

## Appendix E - Procedures Relating to Endangered Species Protection

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

In accordance with Part 1.1.4, you must follow the procedures in this appendix to determine which of the eligibility criteria (i.e., criterion A - E) you qualify under, if any, with respect to the protection of threatened or endangered species listed, and "critical habitat" designated, under the federal Endangered Species Act (ESA). If you do not meet one of these criteria, you are not eligible for coverage under this permit.

The procedures in this appendix will help you assess the potential effects of applicable stormwater discharges, discharge-related activities, and authorized non-stormwater discharges on federally listed threatened and endangered species and their designated critical habitat. In accordance with Part 6.2.6.1 of this permit, you must keep any documentation that supports your eligibility criteria 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 outlined in the Endangered Species Protection section of the Notice of Intent (NOI) in the NPDES eReporting Tool (NeT-MSGP) and provide all information as required on your NOI that supports the Part 1.1.4 eligibility criterion you qualify under. Note that if you have determined that you may be eligible under Criterion C3 or Criterion F, you must complete additional questions in the Endangered Species Protection section of the NOI in NeT-MSGP, unless the EPA Regional Office grants you a waiver from electronic reporting, in which case you must submit a completed [Criterion C3 Eligibility Form](#) to EPA a minimum of 30 days prior to submitting your NOI for permit coverage.**

While coordination between you and the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS) (together, the "Services") is not necessarily required in all cases, EPA encourages you to coordinate with the Services, to document that coordination, and to do so early in the planning process prior to submitting your NOI.

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, as identified by the [USFWS IPaC](#) and/or the [NOAA Species Directory](#) (see Part E.4 of this appendix). Action area is defined in Appendix A of the MSGP and below:

**Action Area** – all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. See 50 CFR 402. For the purposes of this permit and for application of Endangered Species Act requirements, the following areas are included in the definition of action area:

- The areas where stormwater discharges originate and flow from the industrial facility to the point of discharge into receiving waters. (Example: Where stormwater flows into a ditch, swale, or gully that leads to receiving waters and where listed species (such as listed amphibians) are found in the ditch, swale, or gully.)
- The areas where stormwater from industrial activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where stormwater from industrial activities discharges into a stream segment that is known to harbor listed aquatic species.)

- The areas where stormwater controls will be constructed and operated, including any areas where stormwater flows to and from the stormwater controls. (Example: Where a stormwater retention pond would be built.)
- The areas upstream and/or downstream from the stormwater discharge into a stream segment that may be affected by these discharges. (Example: Where sediment discharged to a receiving stream settles downstream and impacts a breeding area of a listed aquatic species.)

## E.2 Eligibility Criterion

As required by Part 1.1.4, you must certify in your NOI that you meet one of the following criteria (A - E) to be eligible for coverage under the permit. Once you determine the applicable eligibility criterion, you must:

- Specify the basis for your selection of the applicable eligibility criterion, and if required, provide documentation that is the basis for your determination with the NOI form; and
- Provide documentation in your SWPPP that is sufficient to support your determination that you satisfy the requirements of the applicable criterion.

**NOTE: You must use the information from the [USFWS IPaC](#) and [NOAA Species Directory](#) (see Part E.4-5 of this appendix, Step 2 and E.6 of this appendix, Step 3) when determining the presence of ESA listed species and critical habitat. Attaching aerial image(s) of the site to this NOI is helpful to EPA, USFWS, and NMFS in confirming eligibility under this criterion. Please Note: NMFS' jurisdiction includes ESA-listed marine and estuarine species that spawn in inland rivers.**

**Criterion A. No ESA-listed species and/or critical habitat present in action area.** No ESA-listed species and designated critical habitat(s) are likely to occur in your facility's "action area" as defined in Appendix A. You must provide a description below of the basis for selecting this criterion and provide documentation supporting your eligibility determination in your SWPPP.

**Basis statement content:** A basis statement supporting the selection of this criterion must identify the USFWS and NMFS information sources used. State resources are not acceptable. Attaching aerial image(s) of the site to this NOI is helpful to EPA, USFWS, and NMFS in confirming eligibility under this criterion. Note that NMFS' jurisdiction includes ESA-listed marine and estuarine species that spawn in inland rivers.

**Criterion B. Eligibility requirements met by another operator under the 2021 MSGP.** 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 eligibility criteria A, C, D, or E of the 2021 MSGP and you have confirmed that no additional ESA-listed species and designated critical habitat not considered in that 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, there must be no lapse of NPDES permit coverage in the other 2021 MSGP operator's certification. By certifying eligibility under this criterion, you must comply with any conditions upon which the other operator's certification was based. You must include in your NOI the NPDES ID assigned to the other 2021 MSGP operator's authorization under this permit. If your certification is based on another 2021 MSGP operator's certification under

criterion C, you must provide EPA with the relevant supporting information required (i.e., permit tracking number, industrial activity SWPPP, a description of the basis for the criterion selected) in your NOI form.

**Basis statement content:** A basis statement supporting the selection of this criterion must identify the eligibility criterion of the other MSGP NOI, the authorization date, and confirmation that the authorization is effective.

**Criterion C1. Facility eligible for Criterion C in the 2015 MSGP with NO CHANGE to listed species, critical habitat, or action area.** Your facility was eligible for Criterion C in the 2015 MSGP and there has been no change in your facility's action area and you have confirmed that there are no additional threatened or endangered species or designated critical habitat listed by USFWS and/or NMFS in your action area since your certification under Criterion C in the 2015 MSGP. You must provide a description of the basis of this criterion selected on your NOI form and provide documentation supporting your eligibility determination in your SWPPP.

**Basis statement content:** A basis statement supporting the selection of this criterion must provide the USFWS and/or NMFS resources consulted that helped you determine that there are no additional and/or critical habitat listed by under the jurisdiction of the Services in your action area.

**Criterion C2. Facility eligible for Criterion C in the 2015 MSGP with CHANGES to listed species, critical habitat, or action area.** Your facility was eligible for Criterion C in the 2015 MSGP, but there have been changes in your facility's action area, and/or additional threatened or endangered species and/or designated critical habitat have been listed by USFWS and/or NMFS in your action area since your certification under Criterion C under the 2015 MSGP. You must provide a description of the basis of this criterion selected on your NOI form and provide documentation supporting your eligibility determination in your SWPPP. You must submit your completed Criterion C2 Eligibility information at the same time that you submit your NOI, which will be held for 30 additional days prior to the standard 30-day review for all NOIs.

**Basis statement content:** A basis statement supporting the selection of this criterion must identify the following:

1. A description of the changes in the facility's action area (if applicable).
2. The USFWS and/or NMFS resources consulted that helped you determine that additional species and/or critical habitat have been listed/designated by either of the Services in your action area.
3. What ESA-listed species and/or designated critical habitat are located in your "action area".
4. Distance in miles between your site and the ESA-listed species and/or designated critical habitat within the action area (in miles, or state "on site" if the ESA-listed species and/or designated critical habitat is within the area to be disturbed).
5. A description of EPA approved measures you will implement or will continue to implement, including additional measures previously

suggested by the services and required by the EPA under the 2015 MSGP, to ensure no likely adverse effects on ESA-listed species and/or critical habitat.

**Criterion C3. ESA-listed species and/or designated critical habitat likely to occur, but discharges not likely to adversely affect them.** ESA-listed threatened or endangered species or their designated critical habitat(s) under the jurisdiction of USFWS and/or NMFS are likely to occur in or near your facility's "action area," and you certify to EPA that your industrial activity's discharges and discharge-related activities are not likely to adversely affect ESA-listed and/or critical habitat. To certify your eligibility under this criterion, you must complete the Criterion C3 Eligibility Form, which you must complete additional questions in the Endangered Species Protection section of the NOI in NeT-MSGP, unless the EPA Regional Office grants you a waiver from electronic reporting, in which case you must submit to EPA at least 30 days prior to filing your NOI for permit coverage. After evaluation of your Criterion C3 Eligibility Form, EPA may require additional measures that you must implement to avoid or eliminate likely adverse effects on ESA-listed species and/or critical habitat from discharges and discharge-related activities. You must submit your completed Criterion C3 Eligibility information at the same time that you submit your NOI, which will be held for 30 additional days prior to the standard 30-day review for all NOIs. 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.

**Basis statement content:** A basis statement supporting the selection of this criterion must identify the following:

1. The USFWS and NMFS information resources and expertise (e.g., state or federal biologists) used to arrive at this conclusion. Any supporting documentation should explicitly state that both ESA-listed species and designated critical habitat under the jurisdiction of the USFWS and/or NMFS were considered in the evaluation.
2. What ESA-listed species and/or designated critical habitat are located in your "action area".
3. Distance in miles between your site and the ESA-listed species and/or designated critical habitat within the action area (in miles, or state "on site" if the ESA-listed species and/or designated critical habitat is within the area to be disturbed).
4. A description of EPA approved measures you will implement to ensure no likely adverse effects on ESA-listed species and/or critical habitat.
5. A statement affirming that "I agree to implement any additional measures that were determined by EPA to be necessary to ensure that my discharges and/or discharge-related activities will not have likely adverse effects on listed species and critical habitat."
6. If the EPA Regional Office granted you a waiver from electronic reporting, date you sent completed Criterion C3 Eligibility form to EPA.

**Criterion D. ESA Section 7 consultation has successfully concluded.** 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 has concluded. The consultation must have addressed the effects of the facility's discharges and discharge-related activities on ESA-listed species and/or designated critical habitat under the jurisdiction of USFWS and/or NMFS. To certify eligibility under this criterion, indicate the result of the consultation:

- i. A biological opinion and/or conference 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 ESA-listed species, or result in the destruction or adverse modification of designated critical habitat; or
- ii. 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 ESA-listed species or designated critical habitat.

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 Criterion D (i), or (ii) above.

If eligible under Criterion D, you must also provide supporting documentation for your determination in your NOI and SWPPP, including the Biological Opinion (or ECO tracking number) or concurrence letter. You must include copies of the correspondence between yourself and the USFWS and/or NMFS in your SWPPP and your NOI.

**Basis statement content:** A basis statement supporting the selection of this criterion should identify the federal action agency(ies) involved, the field office/regional office(s) providing that consultation, any tracking numbers of identifiers associated with that consultation (e.g., IPaC number, ECO number), and the date the consultation was completed.

**Criterion E. Issuance of section 10 permit.** Potential take is authorized through the issuance of a permit under section 10 of the ESA by the USFWS and/or NMFS, and this authorization addresses the effects of the facility's discharges and discharge-related activities on ESA-listed species and designated critical habitat. You must include copies of the correspondence between yourself and the participating agencies in your SWPPP and your NOI.

**Basis statement content:** A basis statement supporting the selection of this criterion should identify whether USFWS or NMFS or both agencies provided a section 10 permit, the field office/regional office(s) providing permit(s), any tracking numbers of identifiers associated with that consultation (e.g., IPaC number, ECO number), and the date the permit was granted.

### **E.3 Eligibility Compliance**

You must comply with any measures that formed the basis of your eligibility determination in Part 1.1.4 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 6.2.6.1).

## E.4 Criterion Selection Worksheet

### Instructions:

You must follow the step-by-step instructions in this worksheet in order to determine your eligibility under Part 1.1.4. 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 the document and provided. You must attach this completed document or Biological Evaluation (or equivalent) to your SWPPP to support your Part 1.1.4 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, such as the geographic location.
- 3) The list(s) of threatened and endangered species and/or any designated critical habitat in your action area, as acquired from the Fish and Wildlife Service and/or the National Marine Fisheries Service. 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 information that is 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 YOU MEET THE ELIGIBILITY REQUIREMENTS OF CRITERION B, D, or E.

- I. 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 2021 MSGP), criterion D (because of a previously completed ESA section 7 consultation), or criterion E (because of a previously issued ESA section 10 permit).
- II. If you determine that your facility does not meet criterion 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.

### **Criterion B Eligibility Requirements**

If your industrial activities were already addressed in another operator's valid certification of eligibility under the current 2021 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** three of 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. Provide the operator's NPDES permit number and list any measures that you must comply with in the box below (or enter "N/A" if none exist):

- **If all three 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 in the other operator's NOI. 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 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** two of 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 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 ESA-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 currently in effect 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<sup>1</sup> and discharge-related activities on all the listed species and designated critical habitat in your action area. To be eligible under (i), any

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<sup>1</sup> 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.

reasonable and prudent measures specified in the incidental take statement must be implemented;

- ii. Written concurrence (e.g., letter of concurrence) from the applicable Service(s) with a finding that your facility's discharges and discharge-related activities are not likely to adversely affect ESA-listed species and/or designated critical habitat. The concurrence letter must have included the effects of your facility's discharges and discharge-related activities on all the ESA-listed species and/or designated critical habitat on your species list(s) acquired from the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service 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 both 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 ECO 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 ESA-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.
- **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.

### **E.5 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) 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 authorized 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 authorized 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. <https://www.epa.gov/npdes/contact-us-stormwater#regional>

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.

### **E.6 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, and/or their designated critical habitat(s) (as defined in Appendix A), are located in your facility's action area. ESA 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 (USFWS), and in many cases, you will need to acquire species and critical habitat lists from both Services.

- For NMFS species and critical habitat information, use the following webpages, which provide up-to-date information on listed species

~~(<https://www.fisheries.noaa.gov/species-directory/threatened-endangered>) and critical habitat <https://www.fisheries.noaa.gov/national/endangered-species-conservation/critical-habitat>.~~ • For the Northeastern U.S.: [NOAA Fisheries Greater Atlantic Region ESA Section 7 Mapper](#):

<https://noaa.maps.arcgis.com/apps/webappviewer/index.html?id=1bc332edc5204e03b250ac11f9914a27;>

- For Puerto Rico:
  - Acropora critical habitat map: <https://www.fisheries.noaa.gov/resource/map/acropora-elkhorn-and-staghorn-coral-critical-habitat-map-and-gis-data;>
  - Green turtle critical habitat map: <https://www.fisheries.noaa.gov/resource/map/green-turtle-critical-habitat-map-and-gis-data;>
  - Hawksbill Turtle critical habitat map: <https://www.fisheries.noaa.gov/resource/map/hawksbill-turtle-critical-habitat-map-and-gis-data;>
- Western U.S.: West Coast Region Protected Resources App: <https://www.webapps.nwfsc.noaa.gov/portal/apps/webappviewer/index.html?id=7514c715b8594944a6e468dd25aaacc9;> and
- Pacific Islands: Contact the Pacific Islands Regional Office at (808) 725-5000 or [pirohonolulu@noaa.gov](mailto:pirohonolulu@noaa.gov).

If you need more information, ~~To determine the field office that corresponds to your facility,~~ go to <https://www.fisheries.noaa.gov/regions>. Choose the Region where the project is based from the left-hand column and the office from the About Us on the right-hand column.

If the action area includes coastal waters or waters used by species that migrate between fresh and salt waters (e.g., salmon, sturgeon), you must obtain a species list from NMFS field office.

- 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.*
  - **Search or zoom to find your location:** Use an address, city name or other location to find your facility then use the zoom in/out feature to see the entire extent of your action area on the screen.
  - **Define you action area:** Use one of the mapping features (e.g., sketch, polygon or line drawing tool) to draw your entire action area.
    - 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, go to confirm and press *Continue*.
  - *Select Define Project* to 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 operators, this should be "Other").
- o 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.
- o 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](#).

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. For NMFS species, include the full printout from the Species Directory with the correct Region selected.

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 ESA-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 in the basis statement for Criterion A.- 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 ESA-protected 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 ESA-protected 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 ESA-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 additional questions in the Endangered Species Protection section of the NOI in NeT-MSGP, unless the EPA Regional Office grants you a waiver from electronic reporting, in which case you must complete the attached [Criterion C3 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 NOI containing Criterion C3 information or your [Criterion C3 Eligibility Form](#), you may be contacted by EPA with additional measures that you must implement in order to ensure your eligibility under criterion C3.

## Criterion C3 Eligibility Form

### Instructions:

In order to be eligible for coverage under criterion C3, **you must complete the Endangered Species Protection section of the Notice of Intent in the NPDES eReporting Tool (NeT-MSGP).** Per Part 7.1, you must submit your NOI electronically via NeT-MSGP, unless the EPA Regional Office grants you a waiver from electronic reporting, in which case you may use this paper Criterion C3 form. If using the paper form, 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 C3.

If after completing this worksheet you cannot make a determination that your discharges and discharge-related activities are not likely to adversely affect ESA 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 ESA-protected 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(s) the facility has been in operation: \_\_\_\_\_year(s)

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 2021 MSGP:**

SIC Code \_\_\_\_\_ or Primary Activity Code \_\_\_\_\_

Sector \_\_\_\_\_ and Subsector \_\_\_\_\_

**e) Identify the sectors of any co-located activities to be covered under the 2021 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:   |  |
|--|----------------------------|----------------------------|-----------------------------|--|--|
| Discharge Point ID                                   | Design Capacity (if known) | Latitude (decimal degrees) | Longitude (decimal degrees) | Name of the receiving water that receives stormwater from the discharge point and/or from the MS4 that the discharge point discharges to | Type of Waterbody (e.g., lake, pond, river/stream/creek, estuarine/marine water) |
|  |                            | ---.---                    | ---.---                     |  |  |
|  |                            | ---.---                    | ---.---                     |  |  |
|  |                            | ---.---                    | ---.---                     |  |  |
|  |                            | ---.---                    | ---.---                     |  |  |
|  |                            | ---.---                    | ---.---                     |  |  |

**SECTION II. ACTION AREA**

As required in [Step 2 of Section E.4-5 of Appendix E](#), You must include a map and a written description of the action area of your facility in Attachment 1 of this appendix.

**SECTION III. LISTED SPECIES AND CRITICAL HABITAT LIST**

As required in [Step 3 of Section E.4-6 of Appendix E](#), 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.

**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.

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.**

**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 2021 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.

**B. In order to ensure any discharge-related activities will have no likely adverse effects on ESA-listed threatened and endangered 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 and these activities will not occur within critical habitat.

**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 affects you should consider:

- *Hydrological Effects.* Stormwater discharges may adversely affect receiving waters by causing changes in water quality parameters such as turbidity, temperature, salinity, or pH. Stormwater discharges may adversely affect the immediate vicinity of the discharge point through streambank erosion and scour. 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 due to exposures to multiple stressors at the same time. In addition, stormwater pollutants identified in Part 6.2.3.2 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 to make a determination of whether your discharges will likely have adverse effects and whether there are any additional controls you can implement to ensure no likely adverse effects.

| <b>A. Evaluation of Pollutants and Controls to Avoid Adverse Effects.</b> In this section, you must document <b>all</b> of your pollutant sources and pollutants expected to be discharged in stormwater (see Part 8). You must also document the controls you will implement to avoid adverse effects on listed aquatic and aquatic-dependent species and critical habitat. You must include specific details about the expected effectiveness of the controls in avoiding adverse effects to the listed aquatic-and aquatic-dependent species and critical habitat. Attach additional pages if needed. |   |  |
|--|---|--|
| Potential Pollutant Source   | Potential Pollutants  | <b>Controls to Avoid Adverse Effects on Listed Aquatic and Aquatic-Dependent Species and Critical Habitat.</b> 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 <u>of your controls to this form.</u>  |
| e.g., <ul style="list-style-type: none"> <li>• vehicle and equipment fueling</li> </ul>  | e.g., <ul style="list-style-type: none"> <li>• Oil &amp; grease</li> <li>• Diesel</li> <li>• Gasoline</li> <li>• TSS</li> <li>• Antifreeze</li> </ul> | e.g., <ul style="list-style-type: none"> <li>• Fueling operators (including the transfer of fuel from tank trucks) will be conducted on an impervious or contained pad or under cover</li> <li>• Drip pans will be used where leaks or spills of fuel can occur and where making and breaking hose connections</li> <li>• Spill kit will be kept on-site in close proximity to potential spill areas</li> <li>• Any spills will be cleaned-up immediately using dry clean-up methods</li> <li>• Stormwater runoff will be diverted around fueling areas using diversion dikes and curbing</li> </ul> |

| <b>Potential Pollutant Source</b> | <b>Potential Pollutants</b> | <b>Controls to Avoid Adverse Effects on Listed Aquatic and Aquatic-Dependent Species and Critical Habitat.</b> |
|-----------------------------------|-----------------------------|--|
|                                   |                             |  |
|                                   |                             |  |
|                                   |                             |  |
|                                   |                             |  |
|                                   |                             |  |

| Potential Pollutant Source   | Potential Pollutants | Controls to Avoid Adverse Effects on Listed Aquatic and Aquatic-Dependent Species and Critical Habitat. |
|--|----------------------|---|
|  |                      |   |
|  |                      |   |
|  |                      |   |
|  |                      |   |
| <p><input type="checkbox"/> 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 <a href="#">Section VI</a> 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.</p> |                      |   |

**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 2021 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 2015 MSGP of any required benchmark(s) or numeric effluent limits. I comply with the applicable monitoring requirements and have not had any exceedances.
- My facility has had exceedances of one or more benchmark(s) or numeric effluent limits under the 2015 MSGP, but I have addressed them during my coverage under the 2015 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 2015 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 provided information supporting 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 provide information supporting 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

**Only if the applicable EPA Regional Office has granted you a waiver from electronic reporting,** you must submit this completed form to EPA at [msgpesa@epa.gov](mailto:msgpesa@epa.gov), including any attachments and any additional information that demonstrates how you will avoid or eliminate adverse effects to listed threatened and endangered species or designated 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 of Section E.4-5 of Appendix E](#). 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 list(s) of species and critical habitat in your action area on this sheet, as required in [Step 3 of Section E.4.6 of Appendix E.](#) You must include a list for applicable listed NMFS and USFWS 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 USFWS species, include the USFWS Official Species List full printout from your IPaC query (including the consultation code and event code at the top of the FWS printout). *Note: If your Official Species List from the USFWS indicated no species or critical habitat were present in your action area, include the consultation code and event code that can be found at the top of your Official Species List in your NOI basis statement. If an Official Species List was not available on IPaC, list the contact date, the ecological services field office and the 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.*