

## Endangered Species Act Eligibility Criteria

### I. Background

In order to meet its obligations under the Clean Water Act (“CWA”) and the Endangered Species Act (“ESA”), and to promote the goals of those Acts, the Environmental Protection Agency (“EPA”) is seeking to ensure the activities regulated by the General Permit For Private Commercial, Industrial And Institutional Stormwater Discharges In The Charles, Mystic And Neponset River Watersheds In Massachusetts (“CII GP”) do not adversely affect endangered and threatened species or critical habitat.

EPA expects to complete all ESA consultation with the United States Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration Marine Fisheries Service (NOAA Fisheries/NMFS), collectively known as The Services, by the time the CII General Permit is finalized. However, as is sometimes the case with general permits, The Services may require that the permittee submit further analysis to ensure that actions covered by the CII meet the permittee’s ESA consultation responsibilities for their specific action area. This additional step may be included as part of the Notice of Intent submission. Based on previous general permits, this Draft Appendix C is an example of what the permittee’s requirements may be. If specific requirements are submitted by The Services during the public comment period, EPA will incorporate the requirements in the Final CII GP and Appendices.

As noted above, depending on the guidance from The Services during the ESA section 7 informal consultation process, owners and operators seeking coverage under this General Permit **may be** required to assess the impacts of their specific discharges and discharge-related activities on federally listed endangered and threatened species (“listed species”) and designated/proposed critical habitat (“critical habitat”) to ensure that those goals are met. The following information is an example of what the requirements, if enacted, would likely be:

#### Example Appendix C

Prior to obtaining general permit coverage, operators must meet the ESA eligibility provisions of this CII GP by following the steps in this appendix. EPA strongly recommends that operators begin this process as early as possible to ensure the notification requirements for general permit coverage are complete upon Notice of Intent (“NOI”) submission. A site that cannot meet any of the ESA eligibility criteria under this general permit must apply for an individual permit.

Owners and operators seeking coverage also have an independent ESA obligation to ensure that their activities do not result in any prohibited “take” of listed species<sup>1</sup>. The term “take” is used in the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. “Harm” is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns including breeding, feeding, or sheltering. “Harass” is defined as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering.

Many of the measures required in the CII GP and this appendix to protect listed species may also assist in ensuring that the stormwater discharges do not result in a prohibited take of species in violation of Section 9 of the ESA. If the owner or operator has plans or activities in an area where endangered and threatened species are located, they may wish to ensure that they are protected from potential take liability under ESA Section 9 by obtaining an ESA Section 10 permit (Incidental Take Permit) or by requesting formal consultation under ESA Section 7. Owners or operators that are unsure whether to pursue a Section 10 permit or a Section 7 consultation for takings protection should confer with the appropriate U.S. Fish and Wildlife Service (“USFWS”)<sup>2</sup> office or the NOAA Fisheries/National Marine Fisheries Service (“NMFS”)<sup>3</sup>, jointly referred to as The Services.

The following are federally protected ESA species whose presence overlaps with the Charles, Mystic, and Neponset River watersheds receiving waters in Massachusetts:

### **USFWS ESA Protected Species**

Piping plover (*Charadrius melodus*)<sup>a</sup>

Roseate tern (*Sterna dougallii dougallii*)<sup>a</sup>

Northern long-eared bat (*Myotis septentrionalis*)<sup>b</sup>

Tricolored Bat (*Perimyotis subflavus*)<sup>c</sup>

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<sup>1</sup> Section 9 of the ESA prohibits any person from “taking” a listed species (e.g., harassing or harming it) unless: (1) the taking is authorized through an “incidental take statement” as part of completion of formal consultation according to ESA section 7; (2) where an incidental take permit is obtained under ESA Section 10 (which requires the development of a habitat conversion plan; or (3) where otherwise authorized or exempted under the ESA. This prohibition applies to all entities including private individuals, businesses, and governments.

<sup>2</sup> Generally, consultation for discharges to freshwater receiving waters is between the operator and USFWS.

<sup>3</sup> Generally, consultation for discharges to saltwater receiving waters is between EPA and NOAA Fisheries/NMFS.

**NOAA Fisheries/NMFS ESA Protected Species<sup>d</sup>**

Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*)

Shortnose sturgeon (*Acipenser brevirostrum*)

Green sea turtle (*Chelonia mydas*)

Kemp's ridley sea turtle (*Lepidochelys kempii*)

Leatherback sea turtle (*Dermochelys coriacea*)

Loggerhead sea turtle (*Caretta caretta*)

North Atlantic right whale (*Eubalaena glacialis*)

Fin whale (*Balaenoptera physalus*)

- <sup>a</sup> Based on the USFWS IPaC Northeast Species Determination Key, no further ESA coordination is required for the roseate tern and the piping plover.
- <sup>b</sup> Based on the USFWS IPaC Northern Long-eared Bat Determination Key; no further ESA coordination is required for the northern long-eared bat.
- <sup>c</sup> Based on EPA analysis, no further ESA coordination is required for the tricolored bat.
- <sup>d</sup> NOAA Fisheries/NMFS ESA species are in the process of ESA section 7 informal consultation.

Any owner or operator seeking coverage under the CII GP must certify eligibility with respect to ESA. By terms of this permit, EPA has automatically designated owner or operator as non-Federal representatives for the purpose of conducting formal or informal consultations with the USFWS and NOAA Fisheries/NMFS (See 50 CFR §402.08 and §402.13).

Permit coverage is available if EPA determines, or the owner or operator determines and EPA concurs, that the stormwater discharge (the action area<sup>4</sup>) does not overlap with the presence of NMFS threatened or endangered species or critical habitat, according to the NMFS ESA Section 7 Mapper<sup>5</sup> and also does not overlap with the presence of USFWS threatened or endangered species or critical habitat, according to the USFWS Information, Planning, and Conservation (IPaC) system mapping tool<sup>6</sup>, resulting in a “no effect” determination (Criterion A in Section II).

In addition, permit coverage is available if EPA determines, or the owner or operator determines and EPA concurs, that the stormwater discharge action area may overlap with the presence of NMFS/USFWS listed species, according to ESA Section 7 Mapper and/or IPaC, and a determination is made that the discharge “may affect, but is not likely to adversely affect” listed species and will not cause adverse modification to critical habitat or result in take of listed species (Criterion B, Section II).

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<sup>4</sup> By definition, the “action area” includes 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 §402.02). The action area includes the underwater areas where any effects of the discharge may be experienced in the receiving water.

<sup>5</sup> <https://www.fisheries.noaa.gov/resource/map/greater-atlantic-region-esa-section-7-mapper>

<sup>6</sup> <https://ecos.fws.gov/ipac/>

Permit coverage is also available if EPA determines, or the owner or operator determines and EPA concurs, that the stormwater discharge action area may overlap with the presence of NMFS/USFWS listed species, according to ESA Section 7 Mapper and/or IPaC, but a further site-specific habitat analysis documents that the action area is isolated from the expected presence of NMFS anadromous and marine species (by a man-made obstruction, for example) or is inconsistent with the documented habitat of the USFWS protected species listed on the IPaC species list. In this case, the action area ultimately does not overlap with the presence of NMFS/USFWS threatened or endangered species or critical habitat, resulting in a “no effect” determination (Criterion C in Section II).

Before submitting a NOI for coverage under this permit, the owner or operators must determine whether they meet the ESA eligibility criteria by following the steps in Sections II and III of this appendix. Owner or operators that cannot meet the eligibility criteria in Sections II and III may be required to apply for an individual permit.

## **II. ESA Eligibility Criteria for one USFWS Endangered Species – The Northern Long-Eared Bat**

EPA has satisfied the USFWS ESA eligibility requirements of this general permit relating to the northern long-eared bat (NLE bat). This endangered species is under the jurisdiction of the USFWS and is identified as occurring in Massachusetts. The CII GP permitted activities are consistent with the USFWS IPaC Northern Long-eared Bat Determination Key finding of “no effect” on the NLE bat.<sup>7</sup> No further ESA consultation is needed by the owner or operator for the NLE bat.

## **III. ESA Eligibility Criteria for Protected NMFS and USFWS Species**

The NMFS/USFWS ESA eligibility requirements of this general permit relating to the protected species listed under the jurisdiction of NMFS/USFWS (above) may be satisfied by documenting that one of the following criteria has been met:

**Criterion A:** No endangered or threatened species or critical habitat are in proximity to the discharges or related activities or come in contact with the “action area”, according to both the ESA Section 7 Mapper and the IPaC species list. This results in a “no effect” determination. No ESA Section 7 consultation is required.

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<sup>7</sup> USFWS Massachusetts Project Code: 2024-0130453; August 14, 2024.

**Criterion B:** Endangered or threatened species or critical habitat do overlap with the discharges or related activities and come in contact with the “action area”, according to the ESA Section 7 Mapper and/or the IPaC species list. In this case, formal or informal consultation with the NMFS and/or USFWS under Section 7 of the ESA resulted in either a no jeopardy opinion (formal consultation) or a written concurrence by NMFS and/or USFWS on a finding that the discharges and related activities “may affect but are not likely to adversely affect” listed species or critical habitat (informal consultation).<sup>8</sup>

**Criterion C:** Endangered or threatened species or critical habitat do overlap with the discharges or related activities and come in contact with the “action area” according to ESA Section 7 Mapper and/or IPaC species list. However, using the best scientific and commercial data available, as well as Attachment I to this appendix, a determination is made by EPA, or by the operator and affirmed by EPA, that the federally listed species or designated critical habitat listed on the USFWS species list is not found in the site-specific aquatic habitat of the action area. This results in a “no effect” determination. No ESA Section 7 consultation is required.

If no protected species overlap with your project’s action area (Criterion A or C), the owner or operator may skip to Section V and verify that their activities will have “no effect”. The owner or operator must submit this information to EPA as specified in Section V of this appendix. The owner or operator may submit their NOI for permit coverage 30 days after they have submitted this ESA information. The owner or operator must also provide a description of the basis for the criterion selected on their NOI form, including the species and critical habitat list(s), the report of species present from the ESA Section 7 Mapper, the IPaC Official Species List and any other documentation supporting their eligibility.

#### **IV. Steps to Determine if the ESA Eligibility Criteria Can Be Met**

To determine eligibility, owners or operators must assess the potential effects of their CII GP discharges and related activities on listed species or critical habitat **prior to completing and submitting a NOI**. Owners or operators must follow the steps outlined below and document the results of the eligibility determination.

In order to evaluate anadromous and marine species under the jurisdiction of NMFS, the ESA Section 7 Mapper online system must be used to develop a preliminary determination of federally listed species or designated critical habitats within the action area of the owner or operator’s discharge and related activities. Further information on

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<sup>8</sup> See USFWS Section 7 consultation handbook, available at [http://www.fws.gov/endangered/esa-library/pdf/esa\\_section7\\_handbook.pdf](http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf) for definitions and guidance.

the use of the ESA Section 7 Mapper is available on the NMFS website at <https://www.fisheries.noaa.gov/resource/map/greater-atlantic-region-esa-section-7-mapper>.

In order to evaluate all other listed species, the USFWS IPaC online system must be used to develop a preliminary determination of federally listed species or designated critical habitats within the action area of your discharge and related activities. Further information on IPaC is available on the USFWS website at <http://ecos.fws.gov/ipac/>. Instructions for using IPaC are available in Section VIII of this Appendix.

**Step 1 – Determine if you meet Criterion A:**

The owner or operator can certify eligibility, according to Criterion A, for coverage by this permit if, upon completing the ESA Section 7 Mapper and IPaC online system process, the owner/operator printed and saved the determination (report/USFWS Official Species List/NOAA Fisheries/NMFS ESA Mapper species list) which indicated that federally listed species or designated critical habitats are not present in the action area.

*If the owner or operator has met Criterion A, go to Step 4.*

*If the owner or operator has not met Criterion A, go to Step 2.*

**Step 2 – Determine if you meet Criterion B:**

The owner or operator can certify eligibility according to Criterion B for coverage by this permit if they answer “Yes” to **all** of the following questions:

- 1) Does the action area overlap with one or more of the protected species under the jurisdiction of NMFS (ESA Section 7 Mapper species list must be used) and/or USFWS (IPaC system USFWS Official Species List must be used to answer this question)?
- 2) Based on further site-specific investigation, are these species still expected to overlap with the aquatic/marine habitat of the action area?
- 3) Did the assessment of the discharge and related activities indicate that discharges “may affect, but are not likely to adversely affect” listed species or critical habitat?<sup>9</sup>
- 4) Did the owner/operator contact NMFS and/or USFWS and conduct an informal consultation resulting in NMFS and/or USFWS concurrence (informal consultation) that the discharge and related activities “may affect, but are not likely to adversely affect” listed species or critical habitat?
- 5) Does the owner/operator agree to implement all measures upon which the consultation was conditioned?

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<sup>9</sup> See USFWS Section 7 consultation handbook, available at [http://www.fws.gov/endangered/esa-library/pdf/esa\\_section7\\_handbook.pdf](http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf) for definitions and guidance.

Use the guidance below to understand effects determination and to answer these questions.

*If you answered “Yes” to **all** five questions above, you have met eligibility Criterion B. Go to Step 4.*

*If you answered “No” to Question 1), you have met eligibility Criterion A. Go to Step 4.*

*If you answered “No” to Question 2), go to Step 3.*

### **Step 3 – Determine if you meet Criterion C**

Criterion C: The owner/operator can certify eligibility according to Criterion C for coverage by this permit if they answer “Yes” to **both** of the following questions:

- 1) Does the action area contain one or more of the NMFS and/or USFWS species listed above (NMFS ESA Section 7 Mapper and IPaC system USFWS Official Species List must be used to answer this question)?
- 2) Did the further assessment of the potential presence of all species within the discharge and related activities indicate that there would ultimately be no overlap between all the species habitat and the aquatic/marine action area?<sup>10</sup>  
This will result in a “no effect” on listed species or critical habitat<sup>11</sup>

Use the guidance and example below to understand effects determination and to answer these questions.

*If you answered “Yes” to **both** questions above, you have met eligibility Criterion C. Go to Step 4.*

*If you answered “No” to Question 1), you may seek eligibility under Criterion A.*

*If you answered “Yes” to Question 1) and “No” to Question 2), you may seek eligibility under Criteria B.*

### **Criterion C Example: Piping plover**

Under Criterion C, Question 1, no NMFS species overlap with the owner/operator’s action area and the **only** protected species that is on the USFWS IPaC Official Species List for the action area is the piping plover, because the action area is near the coast. The owner/operator researches the habitat of the piping plover and determines that the bird is found in “**Coastal habitats include sand spits, small islands, tidal flats, shoals, and sandbars with inlets. Primary foraging habitats include sandy mud flats, ephemeral pools and seasonally emergent seagrass beds with abundant**

<sup>10</sup> For USFWS species, Attachment I, as well as other habitat information, may be used to further examine the habitat of the species present on the species list.

<sup>11</sup> See USFWS Section 7 consultation handbook, available at [http://www.fws.gov/endangered/esa-library/pdf/esa\\_section7\\_handbook.pdf](http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf) for definitions and guidance.

**invertebrates...**" (<https://www.fws.gov/species/piping-plover-charadrius-melodus> and Attachment I).

Since none of the sandbar-like habitat documented above is within or near the owner/operator project's action area, it is determined that even though the piping plover is on the IPaC USFWS Official Species List, the piping plover **does not** overlap with the owner/operator's action area (Yes to Question 2). The project has met eligibility Criterion C. This assessment must be documented using USFWS and/or NMFS resources.

#### **Step 4 - Document results of the Eligibility Determination**

Once the ESA eligibility requirements have been met, the owner/operator shall include documentation of NOAA Fisheries/NMFS and USFWS ESA eligibility in the NOI submission. Documentation for the various eligibility criteria are as follows:

- **Criterion A:** A copy of the ESA Section 7 Mapper species list (see Attachment II at the end of this appendix for an example) and IPaC generated USFWS Official Species List (not the preliminary resource list) documenting that no listed species or critical habitat is present within the action area. The owner/operator shall also include a statement specifying how it was determined that no listed species or critical habitat are in proximity to the discharges.
- **Criterion B:** A dated copy of the NMFS and/or USFWS letter of concurrence on a finding of "no jeopardy" (for formal consultation) or "not likely to adversely affect" (for informal consultation) regarding the ESA section 7 consultation.
- **Criterion C:** A copy of the ESA Section 7 Mapper species list (see Attachment II of this appendix) and IPaC generated USFWS Official Species List documenting that listed species or critical habitat are present within the action area along with a justification that the species identified, while listed in the action area, are not found in the specific aquatic action area because their habitat does not overlap with the aquatic/marine features of the action area.

#### **V. Submittal of Notice of Intent (NOI)**

Once the ESA eligibility requirements of Part III and IV of this Appendix have been met, and an owner or operator has determined ESA eligibility, an owner or operator may certify ESA eligibility in the Notice of Intent (NOI). Signature and submittal of the NOI constitutes an owner or operator's certification, under penalty of law, of eligibility for permit coverage under 40 CFR §122.21.

#### **VI. Duty to Implement Terms and Conditions upon which Eligibility was Determined.**

Owners or operators must comply with any terms and conditions imposed under the ESA eligibility requirements to ensure that CII GP discharges and related activities do not pose adverse effects or jeopardy to listed species and/or critical habitat. If the ESA

eligibility requirements of this permit cannot be met, then a site may not receive coverage under this general permit and must apply for an individual permit.

## VII. Services Information

### United States Fish and Wildlife Service

National websites for Endangered Species Information:

Endangered Species home page: <http://endangered.fws.gov>

ESA Section 7 Consultations:

<https://www.fws.gov/midwest/endangered/section7/section7.html>

Information, Planning, and Conservation System (IPAC):

<http://ecos.fws.gov/ipac/>

United States Fish and Wildlife Service

New England Field Office

70 Commercial Street, Suite 300

Concord, NH 03301-5087

Phone: (603) 223-2541

### NOAA Fisheries/National Marine Fisheries Service

Website: [http://www.nmfs.noaa.gov/pr/species/esa\\_species.htm](http://www.nmfs.noaa.gov/pr/species/esa_species.htm)

ESA Species Map: <https://www.fisheries.noaa.gov/resource/map/greater-atlantic-region-esa-section-7-mapper>

NOAA Fisheries/National Marine Fisheries Service

Greater Atlantic Region Fisheries Office

Protected Resources Division

55 Great Republic Drive

Gloucester, MA 01930-2298

Phone: (978) 281-9300 ext. 6505

## VIII. U.S. Fish and Wildlife Service IPaC System Instructions

Follow the instructions provided below to determine if any federally listed species or designated critical habitat under the jurisdiction of the U.S. Fish and Wildlife Service exist in the action area of a site.

Enter site-specific information into the “Initial Project Scoping” feature of the Information, Planning, and Conservation (IPaC) system mapping tool, which can be accessed at <https://ecos.fws.gov/ipac/>.

1. Indicate the action area<sup>12</sup> for the site by either:
  - a. Drawing the boundary on the map; or
  - b. Uploading a shapefile.
2. Select “Continue”.
3. Select “SEE RESOURCE LIST”. The next screen will display a resources list, which can be exported. This list indicates natural resources of concern, which will include a list of Endangered Species Act species<sup>13</sup>. As the next required step, a USFWS Official Species List under “REGULATORY DOCUMENTS” must be requested. Retain a copy of the Official Species List for record keeping purposes.

If the owner/operator is unable to certify eligibility under Criterion A, they must assess whether the discharges or related activities “may affect but will not likely adversely affect” listed species or critical habitat. “Discharge-related activities” include Best Management Practices (BMPs) to prevent or minimize the concentration of pollutants in the stormwater.

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<sup>12</sup> The action area is defined by regulation as all areas to be affected directly or indirectly by the action and not merely the immediate area involved in the action (50 CFR §402.02). This analysis is not limited to the “footprint” of the action, nor is it limited by the Federal agency's authority. Rather, it is a biological determination of the reach of the proposed action on listed species. Subsequent analyses of the environmental baseline, effects of the action, and levels of incidental take are based upon the action area.

The documentation used by a Federal action agency to initiate consultation should contain a description of the action area as defined in the Services' regulations and explained in the Services' consultation handbook. If the Services determine that the action area as defined by the action agency is incorrect, the Services should discuss their rationale with the agency or applicant, as appropriate. Reaching agreement on the description of the action area is desirable but ultimately the Services can only consult when an action area is defined properly under the regulations.

For stormwater discharges or discharge related activities, the action area should encompass the following:

- The immediate vicinity of, or nearby, the point of discharge into receiving waters.
- The path or immediate area through which or over which stormwater waters flow from the point(s) of removal to the point of discharge into the receiving water. This includes areas in the receiving water downstream from the point of discharge.

The action area will vary with the size and location of the outfall pipe, the nature and quantity of the stormwater discharges, and the type of receiving waters, among other factors.

<sup>13</sup> The northern long-eared bat, (*Myotis septentrionalis*), under the jurisdiction of the USFWS, is identified as occurring statewide in Massachusetts. The CII GP permit issuance is consistent with the USFWS IPaC Northern Long-eared Bat Determination Key finding of “no effect” on the NLE bat. No further ESA consultation is needed for the northern long-eared bat.

The scope of effects to consider will vary with each site. If the owner/operator is having difficulty in determining whether the discharge is likely to cause adverse effects to a listed species or critical habitat, they should contact USEAP or the USFWS for assistance. In order to complete the determination of effects it may be necessary to follow the formal or informal consultation procedures in Section 7 of the ESA.

Upon completion of the assessment, document the results of the discharge's effects determination. If the results indicate that discharges and related activities do not ultimately overlap with the aquatic/marine action area, a "no effect" determination on threatened or endangered species or critical habitat can be made. If EPA concurs with the determination, the owner/operator is eligible under Criterion C of this Appendix.

**If the determination is "may affect, but not likely to adversely affect"** the owner/operator must contact EPA Region 1 and the USFWS to discuss the findings and measures that may be required to avoid, eliminate, or minimize adverse effects. If the owner/operator and the USFWS reach agreement on measures to avoid adverse effects, the discharge is eligible under Criterion B. Any terms and/or conditions to protect listed species and critical habitat that are relied on in order to complete an adverse effects determination, must be attached to the NOI.

Effects from stormwater discharges and/or related activities which could pose an adverse effect include, but are not limited to:

- **Water Quality/Prey Quality:** Certain pollutants present in have the potential to cause toxicity in the receiving water. Toxic pollutants in the discharges may have toxic effects on listed species or their prey.
- **Habitat Structure and Disturbance:** Solids have the potential to settle and cover bottom habitat areas, potentially causing benthic smothering and effluent flow can cause erosion or scouring.

**If endangered species issues cannot be resolved:** If the owner/operator cannot reach agreement with the NMFS/USFWS on measures to avoid or eliminate adverse effects, the discharge is not eligible for coverage under this general permit. The owner/operator must seek coverage under an individual permit.

**Attachment I – Selected USFWS Species Habitat Descriptions**

Protected Species	General Habitat <sup>14</sup>
<p>Piping plover (<i>Charadrius melodus</i>) MA</p>	<p>Piping plovers nest above the high tide line on coastal beaches, sand flats at the ends of sandspits and barrier islands, gently sloping foredunes, blowout areas behind primary dunes, sparsely vegetated dunes, and washover areas cut into or between dunes. Feeding areas include intertidal portions of ocean beaches, washover areas, mudflats, sandflats, wrack lines, and shorelines of coastal ponds, lagoons, or saltmarshes. Wintering plovers on the Atlantic Coast are generally found at accreting ends of barrier islands, along sandy peninsulas, and near coastal inlets.</p>
<p>Roseate tern (<i>Sterna dougallii dougallii</i>)<sup>MA</sup></p>	<p>In Massachusetts, the Roseate Tern generally nests on sandy, gravelly, or rocky islands and, less commonly, in small numbers at the ends of long barrier beaches. Compared to the Common Tern, it selects nest sites with denser vegetation, such as seaside goldenrod and beach pea, which is also used for cover by chicks. Large boulders are used for cover at other locations in the northeast. It feeds in highly specialized situations over shallow sandbars, shoals, inlets, or schools of predatory fish.</p>

<sup>14</sup> Information taken from US Fish and Wildlife species profile website, Biological Opinions, species recovery plan documents, and the National Heritage and Endangered Species Program of Massachusetts.

**Attachment II. Example of ESA Section 7 Mapper documentation indicating that no NOAA Fisheries/NMFS anadromous or marine species overlap with the project action area.**

Note that all listed species contain a (0) in the Number of Species, Life Stages, or Critical Habitat column. This information can be printed from the NMFS website, or a screen shot of the ESA Section 7 Mapper can be taken and submitted with the NOI.

