

**ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-11280-01-R1]**

**Notice of Availability of Draft NPDES Non-Contact Cooling Water General Permit**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability of draft NPDES General Permits MAG250000 and NHG250000.

**SUMMARY:** The Director of the Water Division, U.S. Environmental Protection Agency, Region 1 (EPA), is providing a Notice of Availability for the Draft National Pollutant Discharge Elimination System (NPDES) Non-Contact Cooling Water General Permit (Draft NCCW GP) for discharges to certain waters of the Commonwealth of Massachusetts and the State of New Hampshire. This Draft NCCW GP establishes effluent limitations and requirements, effluent and ambient monitoring requirements, reporting requirements, and standard conditions for existing facilities with non-contact cooling water discharges. The Draft NCCW GP is available on EPA Region 1's website at <https://www.epa.gov/npdes-permits/noncontact-cooling-water-general-permit-nccw-gp-massachusetts-new-hampshire>. The Fact Sheet for the Draft NCCW GP sets forth principal facts and the significant factual, legal, methodological, and policy questions considered in the development of the Draft Permit and is also available at this website.

**DATES:** The public comment period will be open until November 21, 2023. See EPA's webpage for the applicable dates, <https://www.epa.gov/npdes-permits/noncontact-cooling-water-general-permit-nccw-gp-massachusetts-new-hampshire>.

**ADDRESSES:** Written comments on the Draft NCCW GP may be sent via email to: Papadopoulos.George@epa.gov. If requesting to submit comments in hard copy form, please reach out to the EPA contact above.

**FOR FURTHER INFORMATION:** The administrative record and additional information concerning the Draft NCCW GP may be obtained from George Papadopoulos via telephone: 617-918-1579 or email Papadopoulos.George@epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Public Comment Information:* Interested persons may submit written comments on the Draft NCCW GP to EPA Region 1 at the address listed above. In reaching a final decision on this Draft Permit, the Regional Administrator will respond to all significant comments and make responses available to the public on EPA Region 1's website. All comments must be postmarked or delivered by the close of the public comment period.

*General Information:* The Draft NCCW GP includes effluent limitations and requirements for eligible facilities based on technology and/or water quality considerations of the unique discharges from these facilities. The effluent limits established in the Draft NCCW GP ensure that the surface water quality standards of the receiving water(s) will be attained and/or maintained.

**Obtaining Authorization:** To obtain coverage under the General Permit, facilities meeting the eligibility requirements outlined in Part 1 of this General Permit may submit a notice of intent (NOI) in accordance with Part 5 of this General Permit and 40 CFR § 122.28(b)(2)(i) & (ii).

The contents of the NOI shall include at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, the receiving stream(s) and be signed by the operator in accordance with the requirements of 40 CFR § 122.22.

**Other Legal Requirements: Endangered Species Act (ESA):** In accordance with the ESA, EPA has updated the provisions and necessary actions and documentation related to potential impacts to threatened and endangered species from discharges of NCCW eligible for coverage under the Draft NCCW GP. Concurrently with the public notice of the Draft NCCW GP, EPA plans to initiate an informal consultation with the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) under ESA section 7, through the submission of a biological assessment (BA) and request for concurrence letter summarizing the results of EPA's assessment of the potential effects to endangered and threatened species and their critical habitats under NOAA Fisheries jurisdiction as a result of EPA's issuance of the Draft NCCW GP.

In this document, EPA has made a preliminary determination that the proposed issuance of the Draft NCCW GP is not likely to adversely affect the shortnose sturgeon, Atlantic sturgeon, Atlantic sturgeon designated critical habitat, leatherback sea turtles, loggerhead sea turtles, Kemp's ridley sea turtles, green sea turtles, North Atlantic right whales, North Atlantic right whale designated critical habitat and fin whales. EPA plans to request that NOAA Fisheries review this submittal and inform EPA whether it concurs with this preliminary finding. In addition, EPA has addressed its responsibilities with the U.S. Fish and Wildlife Service (USFWS) under ESA section 7, through an assessment of the potential effects to endangered and threatened species and their critical habitats under USFWS jurisdiction as a

result of EPA’s issuance of the Draft NCCW GP. As part of the assessment, EPA prepared an Effects Determination for the endangered northern long eared bat. The USFWS recorded the determination of “No Effect” on the northern long-eared bat by letter, dated March 30, 2023<sup>1</sup>. The determination of “No Effect” concluded EPA’s consultation responsibilities for the NCCW GP NPDES permitting action under ESA Section 7(a)(2) with respect to the northern long-eared bat. EPA also made the assessment that no action areas expected to be covered by the Draft NCCW GP overlap with the documented habitat of the dwarf wedgemussel<sup>2</sup> in the Connecticut River Watershed. Therefore, no ESA section 7 consultation is required for the dwarf wedgemussel with USFWS for this GP.

**Essential Fish Habitat (EFH):** Under the 1996 Amendments (PL 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.* (1998)), EPA is required to consult with NOAA Fisheries if EPA's actions or proposed actions that it funds, permits or undertakes “may adversely impact any essential fish habitat.” 16 U.S.C. § 1855(b). In the Fact Sheet accompanying the Draft NCCW GP, EPA notes that the general permit action minimizes adverse effects to aquatic organisms, including those with designated EFH in the receiving waters. EFH species associated with the receiving waters of facilities covered by the Draft NCCW GP may include Atlantic salmon as well as the life stages of some coastal EFH designated species, along with three habitat areas of particular concern. EPA has made the determination that additional mitigation is not warranted under Section 305(b)(2) of the Magnuson-Stevens Act and has provided this determination to NOAA for its review.

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<sup>1</sup> USFWS New Hampshire Project code: 2022-0065502, March 30, 2023.

USFWS Massachusetts Project code: 2022-0065493, March 30, 2023.

<sup>2</sup> <https://ipac.ecosphere.fws.gov/>

**National Historic Preservation Act (NHPA):** Facilities which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the NHPA are not authorized to discharge under the Draft NCCW GP. EPA is requesting that facilities certify, prior to obtaining coverage, that there are either no historic properties present or that their discharge and related activities do not have the potential to impact historic properties.

**Coastal Zone Management Act (CZMA):** The CZMA, 16 U.S.C. 1451 *et seq.*, and its implementing regulations (15 CFR part 930) require a determination that any federally licensed activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) is consistent with the CZMA.

Concurrent with the public notice, EPA will request that the Executive Office of Environmental Affairs, MA CZM, Project Review Coordinator provide a consistency concurrence that the proposed Draft NCCW GP is consistent with the MA CZMP.

Concurrent with the public notice, EPA will request that the New Hampshire Coastal Program, Project Review Coordinator, provide a consistency concurrence that the proposed Draft NCCW GP is consistent with the NH CZMP.

**AUTHORITY:** This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

David Cash,  
Regional Administrator,  
EPA Region 1