

# Notice of Intent (NOI) for coverage under Small MS4 General Permit

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## Part I: General Conditions

### General Information

Name of Municipality or Organization: Department of Conservation and Recreation State: MA

EPA NPDES Permit Number (if applicable): MAR043001

### Primary MS4 Program Manager Contact Information

Name: Robert Lowell Title: Acting Chief Engineer

Street Address Line 1: 251 Causeway Street

Street Address Line 2:

City: Boston State: MA Zip Code: 02114

Email: Robert.Lowell@mass.gov Phone Number: (617) 626-1340

Fax Number: (617) 626-1370

### Other Information

Stormwater Management Program (SWMP) Location (web address or physical location, if already completed): <https://www.mass.gov/files/documents/2016/08/ty/swmp.pdf>

### Eligibility Determination

Endangered Species Act (ESA) Determination Complete? No

Eligibility Criteria (check all that apply): ☐ A ☐ B ☐ C

National Historic Preservation Act (NHPA) Determination Complete? No

Eligibility Criteria (check all that apply): ☐ A ☐ B ☐ C

☒ Check the box if your municipality or organization was covered under the 2003 MS4 General Permit

### MS4 Infrastructure (if covered under the 2003 permit)

Estimated Percent of Outfall Map Complete? (Part II, III, IV or V, Subpart B.3.(a.) of 2003 permit)

100%

If 100% of 2003 requirements not met, enter an estimated date of completion (MM/DD/YY):

Web address where MS4 map is published:

*If outfall map is unavailable on the internet an electronic or paper copy of the outfall map must be included with NOI submission (see section V for submission options)*

Included with NOI submission (pdf attachment)

### Regulatory Authorities (if covered under the 2003 permit)

Illicit Discharge Detection and Elimination (IDDE) Authority Adopted? (Part II, III, IV or V, Subpart B.3.(b.) of 2003 permit)

Yes

Effective Date or Estimated Date of Adoption (MM/DD/YY):

07/01/11

Construction/Erosion and Sediment Control (ESC) Authority Adopted? (Part II, III, IV or V, Subpart B.4.(a.) of 2003 permit)

Yes

Effective Date or Estimated Date of Adoption (MM/DD/YY):

07/01/08

Post- Construction Stormwater Management Adopted? (Part II, III, IV or V, Subpart B.5.(a.) of 2003 permit)

Yes

Effective Date or Estimated Date of Adoption (MM/DD/YY):

11/01/11

## Notice of Intent (NOI) for coverage under Small MS4 General Permit

### Part II: Summary of Receiving Waters

Please list the waterbodies to which your MS4 discharges. For each waterbody, please report the number of outfalls discharging into it and, if applicable, the segment ID and any impairments.

Massachusetts list of impaired waters: [Massachusetts 2014 List of Impaired Waters- http://www.mass.gov/eea/docs/dep/water/resources/07v5/14list2.pdf](http://www.mass.gov/eea/docs/dep/water/resources/07v5/14list2.pdf)

Waterbody that receives flow from the MS4 and segment ID if applicable	Number of outfalls into receiving water segment	Chloride	Chlorophyll-a	Dissolved Oxygen/ DO Saturation	Nitrogen	Oil & Grease/ PAH	Phosphorus	Solids/ TSS/ Turbidity	E. coli	Enterococcus	Other pollutant(s) causing impairments
See attached list		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
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## Notice of Intent (NOI) for coverage under Small MS4 General Permit

### Part III: Stormwater Management Program Summary

Identify the Best Management Practices (BMPs) that will be employed to address each of the six Minimum Control Measures (MCMs). For municipalities/organizations whose MS4 discharges into a receiving water with an approved Total Maximum Daily Load (TMDL) and an applicable waste load allocation (WLA), identify any additional BMPs employed to specifically support the achievement of the WLA in the TMDL section at the end of part III.

For each MCM, list each existing or proposed BMP by category and provide a brief description, responsible parties/departments, measurable goals, and the year the BMP will be employed (public education and outreach BMPs also requires a target audience). **Use the drop-down menus in each table or enter your own text to override the drop down menu.**

#### MCM 1: Public Education and Outreach

BMP Media/Category (enter your own text to override the drop down menu)	BMP Description	Targeted Audience	Responsible Department/Parties (enter your own text to override the drop down menu)	Measurable Goal	Beginning Year of BMP Implementation
Brochures/Pamphlets	Distribute "Downstream" newsletter twice annually	Visitors	Engineering	Publication dates	2019
Training	Provide training to external contractors after update to DCR Storm Water Handbook	Designers/ Contractors	Engineering	Training event date	2020
Displays/Posters/Kiosks	Signs and public service announcements informing public to not feed seagulls	Visitors	Operations	Facilities with signs, PSA dates	2019
Meeting	Discuss relevant stormwater and permitting requirements at project kick-off meetings with contractors	Designers/ Contractors	Engineering	Number of kick-offs held	2019
Web Page	Maintain DCR Stormwater webpage	Staff, visitors, designers/contractors	External Affairs	Web page views	2019
Training	Internal training for staff after update to DCR Storm Water Handbook	Staff	Engineering	Training event date	2020

[illegible]

## Notice of Intent (NOI) for coverage under Small MS4 General Permit

### Part III: Stormwater Management Program Summary (continued)

## MCM 2: Public Involvement and Participation

[illegible]

[illegible]

**Notice of Intent (NOI) for coverage under Small MS4 General Permit**Part III: Stormwater Management Program Summary (continued)**MCM 3: Illicit Discharge Detection and Elimination (IDDE)**

<b>BMP Categorization</b> (enter your own text to override the drop down menu)	<b>BMP Description</b>	<b>Responsible Department/Parties</b> (enter your own text to override the drop down menu)	<b>Measurable Goal</b> (all text can be overwritten)	<b>Beginning Year of BMP Implementation</b>
Sanitary Sewer Overflow (SSO) inventory	Develop SSO inventory in accordance with permit conditions	Engineering	Complete within 1 year of permit effective date (June 30, 2019)	2018
Storm sewer system map	DCR completed mapping of storm drainage system during the previous permit term. DCR will update mapping as new data is collected.	Engineering	Complete update of full system map within 10 years of permit effective date (June 30, 2028)	2018
Written IDDE program	Update current IDDE program to reflect permit requirements	Engineering	Complete within 1 year of permit effective date (June 30, 2019) and update as required	2018
Catchment investigation	Implement catchment investigations according to program and permit conditions	Engineering	Complete within 10 years of permit effective date (June 30, 2028)	2018
Employee training	Train employees on IDDE implementation	Engineering	Document date of annual training and number of attendees	2018
Dry weather screening	Conduct in accordance with outfall screening procedure and permit conditions	Engineering	Complete within 3 years of permit effective date (June 30, 2021)	2018
Wet weather screening	Conduct in accordance with outfall screening procedure	Engineering	Complete within 10 years of permit effective date (June 30, 2028)	2021
Ongoing screening	Conduct dry weather and wet weather screening (as necessary)	Engineering	Complete ongoing outfall screening upon completion of IDDE program	2023

[illegible]



**Notice of Intent (NOI) for coverage under Small MS4 General Permit****Part III: Stormwater Management Program Summary (continued)****MCM 4: Construction Site Stormwater Runoff Control**

<b>BMP Categorization</b> (enter your own text to override the drop down menu or entered text)	<b>BMP Description</b>	<b>Responsible Department/Parties</b> (enter your own text to override the drop down menu)	<b>Measurable Goal</b> (all text can be overwritten)	<b>Beginning Year of BMP Implementation</b>
Site inspection and enforcement of Erosion and Sediment Control (ESC) measures	Continue to include contract bid item and special provisions related to ESC/ NPDES in all appropriate projects	Engineering	Continue to include in all appropriate projects	2018
Project design review	DCR performs internal reviews of all project design work	Engineering	Continue to perform internal reviews	2018
Erosion and Sediment Control/ Construction Waste Management	Contract bid items and special provisions include requirements to control construction site waste	Engineering	Continue to include in all appropriate projects	2018
Construction SWPPPs	DCR reviews all submitted SWPPPs	Engineering	Number of construction starts with CGP coverage	2018
Construction General Permit (CGP) Inspections	Contractors perform site inspections in line with the requirements in the CGP	Engineering	Number of construction starts with CGP coverage	2018

[illegible]

**Notice of Intent (NOI) for coverage under Small MS4 General Permit**Part III: Stormwater Management Program Summary (continued)**MCM 5: Post-Construction Stormwater Management in New Development and Redevelopment**

<b>BMP Categorization</b> (enter your own text to override the drop down menu or entered text)	<b>BMP Description</b>	<b>Responsible Department/Parties</b> (enter your own text to override the drop down menu)	<b>Measurable Goal</b> (all text can be overwritten)	<b>Beginning Year of BMP Implementation</b>
As-built plans for on-site stormwater control	DCR requires submission of as-built drawings upon completion of a project. The assets are then added to the stormwater database which is used for scheduling inspections and long term operation and maintenance of the system.	Engineering	Continue to require submission of as-built plans for completed projects	2018
Target properties to reduce impervious areas	Identify at least 5 DCR-owned properties that could be modified or retrofitted with BMPs to reduce impervious areas and update annually	Engineering	Complete within 4 years of permit effective date (June 30, 2022) and report annually on retrofitted properties	2020
Street design and parking lot guidelines	Review if DCR design guidelines affect the creation of impervious cover. The assessment will help determine if changes to design standards for streets and parking lots can be modified to support low impact design options.	Planning/Engineering	Complete within 4 years of permit effective date (June 30, 2022) and implement recommendations of report	2020

[illegible]


**Notice of Intent (NOI) for coverage under Small MS4 General Permit**Part III: Stormwater Management Program Summary (continued)

## MCM 6: Municipal Good Housekeeping and Pollution Prevention

<b>BMP Categorization</b> (enter your own text to override the drop down menu or entered text)	<b>BMP Description</b>	<b>Responsible Department/Parties</b> (enter your own text to override the drop down menu)	<b>Measurable Goal</b> (all text can be overwritten)	<b>Beginning Year of BMP Implementation</b>
Operation and Maintenance (O&M) procedures	Create written O&M procedures including all requirements contained in 2.3.7.a.ii for parks and open spaces, buildings and facilities, and vehicles and equipment	Operations/Engineering	Complete and implement within 2 years of permit effective date (June 30, 2020)	2019
Inventory all DCR-owned parks and open spaces, buildings and facilities, and vehicles and equipment	Create inventory	Operations/Engineering	Complete within 2 years of permit effective date (June 30, 2020) and update annually	2019
Infrastructure O&M	Establish and implement program for repair and rehabilitation of MS4 infrastructure	Operations/Engineering	Complete within 2 years of permit effective date (June 30, 2020)	2018
Stormwater Pollution Prevention Plan (SWPPP)	Create SWPPPs for maintenance garages, transfer stations, and other waste-handling facilities	Operations/Engineering	Complete and implement within 2 years of permit effective date (June 30, 2020)	2018
Catch basin cleaning	Establish schedule for catch basin cleaning such that each catch basin is no more than 50% full and clean catch basins on that schedule	Operations/Engineering	Clean catch basins on established schedule and report number of catch basins cleaned and volume of material moved annually	2018
Street sweeping program	Sweep DCR streets and parking lots in accordance with permit conditions	Operations/Engineering	Report on compliance with street sweeping schedule annually	2018
Road salt use optimization program	Continue program to minimize the use of road salt	Operations	Continue salt use optimization during deicing season	2018

[illegible]

## Notice of Intent (NOI) for coverage under Small MS4 General Permit

### Part III: Stormwater Management Program Summary (continued)

## Actions for Meeting Total Maximum Daily Load (TMDL) Requirements

Use the drop-down menus to select the applicable TMDL, action description to meet the TMDL requirements, and the responsible department/parties. If no options are applicable, or more than one, **enter your own text to override drop-down menus.**

[illegible]



**Notice of Intent (NOI) for coverage under Small MS4 General Permit****Part III: Stormwater Management Program Summary (continued)****Actions for Meeting Requirements Related to Water Quality Limited Waters**

Use the drop-down menus to select the pollutant causing the water quality limitation and enter the waterbody ID(s) experiencing excursions above water quality standards for that pollutant. In addition, if you are subject to additional requirements due to a downstream nutrient impairment (see Part 2.2.2 of the permit) select the pollutant of concern and indicate applicable waterbody IDs or write "all waterbodies" if applicable. Choose the action description from the dropdown menu and indicate the responsible party. If no options are applicable, or more than one, **enter your own text to override drop-down menus.**

<b>Pollutant</b>	<b>Waterbody ID(s)</b>	<b>Action Description</b>	<b>Responsible Department/Parties</b> (enter your own text to override the drop down menu)
E. Coli	see attached list	Adhere to requirements in part III of Appendix H	Engineering
Enterococcus		Adhere to requirements in part III of Appendix H	Engineering
Fecal Coliform		Adhere to requirements in part III of Appendix H	Engineering
Nitrogen		Adhere to requirements in part I of Appendix H	Engineering
Phosphorus		Adhere to requirements in part II of Appendix H	Engineering
TSS		Adhere to requirements in part V of Appendix H	Engineering
Turbidity		Adhere to requirements in part V of Appendix H	Engineering
Chloride		Adhere to requirements in part IV of Appendix H	Engineering
Cadmium		Adhere to requirements in part V of Appendix H	Engineering
Copper		Adhere to requirements in part V of Appendix H	Engineering
Oil and Grease		Adhere to requirements in part V of Appendix H	Engineering
Petroleum Hydrocarbons		Adhere to requirements in part V of Appendix H	Engineering
Lead		Adhere to requirements in part V of Appendix H	Engineering
	N/A	Adhere to requirements in part V of Appendix H	
	N/A	Adhere to requirements in part V of Appendix H	

**Part IV: Notes and additional information**

Use the space below to indicate the part(s) of 2.2.1 and 2.2.2 that you have identified as not applicable to your MS4 because you do not discharge to the impaired water body or a tributary to an impaired water body due to nitrogen or phosphorus. Provide all supporting documentation below or attach additional documents if necessary. Also, provide any additional information about your MS4 program below.

**Outfall map:**

DCR's outfall map is included as a pdf attachment to the NOI. DCR will further refine the outfall layer and receiving waterbodies list during development of the Stormwater Management Program (SWMP) and Illicit Discharge Detection and Elimination (IDDE) Program.

**Status of policies/procedures required under the 2003 MS4 Permit:**

IDDE - DCR has been implementing its Drainage Connection Policy since 2011.

Construction/Erosion and Sediment Control - ESC contract bid items and special provisions have been included in contracts for projects over one acre since 2008.

Post-Construction Stormwater Management - DCR follows the MassDEP Stormwater Management Standards. In November 2011, DCR finalized a Stormwater Handbook for use by engineering and planning staff at DCR.

**Endangered Species Act (ESA) eligibility determination:**

DCR has completed the ESA eligibility process outlined in Appendix C of the MS4 permit. According to the U.S. Fish & Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) tool, DCR properties within the MS4 regulated area contain potential habitat for Northern Long-eared Bat, Piping Plover, Red Knot, Roseate Tern, Plymouth Redbelly Turtle, Dwarf Wedgemussel, Rusty Patched Bumble Bee, Small Whorled Pogonia, American Chaffseed, and Sandplain Gerardia.

DCR has initiated informal consultation with USFWS, as documented in the attached correspondence.

**National Historic Preservation Act (NHPA) Eligibility Determination:**

As an existing facility authorized by the previous MS4 permit, DCR certified eligibility with the NHPA as part of DCR's NOI in 2006. For parcels acquired by DCR since 2006, DCR is in the process of assessing potential impacts on properties that are listed on, or eligible for listing on, the National Register of Historic Places. DCR will initiate consultation with Massachusetts Historical Commission if DCR determines that its discharge and discharge-related activities have the potential to affect historic properties.

## Notice of Intent (NOI) for coverage under Small MS4 General Permit

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### Part V: Certification

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Name:

LEO P. ROY

Title:

Commissioner

Signature:



Date:

9/28/18

[To be signed according to Appendix B, Subparagraph B.11, Standard Conditions]

Note: When prompted during signing, save the document under a new file name



May 15, 2019

Newton Tedder  
U.S. EPA Region 1  
5 Post Office Square  
Boston, MA 02109-3912

Re: Massachusetts Department of Conservation and Recreation  
Addendum to MS4 Notice of Intent: Endangered Species Act and National Historic  
Preservation Act Eligibility Determination

Dear Mr. Tedder:

The Massachusetts Department of Conservation and Recreation (DCR) submitted its Notice of Intent (NOI) for coverage under the Massachusetts MS4 General Permit on September 28, 2018. At that time, DCR had not yet completed its review and determination of eligibility with the Endangered Species Act (ESA) and the National Historic Preservation Act (NHPA). DCR has since completed its review and has determined that it is eligible for MS4 Permit coverage under ESA Criterion B and NHPA Criterion A. The following sections summarize the review and determinations.

#### Endangered Species Act (ESA) Eligibility Determination

DCR completed the ESA eligibility process outlined in the MS4 Permit Appendix C. According to the U.S. Fish & Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) tool, DCR properties within the MS4 regulated area contain potential habitat for Northern Long-eared Bat, Piping Plover, Red Knot, Roseate Tern, Plymouth Redbelly Turtle, Dwarf Wedgemussel, Rusty Patched Bumble Bee, Small Whorled Pogonia, American Chaffseed, and Sandplain Gerardia.

All projects undertaken by DCR, including upgrades to stormwater management systems, are coordinated with the Massachusetts Natural Heritage and Endangered Species Program (NHESP) when they occur within known protected species habitat. Recommendations from the NHESP to avoid impact to a protected species are incorporated into the project. These efforts extend to the operation of DCR's MS4 system for compliance with the ESA.

In a letter dated September 24, 2018, USFWS issued a determination that stormwater discharge activities associated with the 2016 MS4 Permit may affect, but are not likely to adversely affect, certain species listed under the ESA when specific conditions are met. A copy of the USFWS letter is enclosed.

As stipulated in the above referenced USFWS letter, DCR confirms that the following conditions are true:

#### COMMONWEALTH OF MASSACHUSETTS · EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS

Department of Conservation and Recreation  
251 Causeway Street, Suite 600  
Boston MA 02114-2119  
617-626-1250 617-626-1351 Fax  
[www.mass.gov/orgs/departments-of-conservation-and-recreation](http://www.mass.gov/orgs/departments-of-conservation-and-recreation)



Charles D. Baker  
Governor

Karyn E. Polito  
Lt. Governor

Kathleen A. Theoharides, Secretary,  
Executive Office of Energy & Environmental Affairs

Leo Roy, Commissioner  
Department of Conservation & Recreation

1. All stormwater discharges are pre-existing or previously permitted by EPA;
2. Any planned operations and maintenance work covered by this permit will only affect previously disturbed areas where stormwater controls are already installed. In these situations, the chance of encountering any of the subject species is discountable;
3. The project implements EPA MS4 Best Management Practices (BMPs) and meets Clean Water Act and Massachusetts Water Quality Standards. Although permitted discharges may reach the environment used by these species, BMPs reduce pollutants to the extent that discharges are not known to have measurable impacts on these species or their habitat;
4. No new construction or structural BMPs are proposed under this permit at this time; and
5. DCR agrees that if, during the course of the permit term, DCR plans to install a structural BMP not identified in the NOI, DCR will re-initiate consultation with the USFWS, as necessary.

In accordance with the ESA eligibility process outlined in the MS4 Permit Appendix C, DCR certifies permit eligibility with the ESA under **Criterion B**. The enclosed letter from USFWS documents written concurrence by USFWS in place of a concurrence letter for informal consultation.

USFWS Criterion B: *In the course of formal or informal consultation with the Fish and Wildlife Service, under section 7 of the ESA, the consultation resulted in either a no jeopardy opinion (formal consultation) or a written concurrence by USFWS on a finding that the stormwater discharges and discharge related activities are "not likely to adversely affect" listed species or critical habitat (informal consultation).*

#### National Historic Preservation Act (NHPA) Eligibility Determination

As an existing facility authorized under the 2003 MS4 Permit, DCR certified eligibility with the NHPA as part of DCR's NOI in 2006. For parcels acquired by DCR since 2006, DCR assessed potential impacts on properties that are listed on, or eligible for listing on, the National Register of Historic Places. The following newly acquired DCR parcels within the urbanized area are listed on, or eligible for listing on, the National Register of Historic Places.

- Major Willard Moore Memorial Park (Moore State Park National Register Historic District)
- Norwottuck Rail Trail (Hadley Center National Register Historic District)
- Blackstone River and Canal Heritage State Park (Blackstone Canal National Register Historic District)

DCR determined that operation of its MS4 system does not have the potential to cause effects on historic properties. DCR does not plan to undertake any activity involving subsurface land disturbance less than an acre in the vicinity of historic properties. If, during the course of the permit term, DCR plans to undertake subsurface land disturbance less than an acre in the vicinity

of a historic property, DCR will assess the potential for the activity to affect the historic property and will consult with the Massachusetts Historical Commission as appropriate.

In accordance with the NHPA eligibility process outlined in the MS4 Permit Appendix D, DCR certifies permit eligibility with the NHPA under **Criterion A**.

NHPA Criterion A: *The discharges do not have the potential to cause effects on historic properties.*

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', with a stylized flourish at the end.

Robert Lowell

Deputy Chief Planning and Engineering

Acting Chief Engineer

CC: Caroline Hampton (VHB)

Encl: US Fish & Wildlife Service letter re ESA eligibility determination, September 24, 2018



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE



New England Field Office  
70 Commercial St, Suite 300  
Concord, NH 03301-5087  
<http://www.fws.gov/newengland>

September 24, 2018

To whom it may concern:

The U.S. Fish and Wildlife Service (USFWS) reviewed the stormwater discharge activities associated with the 2016 National Pollutant Discharge and Elimination System (NPDES) Massachusetts (MA) Small Municipal Separate Storm Sewer System (MS4) general permit (MA MS4 General Permit) issued by the Environmental Protection Agency (EPA). We determined those activities may affect, but are not likely to adversely affect, certain species listed under the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) when specific conditions are met. When these conditions are met, we do not need to review individual projects. These comments are provided in accordance with section 7 of the ESA and complement existing 2016 MA MS4 General Permit Appendix C Guidance. We understand the applicant is acting as a non-Federal representative of the EPA for the purpose of consultation under section 7. **This letter provides additional guidance for meeting Criterion B and should be submitted as part of your application package to the EPA.**

If the USFWS Information for Planning and Consultation website (<https://ecos.fws.gov/ipac/>) indicates your MA MS4 General Permit project action area may contain one or more of the following federally listed endangered species: roseate tern (*Sterna dougallii*), northern red-bellied cooter (*Pseudemys rubriventris*), dwarf wedgemussel (*Alasmidonta heterodon*), rusty patched bumble bee (*Bombus affinis*), northeastern bulrush (*Scirpus ancistrochaetus*), or American chaffseed (*Schwalbea americana*); threatened species: piping plover (*Charadrius melodus*), bog turtle (*Glyptemys muhlenbergii*), Puritan tiger beetle (*Cicindela puritana*), northeastern beach tiger beetle (*Cicindela dorsalis*), or red knot (*Calidris canutus rufa*); or their federally designated critical habitat; and the specific conditions listed below are met, you may submit this letter to complete the **MA MS4 General Permit Appendix C: Step 4** in place of a concurrence letter for informal consultation as documentation of ESA eligibility for **USFWS Criterion B**.

In addition, this letter also satisfies the requirement in the **MA MS4 General Permit Appendix C: Step 2 (3)** to contact the USFWS and obtain a concurrence letter, if you have not yet done so. If your project action area includes one or more of the above-listed species *and* one or more of the



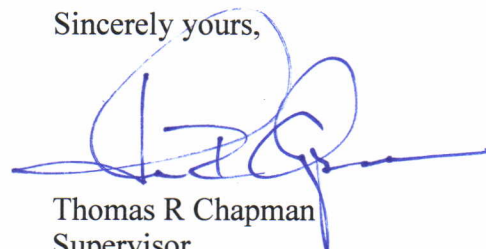
species listed under **Criterion C**,<sup>1</sup> you may still use this letter to certify under **Criterion B**. All existing guidance regarding requirements for certifying eligibility according to the USFWS Criterion A, B, or C for coverage by the 2016 MS4 Permit (see MA MS4 General Permit Appendix C – Endangered Species Guidance) remains unchanged.

We have determined that proposed stormwater discharge activities covered under the 2016 MS4 Permit *may affect, but are not likely to adversely affect*, the above-listed species and the species' critical habitat when the following are true:

1. all stormwater discharges are pre-existing or previously permitted by EPA;
2. any planned operations and maintenance work covered by this permit will only affect previously disturbed areas where stormwater controls are already installed. In these situations the chance of encountering any of the subject species is discountable;
3. the project implements EPA MS4 Best Management Practices (BMPs) and meets Clean Water Act and Massachusetts Water Quality Standards. Although permitted discharges may reach the environment used by these species, BMPs reduce pollutants to the extent that discharges are not known to have measurable impacts on these species or their habitat;
4. no new construction or structural BMPs are proposed under this permit at this time; and
5. you agree that if, during the course of the permit term, you plan to install a structural BMP not identified in the Notice of Intent (NOI), you will re-initiate consultation with the USFWS as necessary (see **MA MS4 General Permit Appendix C: Step 2 (5)**).

If the above criteria are met, further consultation with the USFWS under section 7 of the ESA is not required at this time; however, if the proposed action changes in any way such that it may affect a listed species in a manner not previously analyzed or if new information reveals the presence of additional listed species that may be affected by the project, the applicant or the EPA should contact us immediately and suspend activities that may affect those species until the appropriate level of consultation is completed with our office. Thank you for your cooperation, and please contact David Simmons of this office at (603) 227-6425 if you have questions or need further assistance.

Sincerely yours,



Thomas R Chapman  
Supervisor  
New England Field Office

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<sup>1</sup> Criterion C includes guidance for project action areas that may contain species for which EPA has already made a determination. These species include the northern long-eared bat (*Myotis septentrionalis*), sandplain gerardia (*Agalinis acuta*), small whorled pogonia (*Isotria medeoloides*), and/or American burying beetle (*Nicrophorus americanus*) (MA MS4 General Permit Appendix C: Step 3 – Determine if You Can Meet Eligibility USFWS Criterion C).