



## United States Department of the Interior



FISH AND WILDLIFE SERVICE  
New England Ecological Services Field Office  
70 Commercial Street, Suite 300  
Concord, NH 03301-5094  
Phone: (603) 223-2541 Fax: (603) 223-0104

In Reply Refer To:

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Project code: 2024-0130453

Project Name: Draft General Permit for Private Commercial, Industrial and Institutional Stormwater Discharges

Federal Nexus: yes

Federal Action Agency (if applicable): Environmental Protection Agency

Subject: Federal agency coordination under the Endangered Species Act, Section 7 for 'Draft General Permit for Private Commercial, Industrial and Institutional Stormwater Discharges'

Dear John Nagle:

This letter records your determination using the Information for Planning and Consultation (IPaC) system provided to the U.S. Fish and Wildlife Service (Service) on August 14, 2024, for “Draft General Permit for Private Commercial, Industrial and Institutional Stormwater Discharges” (here forward, Project). This project has been assigned Project Code 2024-0130453 and all future correspondence should clearly reference this number.

The Service developed the IPaC system and associated species’ determination keys in accordance with the Endangered Species Act of 1973 (ESA; 87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) and based on a standing analysis. All information submitted by the Project proponent into the IPaC must accurately represent the full scope and details of the Project. Failure to accurately represent or implement the Project as detailed in IPaC or the Northeast Determination Key (DKey), invalidates this letter. **Answers to certain questions in the DKey commit the project proponent to implementation of conservation measures that must be followed for the ESA determination to remain valid.**

To make a no effect determination, the full scope of the proposed project implementation (action) should not have any effects (either positive or negative effect(s)), to a federally listed species or designated critical habitat. Effects of the action are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area

involved in the action. (See § 402.17). Under Section 7 of the ESA, if a federal action agency makes a no effect determination, no further consultation with, or concurrence from, the Service is required (ESA §7). If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Service concurs, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat [50 CFR §402.02, 50 CFR§402.13]).

The IPaC results indicated the following species is (are) potentially present in your project area and, based on your responses to the Service's Northeast DKey, you determined the proposed Project will have the following effect determinations:

Species	Listing Status	Determination
Piping Plover ( <i>Charadrius melodus</i> )	Threatened	No effect
Roseate Tern ( <i>Sterna dougallii dougallii</i> )	Endangered	No effect

**Conclusion** If there are no updates on listed species, no further consultation/coordination for this project is required for the species identified above. However, the Service recommends that project proponents re-evaluate the Project in IPaC if: 1) the scope, timing, duration, or location of the Project changes (includes any project changes or amendments); 2) new information reveals the Project may impact (positively or negatively) federally listed species or designated critical habitat; or 3) a new species is listed, or critical habitat designated. If any of the above conditions occurs, additional consultation with the Service should take place before project implements any changes which are final or commits additional resources.

In addition to the species listed above, the following species and/or critical habitats may also occur in your project area and are not covered by this conclusion:

- Monarch Butterfly *Danaus plexippus* Candidate
- Northern Long-eared Bat *Myotis septentrionalis* Endangered
- Tricolored Bat *Perimyotis subflavus* Proposed Endangered

To complete consultation for species that have reached a "May Affect" determination and/or species may occur in your project area and are not covered by this conclusion, please visit the "New England Field Office Endangered Species Project Review and Consultation" website for step-by-step instructions on how to consider effects on these listed species and/or critical habitats, avoid and minimize potential adverse effects, and prepare and submit a project review package if necessary: <https://www.fws.gov/office/new-england-ecological-services/endangered-species-project-review>

Please Note: If the Action may impact bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act (BGEPA) (54 Stat. 250, as amended, 16 U.S.C. 668a-d) by the prospective permittee may be required. Please contact the Migratory Birds Permit Office, (413) 253-8643, or [PermitsR5MB@fws.gov](mailto:PermitsR5MB@fws.gov), with any questions regarding potential impacts to Eagles.

If you have any questions regarding this letter or need further assistance, please contact the New England Ecological Services Field Office and reference the Project Code associated with this Project.

## Action Description

You provided to IPaC the following name and description for the subject Action.

### 1. Name

Draft General Permit for Private Commercial, Industrial and Institutional Stormwater Discharges

### 2. Description

The following description was provided for the project 'Draft General Permit for Private Commercial, Industrial and Institutional Stormwater Discharges':

Once this Draft NPDES General Permit becomes final, it will be in effect for five years. The United States Environmental Protection Agency, Region 1 (“EPA” or “Region 1”) proposes to issue a draft National Pollutant Discharge Elimination System (“NPDES”) General Permit for discharges of pollutants in stormwater. Specifically, this “Draft General Permit for Private Commercial, Industrial and Institutional Stormwater Discharges in the Charles, Mystic and Neponset River Watersheds in Massachusetts” (“CII GP”) covers stormwater discharges from certain commercial, industrial and institutional properties (referred to as “CII properties,” “properties,” “permittees,” “CII sites” and/or “sites”) to the Charles, Mystic, and Neponset River Watersheds in the Commonwealth of Massachusetts. Discharges EPA covered under this CII GP consist of stormwater originating from private properties with one acre or more of impervious surface in the Charles, Mystic, and Neponset River Watersheds that are designated as “commercial,” “industrial,” or “institutional” land uses, as classified in the Massachusetts Tax Codes. This permit covers stormwater discharges that discharge directly to receiving waters or through the MS4 or a private separate storm system into the receiving waters. As defined in the draft CII GP, “impervious surface” is “any surface that prevents or significantly impedes the infiltration of water into the underlying soil. This can include but is not limited to: roads, driveways, parking areas and other areas created using nonporous material; buildings, rooftops, structures, artificial turf and compacted gravel or soil .”

Once authorized to discharge under this general permit, the permittee must meet the stormwater treatment requirements included in Part 2 of the Draft CII GP, which will lead to compliance with applicable Federal and State water quality standards (WQs). All permittees are also subject to the reporting requirements included in Part 3 of the CII GP. Failure to comply with the limitations and conditions of the CII GP could result in penalties generally described in Attachment B, Standard Conditions, of the draft permit.

EPA expects that there are approximate 3,000 potential permittees in the Charles, Mystic, and Neponset River Watersheds that will submit CII GP NOIs once the permit is finalized.

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@42.285285,-71.19030127943485,14z>



## QUALIFICATION INTERVIEW

1. As a representative of this project, do you agree that all items submitted represent the complete scope of the project details and you will answer questions truthfully?

*Yes*

2. Does the proposed project include, or is it reasonably certain to cause, intentional take of listed species?

**Note:** This question could refer to research, direct species management, surveys, and/or studies that include intentional handling/encountering, harassment, collection, or capturing of any individual of a federally listed threatened, endangered, or proposed species.

*No*

3. Is the action authorized, permitted, licensed, funded, or being carried out by a Federal agency in whole or in part?

*Yes*

4. Is the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), or Federal Transit Administration (FTA) the lead agency for this project?

*No*

5. Are you including in this analysis all impacts to federally listed species that may result from the entirety of the project (not just the activities under federal jurisdiction)?

**Note:** If there are project activities that will impact listed species that are considered to be outside of the jurisdiction of the federal action agency submitting this key, contact your local Ecological Services Field Office to determine whether it is appropriate to use this key. If your Ecological Services Field Office agrees that impacts to listed species that are outside the federal action agency's jurisdiction will be addressed through a separate process, you can answer yes to this question and continue through the key.

*Yes*

6. Are you the lead federal action agency or designated non-federal representative requesting concurrence on behalf of the lead Federal Action Agency?

*Yes*

7. Is the lead federal action agency the Environmental Protection Agency (EPA) or Federal Communications Commission (FCC)?

*Yes*

8. Will the proposed project involve the use of herbicide where listed species are present?

*No*

9. Are there any caves or anthropogenic features suitable for hibernating or roosting bats within the area expected to be impacted by the project?

*No*

10. Does any component of the project associated with this action include activities or structures that may pose a collision risk to **birds** (e.g., plane-based surveys, land-based or offshore wind turbines, communication towers, high voltage transmission lines, any type of towers with or without guy wires)?

**Note:** For federal actions, answer 'yes' if the construction or operation of wind power facilities is either (1) part of the federal action or (2) would not occur but for a federal agency action (federal permit, funding, etc.).

*No*

11. Does any component of the project associated with this action include activities or structures that may pose a collision risk to **bats** (e.g., plane-based surveys, land-based or offshore wind turbines)?

**Note:** For federal actions, answer 'yes' if the construction or operation of wind power facilities is either (1) part of the federal action or (2) would not occur but for a federal agency action (federal permit, funding, etc.).

*No*

12. Will the proposed project result in permanent changes to water quantity in a stream or temporary changes that would be sufficient to result in impacts to listed species?

For example, will the proposed project include any activities that would alter stream flow, such as water withdrawal, hydropower energy production, impoundments, intake structures, diversion structures, and/or turbines? Projects that include temporary and limited water reductions that will not displace listed species or appreciably change water availability for listed species (e.g. listed species will experience no changes to feeding, breeding or sheltering) can answer "No". Note: This question refers only to the amount of water present in a stream, other water quality factors, including sedimentation and turbidity, will be addressed in following questions.

*No*

13. Will the proposed project affect wetlands where listed species are present?

This includes, for example, project activities within wetlands, project activities within 300 feet of wetlands that may have impacts on wetlands, water withdrawals and/or discharge of contaminants (even with a NPDES).

*No*

14. Will the proposed project activities (including upland project activities) occur within 0.125 miles of the water's edge of a stream or tributary of a stream where listed species may be present?

*Yes*

15. Will the proposed project directly affect a streambed (below ordinary high water mark (OHWM)) of the stream or tributary where listed species may be present?

*No*

16. Will the proposed project bore underneath (directional bore or horizontal directional drill) a stream where listed species may be present?

*No*

17. Will the proposed project involve a new point source discharge into a stream or change an existing point source discharge (e.g., outfalls; leachate ponds) where listed species may be present?

*No*

18. Will the proposed project involve the removal of excess sediment or debris, dredging or in-stream gravel mining where listed species may be present?

*No*

19. Will the proposed project involve the creation of a new water-borne contaminant source where listed species may be present?

**Note** New water-borne contaminant sources occur through improper storage, usage, or creation of chemicals. For example: leachate ponds and pits containing chemicals that are not NSF/ANSI 60 compliant have contaminated waterways. Sedimentation will be addressed in a separate question.

*No*

20. Will the proposed project involve perennial stream loss, in a stream or tributary of a stream where listed species may be present, that would require an individual permit under 404 of the Clean Water Act?

*No*

21. Will the proposed project involve blasting where listed species may be present?

*No*

22. Will the proposed project include activities that could negatively affect fish movement temporarily or permanently (including fish stocking, harvesting, or creation of barriers to fish passage).

*No*

23. Will the proposed project involve earth moving that could cause erosion and sedimentation, and/or contamination along a stream or tributary of a stream where listed species may be present?

**Note:** Answer "Yes" to this question if erosion and sediment control measures will be used to protect the stream.

*No*

24. Will earth moving activities result in sediment being introduced to streams or tributaries of streams where listed species may be present through activities such as, but not limited to, valley fills, large-scale vegetation removal, and/or change in site topography?

*No*

25. Will the proposed project involve vegetation removal within 200 feet of a perennial stream bank where aquatic listed species may be present?

*No*



26. Will erosion and sedimentation control Best Management Practices (BMPs) associated with applicable state and/or Federal permits, be applied to the project? If BMPs have been provided by and/or coordinated with and approved by the appropriate Ecological Services Field Office, answer "Yes" to this question.

*Yes*

27. Is the project being funded, lead, or managed in whole or in part by U.S Fish and Wildlife Restoration and Recovery Program (e.g., Partners, Coastal, Fisheries, Wildlife and Sport Fish Restoration, Refuges)?

*No*

28. Will the proposed project result in changes to beach dynamics that may modify formation of habitat over time?

**Note:** Examples of projects that result in changes to beach dynamics include 1) construction of offshore breakwaters and groins; 2) mining of sand from an updrift ebb tidal delta; 3) removing or adding beach sands; and 4) projects that stabilize dunes (including placement of sand fences or planting vegetation).

*No*

29. [Hidden Semantic] Is the project area located within the piping plover AOI?

**Automatically answered**

*Yes*

30. If you have determined that the piping plover is unlikely to occur within your project's action area or that your project is unlikely to have any potential effects on the piping plover, you may wish to make a "no effect" determination for the piping plover. Additional guidance on how to make this decision can be found in the project review section of your local Ecological Services Field Office's website. CBFO: <https://www.fws.gov/office/chesapeake-bay-ecological-services/project-review> ; MEFO: <https://www.fws.gov/office/maine-ecological-services> ; NJFO: <https://www.fws.gov/office/new-jersey-ecological-services/new-jersey-field-office-project-review-guide> ; NEFO: <https://www.fws.gov/office/new-england-ecological-services/endangered-species-project-review#Step5> ; WVFO: <https://www.fws.gov/office/west-virginia-ecological-services/project-planning>. If you are unsure, answer "No" and continue through the key.

Would you like to make a no effect determination for the piping plover?

*Yes*

31. [Hidden Semantic] Is the project area located within the piping plover AOI?

**Automatically answered**

*Yes*

32. [Hidden Semantic] Is the project area located within the roseate tern AOI?

**Automatically answered**

*Yes*

33. If you have determined that the roseate tern is unlikely to occur within your project's action area or that your project is unlikely to have any potential effects on the roseate tern, you may wish to make a "no effect" determination for the roseate tern. Additional guidance on how to make this decision can be found in the project review section of your local Ecological Services Field Office's website. CBFO: <https://www.fws.gov/office/chesapeake-bay-ecological-services/project-review> ; MEFO: <https://www.fws.gov/office/maine-ecological-services> ; NJFO: <https://www.fws.gov/office/new-jersey-ecological-services/new-jersey-field-office-project-review-guide> ; NEFO: <https://www.fws.gov/office/new-england-ecological-services/endangered-species-project-review#Step5> ; WVFO: <https://www.fws.gov/office/west-virginia-ecological-services/project-planning>. If you are unsure, answer "No" and continue through the key.

Would you like to make a no effect determination for the roseate tern?

*Yes*

34. [Semantic] Does the project intersect the Virginia big-eared bat critical habitat?

**Automatically answered**

*No*

35. [Semantic] Does the project intersect the Indiana bat critical habitat?

**Automatically answered**

*No*

36. [Semantic] Does the project intersect the candy darter critical habitat?

**Automatically answered**

*No*

37. [Semantic] Does the project intersect the diamond darter critical habitat?

**Automatically answered**

*No*

38. [Semantic] Does the project intersect the Big Sandy crayfish critical habitat?

**Automatically answered**

*No*

39. [Hidden Semantic] Does the project intersect the Guyandotte River crayfish critical habitat?

**Automatically answered**

*No*

40. Do you have any other documents that you want to include with this submission?

*No*

## PROJECT QUESTIONNAIRE

1. Approximately how many acres of trees would the proposed project remove?

0

2. Approximately how many total acres of disturbance are within the disturbance/ construction limits of the proposed project?

0

3. Briefly describe the habitat within the construction/disturbance limits of the project site.

*Urban habitat with impervious land development.*

## **IPAC USER CONTACT INFORMATION**

Agency: Environmental Protection Agency

Name: John Nagle

Address: 5 Post Office Square, Suite 100

City: Boston

State: MA

Zip: 02109

Email: [nagle.john@epa.gov](mailto:nagle.john@epa.gov)

Phone: 6179181054