohibits any actions by communities, developers, private citizens, etc., from "taking" or "harming" endangered wildlife. Similar prohibitions are generally extended, by regulation, to threatened wildlife. Private individuals and local and state jurisdictions are required to comply with the ESA independently of FEMA's process.

Section 7 of the ESA requires each federal agency to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat.

Section 9 of the ESA prohibits anyone from "taking" or harming an endangered species. This includes non-federal projects. If an action might harm an endangered species, a permit may be obtained from the Services under Section 10 of the ESA.

### RISK MAPPING, ASSESSMENT, AND PLANNING PROGRAM (RISK MAP)

The Federal Emergency Management Agency's Risk MAP Program delivers quality data that increases public awareness and leads to action to reduce risk to life and property. Risk MAP is a nationwide program that works in collaboration with states, tribes, and local communities using best available science, rigorously vetted standards, and expert analysis to identify risk and promote mitigation action, resulting in safer, more resilient communities.

FEMA issues these comments before construction occurs in the floodplain. FEMA's comments on the proposed project's impact to the flood hazard maps do not constitute a permit or approval of the proposed development; the authority to approve projects and issue building permits lies with the local government and, in some instances, state agencies.

### **ESA Compliance Documentation for Projects with Federal Actions**

If federal construction, funding or permitting is involved in a project for which a CLOMR or CLOMR-F has been requested, then the applicant may use that agency's Section 7 consultation to document to FEMA that ESA compliance has been achieved.

The ESA documentation may be:

1. A "No Effect" determination made by, or concurred by, the federal agency;
2. A "Not Likely to Adversely Affect" determination with concurrence from the Services;
3. A biological opinion with a "no jeopardy" determination or with accepted reasonable and prudent alternatives; or
4. A copy of a federally issued permit with justification that the proposed development for which a CLOMR or CLOMR-F is sought is covered by the permit.

### **ESA Compliance Documentation for Non-Federal Projects**

While FEMA does not play a role in ESA compliance for proposed private development, these projects are required to comply with the ESA independently of FEMA's process. For these projects, the requester must document that:

1. No potential for "Take" exists (meaning that the project has no potential to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) to threatened and endangered species. The requester will be responsible for the potential for take determination and the determination is not required to come from, or be concurred by, the Services.
2. If the requester determines a "Take" will or has a potential to occur, they can consider contacting the Services to discuss potential project revisions to eliminate the "Take."
3. If neither 1 or 2 are possible and the project has the potential to "Take" listed species, an Incidental Take Permit may be submitted showing that the project is the subject, or is covered by the subject, of the permit.

### **Resources for Additional Information:**

**FEMA:** For more information on CLOMCs and ESA compliance, as well as additional resources and "Frequently Asked Questions," visit <https://www.fema.gov/compliance-endangered-species-act-letters-map-change>.

**FWS:** The U.S. Department of Interior's FWS shares responsibility for the implementation of the ESA. For additional information about ESA and permitting requirements, visit: <http://www.fws.gov/endangered/what-we-do/consultations-overview.html> and <https://ecos.fws.gov/ipac/>.

**NMFS:** With the FWS, the U.S. Department of Commerce's NMFS administers the ESA. For more information about how the NMFS implements the Act, visit: <http://www.nmfs.noaa.gov/pr/laws/esa/>.

### **Definitions**

#### **Conditional Letter of Map Change (CLOMC):**

CLOMCs include Conditional Letters of Map Revision and Conditional Letters of Map Revision Based on Fill.

#### **Conditional Letter of Map Revision (CLOMR):**

A CLOMR is a letter from FEMA commenting on a proposed project that would, if built as proposed, affect the hydrologic and/or hydraulic characteristics of a flooding source and thus result in the modification of the effective regulatory floodway, Base (1-percent-annual-chance) Flood Elevations, and/or Special Flood Hazard Areas.

#### **Conditional Letter of Map Revision Based on Fill (CLOMR-F):**

A CLOMR-F is a FEMA letter commenting on whether a parcel of land or a proposed structure that will be elevated by fill would not be inundated by the base flood, if fill is placed on the parcel as proposed or the structure is built on fill as proposed.

These letters do not revise the effective National Flood Insurance Program (NFIP) maps; rather, they comment on the flood hazard mapping implications of future projects.