

Appendix E - Procedures Relating to Endangered Species Protection

E.1 Assessing the Effects of Your Discharges and Discharge-Related Activities

You must follow the procedures in this appendix to determine which of the eligibility criteria in Part 1.1.4.5 (i.e., criterion A - E), if any, you qualify under, by assessing the potential effects of applicable stormwater discharges, discharge-related activities, and allowable non-stormwater discharges on listed threatened and endangered species and their designated critical habitat. In accordance with Part 5.2.6.1 of this permit, you must keep any documentation that supports your eligibility determination, including the completed [Criterion Selection Worksheet](#) in Part E.4 of this appendix, with your Stormwater Pollution Prevention Plan (SWPPP). You must complete your eligibility determination prior to submitting your Notice of Intent (NOI) for coverage under the MSGP, and must provide all information as required on your NOI form that supports the Part 1.1.4.5 eligibility criterion you qualify under. **Note that if you have determined that you may be eligible under criterion C, you must submit a completed [Criterion C Eligibility Form](#) to EPA a minimum of 30 days prior to submitting your NOI for permit coverage.**

When evaluating the potential effects of your activities, you must consider effects to listed species or critical habitats within the "action area" of your industrial activity. Action area is defined in Appendix A of the MSGP as all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. This includes areas beyond the footprint of the facility that are likely to be affected by stormwater discharges, discharge-related activities, and allowable non-stormwater discharges. For example, discharges of pollutants into downstream areas can increase the "action area" beyond the footprint of the facility.

E.2 Eligibility Criterion

As required by Part 1.1.4.5, you must meet one or more of the following five criteria (A - E) to be eligible for coverage under the permit:

- Criterion A.** No federally listed threatened or endangered species or their designated critical habitat(s) are likely to occur in the "action area" as defined in Appendix A. To certify your eligibility under this criterion, you must use the *Criterion Selection Worksheet* in Part E.4 of Appendix E. You must also provide a description of the basis for the criterion you selected on your NOI form and provide documentation supporting your eligibility determination in your SWPPP.
- Criterion B.** Your industrial activity's discharges and discharge-related activities were already addressed in another operator's valid certification of eligibility for your action area under this permit and there is no reason to believe that federally listed species or designated critical habitat not considered in the prior certification may be present or located in the "action area" (e.g., due to a new species listing or critical habitat designation). To certify your eligibility under this criterion, you must use the *Criterion Selection Worksheet* in Part E.4 of Appendix E. There must be no lapse of NPDES permit coverage in the other operator's certification. You must also comply with any additional measures that formed the basis of the other operator's valid certification of eligibility to ensure that your discharges and discharge-related activities are protective of listed species and/or critical habitat. You must include in your NOI the NPDES ID (i.e., permit tracking number) assigned to the other operator's authorization under this permit, and a description of the basis for the criterion selected on your NOI form, including the eligibility criterion selected by the

other operator's certification. You must also provide any documentation in your SWPPP that supports the other operator's eligibility determination, including any additional measures that formed the basis of the other operator's eligibility determination.

Criterion C. Federally listed threatened or endangered species or their designated critical habitat(s) are likely to occur in or near your facility's "action area," and your industrial activity's discharges and discharge-related activities are not likely to adversely affect listed threatened or endangered species or critical habitat. To certify your eligibility under this criterion, you must use the *Criterion Selection Worksheet* in Part E.4 of Appendix E, including completion of the *Criterion C Eligibility Form*, which you must submit to EPA at least 30 days prior to filing your NOI for permit coverage. After evaluation of your *Criterion C Eligibility Form*, EPA may require additional measures that you must implement to avoid or eliminate likely adverse effects on listed species and critical habitat from discharges and discharge-related activities. You may submit your NOI for permit coverage 30 days after submitting to EPA your completed *Criterion C Eligibility Form*. You must also provide a description of the basis for the criterion you selected on your NOI form and provide documentation supporting your eligibility determination in your SWPPP.

Criterion D. Consultation between a Federal Agency and the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service under section 7 of the Endangered Species Act (ESA) has been concluded. Consultations can be either formal or informal, and would have occurred only as a result of a separate federal action (e.g., during application for an individual wastewater discharge permit or the issuance of a wetlands dredge and fill permit), and consultation must have addressed the effects of the industrial activity's discharges and discharge-related activities on all federally listed threatened or endangered species and federally designated critical habitat. The result of this consultation must be one of the following:

- i. A biological opinion that concludes that the action in question (taking into account the effects of your facility's discharges and discharge-related activities) is not likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of critical habitat;
- ii. A biological opinion that concludes that the action is likely to jeopardize listed species or to result in the destruction or adverse modification of critical habitat, and any recommended reasonable and prudent alternatives or reasonable and prudent measures are being implemented; or
- iii. Written concurrence from the applicable Service(s) with a finding that your facility's discharges and discharge-related activities are not likely to adversely affect listed species or critical habitat.

To certify your eligibility under this criterion, you must use the *Criterion Selection Worksheet* in Part E.4 of Appendix E. You must verify that the consultation does not warrant reinitiation under 50 CFR §402.16. If reinitiation of consultation is required, in order to be eligible under this criterion you must ensure consultation is reinitiated and the result of the consultation must be consistent with (i), (ii), or (iii) above.

If eligible, you must also provide supporting documentation for your determination in your NOI and SWPPP, including the Biological Opinion (or PCTS tracking number) or concurrence letter.

Criterion E. Your industrial activities are the subject of a permit under section 10 of the ESA, and this authorization addresses the effects of your facility's discharges and discharge-related activities on federally listed species and designated critical habitat. To certify your eligibility under this criterion, you must use the *Criterion Selection Worksheet* in Part E.4 of Appendix E. You must also provide supporting documentation for your determination in your NOI and SWPPP, including a copy of the permit from the Services.

E.3 Eligibility Compliance

You must comply with any measures that formed the basis of your eligibility determination in Part 1.1.4.5 for the duration of your coverage under the MSGP in order to maintain your eligibility for coverage under the permit. These measures become permit requirements per Part 2.3. Documentation of these measures must be kept as part of your SWPPP (see Part 5.2.6.1).

E.4 Criterion Selection Worksheet

Instructions:

You must follow the step-by-step instructions in this worksheet in order to determine your eligibility under the Part 1.1.4.5 criteria. Alternatively, if you prefer to use a Biological Evaluation (or its equivalent) in making a determination of your eligibility, you should ensure all of the information requested below for the criterion you are selecting is fully addressed in such a document. You must attach this completed document or Biological Evaluation (or equivalent) to your SWPPP to support your Part 1.1.4.5 eligibility determination.

You may need the following information in order to determine your eligibility:

- 1) Your facility's draft Stormwater Pollution Prevention Plan (SWPPP), including information on receiving waters.
- 2) Any additional site-specific information related to your facility's discharges and discharge-related activities.
- 3) The list(s) of endangered and threatened species and any designated critical habitat in your action area, as acquired from the Fish and Wildlife Service and/or the National Marine Fisheries Services. Directions on how to acquire species lists is described in a subsequent section below.

Note that much of the information needed to complete this worksheet is also needed in order to prepare your NOI for permit coverage, and is also information that you must develop as part of your SWPPP. You may copy and paste any information that is already required and completed in your SWPPP into this worksheet. (You may also decide to make minor changes or additions to your SWPPP while filling out the worksheet for clarification purposes or to address any concerns that are identified below.)

STEP 1: DETERMINE IF THE ELIGIBILITY REQUIREMENTS OF CRITERION B, D, OR E CAN BE MET.

- A. You should first determine whether you are eligible under [criterion B](#) (because another operator has accounted for your action area in their valid certification of eligibility under the 2015 MSGP), [criterion D](#) (because of a previously completed ESA section 7 consultation), or [criterion E](#) (because of a previously issued ESA section 10 permit).

- B. If your facility is likely to be eligible under criterion B, D or E, you may skip ahead to the applicable criterion's requirements to determine if you are eligible. If after completing the relevant section you find that your facility does not in fact meet criteria B, D, or E (e.g., due to difference in action area described, lack of analysis of appropriate effects, new listings or designation of critical habitat), proceed to [Step 2](#) below.
- C. If your facility is not likely to be eligible under criterion B, D or E, you may proceed directly to [Step 2](#).

Criterion B Eligibility Requirements

If your industrial activities were already addressed in another operator's valid certification of eligibility under the current 2015 MSGP, you may be eligible for coverage under criterion B. In order to be eligible for coverage under criterion B, you must confirm that all the following are true:

- You have confirmed that the other operator's certification of eligibility accounted for your action area and that the eligibility determination was valid.
- There has been no lapse of NPDES permit coverage in the other operator's certification.
- You will comply with all measures that formed the basis of the other operator's valid certification of eligibility. List any measures here (or enter "N/A" if none exist):

- **If all of the above are true, you may select criterion B on your NOI.** You must include in your NOI the NPDES ID assigned to the other operator's authorization under this permit, and a description of the basis for the criterion selected on your NOI form, including the eligibility criterion selected by the other operator's certification. You must include this completed worksheet in your SWPPP.
- **If any of the above are not true, you may not select criterion B and must proceed to [Step 2](#).** For example, if there are any listed species in your action area that were not addressed in the other operator's certification, you are not eligible under criterion B.

Criterion D Eligibility Requirements

If consultation under section 7 of the ESA has been concluded, you may be eligible for coverage under criterion D. In order to be eligible for coverage under criterion D, you must confirm that all the following are true:

- A consultation between a federal agency and the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service under section 7 of the ESA has been concluded. Consultations can be either formal or informal, and would have occurred only as a result of a separate federal action (e.g., during application for an individual wastewater discharge permit or the issuance of a wetlands dredge and fill permit), and the consultation must have addressed the effects of your industrial activity's discharges and discharge-related activities on all federally listed threatened or endangered species and all designated critical habitat in your action area. The result of this consultation must be either:

- i. A biological opinion that concludes that the action in question (taking into account the effects of your facility's discharges and discharge-related activities) is not likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of critical habitat. The biological opinion must have included the effects of your facility's discharges^a and discharge-related activities on all the listed species and designated critical habitat in your action area;
- ii. A biological opinion that concludes that the action is likely to jeopardize listed species or to result in the destruction or adverse modification of critical habitat, and any recommended reasonable and prudent alternatives or reasonable and prudent measures are being implemented; or
- iii. Written concurrence (e.g., letter of concurrence) from the applicable Service(s) with a finding that concludes that your facility's discharges and discharge-related activities are not likely to adversely affect listed species or designated critical habitat. The concurrence letter must have included the effects of your facility's discharges and discharge-related activities on all the listed species and designated critical habitat on your species list(s) acquired from the Service(s) as part of this worksheet.

The consultation does not warrant reinitiation under 50 CFR §402.16; or, if reinitiation of consultation is required (e.g., due to a new species listing or critical habitat designation; new information), you have reinitiated the consultation and the result of the consultation is consistent with the statements above. Attach a copy of any reinitiation documentation from the Services or other consulting federal agency.

- **If all of the above are true, you may select criterion D on your NOI.** You must also provide a description of the basis for the criterion selected on your NOI form and you must include this completed worksheet in your SWPPP. In both your SWPPP and NOI you must also provide the Biological Opinion (or PCTS tracking number) or concurrence letter and any other documentation supporting your eligibility determination.
- **If any of the above are not true, you may not select criterion D and must proceed to [Step 2](#).** For example, if the biological opinion or written concurrence did not include the effects of the discharge or discharge-related activities as described above (e.g., the previous consultation covered some but not all of the species or critical habitat in your action area as shown on your species list), or if the consultation is no longer valid (e.g., due to new species listings), you are not eligible under criterion D.

Criterion E Eligibility Requirements

If your industrial activities are the subject of a permit under section 10 of the ESA, and this authorization addresses the effects of your facility's discharges and discharge-related activities on federally listed species and designated critical habitat in your action area, you may be eligible for coverage under criterion E. In order to be eligible for coverage under criterion E, you must confirm that the following is true:

A permit has been issued under section 10 of the ESA. The permit authorization specifically addresses the effects of your facility's discharges and discharge-related activities (if applicable) on all federally-listed species and designated critical habitat in your action area.

^a Effects of discharge includes, but is not limited to, the analysis of the hydrological, chemical, and biological effects of the discharge on listed species, their prey, and their habitat, as well as critical habitat, where designated. For example, the effects analysis would have evaluated whether the various pollutants in the discharge (e.g., TSS, metals) would adversely affect listed species through exposure to the pollutants, or to their prey or habitat. Effects that look only at short-term effects unrelated to the stormwater discharge effects to listed species are not sufficient for these purposes.

- **If the above is true, you may select criterion E on your NOI.** You must also provide a description of the basis for the criterion selected on your NOI form and must include this completed worksheet in your SWPPP. In both your SWPPP and your NOI you must provide a copy of the section 10 permit issued by the Services.
- **If the above is not true, you may not select criterion E and must proceed to [Step 2](#).** For example, if a permit has been issued under section 10 of the ESA, but the permit authorization did not address the effects of your facility's discharges and/or discharge-related activities on all federally-listed species and designated critical habitat in your action area, you are not eligible under criterion E, but you should attach a copy of the permit to the SWPPP for reference.

STEP 2: DETERMINE THE EXTENT OF YOUR ACTION AREA

You must determine whether species listed as either threatened or endangered, or their critical habitat(s) (see definitions of these terms in Appendix A), are located in your facility's action area (i.e., all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action, including areas beyond the footprint of the facility that are likely to be affected by stormwater discharges, discharge-related activities, and allowable non-stormwater discharges). Consider the following in determining the action area for your facility:

- Discharges of pollutants into downstream areas can expand the action area well beyond the footprint of your facility and the discharge point(s). Take into account the controls you will be implementing to minimize pollutants and the receiving waterbody characteristics (e.g., perennial, intermittent, ephemeral) in determining the extent of physical, chemical, and/or biotic effects of the discharges. All receiving waterbodies that could receive pollutants from your facility must be included in your action area.
- Discharge-related activities must also be accounted for in determining your action area. Discharge-related activities are any activities that cause, contribute to, or result in stormwater and allowable non-stormwater point source discharges, and measures such as the siting, construction, and operation of stormwater controls to control, reduce, or prevent pollutants from being discharged. For example, any new or modified stormwater controls that will have noise or other similar effects, and any disturbances associated with construction of controls, are part of your action area.

If you have any questions about determining the extent of your action area, you may contact EPA or the Services for assistance.

You must include a map **and a written description of** the action area of your facility in [Attachment 1](#) of this appendix. You may choose to include the map that is generated from the FWS' on-line mapping tool IPaC (the *Information, Planning, and Consultation System*) located at <http://ecos.fws.gov/ipac/> (see [Step 3](#) for information about using this tool).

You must proceed to [Step 3](#) below.

STEP 3: DETERMINE IF LISTED THREATENED OR ENDANGERED SPECIES AND/OR CRITICAL HABITAT ARE PRESENT IN YOUR ACTION AREA.

You must determine whether species listed as either threatened or endangered under the Endangered Species Act (ESA), and/or their designated critical habitat(s)^b, are located in your facility's action area. Federally listed species and designated critical habitat are under the purview of the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) (together, "Services"), and in many cases, species and critical habitat lists will need to be acquired from both Services.

^b See definitions of these terms in Appendix A of the MSGP.

- For NMFS species and critical habitat information, use the following webpages, which provide up-to-date information on listed species (<http://www.nmfs.noaa.gov/pr/species/esa/>) and critical habitat (<http://www.nmfs.noaa.gov/pr/species/criticalhabitat.htm>). To determine the field office that corresponds to your facility, go to <http://www.nmfs.noaa.gov/> (under the left tab for "Regions"). For NMFS species in the Greater Atlantic Region, go to <http://www.greateratlantic.fisheries.noaa.gov/protected/section7/guidance/maps/index.html>.
- For FWS species information, use the on-line mapping tool IPaC (the *Information, Planning, and Consultation System*) located at <http://ecos.fws.gov/ipac/>, and follow these steps:
 - *Select Get Started.*
 - Select Enter Project Location
 - Use an address, city name or other location to zoom into your project area
 - Use the zoom feature to see the entire extent of your action area on the screen.
 - Use one of the mapping features (e.g., Polygon or line feature) to draw your action.
 - For the aquatic portion of your action area, trace the waterbody(ies) with the tool to characterize your action area.
 - If your proposal will include any upland activities (i.e., discharge-related activities), or if there is some aspect of your discharge that would potentially result in effects to terrestrial species, include the corresponding upland areas within your action area.
 - When you are done, press *Continue*.
 - Select Request an Official Species List
 - Complete the fields on the Official Species List Request page, and include "(MSGP)" at the end of the project description.
 - For Classification, select "Water Quality Modification".
 - Select the appropriate requesting agency/organization type (for most applicants, this should be "Other").
 - Submit the request to acquire an Official Species List, which should show both listed species as well as any designated critical habitat that are present in the action area in the previous step.
 - *Note: If a link to an Official Species List is not available on the page, follow the web link of the office(s) indicated, or contact the office directly by mail or phone if a web link is not shown.*

The principle authority for critical habitat designations and associated requirements is found at 50 CFR Parts 17 and 226. See <http://www.access.gpo.gov>.

Attach a copy of the species and critical habitat list(s) from the Service(s) to [Attachment 2](#) of this appendix and use the list(s) to complete the rest of this worksheet. For FWS species, include the full printout from your IPaC query/Official Species List in Attachment 2. You can include the map from your IPaC query in Attachment 1.

If after following the steps you have determined that there are no listed species and/or designated critical habitat in your action area, you may be eligible for coverage under [criterion A](#).

If you have determined that there are or may be listed species and/or designated critical habitat in your action area, you are not eligible under criterion A and must proceed to [Step 4](#) below.

Criterion A Eligibility Requirements

In order to be eligible for coverage under criterion A, you must confirm that the following is true:

I have confirmed there to be no listed species and no critical habitat in my action area.

- **If the above is true, you may select criterion A on your NOI form.** You must also provide a description of the basis for the criterion selected on your NOI form. You must include this completed worksheet in your SWPPP. *Note: If your Official Species List from the USFWS indicated no species or critical habitat were present in your action area, include the full consultation tracking code at the top of your Official Species List in your NOI submittal in the question "Provide a brief summary of the basis for the criterion selected in Appendix E." If an Official Species List was not available on IPaC, list the contact date and name of the Service staff with whom you corresponded to verify no USFWS species or critical habitat were present in your action area.*
- If the above is not true, you may not select criterion A and must proceed to [Step 4](#) to determine if you can become eligible under criterion C.

Note: For existing dischargers that have previously obtained coverage under criterion A, you must verify whether listed species and/or critical habitat are expected to exist in your action area, as described above. Please note that if you now find that your action area overlaps with listed species or critical habitat, you must proceed to [Step 4](#).

STEP 4: DETERMINE IF YOUR INDUSTRIAL FACILITY’S DISCHARGES OR DISCHARGE-RELATED ACTIVITIES ARE LIKELY TO ADVERSELY AFFECT LISTED THREATENED OR ENDANGERED SPECIES OR DESIGNATED CRITICAL HABITAT AND ANY MEASURES THAT MUST BE IMPLEMENTED TO AVOID ADVERSE EFFECTS

If in Step 3 you determined that listed species and/or designated critical habitat could exist in your action area, you must next assess whether your discharges and discharge-related activities are likely to adversely affect listed threatened or endangered species or designated critical habitat, and whether any additional measures are necessary to ensure no likely adverse effects. In order to make a determination of your facility’s likelihood of adverse effects, you must complete the attached [Criterion C Eligibility Form](#) and must submit this form to EPA a minimum of 30 days prior to filing your NOI for permit coverage. After you submit your [Criterion C Eligibility Form](#), you may be contacted by EPA with additional measures that you must implement in order to ensure your eligibility under criterion C.

Criterion C Eligibility Form

Instructions:

In order to be eligible for coverage under criterion C, you must complete the following form and you must submit it to EPA following the instructions in Section VII a **minimum of 30 days prior to filing your NOI for permit coverage.** After you submit your form, you may be contacted by EPA with additional measures (e.g., additional stormwater controls or modifications to your discharge-related activities) that you must implement in order to ensure your eligibility under criterion C.

If after completing this worksheet you cannot make a determination that your discharges and discharge-related activities are not likely to adversely affect listed threatened or endangered species or designated critical habitat, you must submit this completed worksheet to EPA, and you may not file your NOI for permit coverage until you receive a determination from EPA that your discharges and/or discharge-related activities are not likely to adversely affect listed species and critical habitat.

Note: Much of the information needed for this form can be obtained from your draft SWPPP which will be needed when you file your NOI.

SECTION I. OPERATOR, FACILITY, AND SITE LOCATION INFORMATION.

1) Operator Information

a) **Operator Name:** _____

b) **Point of Contact**

First Name: _____ **Last Name:** _____

Phone Number: _____

E-mail: _____

2) Facility Information

a) **Facility Name:** _____

b) **Check which of the following applies:**

I am seeking coverage under the MSGP as a new discharger or as a new source

I am seeking coverage under the MSGP as an existing discharger and my facility has modifications to its discharge characteristics (e.g., changes in discharge flow or area drained, different pollutants) and/or discharge-related activities (e.g., stormwater controls)

Indicate the number of years the facility has been in operation: _____ years

Provide your NPDES ID (i.e., permit tracking number) from your previous MSGP coverage: _____

I am seeking coverage under the MSGP as an existing discharger and there are no modifications to my facility.

Indicate the number of year the facility has been in operation: _____ years

Provide your NPDES ID (i.e., permit tracking number) from your previous MSGP coverage: _____

c) Facility Address:

Address 1: _____

Address 2: _____

City: _____ State: _____ Zip Code: _____

d) Identify the primary industrial sector to be covered under the 2015 MSGP:

SIC Code _____ or Primary Activity Code _____

Sector _____ and Subsector _____

e) Identify the sectors of any co-located activities to be covered under the 201r MSGP:

Sector _____ Subsector _____

f) Estimated area of industrial activity exposed to stormwater: _____ acres

g) Provide a general description of the industrial activities that are taking place at this facility:

3) Receiving Waters Information

List all the stormwater outfalls from your facility.				For each outfall, provide the following receiving water information:	
Outfall ID	Design Capacity (if known)	Latitude (decimal degrees)	Longitude (decimal degrees)	Name of the receiving water that receives stormwater from the outfall and/or from the MS4 that the outfall discharges to	Type of Waterbody (e.g., lake, pond, river/stream/creek, estuarine/marine water)
		____.____	____.____		
		____.____	____.____		
		____.____	____.____		
		____.____	____.____		
		____.____	____.____		

SECTION II. ACTION AREA

Ensure that your action area is described in [Attachment 1](#), as required in [Step 2](#).

SECTION III. LISTED SPECIES AND CRITICAL HABITAT LIST

Ensure that the listed species and critical habitat list is included in [Attachment 2](#), as required in [Step 3](#).

Review your species list in Attachment 2, choose one of the following three statements, and follow the corresponding instructions:

The species list includes only terrestrial species and/or their designated critical habitat. No aquatic or aquatic-dependent species or their critical habitat are present in the action area. **You may skip to [Section IV](#) of this form. You are not required to fill out [Section V](#).**

The species list includes only aquatic and/or aquatic-dependent species and/or their designated critical habitat. No terrestrial species or their critical habitat are present in the action area. **You may skip to [Section V](#) of this form and are not required to fill out [Section IV](#).**

The species list includes both terrestrial and aquatic or aquatic-dependent species and/or their designated critical habitat. **You must fill out both [Sections IV](#) and [V](#) of this form.**

Note: For the purposes of this permit, "terrestrial species" would not include animal or plant species that 1) spends any portion of its life cycle in a waterbody or wetland, or 2) if an animal, depends on prey or habitat that occurs in a waterbody or wetland. For example, shorebirds, wading birds, amphibians, and certain reptiles would not be considered terrestrial species under this definition. Please also be aware that some terrestrial animals (e.g., certain insects, amphibians) may have an aquatic egg or larval/juvenile phase.

SECTION IV. EVALUATION OF DISCHARGE-RELATED ACTIVITIES EFFECTS

Note: You are only required to fill out this section if your facility's action area contains terrestrial species and/or their designated critical habitat. If your action area only contains aquatic and/or aquatic-dependent species and/or their designated critical habitat, you can skip directly to [Section V](#).

Most of the potential effects related to coverage under the MSGP are assumed to occur to aquatic and/or aquatic-dependent species. However, in some cases, potential effects to terrestrial species and/or their critical habitat should be considered as well from any discharge-related activities that occur during coverage under the MSGP. Examples of discharge-related activities that could have potential effects on listed terrestrial species or their critical habitat include the storage of materials and land disturbances associated with stormwater management-related activities (e.g., the installation or placement of stormwater control measures).

A. Select the applicable statement(s) below and follow the corresponding instructions:

There are no discharge-related activities that are planned to occur during my coverage under the MSGP. You can conclude that your discharge-related activities will have no likely adverse effects, and:

- If there are any aquatic or aquatic-dependent species and/or their critical habitat in your action area, you must skip to [Section V](#), *Evaluation of Discharge Effects*, below.
- If there are no aquatic or aquatic-dependent species you may skip to [Section VI](#) and verify that your activities will have no likely adverse effects. You must submit this form to EPA as specified in [Section VII](#) of this form. You may select criterion C on your NOI form and may submit your NOI for permit coverage 30 days after you have submitted this *Criterion C Eligibility Form*. You must also provide a description of the basis for the criterion you selected on your NOI form, **including the species and critical habitat list(s) in your action area**, as well as any other documentation supporting your eligibility. You must also include this completed *Criterion C Eligibility Form* in your SWPPP.

There are discharge-related activities planned as part of the proposal. Describe your discharge-related activities in the following box and continue to (b) below.

Describe discharge-related activities:

B. In order to ensure any discharge-related activities will have no likely adverse effects on listed species and/or their designated critical habitat, you must certify that all the following are true:

- Discharge-related activities will occur:
- on previously cleared/developed areas of the site where maintenance and operation of the facility are currently occurring or where existing conditions of the area(s) in which the discharge-related activities will occur precludes its use by listed species (e.g., work on existing impervious surfaces, work occurring inside buildings, area is not used by species), and
 - if discharge-related activities will include the establishment of structures (including, but not limited to, infiltration ponds and other controls) or any related disturbances, these structures and/or disturbances will be sited in areas that will not result in isolation or degradation of nesting, breeding, or foraging habitat or other habitat functions for listed animal species (or their designated critical habitat), and will avoid the destruction of native vegetation (including listed plant species).

If vegetation removal (e.g., brush clearing) or other similar activities will occur, no terrestrial listed species that use these areas for habitat would be expected to be present during vegetation removal.

If all the above are true, you can conclude that your discharge-related activities will have no likely adverse effects, and:

- If there are any aquatic or aquatic-dependent species and/or critical habitat in your action area, you must skip to [Section V](#), *Evaluation of Discharge Effects*, below.
- If there are no aquatic or aquatic-dependent species you may skip to [Section VI](#) and verify that your activities will have no likely adverse effects. You must submit this form to EPA as specified in [Section VII](#) of this form. You may select criterion C on your NOI and may submit your NOI for permit coverage 30 days after you have submitted this completed form. You must also provide a description of the basis for the criterion you selected on your NOI form, **including the species and critical habitat list(s)**, and any other documentation supporting your eligibility. You must also include this completed *Criterion C Eligibility Form* in your SWPPP.
- **If any of the above are not true**, you cannot conclude that your discharge-related activities will have no likely adverse effects. You must complete the rest of this form (if applicable), and must submit the form to EPA for assistance in determining your eligibility for coverage.

SECTION V. EVALUATION OF DISCHARGE EFFECTS

Note: You are only required to fill out this section if your facility's action area includes aquatic and/or aquatic-dependent species and/or their critical habitat.

In this section, you will evaluate the likelihood of adverse effects from your facility's discharges. The scope of effects to consider will vary with each facility and species/critical habitat characteristics. The following are examples of discharge effects you should consider:

- **Hydrological Effects.** Stormwater discharges may adversely affect receiving waters from pollutant parameters such as turbidity, temperature, salinity, or pH. These effects will vary with the amount of stormwater discharged and the volume and condition of the receiving water. Where a stormwater discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely.
- **Toxicity of Pollutants.** Pollutants in stormwater may have toxic effects on listed species and may adversely affect critical habitat. Exceedances of benchmarks, effluent limitation guidelines, or state or tribal water quality requirements may be indicative of potential adverse effects on listed species or critical habitat. However, some listed species may be adversely affected at pollutant concentrations below benchmarks, effluent limitation guidelines, and state or tribal water quality standards. In addition, stormwater pollutants identified in Part 5.2.3.2 of your SWPPP, but not monitored as benchmarks or effluent limitation guidelines, may also adversely affect listed species and critical habitat.

As these effects are difficult to analyze for listed species, their prey, habitat, and designated critical habitat, this form helps you to analyze your discharges and make a determination of whether your discharges will have likely adverse effects and whether there are any additional controls you can implement to ensure no likely adverse effects.

A. Evaluation of Pollutants and Controls to Avoid Adverse Effects. In this section, you must document all of your pollutant sources and pollutants expected to be discharged in stormwater. You must also document the controls you will implement to avoid adverse effects on listed aquatic and aquatic-dependent species. You must include specific details about the expected effectiveness of the controls in avoiding adverse effects to the listed aquatic-and aquatic-dependent species. Attach additional pages if needed.

Potential Pollutant Source	Potential Pollutants	Controls to Avoid Adverse Effects on Listed Aquatic and Aquatic-Dependent Species. Include information supporting why the control(s) will ensure no adverse effects, including any data you have about the effectiveness of the control(s) in reducing pollutant concentrations. You may also attach photos of your controls to this form.
e.g., vehicle and equipment fueling	e.g., <ul style="list-style-type: none"> • Oil & grease • Diesel • Gasoline • TSS • Antifreeze 	e.g., <ul style="list-style-type: none"> • Fueling operators (including the transfer of fuel from tank trucks) will be conducted on an impervious or contained pad or under cover • Drip pans will be used where leaks or spills of fuel can occur and where making and breaking hose connections • Spill kit will be kept on-site in close proximity to potential spill areas • Any spills will be cleaned-up immediately using dry clean up methods • Stormwater runoff will be diverted around fueling areas using diversion dikes and curbing

Potential Pollutant Source	Potential Pollutants	Controls to Avoid Adverse Effects on Listed Aquatic and Aquatic-Dependent Species.

Potential Pollutant Source	Potential Pollutants	Controls to Avoid Adverse Effects on Listed Aquatic and Aquatic-Dependent Species.

Check if you are not able to make a preliminary determination that any of your pollutants will be controlled to a level necessary to avoid adverse effects on aquatic and/or aquatic-dependent listed species and their designated critical habitat. You must check in [Section VI](#) that you are unable to make a determination of no likely adverse effects, and must complete the rest of the form. You must submit your completed form to EPA for assistance in determining your eligibility for coverage.

B. Analysis of Effects Based on Past Monitoring Data. Select which of the following applies to your facility:

- I have no previous monitoring data for my facility because there are no applicable monitoring requirements for my facility's sector(s).
- I have no previous monitoring data for my facility because I am a new discharger or a new source, but I am subject to monitoring under the 2015 MSGP. You must provide information to support a conclusion that your facility's discharges are not expected to result in benchmark or numeric effluent limit exceedances that will adversely affect listed species or their critical habitat:
- My facility has not had any exceedances under the 2008 MSGP of any required benchmark(s) or numeric effluent limits.
- My facility has had exceedances of one or more benchmark(s) or numeric effluent limits under the 2008 MSGP, but I have addressed them during my coverage under the 2008 MSGP, or in my evaluation of controls to avoid adverse effects in (A) above. Describe all actions (including specific controls) that you will implement to ensure that the pollutants in your discharge(s) will not result in likely adverse effects from future exceedances.
- Check if your facility has had exceedances of one or more benchmarks or numeric effluent limits under the 2008 MSGP and you have not been able to address them to avoid adverse effects from future exceedances, or if you are a new discharger or a new source but you are not sure if you can avoid adverse effects from possible exceedances. You must check in [Section VI](#) that you are unable to make a determination of no likely adverse effects. You must submit your completed form to EPA for assistance in determining your eligibility for coverage. You may not file your NOI for permit coverage until you are able to make a determination that your discharges will avoid adverse effects on listed species and designated critical habitat.

SECTION VI VERIFICATION OF PRELIMINARY EFFECTS DETERMINATION

Based on Steps I – V of this form, you must verify your preliminary determination of effects on listed species and designated critical habitat from your discharges and/or discharge-related activities :

- Following the applicable Steps in I – V above, I have made a preliminary determination that my discharges and/or discharge-related activities are not likely to adversely affect listed species and designated critical habitats.
- Following the applicable Steps in I – V above, I am **not** able to make a preliminary determination that my discharges and/or discharge-related activities are not likely to adversely affect listed species and designated critical habitats.

Certification Information

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

First Name, Middle Initial, Last Name:

Title:

Signature: _____ Date: / /

E-mail:

SECTION VII CRITERION C ELIGIBILITY FORM SUBMISSION INSTRUCTIONS

You must submit this completed form to EPA at msgpesa@epa.gov, including any attachments and any additional information that demonstrates how you will avoid or eliminate adverse effects to listed species or critical habitat (e.g., specific controls you will implement to avoid or eliminate adverse effects). **Any missing or incomplete information may result in a delay of your coverage under the permit.**

If you have made a preliminary determination that your discharges and/or discharge-related activities are not likely to adversely affect listed species and critical habitat, this form must be submitted a minimum of 30 days prior to submitting your NOI for permit coverage under criterion C. Please note that during either the 30-day *Criterion C Eligibility Form* review period prior to your NOI submission, or within 30 days after your NOI submission and before you have been authorized for permit coverage, EPA may advise you that additional information is needed, or that there are additional measures you must implement to avoid likely adverse effects.

If you are unable to make a preliminary determination that your discharges and/or discharge-related activities are not likely to adversely affect listed species and critical habitat, this worksheet must be submitted to EPA, but you may not file your NOI for permit coverage until you have received a determination from EPA that your discharges and/or discharge-related activities are not likely to adversely affect listed species and critical habitat.

Attachment 1

Include a map **and a written description** of the action area of your facility, as required in [Step 2](#). You may choose to include the map that is generated from the FWS' on-line mapping tool IPaC (the *Information, Planning, and Consultation System*) located at <http://ecos.fws.gov/ipac/>.

The written description of your action area that accompanies your action area map must explain your rationale for the extent of the action area drawn on your map. For example, your action area written description may look something like this:

The action area for the (name of your facility)'s stormwater discharges extends downstream from the outfall(s) in (name of receiving waterbody) (# of meters/feet/kilometers/miles). The downstream limit of the action area reflects the approximate distance at which the discharge waters and any pollutants would be expected to cause potential adverse effects to listed species and/or critical habitat because (insert rationale). The action area does/does not extend to the (name of receiving waterbody)'s confluence with (name of confluence waterbody) because (insert rationale).

Note that your action area written description will be highly site-specific, depending on the expected effects of your facility's discharges and discharge-related activities, receiving waterbody characteristics, etc.

Attachment 2

List or attach the listed species and critical habitat in your action area on this sheet, as required in [Step 3](#). You must include a list for applicable listed NMFS and FWS species and critical habitat. If there are listed species and/or critical habitat for only one Service, you must include a statement confirming there are no listed species and/or critical habitat for the other Service. For FWS species, include the full printout from your IPaC query. *Note: If your Official Species List from the USFWS indicated no species or critical habitat were present in your action area, include the full consultation tracking code at the top of your Official Species List in your NOI submittal in the question "Provide a brief summary of the basis for the criterion selected in Appendix E." If an Official Species List was not available on IPaC, list the contact date and name of the Service staff with whom you corresponded to identify the existence of any USFWS species or critical habitat present in your action area.*