

## Appendix E: Desirable Species Procedures (17-PE)

### Assessing the Effects of Your Discharge and Discharge-Related Activities

You must follow the procedures in this Appendix E to certify eligibility to discharge to Waters of this State containing Desirable Species, as defined in Appendix A of the permit, and determine under which of the eligibility criteria in Part I.B.2.e, if any, you qualify. This process verifies that you meet at least one of the criteria of the permit to be eligible for coverage under this permit.

The Maryland Department of Natural Resources (MD DNR) determines the presence of protected species and coordinates strategies to protect them. The Desirable Species include plants and both game and non-game animals protected through these MD DNR. The coordinating MD DNR program who work with this permit (and with you if you have questions or concerns) is the [Environmental Review Program \(DNR ERP\)](#). The DNR ERP program serves to review and screen when there may be potential issues. They work with both the following programs:

- [Maryland Natural Heritage Program \(MD NHP\)](#). The MD NHP has been the lead state agency responsible for protecting and managing nongame, rare, threatened, and endangered species and their habitats in Maryland. The main duties of the Program biologists are to:
  - a. Perform field surveys and scientific research
  - b. Maintain data needed to conserve species and habitats
  - c. Provide technical guidance on rare species conservation
  - d. Restore ecosystems
- [Sensitive Species Project Review Areas \(SSPRA\)](#). The SSPRA are managed by the MD NHP. The Program creates maps that indicate areas that contain one or more threatened or endangered species or wildlife species in need of conservation. The SSPRA are dynamic and may change yearly, based on information from the MD NHP.
- Fishing and Boating Services additionally review game fish species on both the [threatened and endangered species list](#) (i.e. federally listed populations of Atlantic Sturgeon), as well as the [Fishery Management Plan](#) or species of management concern (i.e. Brook Trout). Both the Atlantic Sturgeon and Brook Trout are included in the criteria below regarding Desirable Species.

When evaluating the potential effects of your activities, you must consider effects to Desirable Species within each treatment area identified in your NOI that contains such Resources. Discharges not meeting at least one of these criteria are not eligible for coverage under this permit. No discharges to Waters of this State containing Desirable Species are eligible for coverage under the 17PE unless those discharges are specifically identified and certified on a complete and accurate NOI form submitted to the Department. These discharges will be authorized 30 days after the Department receives the NOI, unless the Department notifies you otherwise within the 30-day period, or unless the discharges are in response to a Declared Pest Emergency Situation in which case the discharges are authorized immediately for a period of at least 60 days from the date this discharge began.

#### Step One: Determine if Desirable Species are Present in the Treatment Area

First, you must determine whether any discharges from your pesticide application activities in any treatment areas included under your NOI are likely to overlap directly with any Desirable Species, as identified using these mapping resources or by working directly with the [Environmental Review Program \(DNR ERP\)](#). The steps below, along with the web based tools, allow you to quickly self-assess if you have the potential.

- a) Start by verifying if your discharge impacts Atlantic Sturgeon, by verifying if your pesticide application is directly into the Potomac River below Great Falls, or to the Susquehanna downstream of the Conowingo Dam.

- b) Next verify if your discharge potentially impacts Brook Trout by determining if your pesticide application is to water designated as Use III or III-P, by using this map <http://mde.maryland.gov/programs/Water/TMDL/WaterQualityStandards/Pages/DesignatedUsesMaps.aspx>.
- c) Next verify if your discharge impacts non-game species using this map <https://gisapps.dnr.state.md.us/MERLIN/index.html>. When reviewing the map, look under drop down list of "Living Resources" of "sensitive species".

If you have any questions on these steps, you may contact the [Environmental Review Program \(DNR ERP\)](#) directly. If you determine that any of your discharges are to Waters of this State containing Desirable Species, you should proceed to Step Two. If you determine that no discharges from your pesticide application activities are to Waters of this State containing Desirable Species, you can certify that the activity meets Criterion A (check box A on the NOI corresponding to Criterion A). In this case, you do not have to further consider any requirements related to Criteria B-F. Note that if you are not otherwise required to submit an NOI, you do not need to submit an NOI merely to document that you meet Criterion A. However, if you are required to submit an NOI anyway, you should document on the NOI that you meet Criterion A.

#### Step Two: Determine if a Previous ESA-Related Action has Already been Completed for your Activities

For each discharge to waters of the United States from Federal Operators, where these waters containing NMFS Listed Resources of Concern (these are the federally listed endangered or threatened species), Decision-makers should determine whether they are eligible under either Criterion B or C because of a previously completed ESA Section 7 consultation, or a previously issued ESA Section 10 permit, respectively as follows:

- The effects of your activities have been addressed in a consultation under ESA Section 7 on a separate Federal action and the consultation resulted in a concurrence by NMFS that the discharge was not likely to adversely affect listed species or critical habitat or NMFS concluded in a biological opinion that the discharge or discharges were not likely to jeopardize listed species or destroy or adversely modify critical habitat, either as part of your activities as planned or as modified with a reasonable and prudent alternative (check box B corresponding to Criterion B). For example, most federal agencies that apply pesticides have already consulted with NMFS, as required under 50 C.F.R. § 402.01(a), and can therefore certify under this criterion.
- The effects of your activities have been addressed through approval of a Habitat Conservation Plan under Section 10 of the ESA (check box C corresponding to Criterion C). Your pesticide discharges may be authorized by this PGP 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 pesticide discharges on federally listed species and designated critical habitat. You must follow NMFS procedures when applying for an ESA Section 10 permit (see 50 CFR 222.22). Application instructions for Section 10 permits for NMFS can be obtained by accessing the NMFS website ([www.nmfs.noaa.gov](http://www.nmfs.noaa.gov)) or by contacting the appropriate NMFS regional office.

If you believe an existing ESA-related action may have already been completed for your planned pesticide application activities but you are uncertain of the details, you should contact your regional NMFS office (contact information available at <https://www.epa.gov/npdes/pesticide-permitting-ESA-procedures>). If an existing ESA-related action has not already been completed for your activities, proceed to Step Three.

#### Step Three: Determine if the Pesticide Application is in Response to a Declared Pest Emergency Situation

Determine if all the discharges to Waters of this State containing Desirable Species and that are to be included in the NOI are being performed in response to a Declared Pest Emergency Situation, as defined in Appendix A

of the permit (check box D corresponding to Criterion D). In such a case, an NOI must be filed no later than 15 days after beginning to discharge with that NOI identifying: 1. The location of the pest management area in detail or include a map of the location; 2. Pest(s) to be controlled; 3. Pesticide product(s) to be discharged and method of application; 4. Planned quantity and rate of discharge(s) for each method of application; 5. Number of planned discharges; 6. Approximate date(s) of planned discharge(s); and 7. The rationale supporting the determination whether the discharge is likely to adversely affect Desirable Species, including the description of appropriate measures to be undertaken to avoid or eliminate the likelihood of adverse effects.

Information provided for items 1 through 6 above must also include any discharges that have already occurred in the days (up to 15) prior to NOI submission. The discharge or discharges to address these Declared Pest Emergency Situations are authorized under the general permit for at least 60 days after beginning to discharge. You may continue to discharge after 60 days unless the Department advises the Operator that additional conditions or an individual permit are necessary. DNR ERP will, within 30 days of submission of the NOI, advise the Department whether the past and planned future discharges meet the eligibility criterion of not likely to adversely affect Desirable Species; whether the eligibility criterion could be met with additional conditions; or whether the eligibility criterion is not met. The Department will advise the Decision-maker within 15 days after receiving notification from DNR ERP whether the discharge or discharges qualify for coverage beyond the 60-day authorization provided under the permit. If the Department identifies additional conditions to qualify discharges as eligible for coverage beyond 60 days under the permit, those conditions remain in effect for the life of the permit. The Department expects to rely on DNR ERP's determination in identifying eligibility for continuing authorization, either with or without additional conditions. If you do not hear from the Department within 45 days of submitting your NOI, you may assume that your authorization to discharge continues unless and until notified otherwise by the Department.

If your pesticide application is not in response to a Declared Pest Emergency Situation, proceed to Step Four.

Step Four: Determine if the Pesticide Application is not likely to adversely affect Desirable Species.

The 17PE provides two options for Decision-makers to demonstrate that discharges from pesticide applications to Waters of this State containing Desirable Species are not likely to adversely affect those resources for the activities for which the Decision-maker is seeking permit coverage. These options include: (1) obtaining confirmation from DNR ERP prior to NOI submission that discharges are not likely to adversely affect Desirable Species, or (2) self-certifying in the NOI that based on your analysis, you have concluded that discharges are not likely to adversely affect Desirable Species. Descriptions of procedures that are to be followed for these two options are described below.

- Option 1 (Criterion E): For each treatment area that will include discharges to Waters of this State containing Desirable Species, you may contact DNR ERP and request input regarding your planned discharges. If DNR ERP determines that your planned discharges are found to meet eligibility criteria for use (i.e., not likely to adversely affect Desirable Species), you have satisfied your eligibility obligations under Criterion E and you may submit your NOI for coverage under the 17PE (check box E corresponding to Criterion E). As part of certifying your compliance with Criterion E, you must submit information received from DNR ERP acknowledging the discharges that they have determined are not likely to adversely affect Desirable Species and establishing any additional requirements for your permit eligibility. To maintain eligibility under the permit for those discharges, you must abide by those additional requirements for the duration of your coverage under the 17PE.
- Option 2 (Criterion F): You must self-certify in your NOI that your discharge is not likely to adversely affect Desirable Species. To do so, you will have to take appropriate measures to avoid or eliminate the likelihood of adverse effects prior to applying for 17PE coverage. These measures may be relatively simple, such as applying pesticides to waters at concentrations below those found to cause adverse effects, or during seasons when Desirable Species are not present. Provided you are able to implement appropriate measures, you may proceed with submitting your NOI for coverage under the 17PE (check

box F corresponding to Criterion F). As part of certifying your compliance with Criterion F, you must submit information to support your findings, including: 1. The location of the pest management area in detail or include a map of the location; 2. Pest(s) to be controlled; 3. Pesticide product(s) to be discharged and method of application; 4. Planned quantity and rate of discharge(s) for each method of application; 5. Number of planned discharges; 6. Approximate date(s) of planned discharge(s); and 7. The rationale supporting the determination that the criterion for which the NOI is submitted is being met, including the description of appropriate measures to be undertaken to avoid or eliminate the likelihood of adverse effects.

This information will be posted online and also will be sent to DNR ERP for their review.

DNR ERP will, within 30 days of submission of the NOI, advise the Department whether it believes the planned discharges meet the eligibility criteria of not likely to adversely affect Desirable Species, whether the eligibility criterion could be met with additional conditions; or whether the eligibility criterion is not met. The Department will advise the Decision-maker as to whether the intended discharges qualify to proceed under the General Permit or whether an individual permit will be required. The Department expects to rely on DNR ERP's determination in identifying eligibility for authorization, either with or without additional conditions. If you do not hear from the Department within 30 days, you may assume that your discharge is authorized without further conditions.

You must comply with any terms and conditions imposed under the eligibility requirements to ensure that your pesticide discharges and discharge-related activities are protective of listed species and/or critical habitat. If the eligibility requirements cannot be met and maintained, then you are not eligible for coverage under this 17PE. In these instances, you may consider applying to the Department for an individual permit, or revising your pesticide application activities so as to comply with these eligibility conditions and resubmitting an NOI to the Department that documents this revised eligibility.