



## Archived Publication

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The Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (2000 MSGP), issued in October 2000, expired at midnight on October 30, 2005. A new permit, the 2008 Multi-Sector General Permit (2008 MSGP) was issued on September 29, 2008. Visit [www.epa.gov/npdes/stormwater/msgp](http://www.epa.gov/npdes/stormwater/msgp) to view the final 2008 MSGP and supporting documents.



**Appendix E**  
**Eligibility and screening procedures relating to species listed and critical habitat**  
**designated under the Endangered Species Act**

## **Appendix E. Eligibility and screening procedures relating to species listed and critical habitat designated under the Endangered Species Act.**

You must meet one or more of the following six criteria (A-F) to be eligible for coverage under the permit:

- Criterion A. No federally-listed threatened or endangered species or their designated critical habitat are in proximity to your facility as defined in Addendum G; or
- Criterion B. Consultation between a Federal agency and the Fish and Wildlife Service and/or the National Marine Fisheries Service (together, the “Services”) under section 7 of the ESA has been concluded. Consultations can be either formal or informal, and would have occurred only as a result of a separate federal action (e.g., during application for an individual wastewater discharge permit, the issuance of a wetlands dredge and fill permit, or as a result of a NEPA review).
- The consultation must have addressed the effects of the facility’s stormwater discharges, allowable non-stormwater discharges, and stormwater discharge-related activities on federally-listed threatened or endangered species and federally-designated critical habitat, and resulted in either:
- i. a biological opinion finding no jeopardy to federally-listed species or destruction/adverse modification of federally-designated critical habitat, or
  - ii. written concurrence from the Service(s) with a finding that the facility’s stormwater discharges associated with industrial activity and allowable non-stormwater discharges are not likely to adversely affect federally-listed species or federally-designated critical habitat; or
- Criterion C. The industrial activities are authorized through the issuance of a permit under section 10 of the ESA, and that authorization addresses the effects of the stormwater discharges associated with industrial activity and allowable non-stormwater discharges on federally-listed species and federally-designated critical habitat; or
- Criterion D. Coordination between the operator and the Fish and Wildlife Service and/or the National Marine Fisheries Service has been concluded. The coordination must have addressed the effects of the facility’s storm water discharges associated with industrial activity and allowable non-storm water discharges on federally-listed threatened or endangered species and federally-designated critical habitat. The result of the coordination must be a written statement from the Services that there are not likely to be any adverse affects to federally-listed species or federally-designated critical habitat. Any conditions or prerequisites deemed necessary to achieve no adverse effects become eligibility conditions for MSGP coverage; or
- Criterion E. Stormwater discharges associated with industrial activity and allowable non-stormwater discharges are not likely to adversely affect any federally-listed endangered and threatened (“listed”) species or designated critical habitat (“critical habitat”); or

Criterion F. The facility's stormwater discharges associated with industrial activity and allowable non-stormwater discharges were already addressed in another operator's valid certification of eligibility under Criteria A-E which included the industrial activities and there is no reason to believe that federally-listed species or federally-designated critical habitat not considered in the prior certification may be present or located in proximity to the facility. To certify eligibility under this criterion there must be no lapse of coverage in the other operator's certification. By certifying eligibility under this criterion, you agree to comply with any measures or controls upon which the other operator's certification was based. You must comply with any applicable terms, conditions, or other requirements developed in the process of meeting the eligibility requirements of the criteria in this section to remain eligible for coverage under this permit. Such terms and conditions must be documented and incorporated into your Stormwater Pollution Prevention Plan (SWPPP).

### Assessing Your Facility Discharges

You must follow the procedures in this addendum to assess the potential effects of stormwater discharges and stormwater discharge-related activities on listed species and their critical habitat. When evaluating these potential effects, you must evaluate your entire facility. For purposes of this Addendum, the term "facility" is inclusive of the term "Action Area." Action area is defined in 50 CFR §402.02 as all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. This includes areas beyond the footprint of the facility that may be affected by stormwater discharges and stormwater discharge related activities. "Facility" is defined in Appendix A. Note that dischargers who are eligible and able to certify eligibility under Criterion B, C, D, or F because of a previously issued ESA section 10 permit, a previously completed ESA section 7 consultation, or because their activities were already addressed in another discharger's certification of eligibility may proceed directly to Step Four.

**Step One:** *Determine if Listed Threatened or Endangered Species and Critical Habitat are Present On or Near Your Facility.*

You must first determine whether federally-listed species commonly reside in your area. Federally-listed threatened and endangered species are usually found in county-specific or sometimes township-specific listings. The local offices of the U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NOAA Fisheries Service), and State or Tribal Heritage Centers often maintain such lists on their internet sites. The types of species that may be present determine which Service office you should contact (in general, National Marine Fisheries Service has jurisdiction over marine, estuaries, and anadromous species). Visit [www.epa.gov/npdes/stormwater/cgp](http://www.epa.gov/npdes/stormwater/cgp) to find the appropriate site for your state or check with your local office. If there are listed species in your county or township, you must then determine, as best you are able, whether any of the species are located on or near your property (use the Services or Heritage Centers, as necessary).

You must also check to see if critical habitat has been designated and whether such areas overlap or are near your facility by contacting your local FWS, NOAA Fisheries Service, or

State or Tribal Heritage Center. Critical habitat areas may be designated independently from the listed species for your county, so even if there are no listed species in your county or township, you must still contact one of the agencies mentioned above to determine if there are any critical habitat areas on or near your project area. You can also find critical habitat designations and associated requirements at 50 CFR Parts 17 and 226 <http://www.access.gpo.gov>.

If there are no listed species in your county or township, no critical habitat areas on or near your project area, or if your local FWS, NOAA Fisheries Service, or State or Tribal Heritage Center indicates that listed species are not a concern in your part of the county or township, you have satisfied your eligibility obligations under Criterion A (check box A on the Notice of Intent Form). If there are listed species and if your local FWS, NOAA Fisheries Service, or State or Tribal Heritage Center indicates that these species could exist on or near your project area, you will need to do one or more of the following:

Conduct visual inspections. This method may be particularly suitable for facilities 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 facilities that discharge directly into municipal separate storm sewer systems.

- Conduct a formal biological survey (typically performed by environmental consulting firms). In some cases, particularly for larger facilities with extensive stormwater discharges, biological surveys may be an appropriate way to assess whether species are located on or near the project area and whether there are likely adverse effects to such species. A biological survey may in some cases be useful in conjunction with Steps Two, Three or Four of these instructions.
- Conduct an environmental assessment under the National Environmental Policy Act (NEPA). Such reviews may indicate if listed species are in proximity to the facility. Coverage under this MSGP may trigger such a review for new sources (that is, dischargers subject to New Source Performance Standards under section 306 of the Clean Water Act). Other facilities might require review under NEPA for other reasons, such as federal funding or other federal involvement in the facility. If listed threatened or endangered species or critical habitat are present in the project area, you must look at impacts to species and/or habitat when following Steps Two through Four. 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 MSGP may require measures to protect critical habitat that are separate from those to protect listed species.

**Step Two:** *Determine if your facility's Stormwater Discharge Associated With Industrial Activity or Allowable Non-Stormwater Discharges Are Likely to Adversely Affect Listed Threatened or Endangered Species or Designated Critical Habitat*

To receive MSGP coverage, you must assess whether your stormwater discharges associated with industrial activity or allowable non-stormwater discharges are likely to adversely affect listed threatened or endangered species or designated critical habitat that are present on or near your facility. Potential adverse effects from stormwater discharges associated with industrial activity 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. Industrial activity itself may also alter drainage patterns on a site where construction occurs that can impact listed species or critical habitat.

- **Habitat.** Site development, grading or other surface disturbances from industrial activities, including storage of materials and the installation or placement of stormwater BMPs, may adversely affect listed species or their habitat. Stormwater may drain or inundate listed species habitat.
- **Toxicity.** In some cases pollutants in stormwater may have toxic effects on listed species.

The scope of effects to consider will vary with each site. If you are having difficulty determining whether your facility is likely to adversely affect listed species or critical habitat, or one of the Services has already raised concerns to you, you must contact the appropriate office of the FWS, NOAA Fisheries Service or Natural Heritage Center for assistance. If adverse effects are not likely, you have satisfied your eligibility obligations under Criterion E (check box E on the NOI form) and can apply for coverage under the MSGP. If your stormwater discharge may adversely affect listed species or critical habitat, you must follow Step Three.

**Step Three:** *Determine if Measures Can Be Implemented to Avoid Adverse Effects.*

If you make a preliminary determination that adverse effects to listed species and/or critical habitat are likely to occur, you can still receive coverage under Criterion E if appropriate measures are undertaken to avoid or eliminate the likelihood of adverse effects prior to applying for MSGP coverage. These measures may be relatively simple, e.g., re-routing a stormwater discharge to bypass an area where species are located, relocating BMPs, or changing the “footprint” of the industrial activity. If you cannot ascertain which measures to implement to avoid the likelihood of adverse effects, you must follow Step Four (iii).

**Step Four:** *Determine if the Eligibility Requirements of Criterion B, C, D or F Can Be Met.*

Where adverse effects are likely and you are uncertain about how to avoid or eliminate the likelihood of adverse effects, you must contact the FWS and/or NOAA Fisheries Service (see subpart iii below). However, you may still be eligible for MSGP coverage if any likely adverse effects can be addressed through meeting Criterion B, C, D, or F as follows:

- i. A consultation under ESA Section 7 has been performed for your industrial activity (see Criterion B).
- ii. An incidental taking permit under Section 10 of the ESA has been issued for your activity (see Criterion C). Stormwater discharges from your industrial facility may be authorized by this MSGP if some activity is authorized through the issuance of a permit under section 10 of the ESA and that authorization addressed the effects of your stormwater discharges on federally-listed species and designated critical habitat. You must follow FWS and/or NOAA Fisheries Service procedures when applying for an ESA Section 10 permit (see 50 CFR §17.22(b)(1) for FWS and §222.22 for NOAA Fisheries Service). Application instructions for section 10 permits for FWS and NOAA Fisheries Service can be obtained by accessing the FWS and NOAA Fisheries Service websites (<http://www.fws.gov> and

<http://www.nmfs.noaa.gov>) or by contacting the appropriate FWS and NOAA Fisheries Service regional office.

- iii. You have coordinated your activities with the appropriate Service office (see Criterion D). In the absence of any other conditions set forth in Step Four, you may still be able to qualify for coverage under this MSGP if you coordinate with the FWS or NOAA Fisheries Service and the Service provides a letter or memorandum concluding that the direct and indirect effects of permitting your stormwater discharges will be unlikely to adversely affect listed species or to adversely modify designated critical habitat. If you adopt measures to avoid or eliminate adverse effects, per the Service's requirements or recommendations, you must abide by those measures for the duration of your coverage under the MSGP. Any such measures must be described in the Stormwater Pollution Prevention Plan and are enforceable MSGP conditions and/or conditions for meeting the eligibility criteria in Subpart 1.2.3.6.
- iv. You are covered under the eligibility certification of another operator for the project area (see Criterion F). Your stormwater discharges were already addressed in another discharger's certification of eligibility under Criteria A through E, which also included your facility and determined that federally listed endangered or threatened species or designated critical habitat would not be jeopardized. To certify eligibility under this criterion there must be no lapse of coverage in the other operator's certification. By certifying eligibility under Criterion F, you agree to comply with any measures or controls upon which the other discharge certification under Criterion B, C, or D was based. Certification under Criterion F is discussed in more detail in the Fact Sheet that accompanies this permit.

You must comply with any terms and conditions imposed under the eligibility requirements of Criterion A through F to ensure that your stormwater discharges are protective of listed species and/or critical habitat. Such terms and conditions must be incorporated in the project's Stormwater Pollution Prevention Plan (SWPPP). If the eligibility requirements cannot be met, then you are not eligible for coverage under this MSGP. In these instances, you may consider applying to EPA for an individual permit.