

## Standard Operating Procedures (SOPs) for the GARFO PRD-USACE NAD 2017 NLAA Program

The GARFO PRD-USACE NAD 2017 NLAA Program (“2017 NLAA Program”) represents an interagency effort to streamline ESA consultation for routine, non-controversial projects that are not likely to adversely affect (NLAA) ESA-listed species or critical habitat. The 2017 NLAA Program does not address whether or not certain activity categories or stressor levels will have no effect on listed species or critical habitat (this remains under the discretion of individual NAD Districts). The purpose of this Standard Operating Procedures (SOPs) document is to help USACE project managers determine which activity categories and associated stressor thresholds are eligible for processing under the Program’s streamlined verification form. Those which are ineligible require individual section 7 consultation (informal or formal, depending on whether the proposed work will likely adversely affect listed species or habitat).

### I. **Is my project eligible for review under the 2017 NLAA Program?**

- a. USACE project managers will screen applications for the potential presence of NOAA Fisheries ESA-listed species and critical habitat in the project’s **action area**. The best available information on the distribution (geographic and temporal), life stages, and behaviors of ESA-listed species, as well as the **physical or biological features (PBFs)** of critical habitat are found here (check both the maps and species tables):

<https://www.greateratlantic.fisheries.noaa.gov/protected/section7/listing/index.html>

As of April 2017, GARFO is in the process of creating new GIS-species and habitat layers that will be hosted on an online web portal. Once available, GARFO will alert USACE. If project managers are in doubt about whether or not ESA-listed species or critical habitat overlap with the action area, they will contact a GARFO Section 7 Biologist and request technical assistance (i.e., make a phone call, send an email). For Section 7 Biologist contacts for your District see:

<https://www.greateratlantic.fisheries.noaa.gov/protected/section7/contactus/index.html>

- b. If the project manager determines that a project will have **no effect** on ESA-listed species or critical habitat, no ESA consultation is needed, and no documentation should be sent to GARFO.
- c. If the project manager determines that a project may affect, but is not likely to adversely affect (NLAA) ESA-listed species or critical habitat (i.e., the project’s effects are **insignificant, discountable, or wholly beneficial**), it may be eligible for review under the 2017 NLAA Program. To determine project eligibility, the project manager must check to see whether or not the application meets (or could meet with the appropriate permit conditions) all of the **project design criteria (PDC)** outlined in the 2017 NLAA Program. There are general PDC that apply to all NLAA projects, and there are “stressor specific” PDC, that apply to projects that have the potential to introduce those stressors into the action

area.

The 2017 NLAA Program Verification Form lists all of the PDC and includes a table to show which stressors may apply to which activity types. If the project meets all of the applicable PDC, it is eligible for review under the 2017 NLAA Program.

- d. **IMPORTANT**: If the project does *not* meet all of the applicable PDC, but the project manager still believes the project should be eligible for review using the form (e.g., the project does not introduce any stressors outside of those considered in the 2017 NLAA Program, but it occurs during a time of year restriction), the project manager should indicate which PDC are not met, and then provide a justification for each PDC not met at the bottom of the form (**Section 4**). Examples of acceptable justifications include (but are not limited to) additional permit conditions, such as observer coverage, turbidity curtains, working in the dry, etc. Each justification should explain how the project's effects are **insignificant** (i.e., too small to be meaningfully measured, detected, or evaluated) or **discountable** (i.e., extremely unlikely to occur), despite not meeting the PDC.

If the project does not meet all of the PDC and either introduces a stressor not considered under the 2017 NLAA Program and/or the project manager cannot provide proper justification for why the project violates PDC but should still be reviewed under the program, the project manager must submit to GARFO a request for individual informal (or formal, if necessary) consultation following this guidance:

<http://www.greateratlantic.fisheries.noaa.gov/protected/section7/guidance/consultation/index.html>

## II. Interpreting the 2017 NLAA Program PDC

### a. Connecting Activities to Stressors and Associated PDC:

On the Verification Form, project managers will find a total of 33 PDC. There are 11 General PDC, which apply to all projects, and then there are PDC for six stressor categories.

The 2017 NLAA Program identifies the following six activity categories and stressors (see table below). Project managers should use the table to decide which stressor specific PDC are applicable to their project in addition to the general PDC. For example, for a maintenance dredging project, the project manager would want to look at the following PDC categories: a) general; b) impingement/entrapment/capture; c) turbidity/sedimentation; d) vessel traffic; and e) habitat modification. This table is meant to be general guidance, in some cases, not all of these stressor categories will apply for a certain activity, in other cases, there may be additional stressors. After reviewing the table, project managers should think through their project and decide which are relevant. Whichever stressors the project managers decide are

relevant should be checked in the verification form in Section 3(b). The project manager is then responsible for ensuring the project meets the general and stressor specific PDC.

Activity Category	Stressor Category					
	Sound Pressure	Impingement/ Entrapment/ Capture	Turbidity/ Sedimentation	Entanglement	Habitat Mod.	Vessel Traffic
Aquaculture (shellfish) and artificial reef creation	N	N	Y	Y	Y	Y
Routine maintenance dredging and disposal/beach nourishment	N	Y	Y	N	Y	Y
Piers, ramps, floats, and other structures	Y	N	Y	Y	Y	Y
Transportation and development (e.g., culvert construction, bridge repair)	Y	N	Y	N	Y	Y
Mitigation (fish/wildlife enhancement or restoration)	N	N	Y	N	Y	Y
Bank stabilization and dam maintenance	Y	N	Y	N	Y	Y

**b. Guidance on General PDC**

On the verification form, General PDC are found in Section 3(a). Review all 11 PDC (guidance below). If your project meets all 11 PDC (i.e., you can answer “Yes” to all of the questions below), check the box next to “Yes, my project meets all of the General PDC.” If your project does not meet all of the PDC, check the box next to “No, my project does not meet all of the General PDC...” and then also check the box next to the PDC your project does not meet.

Regardless of how you answer (Yes or No), complete the gray field for PDC 8 (see additional instructions below).

1. No work will individually or cumulatively have an adverse effect on ESA-listed species or designated critical habitat; no work will cause adverse modification or destruction to proposed critical habitat.
  - a. **Yes** – project is eligible.
  - b. **No** – project will require individual consultation
2. No work will occur in the tidally influenced portion of rivers/streams where Atlantic salmon presence is possible from April 10–November 7.
  - a. **Yes** – project is eligible. To determine if your project overlaps with possible Atlantic salmon presence in rivers/streams, see the [GARFO maps/species tables](#). If the project is in coastal/marine waters (i.e., outside of a river/river estuary, this PDC does not apply.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
3. No work will occur in Atlantic or shortnose sturgeon spawning grounds during the **time of year (TOY)** restriction for your District:
  - a. **Yes** – project is eligible. To determine if your project overlaps with possible sturgeon spawning grounds, see the [GARFO maps/species tables](#). If the project is in coastal/marine waters (i.e., outside of a river, this PDC does not apply.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
4. No work will occur in shortnose sturgeon overwintering grounds during the TOY restriction for your District.
  - a. **Yes** – project is eligible. To determine if your project overlaps with possible shortnose sturgeon overwintering grounds, see the GARFO maps/species tables. If the project is in coastal/marine waters (i.e., outside of a river, this PDC does not apply.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
5. Within designated Atlantic salmon critical habitat, no work will affect spawning and rearing areas.
  - a. **Yes** – project is eligible. To determine if your project has the potential to affect Atlantic salmon critical habitat, first look to see if your project is in Atlantic sturgeon critical habitat ([GARFO maps/species tables](#)). Next, review PBFs 1-7 in Table 4. If still uncertain, seek technical assistance from a GARFO Section 7 biologist. If the project is in coastal/marine waters (i.e., outside of a river, this PDC does not apply.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.

6. Within proposed/designated Atlantic sturgeon critical habitat, no work will affect hard bottom substrate (e.g., rock, cobble, gravel, limestone, boulder, etc.) in low salinity waters (i.e., 0.0-0.5 parts per thousand).
  - a. **Yes** – project is eligible. To determine if your project has the potential to affect Atlantic sturgeon critical habitat, first look to see if your project is in Atlantic sturgeon critical habitat ([GARFO maps/species tables](#)). Next, review PBF 1 in Table 3. If still uncertain, seek technical assistance from a GARFO Section 7 biologist. If the project is in coastal/marine waters (i.e., outside of a river/estuary, this PDC does not apply).
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
7. Work will not change temperature, water flow, salinity, or dissolved oxygen levels.
  - a. **Yes** – project is eligible.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
8. If it is possible for ESA-listed species to pass through the action area, a zone of passage with appropriate habitat for ESA-listed species (e.g., depth, water velocity, etc.) must be maintained (i.e., physical or biological stressors such as turbidity and sound pressure must not create barrier to passage).
  - a. **Yes** – project is eligible. To determine if your project will maintain passage with appropriate habitat for ESA-listed species, consider the distance an animal would have to travel to avoid the sound pressure, turbidity plume, or other stressor associated with your project. After avoiding the stressor, make sure there is still a zone of passage with suitable habitat (sufficient width, depth, water velocity, etc.) available for the species' passage. This is particularly important in rivers and streams. You may need to use the GARFO acoustic tool or reference the GARFO website for turbidity plume estimates (both found here: <https://www.greateratlantic.fisheries.nmfs.gov/protected/section7/guidance/consultation/index.html>). If uncertain, seek technical assistance from GARFO Section 7 Biologist.

Include support for your determination that passage is maintained on the verification form: provide the water body width and the max extent of the stressor (e.g., turbidity plume, sound pressure wave). See **PDC 14 & 20** for further guidance.

- b. **No** – If the max extent of the stressor exceeds the width of the water body, PDC 8 is **not** met. The project will require individual consultation unless the project manager can provide proper justification on the form.
9. Any work in designated North Atlantic right whale critical habitat must have no effect on the physical and biological features (PBFs).

- a. **Yes** – project is eligible. To determine if your project has the potential to affect any of the PBFs of North Atlantic right whale critical habitat, first look to see if your project is in critical habitat ([GARFO maps/species tables](#)). Next, see PBFs in Table 5. If still uncertain, seek technical assistance from a GARFO Section 7 biologist. If the project is in a river or stream, this PDC does not apply.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
10. The project will not adversely impact any submerged aquatic vegetation (SAV).
- a. **Yes** – project is eligible. You may need to provide documentation showing that no SAV is present.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
11. No blasting will occur.
- a. **Yes** – project is eligible.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.

**c. Guidance on Sound Pressure PDC**

If your project meets PDC 12-14 (i.e., you can answer “Yes” to all of the questions below), check the box next to “Yes, my project meets all of the Sound Pressure PDC below.” If your project does not meet all of the PDC, check the box next to “No, my project does not meet all the Sound Pressure PDC...” and then also check the box next to the PDC your project does not meet.

Regardless of how you answer (Yes or No), complete the gray field for PDC 14 (see additional instructions below).

12. If the pile driving is occurring during a time of year when ESA-listed species may be present, and the anticipated noise is above the behavioral noise threshold of those species, a 20 minute “soft start” is required to allow for animals to leave the project vicinity before sound pressure increases.
- a. **Yes** – project is eligible. To determine if ESA-listed species may be present, refer to the [GARFO maps/species tables](#).
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
13. Any new pile supported structure must involve the installation of ≤ 50 piles (below MHW).
- a. **Yes** – project is eligible.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
14. If the project involves steel piles, or non-steel piles greater than (>) 24-inches in diameter/width, or any other noise-producing mechanism, the expected underwater

noise (pressure) must be below (<) the physiological/injury noise threshold for ESA-species in the action area.

- a. **Yes** – project is eligible.

**NON-STEEL or STEEL SHEET PILES  
≤ 24” in DIAMETER/WIDTH:**

If your project only involves non-steel piles (or steel sheet piles) ≤ 24-inches in diameter/width, then your project meets this PDC (see Note below if your project’s action area includes ESA-listed whales).

Here are the estimated distances to sturgeon/salmon/sea turtle injury and behavioral thresholds for piles in this category (to show compliance with **PDC 8**):

**Table 1: Estimated Distances to Sturgeon/Salmon/Sea Turtle Injury & Behavioral Thresholds (non-steel piles and steel sheet piles ≤ 24”)**

Diameter and Type of Pile	Hammer Type	Sturgeon/Salmon Thresholds			Sea Turtle Thresholds	
		Distance (m) to Behavioral Disturbance Threshold (150 dB <sub>RMS</sub> )	Distance (m) to 206dB <sub>Peak</sub> (injury)	Distance (m) to sSEL of 150 dB (surrogate for 187 dBcSEL injury)	Distance (m) to 166 dBRMS (behavior)	Distance (m) to 180 dB RMS (injury)
16-20" Timber	Impact	40.0	NA	NA	NA	NA
16-20" Timber	Vibratory	20.0	NA	NA	NA	NA
24" Concrete	Impact	50.0	NA	30.0	NA	NA
24" Concrete	Vibratory	30.0	NA	10.0	18.0	NA
24” Steel Sheet	Impact	90.0	NA	70.0	58.0	30.0
24” Steel Sheet	Vibratory	40.0	NA	40.0	NA	NA

**STEEL or NON-STEEL/STEEL SHEET PILES  
> 24” in DIAMETER/WIDTH:**

If your project involves steel piles (any size), or non-steel piles/steel sheet piles > 24-inches in diameter/width, you must provide a sound pressure (noise) estimate for the installation of the piles. GARFO has an acoustics tool with noise estimates for a variety of pile types, sizes, and

installation methods:

<https://www.greateratlantic.fisheries.noaa.gov/protected/section7/guidance/consultation/index.html>

You can use this or another credible noise estimate. If you can show that the underwater noise will be below (<) the physiological/injury noise threshold for ESA-species in the action area (thresholds are in the GARFO tool), your project meets **PDC 14**. You should submit documentation to support your findings (e.g., the completed tables from the GARFO acoustics tool) along with your verification form. Remember to also use the estimated distances to ESA-listed species behavior thresholds for **PDC 8**.

NOTE: If ESA-listed whales may be in your action area, you'll need to use two tools to estimate the impacts of underwater noise. Coordinating with a GARFO Section 7 biologist is recommended.

1) For Injury:

<https://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm>

2) For Behavior:

<https://www.greateratlantic.fisheries.noaa.gov/protected/section7/guidance/consultation/index.html>

- b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.

**d. Guidance on Impingement/Entrapment/Capture PDC**

If your project meets PDC 15-19 (i.e., you can answer “Yes” to all of the questions below), check the box next to “Yes, my project meets all of the Impingement/Entrapment/Capture PDC below.” If your project does not meet all of the PDC, check the box next to “No, my project does not meet all the Impingement/Entrapment/Capture PDC below...” and then also check the box next to the PDC your project does not meet.

Regardless of how you answer (Yes or No), complete the gray fields (if applicable) for dredging information and PDC 18 (see additional instructions below). If not applicable, write in “NA.”

- 15. Only mechanical, cutterhead, and low volume hopper (e.g., CURRITUCK) dredges may be used.
  - a. **Yes** – project is eligible.

- b. **No** – project will require individual consultation unless the project manager can provide proper justification for the PDC violation on the form.
- 16. No new dredging in proposed or designated Atlantic sturgeon or Atlantic salmon critical habitat (maintenance dredging still must meet all other PDC). New dredging outside Atlantic sturgeon or salmon critical habitat is limited to one-time dredge events (e.g., burying a utility line) and minor ( $\leq 2$  acres) expansions of areas already subject to maintenance dredging (e.g., marina/harbor expansion).
  - a. **Yes** – project is eligible. To determine if your project overlaps with Atlantic sturgeon or salmon critical habitat, see the [GARFO maps/species tables](#). NOTE: PDC 16 does not explicitly limit maintenance dredging acreage; however, project still must meet all other applicable PDC.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
- 17. Work behind cofferdams, turbidity curtains, and other methods to block access of animals to dredge footprint is required when operationally feasible and ESA-listed species may be present.
  - a. **Yes** – project is eligible. If the project manager determines that cofferdams, turbidity curtains, and other methods to block access of animals from the dredge footprint are not operationally feasible, she/he should be prepared to submit a written justification along with the verification form.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
- 18. Temporary intakes related to construction must be equipped with appropriate sized mesh screening (as determined by GARFO Section 7 biologist and/or according to Chapter 11 of the [NOAA Fisheries Anadromous Salmonid Passage Facility Design](#)) and must not have greater than 0.5 fps intake velocities, to prevent impingement or entrainment of any ESA-listed species life stage.
  - a. **Yes** – project is eligible. Coordinate with a GARFO Section 7 biologist to determine appropriate size of mesh screening (depends on species/life stages present in the action area).
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
- 19. No new permanent intake structures related to cooling water, or any other inflow at facilities (e.g. water treatment plants, power plants, etc.).
  - a. **Yes** – project is eligible.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.

**e. Guidance on Turbidity/Water Quality PDC**

If your project meets PDC 20-23 (i.e., you can answer “Yes” to all of the questions below),

check the box next to “Yes, my project meets all of the Turbidity/Water Quality PDC below.” If your project does not meet all of the PDC, check the box next to “No, my project does not meet all the Turbidity/Water Quality PDC below...” and then also check the box next to the PDC your project does not meet.

20. Work behind cofferdams, turbidity curtains, or other methods to control turbidity are required when operationally feasible and ESA-listed species may be present.
- a. **Yes** – project is eligible. If the project manager determines that cofferdams, turbidity curtains, and other methods to block access of animals from the turbidity plume are not operationally feasible, she/he should be prepared to submit a written justification along with the verification form.

For compliance with **PDC 8**, you must also provide an estimate for the max extent of the turbidity plume and show that there will still be a zone of passage through the water body where the action is taking place.

Turbidity estimates can be found here:

<https://www.greatatlanticfisheries.org/protected/action7/guidelines/consultation/index.html>

- b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
21. In-water offshore disposal may only occur at designated disposal sites that have already been consulted on with GARFO.
- a. **Yes** – project is eligible. If the project manager is uncertain whether or not the proposed offshore disposal site as an existing consultation with GARFO, contact a GARFO Section 7 biologist. If the project will dispose of dredged material at a site with an existing GARFO consultation, all of the permit conditions from that existing consultation must be used in the permit (e.g., observer/designated lookout, vessel speed limits, TOYs, etc.).
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
22. Any temporary discharges must meet state water quality standards; no discharges of toxic substances.
- a. **Yes** – project is eligible.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
23. Only repair of existing discharge pipes allowed; no new construction.
- a. **Yes** – project is eligible. The completed repair/replacement of an existing discharge pipe must maintain or improve current water quality conditions around the pipe.

- b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.

**f. Guidance on Entanglement PDC**

If your project meets PDC 24-28 (i.e., you can answer “Yes” to all of the questions below), check the box next to “Yes, my project meets all of the Entanglement PDC below.” If your project does not meet all of the PDC, check the box next to “No, my project does not meet all the Entanglement PDC below...” and then also check the box next to the PDC your project does not meet.

Regardless of how you answer (Yes or No), complete the gray fields (if applicable) for the type of aquaculture project. If not applicable, leave blank or write in “NA.”

- 24. Shell on bottom <50 acres with maximum of 4 corner marker buoys.
  - a. **Yes** – project is eligible.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
- 25. Cage on bottom with no loose floating lines <5 acres and minimal vertical lines (1 per string of cages, 4 corner marker buoys).
  - a. **Yes** – project is eligible. If the project manager is uncertain whether or not the project design meets the “no loose floating line” criteria, ask a GARFO Section 7 biologist for technical assistance. Generally, lines should be taught, or other methods should be promoted to achieve rigidity (e.g., sheathed or weighted line).
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
- 26. Floating cages <3 acres and in waters shallower than -10 feet MLLW with no loose lines and minimal vertical lines (1 per string of cages, 4 corner marker buoys).
  - a. **Yes** – project is eligible. If the project manager is uncertain whether or not the project design meets the “no loose floating line” criteria, ask a GARFO Section 7 biologist for technical assistance.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
- 27. Floating upweller docks in >10 feet MLLW
  - a. **Yes** – project is eligible.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.

28. Any in-water lines, ropes, or chains must be made of materials and installed in a manner (properly spaced) to minimize the risk of entanglement by keeping lines taut or using methods to promote rigidity (e.g., sheathed or weighted lines that do not loop or entangle).
- Yes** – project is eligible.
  - No** – project will require individual consultation unless the project manager can provide proper justification on the form.

#### **g. Guidance on Habitat Modification PDC**

If your project meets PDC 29 (i.e., you can answer “Yes” to the statement below), check the box next to “Yes, my project meets all of the Habitat Modification PDC below.” If your project does not meet all of the PDC, check the box next to “No, my project does not meet all the Habitat Modification PDC below...” and then also check the box next to the PDC your project does not meet. While PDC 29 deals explicitly with aquaculture habitat modification, all activity categories are likely to have some form of habitat modification, so this stressor category is still relevant, and project managers should check whether or not the PDC is met.

29. No conversion of habitat type (soft bottom to hard, or vice versa) for aquaculture or reef creation
- Yes** – project is eligible. If the project manager is uncertain whether or not the proposed project constitutes a habitat conversion, ask a GARFO Section 7 biologist for technical assistance.
  - No** – project will require individual consultation unless the project manager can provide proper justification on the form.

#### **h. Guidance on Vessel Traffic PDC**

If your project meets PDC 30-33 (i.e., you can answer “Yes” to all of the questions below), check the box next to “Yes, my project meets all of the Vessel Traffic PDC below.” If your project does not meet all of the PDC, check the box next to “No, my project does not meet all the Vessel Traffic PDC below...” and then also check the box next to the PDC your project does not meet.

Regardless of how you answer (Yes or No), complete the gray fields for PDC 33. If your project doesn't involve increases of certain vessel categories, leave the field blank or write in “NA.”

30. Speed limits below 10 knots for project vessels with buffers of 150 feet for all listed species (1,500 feet for right whales).
- Yes** – project is eligible. If the project manager is uncertain whether or not ESA-listed whales will occur in the action area, review the [CADECO maps/species tables](#). If whales will be present, a permit condition requiring observers or designated lookouts will be necessary to ensure this PDC is met.

- b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
- 31. While dredging, dredge buffers of 300 feet in the vicinity of any listed species (1,500 feet for right whales), with speeds of 4 knots maximum.
  - a. **Yes** – project is eligible. If the project manager is uncertain whether or not ESA-listed whales will occur in the action area, review the [GARFO maps/species tables](#). If whales will be present, a permit condition requiring observers or designated lookouts will be necessary to ensure this PDC is met.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
- 32. The number of project vessels must be limited to the greatest extent possible, as appropriate to size and scale of project.
  - a. **Yes** – project is eligible. When reviewing projects, ensure that project vessels and the number of trips taken (e.g., dredged material disposal) are limited to the greatest extent possible.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.
- 33. A project must not result in the permanent net increase of commercial vessels (e.g., a ferry terminal). The permanent net increase in vessels resulting from a residential project (e.g., dock/float/pier) must not exceed two vessels.
  - a. **Yes** – project is eligible. The phrase “net increase” is key here. E.g., if the project involves the reconstruction of an existing pier with 12 slips, as long as the replacement pier has  $\leq 14$  slips, and no new commercial vessels will be using the pier, the project meets this PDC.
  - b. **No** – project will require individual consultation unless the project manager can provide proper justification on the form.

### III. Sign and Submit your 2017 NLAA Program Verification Form

Once you’ve completed Sections 1-4, move to Section 5 and be sure to check the appropriate box expressing your determination that your project is NLAA ESA-listed species or critical habitat. Check the first box if your project meets ALL of the PDC and does not require any justifications. Check the second box if your project did NOT meet one or more PDC and you provided justification(s). Enter a digital signature with your CAC in the signature box, and hit save.

**NOTE:** By providing your determination and signature, you are certifying that to the best of your knowledge the answers you have provided in this form is accurate and based upon the best available scientific information. This form must be filled out and signed by USACE staff, and not a third party, unless that party is an officially designated non-federal representative.

Once the form is signed, submit the PDF along with any associated project plans, maps, public notices, supporting documentation (e.g., data for PDC 8, 14) etc. to [nmla\\_section7@nps.gov](mailto:nmla_section7@nps.gov) with "2017 NLAA Program" in the subject line.

**NOTE:** Please do not print, sign, and scan the form, as the original fillable PDF format allows us to import the data you enter to a spreadsheet, and we cannot do that from a scanned version.

#### **IV. Monitoring**

As outlined in the 2017 NLAA Program (both in the USACE Biological Assessment and GARFO Programmatic Consultation), USACE will provide an annual monitoring report to GARFO by March 1 of each year. This report should capture all of the projects USACE submitted for ESA Section 7 review under the 2017 NLAA Program in the previous calendar year. A summary table within the report should show the number of projects, by NAD District, for each activity category. Additional data on cumulative effects (e.g., habitat modification, aquaculture leases, and vessel traffic) should be provided to the extent that this information is captured in ORM.

#### **V. Glossary**

- Action area:** “All areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action” (50CFR§402.02). This includes the project’s footprint as well as the area beyond it that may experience direct or indirect effects that would not occur but for the action. For more information on how to determine the scope of the action area, please consult the definition of “effects of the action” (50 CFR §402.02).
- Discountable** In order to determine that effects of a particular project will be “discountable,” you must be able to demonstrate that the effects are extremely unlikely to occur (i.e., discountable effects relate to the likelihood of the impact).
- Insignificant** In order to determine that effects of a particular project will be “insignificant,” you must be able to demonstrate that the effects cannot be meaningfully detected, measured, or evaluated, and will never reach the scale where “take” will occur (i.e., insignificant effects relate to the magnitude of the impact).
- NLAA** Informal consultation: the action agency determines that an action may affect, but is not likely to adversely affect listed species or critical habitat. A “May Affect, but Not Likely to Adversely Affect” (NLAA) determination is based on a determination that effects are insignificant, discountable, or wholly beneficial as those terms are defined in the FWS-NOAA Fisheries Joint Section 7 Consultation Handbook.
- No Effect** There will be no direct or indirect effects to listed species or critical habitat from the proposed action. USACE does not need to contact GARFO for consultation.
- PBF** Physical or Biological Features. Critical habitat designations are based on the physical or biological features essential to the conservation of the listed entity

(e.g., species, subspecies, or DPS) and which may require special management or protection.

**PDC** Project Design Criteria. PDC determine whether or not a project is eligible for consultation under the 2017 NLAA Program using a verification form. There are General PDC that apply to all projects, and stressor specific PDC that depend on the activity and associated in-water work.

**TOY** Time of Year. Some of the General PDC require that in-water work occur outside of certain TOYs when sensitive life stages and behaviors are present (e.g., spawning, overwintering).

**Wholly Beneficial** In order to determine that effects of a particular project will be “insignificant,” you must be able to demonstrate that the effects are wholly positive, without any adverse effects, on a listed species or designated critical habitat.

## VI. Appendix: ESA-Listed Species and Critical Habitat

NOTE: the info below may be outdated. For the most up-to-date information, visit the GARFO website at:

<https://www.greateratlantic.fisheries.noaa.gov/protected/section7/listing/index.html>

**Table 2: NOAA Fisheries ESA-Listed Species and Critical Habitat in the Action Area**

Species	ESA Status	Expected Life Stages	Expected Behaviors	Expected TOY	Listing Rule/Date	Most Recent recovery plan date	Effect determination
North Atlantic Right Whale	E	Adults; Juveniles	Foraging; Wintering; Migrating	Year round (greatest densities January to April)	73 FR 12024	NMFS 2005	NLAA
Fin Whale	E	Adults; Juveniles	Foraging; Wintering; Migrating; Calving	Year round	35 FR 18319	NMFS 2010	NLAA
Kemp's Ridley Sea Turtle	E	Juveniles	Foraging; Migrating	May to November	35 FR 18319	NMFS <i>et al.</i> 2011	NLAA
Leatherback Sea Turtle	E	Adults; Juveniles	Foraging; Migrating	May to November	35 FR 849	NMFS & USFWS 1992	NLAA
Loggerhead Sea Turtle; Northwest Atlantic DPS	T	Adults; Subadults; Pelagic/ benthic juveniles	Foraging; Migrating	May to November	76 FR 58868	NMFS & USFWS 2008	NLAA
Green Sea Turtle; North Atlantic DPS	T	Adults; Juveniles	Foraging; Migrating	May to November	81 FR 20057	NMFS & USFWS 1991	NLAA

Atlantic sturgeon (all 5 DPSs)	E (GOM) T (four others)	All life stages (eggs to adults)	Spawning and Rearing (specific rivers); Foraging; Overwintering; Migrating	Year round	77 FR 5880 and 77 FR 5914	N/A	NLAA
Shortnose sturgeon	E	All life stages (eggs to adults)	Spawning and Rearing (specific rivers); Foraging; Overwintering; Migrating	Year round	32 FR 4001	NMFS 1998	NLAA
Atlantic salmon; Gulf of Maine DPS <sup>1</sup>	E	All life stages (eggs to adults)	Foraging, Migrating, Spawning, Rearing, Overwintering	April to November (marine/estuarine areas); Year round (freshwater areas)	74 FR 29344	NMFS & USFWS 2016	NLAA

**Table 3: PBFs for Proposed Atlantic Sturgeon Critical Habitat**

1.	Hard bottom substrate (e.g., rock, cobble, gravel, limestone, boulder, etc.) in low salinity waters (i.e., 0.0-0.5 parts per thousand range) for settlement of fertilized eggs, refuge, growth, and development of early life stages;
2.	Aquatic habitat with a gradual downstream salinity gradient of 0.5-30 parts per thousand and soft substrate (e.g., sand, mud) downriver of spawning sites for juvenile foraging and physiological development.
3.	Water of appropriate depth absent physical barriers to passage (e.g., locks, dams, reservoirs, gear, etc.) between the river mouth and spawning sites necessary to support: (1) unimpeded movements of spawning adults to and from spawning sites; (2) as well as seasonal and physiologically-dependent movement of juvenile Atlantic sturgeon to appropriate salinity zones within the river estuary; (3) staging, resting, or holding of subadults or spawning condition adults. Water depths in main river channels must also be deep enough (e.g., $\geq 1.2$ m) to ensure continuous flow in the main channel at all times when any sturgeon life stage would be in the river;
4.	Water, especially in the bottom meter of the water column, with the temperature, salinity, and oxygen values that, combined, support: (1) spawning; (2) annual and interannual adult, subadult, larval, and juvenile survival; and (3) larval, juvenile, and subadult growth, development, and recruitment (e.g., 13°C to 26° C for spawning habitat and no more than 30° C for juvenile rearing habitat and 6 mg/L dissolved oxygen for juvenile rearing habitat)

<sup>1</sup> The U.S. Fish and Wildlife Service (USFWS) has jurisdiction of Atlantic salmon in the freshwater portion of its range (except for work on hydropower dams), while NOAA Fisheries has jurisdiction of Atlantic salmon in tidal and marine portions of its range.

**Table 4: PBFs for Atlantic Salmon (GOM DPS) Critical Habitat**

Spawning and Rearing Critical Habitat	
1.	Deep, oxygenated pools and cover (e.g., boulders, woody debris, vegetation) near freshwater spawning sites necessary to support adult migrants during the summer while they await spawning in the fall.
2.	Freshwater spawning sites that contain clean, permeable gravel and cobble substrate with oxygenated water and cool water temperatures to support spawning activity, egg incubation, and larval development.
3.	Freshwater spawning and rearing sites with clean, permeable gravel and cobble substrate with oxygenated water and cool water temperatures to support emergence, territorial development, and feeding activities of Atlantic salmon fry.
4.	Freshwater rearing sites with space to accommodate growth and survival of Atlantic salmon parr.
5.	Freshwater rearing sites with a combination of river, stream, and lake habitats that accommodate Atlantic salmon parrs' ability to occupy many niches and maximize parr production.
6.	Freshwater rearing sites with cool, oxygenated water to support growth and survival of Atlantic salmon parr.
7.	Freshwater rearing sites with diverse food resources to support growth and survival of Atlantic salmon parr.
Migration Critical Habitat	
8.	Freshwater and estuary migratory sites free from physical and biological barriers that delay or prevent access of adult salmon seeking spawning grounds needed to support recovered populations;
9.	Freshwater and estuary migration sites with abundant, diverse native fish communities to serve as a protective buffer against predation; and
10.	Freshwater and estuary migration sites free from physical and biological barriers that delay or prevent emigration of smolts to the marine environment.

**Table 5: PBFs for North Atlantic Right Whale Critical Habitat**

1.	The physical oceanographic conditions and structures of the Gulf of Maine and Georges Bank region that combine to distribute and aggregate <i>Calanus finmarchicus</i> for right whale foraging, namely prevailing currents and circulation patterns, bathymetric features (basins, banks, and channels), oceanic fronts, density gradients, and temperature regimes;
2.	Low flow velocities in Jordan, Wilkinson, and Georges Basins that allow diapausing <i>C. finmarchicus</i> to aggregate passively below the convective layer so that the copepods are retained in the basins;
3.	Late stage <i>C. finmarchicus</i> in dense aggregations in the Gulf of Maine and Georges Bank region;
4.	Diapausing <i>C. finmarchicus</i> in aggregations in the Gulf of Maine and Georges Bank region.