

Appendix D - Eligibility Worksheet Relating to Threatened and Endangered Species Protection

D.1 Introduction

This appendix provides a printable worksheet that can be helpful in selecting and documenting your eligibility criteria with respect to the protection of Federally listed threatened or endangered species and Federally designated "critical habitat" under the Endangered Species Act (ESA) [hereinafter "ESA-listed species and designated critical habitat(s)"] from discharges and discharge-related activities authorized under this permit. This is important because Section 9 of the ESA prohibits all persons and agencies from "taking" threatened and endangered species (16 U.S.C. § 1532(19)).

While coordination between you and the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS) (together, referred to as the "Services") may not be 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.

D.2 Certifying ESA Eligibility Criterion for the CGP

To be eligible for coverage under the CGP, you must certify that you meet one of the criteria listed in this worksheet (Section D.5), which is then submitted with your NOI for coverage under this permit. If you do not meet one of the ESA eligibility criteria outlined in the worksheet below, you are not eligible for coverage under this permit. These criteria ensure that coverage is available only for discharges and discharge-related activities that (1) avoid or eliminate any short- or long-term adverse effects to ESA-listed species and designated critical habitat(s), or (2) may result in any short- or long-term adverse effects that result in incidental take addressed under the incidental take statement of a biological opinion or permit for take issued under Section 10 of the ESA.

As part of your determination of eligibility, EPA has developed a worksheet that assists operators in arriving at the correct criterion. The following requirements apply to the completion of the worksheet depending on how you are submitting your NOI for permit coverage:

1. If the EPA Regional Office grants you a waiver from electronic reporting, in accordance with Part 1.1.5 of the CGP, you must complete the worksheet in section D.4 of this appendix to provide all information as required on your NOI that supports the eligibility criterion you qualify under per Part 1.1.5 of the permit. **You must submit the worksheet with your NOI. If you do not submit the worksheet with your NOI, your NOI will be considered incomplete.**
2. If you do not have a waiver from electronic reporting, you must **complete your eligibility criteria selection outlined in the Endangered Species Protection section of the NOI in the NPDES eReporting Tool (NeT-CGP)** and provide all information as required on your NOI that supports the eligibility criterion you qualify under per Part 1.1.5 of the permit. The printable worksheet in this appendix may be helpful to you in preparing to submit your NOI, but you do not have to use it.

D.3 What to Expect Once you Submit your NOI

After you submit your NOI and before your NOI is authorized, EPA may notify you if any additional controls are necessary to ensure your discharges are not likely to result in any short- or long-term adverse effects on ESA-listed species and critical habitat.

The Services have the opportunity, within 14 days of submission of the NOI, to advise EPA whether either agency believes the planned discharges meet the selected eligibility criterion; whether the eligibility criterion could be met with additional conditions; or whether the eligibility criterion is not met. With respect to ESA issues, EPA recognizes the Services' expertise and will carefully consider their conclusion(s) in identifying eligibility for authorization, either with or without additional conditions. In the event EPA has placed a hold on your NOI based on NMFS or USFWS' recommendation, EPA will notify you as to whether your discharges are authorized or whether an individual permit will be required. If you do not hear from EPA within 14 days, you may assume that your discharge is authorized without further conditions.

D.4 Worksheet Instructions

Follow the instructions within the worksheet below to determine which criterion you are eligible for coverage under this permit. Check only 1 criterion, answer the required questions, and include the required information.

Please keep the following in mind as you complete the worksheet:

- The worksheet requires that you answer questions in a sequential order so that you can select the correct eligibility criterion. The worksheet does not go through each criterion alphabetically, but rather is organized in a way that allows you to eliminate those criteria that do not apply to your site. For instance, Step 1 of the worksheet requires you to determine whether criterion B, E, or F applies first, in that order, before proceeding to determining whether criterion A applies in Step 2.
- You must consider ESA-listed species and/or designated critical habitat(s) under the jurisdiction of both the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) and select the criterion that best applies to your site. You must comply with any applicable terms, conditions, or other requirements developed in the process of meeting one of the eligibility criteria in this section to remain eligible for coverage under this permit.
- When evaluating the potential effects of your activities, you must consider effects to listed species or critical habitats within the "action area" of your construction activity, as identified by the USFWS IPaC and/or the NOAA website resources on page D-10 through D-11 of this appendix. Please Note: *NMFS' jurisdiction includes ESA-listed marine and estuarine species that spawn in inland rivers.* The definition of "action area," which is contained in Appendix A, is repeated below for convenience.

"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 part 402. For the purposes of this permit and for application of the Endangered Species Act requirements, the following areas are included in the definition of action area:

- **The areas on the construction site** where stormwater discharges originate and flow toward the point of discharge into the receiving waters. This includes:
 - areas on the construction site where excavation, site development, or other ground disturbance activities occur, and
 - areas where stormwater controls will be constructed and operated, including any areas where stormwater flows to and from the stormwater controls.
- **The areas in the vicinity of the construction site** where stormwater discharges flow from the construction site to one or more points of discharge into receiving waters. (Example: Where stormwater flows into an off-site ditch, swale, or gully that leads to receiving waters.)
- **The extent of the receiving water** potentially affected by stormwater discharges from your construction site through alteration of water chemistry, turbidity, temperature, or bank structure (i.e., erosive flow), regardless of whether the construction site is adjacent to the receiving water.

D.5 Worksheet**Step 1 – Determine if You Meet the Eligibility Requirements of Criterion B, E, or F****Instructions**



- First determine whether you are eligible under Criterion B by reviewing the eligibility requirements below.
- If you determine that your facility does not meet Criterion B (e.g., due to difference in action area described, lack of analysis of appropriate effects, new listings or designation of critical habitat), proceed to check if you meet the requirements for Criterion E or F.

Criterion B Eligibility Requirements

If your discharges and discharge-related activities were already addressed in another operator's valid certification of eligibility under the current 2022 CGP that included your action area (e.g., a general contractor or developer may have completed and filed an NOI for the entire action area with the necessary ESA certifications (Criterion A, C, D, E, or F)), you may be eligible under Criterion B. In order to be eligible for coverage, you must confirm that **all** three of the following are true (**check all that apply**):

- ☐ I have confirmed that the other operator's certification of eligibility accounted for my action area and that the eligibility certification was valid.
- ☐ There has been no lapse of NPDES permit coverage in the other operator's certification.
- ☐ I will comply with all measures that formed the basis of the other operator's valid certification of eligibility.

Instructions

- **If all three of the above are true, you may check Criterion B below and answer questions B1-B5, and if applicable, B6-B7.** 
- **If any of the above are not true** (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), **you may not select Criterion B and must proceed to check if you meet the requirements for Criterion E or F.** 

B Eligibility requirements met by another operator under the 2022 CGP. The construction site's discharges and discharge-related activities were already addressed in another operator's valid certification of eligibility for your "action area" under eligibility Criterion A, C, D, E, or F of the 2022 CGP and you have confirmed that no additional ESA-listed species and/or designated critical habitat under the jurisdiction of USFWS and/or NMFS not considered in the

that certification may be present or located in the "action area." To certify your eligibility under this criterion, there must be no lapse of NPDES permit coverage in the other CGP operator's certification. By certifying eligibility under this criterion, you agree to comply with any conditions upon which the other CGP operator's certification was based. You must include below the NPDES ID from the other 2022 CGP operator's notification of authorization under this permit and list any measures that you must comply with). If your certification is based on another 2022 CGP operator's certification under Criterion C, you must provide EPA with the relevant supporting information required of existing dischargers in Criterion C.

B1. Provide the NPDES ID from the other CGP operator's NOI authorized under this permit:

B2. Identify the eligibility criterion of the other CGP operator's NOI? (check only one)

☐ A ☐ C ☐ D ☐ E ☐ F

B3. Provide the authorization date of the other CGP operator's NOI (MM/DD/YYYY):

___ / ___ / _____

By certifying eligibility under Criterion B, you must comply with any terms and conditions imposed under the eligibility requirements of the criterion for which the other operator has established eligibility (either Criterion A, C, D, E, or F) to ensure that your discharges and discharge-related activities are protective of listed species and/or critical habitat. *Note: If you are unable to meet these eligibility requirements, then you may either establish eligibility under one of the other criteria, or you may consider applying to EPA for an individual permit.*

B4. List any measures that formed the basis of the other operator's valid certification of eligibility that you will comply with (or enter "N/A" if none exist):

B5. Check to confirm you have provided documentation in your SWPPP supporting your eligibility under Criterion B, including any of the terms and conditions, as well as the other operator's basis for establishing eligibility. Yes ☐

If your certification is based on another operator's certification under Criterion C, you must provide the following:

B6. What Federally listed species and/or designated habitat are located in your "action area"? (attached separate sheet if necessary)

B7. What is the distance between your site and the listed species or designated critical habitat (in miles)? _____

Instructions

- If you selected Criterion B above and answered questions B1-B5, and if applicable, B6-B7, you are done with this worksheet. If you are *not* filing electronically, you must submit this worksheet with your NOI.
- If you are not eligible under Criterion B, proceed to check if you meet the requirements for Criterion E or F. Note that for projects located in Lands of Exclusive Federal Jurisdiction carried by or on behalf of a Federal agency, your options are limited to selecting Criterion E.



Criterion E Eligibility Requirements

If consultation under ESA section 7 has concluded, you may be eligible for coverage under Criterion E. In order to be eligible for coverage under Criterion E, **you must confirm that both of the following are true (check all that apply):**

☐ A consultation between a Federal agency and USFWS and/or the NMFS 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 construction activity's discharges and discharge-related activities on all ESA-listed threatened or endangered species and all designated critical habitat under the jurisdiction of each Service, as appropriate, in your action area. The result of this consultation must be either:

- i. A biological opinion currently in effect that determined that the action in question (taking into account the effects of your facility's discharges and discharge-related activities) is likely to adversely affect, but 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 discharges¹ and discharge-related activities on all the listed species and designated

¹ Effects of discharge include, but are 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

critical habitat in your action area under the jurisdiction of each Service, as appropriate. To be eligible under (i), any 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 determination 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 USFWS and/or NMFS 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, critical habitat designation, or new information), the Federal action agency has reinitiated the consultation and the result of the consultation is consistent with the statements above. Include any reinitiation documentation from the Services or consulting Federal agency with your NOI.

Instructions

- **If both of the above are true, you may check Criterion E below and answer questions E1-E6.**



- For more information on section 7 consultation, see 50 CFR part 402. If you receive a "jeopardy opinion," you may continue to work with USFWS and/or NMFS and your permitting authority to modify your project so that it will not jeopardize listed species or designated critical habitat.
- Note that most consultations are accomplished through informal consultation. When conducting informal ESA section 7 consultation as a non-Federal representative, you must follow the procedures found in 50 CFR Part 402 of the ESA regulations. You must notify the Services of your intention and agreement to conduct consultation as a non-Federal representative.
- Consultation may also occur in the context of another Federal action at the construction site (e.g., where ESA section 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project or where a NEPA review is performed for the project that incorporates a section 7 consultation).
- Any terms and conditions developed through consultations to protect listed species and critical habitat must be incorporated into the SWPPP. As noted above, a Federal operator may, if they wish, initiate consultation with the Services at Step Four. Non-Federal operators may seek technical assistance from the Services at Step 5.
- Whether ESA section 7 consultation must be performed with either USFWS, NMFS, or both Services depends on the listed species that may be affected by the operator's stormwater discharges. In general, NMFS has jurisdiction over marine, estuarine, and anadromous species. Operators should also be aware that while formal section 7 consultation provides protection from incidental takings liability, informal consultation does not.

- **If not, proceed to check if you meet the requirements for Criterion F.**



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.

☐ **E ESA Section 7 consultation has successfully concluded.** Consultation between a Federal Agency and the USFWS and/or NMFS under section 7 of the ESA has concluded. The consultation must have addressed the effects of the construction site'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:**

☐ Biological opinion and/or conference opinion and incidental take statement currently in effect currently in effect from USFWS and/or NMFS that concludes that the action in question (taking into account the effects of your site's discharges and discharge-related activities) is not likely to jeopardize the continued existence of ESA-listed species, nor the destruction or adverse modification of critical habitat;

Or

☐ Written concurrence from USFWS and/or NMFS with a finding that the site's discharges and discharge-related activities are not likely to adversely affect ESA-listed species and/or designated critical habitat.

E1. Identify the federal action agency or agencies involved:

E2. Identify the Service(s) field or regional offices providing the consultation:

E3. Identify any tracking numbers associated with the consultation (e.g., IPaC number, ECO number):

E4. What is the date the consultation was completed? (MM/DD/YYYY) __ / __ / ____

E5. Check to confirm that correspondence with USFWS and/or NMFS documenting the Biological Opinion, conference opinion (IPaC or ECO tracking number) or concurrence is attached. Yes ☐

E6. Check to confirm you have provided documentation in your SWPPP supporting your eligibility under Criterion E, including copies of the correspondence between yourself and the Services. Yes ☐

Instructions

- **If you selected Criterion E above and answered questions E1-E6, you are done with this worksheet. If you are not filing electronically, you must submit this worksheet with your NOI.**
- If you are not eligible under Criterion E, proceed to check if you meet the requirements for Criterion F.

**Criterion F Eligibility Requirements**

If your construction activities are the subject of a permit under ESA section 10, and this authorization addresses the effects of your site'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 F. In order to be eligible for coverage under Criterion F, **you must confirm that the following is true:**

- ☐ A permit or permits issued under section 10 of the ESA specifically address 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.

Note: You must follow USFWS and/or NMFS procedures when applying for an ESA section 10 permit (see 50 CFR § 17.22(b)(1) for USFWS and § 222.22 for NMFS). Application instructions for section 10 permits can be obtained from <http://www.fws.gov> and <http://www.nmfs.noaa.gov> or by contacting the appropriate Service office.

Instructions

- **If the above is true, you may check Criterion F below and answer questions F1-F6.**
- If you are not eligible under criterion F, proceed to Step 2.



- ☐ **F 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 site'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.

F1. Which Service provided the section 10 permit? (check all that apply)

USFWS ☐ NMFS ☐

F2. Identify the field or regional offices providing the permit(s):

F3. Identify any tracking numbers associated with the consultation (e.g., IPaC number, ECO number):

F4. What is the date the permit(s) was granted? (MM/DD/YYYY) ____ / ____ / ____
(2nd permit date, if applicable: ____ / ____ / ____)

F5. Check to confirm that correspondence with USFWS and/or NMFS and a copy of the section 10 permit or relevant tracking number(s) (IPaC and/or ECO number) is attached. Yes ☐

F6. Check to confirm you have provided documentation in your SWPPP supporting your eligibility under Criterion F, including a copy of the section 10 permit and copies of the correspondence between yourself and the Services. Yes ☐

Instructions

- **If you selected Criterion F above and answered questions F1-F6, you are done with this worksheet. If you are not filing electronically, you must submit this worksheet with your NOI.**
- If you are not eligible under Criterion F, proceed to Step 2.



Step 2 – Determine if Listed Threatened or Endangered Species or their Designated Critical Habitat(s) are Likely to Occur in your Site's Action Area

Instructions

- **First, 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 site'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 site that are likely to be affected by stormwater discharges, discharge-related activities, and authorized non-stormwater discharges).

You must consider the following in determining the action area for your site, and **confirm that all the following are true:**

- ☐ In determining my "action area", I have considered that discharges of pollutants from the project site can expand the action area well beyond the footprint of my site and the discharge point(s). I have taken into account the controls I 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. I confirm that all receiving waterbodies that could receive pollutants from my site are included in my action area.

☐ In determining my "action area", I have considered that discharge-related activities must also be accounted for in determining my action area. I understand that 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, timing,² and operation of stormwater controls to control, reduce, or prevent pollutants from being discharged. I understand that 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 my 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>

Instructions

- **Next, you must identify, to the best of your ability, any species listed as either threatened or endangered, or their critical habitat(s), that are located in your site's action area (see definitions of these terms in Appendix A).** You must follow the instructions on the <https://www.epa.gov/npdes/construction-general-permit-threatened-and-endangered-species> to obtain lists of any ESA-protected species and/or critical habitat that are expected to exist in your county, township, or the receiving water for your discharge.
- If ESA-protected resources occur within your action area, keep a copy of the species and critical habitat list(s) from the Service(s) with your SWPPP and use the list(s) to complete your NOI. For USFWS species, attach to this worksheet the full printout from your IPaC query/Official Species List. You can include the map from your IPaC query. For NMFS species, attach to this worksheet the full printout of the report from your query of the mapping resource you used (either the National or Greater Atlantic Region Mapper). The printed report from NMFS mappers will include a map of your query.

² Timing considerations could be related to, for example, a time of the year where a migratory bird species is present in the action area and the operator might want to consider that in terms of their construction sequencing; there are other times of the year where this consideration might not be relevant.

Instructions


- After completing Step 2 above, if there are no listed species and no critical habitat areas in your action area, you may be eligible for criterion A.

Criterion A Eligibility Requirements

In order to be eligible for coverage under criterion A, you must confirm that all the following are true (**check all that apply**):

- ☐ I confirm that I have used the species location resources of **BOTH** NMFS and USFWS to identify any ESA-listed species within my action area.
- ☐ I have confirmed there to be no ESA-listed species and no critical habitat in my action area.

Instructions

- If all of the above are true, you may check criterion A below and answer questions A1-A5. 
- If any of the above is not true, you may not select criterion A and must proceed to Step 3 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 3.

- ☐ **A No ESA-listed species and/or designated critical habitat present in action area.** You certify that ESA-listed species and designated critical habitat(s) under the jurisdiction of the USFWS or NMFS are not likely to occur in your site's "action area" as defined in Appendix A of this permit.. *Please Note: NMFS' jurisdiction includes ESA-listed marine and estuarine species that spawn in inland rivers.*

A1. USFWS information sources used (reliance on State resources is not acceptable):

Note: If your Official Species List from 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.



A2. NMFS information sources used (reliance on State resources is not acceptable):

A3. I confirm that aerial image(s) of the site is attached. Yes ☐

A4. I confirm that a printout of the species' list(s) showing no ESA-listed species or critical habitat in my action area is attached. Yes ☐

A5. Check to confirm you have provided documentation in your SWPPP supporting your eligibility under Criterion A. For USFWS species, include the full printout from your IPaC query/Official Species List. You can include the map from your IPaC query. For NMFS species, include the full printout from the appropriate NMFS website resources on page X with the correct Region selected. Yes ☐

Instructions

- **If you selected Criterion A above and answered questions A1-A5, you are done with this worksheet. If you are not filing electronically, you must submit this worksheet with your NOI.** 
 - **If listed species and/or critical habitat may exist in your action area, you must do one or more of the following:** 
 - **Conduct visual inspections.** This method may be particularly suitable for construction sites that are smaller in size or located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no natural habitat, or for construction activities that discharge directly into municipal stormwater collection systems.
 - **Conduct a formal biological survey.** In some cases, particularly for larger construction sites with extensive stormwater discharges, biological surveys may be an appropriate way to assess whether species are located in the action area and whether there are likely to be short- or long-term adverse effects to such species. Biological surveys are frequently performed by environmental consulting firms.
 - **If required, conduct an environmental assessment under the National Environmental Policy Act (NEPA).** Some construction activities might require review under NEPA for specific reasons, such as Federal funding or other Federal involvement in the project. Note: Coverage under the CGP does not trigger such a review for individual projects/sites. EPA has complied with NEPA in the issuance of the CGP.
- and**
- **Follow the instructions in Steps 3 – 5 below, as applicable.** Note that many but not all measures imposed to protect listed species under these steps will also protect critical habitat. Thus, meeting the eligibility requirements of this CGP may require measures to protect critical habitat that are separate from those to protect listed species.

Step 3 – Assess if the Construction Activity’s Discharges or Discharge-Related Activities Are Likely to Result in Short- or Long-Term Adverse Effects to Listed Threatened or Endangered Species or Designated Critical Habitat

Instructions

- If in Step 2 you identified that listed species and/or designated critical habitat could exist in your action area, **you must next assess whether your discharges or discharge-related activities are likely to result in short- or long-term adverse effects to ESA-listed threatened or endangered species or designated critical habitat.**

Potential short- or long-term adverse effects from discharges and discharge-related activities include:

- **Hydrological.** Stormwater discharges may cause siltation, sedimentation, or induce other changes in receiving waters such as temperature, salinity, or pH. These effects will vary with the amount of stormwater discharged and the volume and condition of the receiving water. Where a stormwater discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely. Construction activity itself may also alter drainage patterns on a site where construction occurs that can impact listed species or critical habitat.
- **Habitat.** Excavation, site development, grading, and other surface disturbance activities from construction activities, including the installation or placement of stormwater controls, may result in adverse effects to listed species or their habitat. Stormwater may drain or inundate listed species habitat.
- **Toxicity.** In some cases, pollutants in construction stormwater may have toxic effects on listed species. For example: Stormwater discharges from construction on or adjacent to agricultural property may contain pesticides. Stormwater discharges from projects involving pavement and roofing could include tar and asphalt.

The scope of effects to consider will vary with each site. If you are having difficulty determining whether your project is likely to result in short- or long-term adverse effects to listed species or critical habitat, or one of the Services has already raised concerns to you, you should contact the appropriate Services office for assistance.

Instructions

- **If any short- or long-term adverse effects to listed threatened or endangered species or their critical habitat are not likely, then you may check Criterion C below and answer questions C1-C8.** 
- **If any short- or long-term adverse effects to listed threatened or endangered species or their critical habitat are likely, you must follow Step 4 below.** You may still be eligible for Criterion C if you are able to install and implement appropriate measures to avoid the likelihood of adverse effects. 

Criterion C Eligibility Requirements

☐ **C** **Discharges not likely to result in any short- or long-term adverse effects to ESA-listed species and/or designated critical habitat.** ESA-listed species and/or designated critical habitat(s) under the jurisdiction of the USFWS and/or NMFS are likely to occur in or near your site's "action area," and you certify to EPA that your site's discharges and discharge-related activities are not likely to result in any short- or long-term adverse effects to ESA-listed threatened or endangered species and/or designated critical habitat. This certification may include consideration of any stormwater controls and/or management practices you will adopt to ensure that your discharges and discharge-related activities are not likely to result in any short- or long-term adverse effects to ESA-listed species and/or designated critical habitat. To certify your eligibility under this criterion, you must indicate below 1) the ESA-listed species and/or designated habitat located in your "action area" using the process outlined in this Appendix; 2) the distance between the site and the listed species and/or designated critical habitat in the action area (in miles); and 3) a rationale describing specifically how short- or long-term adverse effects to ESA-listed species will be avoided from the discharges and discharge-related activities. You must also include a copy of your site map from your SWPPP showing the upland and in-water extent of your "action area" with your NOI.

C1. I confirm that both ESA-listed species and designated critical habitat under the jurisdiction of the USFWS and/or NMFS were considered in my evaluation. Yes ☐

C2. Provide the USFWS information resources and expertise used to arrive at this criterion selection:

C3. Provide the NMFS information resources and expertise used to arrive at this criterion selection:

C4. What ESA-listed species and/or designated critical habitat are located in your "action area?" (or attach a printout of the species' list(s))

C5. What is the distance between your site and the ESA-listed species and/or designated critical habitat within the action area (in miles, state "on site" if the ESA-listed species and/or designated critical habitat is within the area to be disturbed)? _____

C6. Provide the rationale describing specifically how any short- or long-term adverse effects to ESA-listed species will be avoided from the discharge and discharge-related activities.

C7. I confirm that a site map from my SWPPP showing the upland and in-water extent of my "action area" is attached. Yes ☐

C8. Check to confirm you have provided documentation in your SWPPP supporting your eligibility under Criterion C. Yes ☐

Instructions

- If you selected Criterion C above and answered questions C1-C8, you are done with this worksheet. If you are not filing electronically, you must submit this worksheet with your NOI.
- If not, please proceed to step 4.





Step 4 - Determine if Measures Can Be Implemented to Avoid Adverse Effects

Instructions

If you make a preliminary decision in Step 3 that short- or long-term adverse effects from your construction activity's discharges or discharge-related activities are likely to occur, you can still receive coverage under eligibility Criterion C of the CGP if appropriate measures are undertaken to avoid or eliminate the likelihood of short- or long-term adverse effects prior to applying for CGP coverage.



These measures may involve relatively simple changes to construction activities such as re-routing a stormwater discharge to bypass an area where species are located, relocating stormwater controls, or by modifying the "footprint" of the construction activity. If you are unable to ascertain which measures to implement to avoid the likelihood of short- or long-term adverse effects, you must coordinate with USFWS and/or NMFS, in which case you would not be eligible for coverage under eligibility Criterion C, but may instead be eligible for coverage under eligibility criterion D (described in more detail in Step 5).

- **If you are able to install and implement appropriate measures to avoid the likelihood of short- or long-term adverse effects, then you may go back and check eligibility Criterion C above and answer questions C1-C8 above, and C9-C10 below.** The measures you adopt to avoid or eliminate short- or long-term adverse effects must be implemented for the duration of the construction project and your coverage under the CGP. 
- **If you cannot ascertain which measures to implement to avoid the likelihood of adverse effects,** you must follow the procedures in Step 5. 

C9. I confirm that I have or will install and implement appropriate measures to avoid the likelihood of any short- or long-term adverse effects to ESA-listed threatened or endangered species or their critical habitat. Yes ☐


C10. Provide a description of the measures installed/to be installed and implemented to avoid likelihood of any short- or long-term adverse effects.

Instructions

- **If you selected Criterion C above and answered questions C1-C10, you are done with this worksheet. If you are not filing your NOI electronically, you must submit this worksheet with your NOI.** 
- **If you are not eligible for Criterion C, please proceed to step 5.** 

Step 5 - Determine if the Eligibility Requirements of Criterion D Can Be Met

Instructions

- If in Step 4 you cannot ascertain which measures to implement to avoid the likelihood of short- or long-term adverse effects, you must contact USFWS and/or NMFS. You may still be eligible for CGP coverage if likely adverse effects can be addressed through meeting criterion D.
- If you meet the requirements of criterion D, **then you may check criterion D below and answer questions D1-D5.** 

Criterion D Eligibility Requirements

D Coordination with USFWS and/or NMFS has successfully concluded. Coordination between you and the USFWS and/or NMFS has concluded. The coordination must have addressed the effects of your site's discharges and discharge-related activities on ESA-listed species and/or designated critical habitat under the jurisdiction of USFWS and/or NMFS, and resulted in a written confirmation from USFWS and/or NMFS that the effects of your site's discharges and discharge-related activities are not likely to result in short- or long-term adverse effects for ESA-listed species and/or designated critical habitat in your action area. By certifying eligibility under this criterion, you agree to comply with any conditions you must meet for your site's discharges and discharge-related activities to not likely result in any short- or long-term adverse effects. You must include copies of the correspondence with the participating agencies in your SWPPP and your NOI.

D1. Which Service participated in coordination? (check all that apply) USFWS ☐ NMFS ☐

D2. Identify the field and/or regional office(s) that provided the coordination?

D3. What is the date the coordination concluded? (MM/DD/YYYY) ____ / ____ / ____

D4. Check to confirm that correspondence with USFWS and/or NMFS documenting concurrence is attached. Yes ☐

D5. Check to confirm you have provided documentation in your SWPPP supporting your eligibility under Criterion D, including copies of the correspondence between yourself and the Services. Yes ☐

Instructions

- **If you selected Criterion D above and answered questions D1-D5, you are done with this worksheet. If you are not filing electronically, you must submit this worksheet with your NOI.**

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