# U.S. ARMY CORPS OF ENGINEERS
# NEW ENGLAND DISTRICT
# -
# NATIONWIDE PERMIT PROGRAM

**General Condition 18. Endangered Species** Webinar
April 30, 2026, 1200 - 1300
R. Brien

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US Army Corps of Engineers®
New England District

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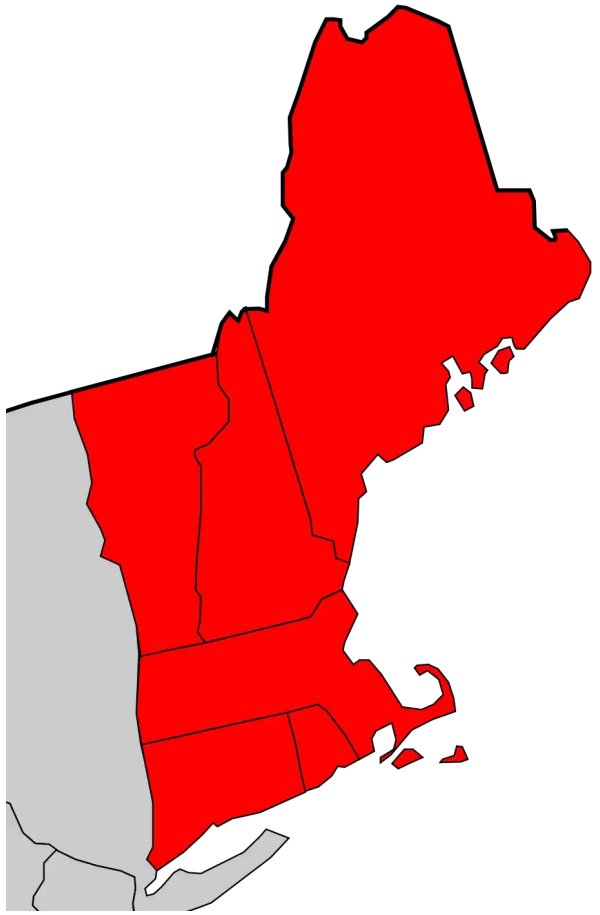
# 2026 WEBINARS SCHEDULE

- General Condition 18. Endangered Species – April 30 (Thursday): Where: Microsoft Teams **Join the meeting now**; Time: 12:00pm – 1:00pm
- Fundamentals of Regulatory Request System – May 14 (Thursday): Where: Microsoft Teams **Join the meeting now**; Time: 12:00pm – 1:00pm
- Essential Fish Habitat Programmatic Consultation – May 28 (Thursday): Where: Microsoft Teams **Join the meeting now**; Time: 12:00pm – 1:00pm
- Regional Condition D, Temporary Fills and Single, Complete Linear Transportation Projects (SCLiPs) – June 11 (Thursday): Where: Microsoft Teams **Join the meeting now**; Time: 12:00pm – 1:00pm
- Regional Condition C, Wild and Scenic Rivers – June 25 (Thursday): Where: Microsoft Teams **Join the meeting now**; Time: 12:00pm – 1:00pm
- Regulatory Field Tools – July 9 (Thursday): Where: Microsoft Teams **Join the meeting now**; Time: 12:00pm – 1:00pm

# 2026 NATIONWIDE PERMITS

On January 8, 2026, USACE HQ published a final rule issuing 57 nationwide permits (NWPs) which took effect on March 15, 2026.

USACE New England District Regulatory (NAE) adopted 50 of these NWPs to authorize activities in the six New England states.



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# 2026 NATIONWIDE PERMITS

1. Aids to Navigation
2. Structures in Artificial Canals (RGP)
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Oil or Natural Gas Pipeline Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water from Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges (RGP)
27. Aquatic Habitat Restoration, Enhancement, and Establishment Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage and Irrigation Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
48. Commercial Shellfish Mariculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy
53. Removal of Low-Head Dams
54. Living Shorelines
55. Seaweed Mariculture Activities
57. Electric Utility Line and Telecommunications Activities
58. Utility Line Activities for Water and Other Substances
59. Water Reclamation and Reuse Facilities
60. Activities to Improve Passage of Fish and Other Aquatic Organisms

# NWP GENERAL CONDITIONS

There are 32 NWP general conditions (GCs).

In addition to meeting the terms of the specific NWP you are interested in using for the project, the work must also comply with the NWP GCs.

Canada lynx. Michael Zahra

**GC 18 addresses endangered species.**

# NWP REGIONAL CONDITIONS

In addition to the 32 GCs published by USACE HQ as part of the NWPS, each district can also develop regional conditions (RCs).

NAE has developed RCs that apply to all of the New England states as well as some state-specific RCs. These can be found on our website.

# CATEGORIES OF NWPS

Non-notifying/Non-reporting

vs.

Pre-Construction Notification (PCN)

# CATEGORIES OF NWPS

**20** Nationwide Permits are **non-notifying** by design

**21** Nationwide Permits require a PCN for **all** activities by design

**16** Nationwide Permits require a PCN for ***some*** activities by design

***HOWEVER….***

# NWP GENERAL CONDITIONS

Certain GCs can trigger the requirement for a **PCN even if the activity would otherwise qualify for the non-notifying procedure.**

Bog turtle. Mass.gov

**GC 18 on endangered species is one of them.**

# NWP REGIONAL CONDITIONS

Some of NAE's RCs can also make a non-notifying NWP require a PCN

*PCN Summary Table. The following activities may require a PCN regardless of the terms of the applicable NWP. Please read the applicable RCs to determine if a PCN is required.*

| **Applicable to All New England States** | |
|---|---|
| Exceedance of loss thresholds within streams, tidal/non-tidal wetlands, tidal submerged aquatic vegetation, mudflats, and intertidal areas | See RC A |
| Located within, or within the vicinity of a Federal Project | See RC B |
| Located within, or within the vicinity of a Wild and Scenic River | See RC C |
| Involving discharges of temporary fill material | See RC D |
| Involving slip lining | See RC E |
| Involving stream crossings | See RC F |
| Located within Essential Fish Habitat | See RC J |
| **Applicable to Specific New England States** | |
| Activities within Time-of-Year Restrictions | See RCs N, O, S, U, V, W |
| Located within the Saint John and Saint Croix River basins (Maine) | See RC P |
| Authorized by NWP 48, Commercial Shellfish Mariculture Activities and within the State of Maine > 5 acres | See RC Q |
| Located within Important or Rare Resources within the State of Maine | See RC R |
| Discharges of fill >10 cubic yards in Lake Champlain and Lake Memphremagog and/or their adjacent wetlands (Vermont) | See RC X |

# GC 18 ENDANGERED SPECIES

*(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation.*

# GC 18 ENDANGERED SPECIES FEDERAL APPLICANTS

*(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.*

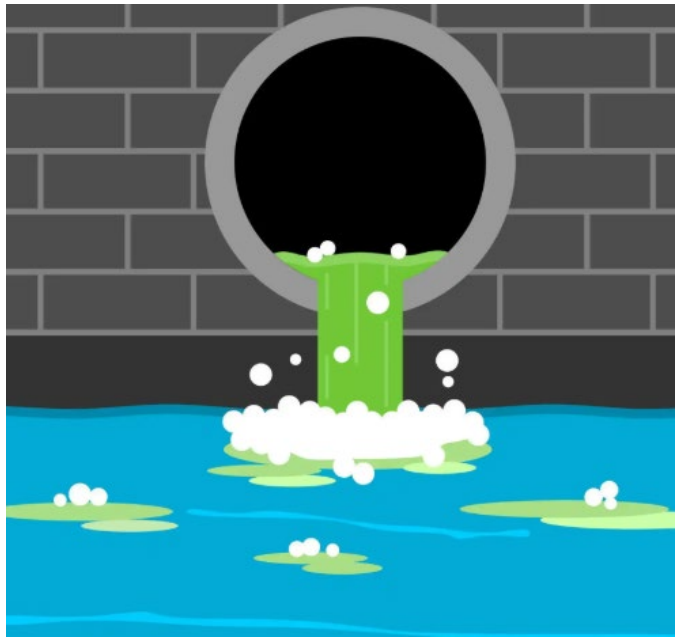
# GC 18 ENDANGERED SPECIES NON-FEDERAL APPLICANT WITH ANOTHER LEAD FEDERAL AGENCY

The applicant is a private applicant, non-profit, town, or state and the proposed work is being funded by or permitted by another federal agency aka the lead federal agency (LFA).

Examples:

- Town doing a culvert replacement project funded by FEMA or NOAA
- State doing a dam removal project permitted by FERC

Submit ESA documentation to NAE who must verify that the ESA consultation meets our needs.



Culvert. Jedsada Naeprai.

# GC 18 ENDANGERED SPECIES NON-FEDERAL APPLICANTS

*(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized.*

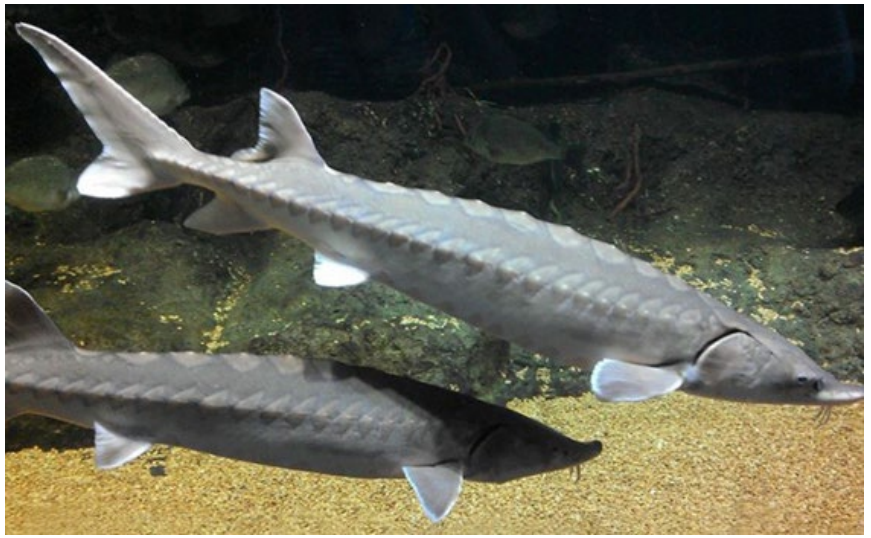
This applies to all 50 NWPs in New England

# NAE ESA PROCEDURES FOR APPLICANTS

On 04/28/26, NAE issued a public notice with ESA local operating procedures for applicants:

**https://go.mil/3f2kysisp4**

This includes information on obtaining species lists for species regulated by USFWS and NMFS as well as what to do next based on the permitting path.

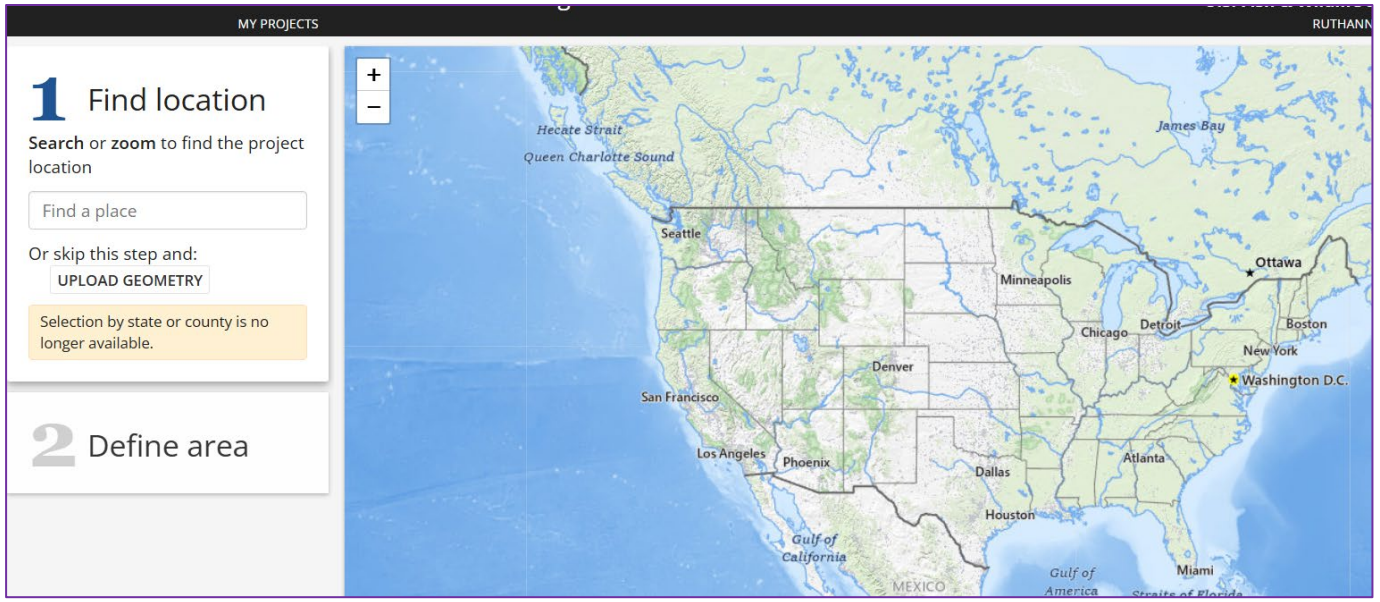


Atlantic sturgeon. NOAA Fisheries.

# USFWS SPECIES LIST

Applicants should obtain an official species list (OSL) from the USFWS' Information Planning and Consultation (IPaC) website:

https://ipac.ecosphere.fws.gov/



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# IPAC PROPOSED OR LISTED SPECIES

## MAMMALS

| NAME | STATUS |
|---|---|
| Northern Long-eared Bat *Myotis septentrionalis*<br>No critical habitat has been designated for this species.<br>Species profile: https://ecos.fws.gov/ecp/species/9045 | Endangered |
| Tricolored Bat *Perimyotis subflavus*<br>No critical habitat has been designated for this species.<br>Species profile: https://ecos.fws.gov/ecp/species/10515 | Proposed Endangered |

## BIRDS

| NAME | STATUS |
|---|---|
| Piping Plover *Charadrius melodus*<br>Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered.<br>There is **final** critical habitat for this species. Your location does not overlap the critical habitat.<br>Species profile: https://ecos.fws.gov/ecp/species/6039 | Threatened |
| Roseate Tern *Sterna dougallii dougallii*<br>Population: Northeast U.S. nesting population<br>No critical habitat has been designated for this species.<br>Species profile: https://ecos.fws.gov/ecp/species/2083 | Endangered |
| Rufa Red Knot *Calidris canutus rufa*<br>There is **proposed** critical habitat for this species. Your location does not overlap the critical habitat.<br>Species profile: https://ecos.fws.gov/ecp/species/1864 | Threatened |

## INSECTS

| NAME | STATUS |
|---|---|
| Monarch Butterfly *Danaus plexippus*<br>There is **proposed** critical habitat for this species. Your location does not overlap the critical habitat.<br>Species profile: https://ecos.fws.gov/ecp/species/9743 | Proposed Threatened |

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# NMFS SPECIES LIST

Applicants should obtain a species list on NMFS' Greater Atlantic Regional Field Office (GARFO) website:

https://www.fisheries.noaa.gov/resource/map/greater-atlantic-region-esa-section-7-mapper

# NMFS PROPOSED OR LISTED SPECIES

## Atlantic Sturgeon

| # | Feature ID | Species | Lifestage | Behavior | Zone | From | Until | From (2) | Until (2) | Area(acres) |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | ANS_PEN_SUB_MAF | Atlantic sturgeon | Subadult | Migrating & Foraging | Penobscot River | 01/01 | 12/31 | N/A | N/A | 27.11 |
| 2 | ANS_PEN_ADU_MAF | Atlantic sturgeon | Adult | Migrating & Foraging | Penobscot River | 01/01 | 12/31 | N/A | N/A | 27.11 |

## Shortnose Sturgeon

| # | Feature ID | Species | Life Stage | Behavior | Zone | From | Until | From (2) | Until (2) | Area(acres) |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | SNS_PEN_ADU_MAF | Shortnose sturgeon | Adult | Migrating & Foraging | Penobscot River | 01/01 | 12/31 | N/A | N/A | 27.11 |

## Atlantic Salmon

| # | Feature ID | Species | Life Stage | Behavior | Zone | From | Until | From (2) | Until (2) | Area(acres) |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | SAL_SME_SMO_MAF | Atlantic salmon | Smolts (Juveniles) | Migrating & Foraging | Marine/Estuarine | 04/15 | 06/15 | N/A | N/A | 43.09 |
| 2 | SAL_SME_ADU_MAF | Atlantic salmon | Adults | Migrating & Foraging | Marine/Estuarine | 01/01 | 12/31 | N/A | N/A | 43.09 |

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# GC 18 ENDANGERED SPECIES NON-FEDERAL APPLICANTS

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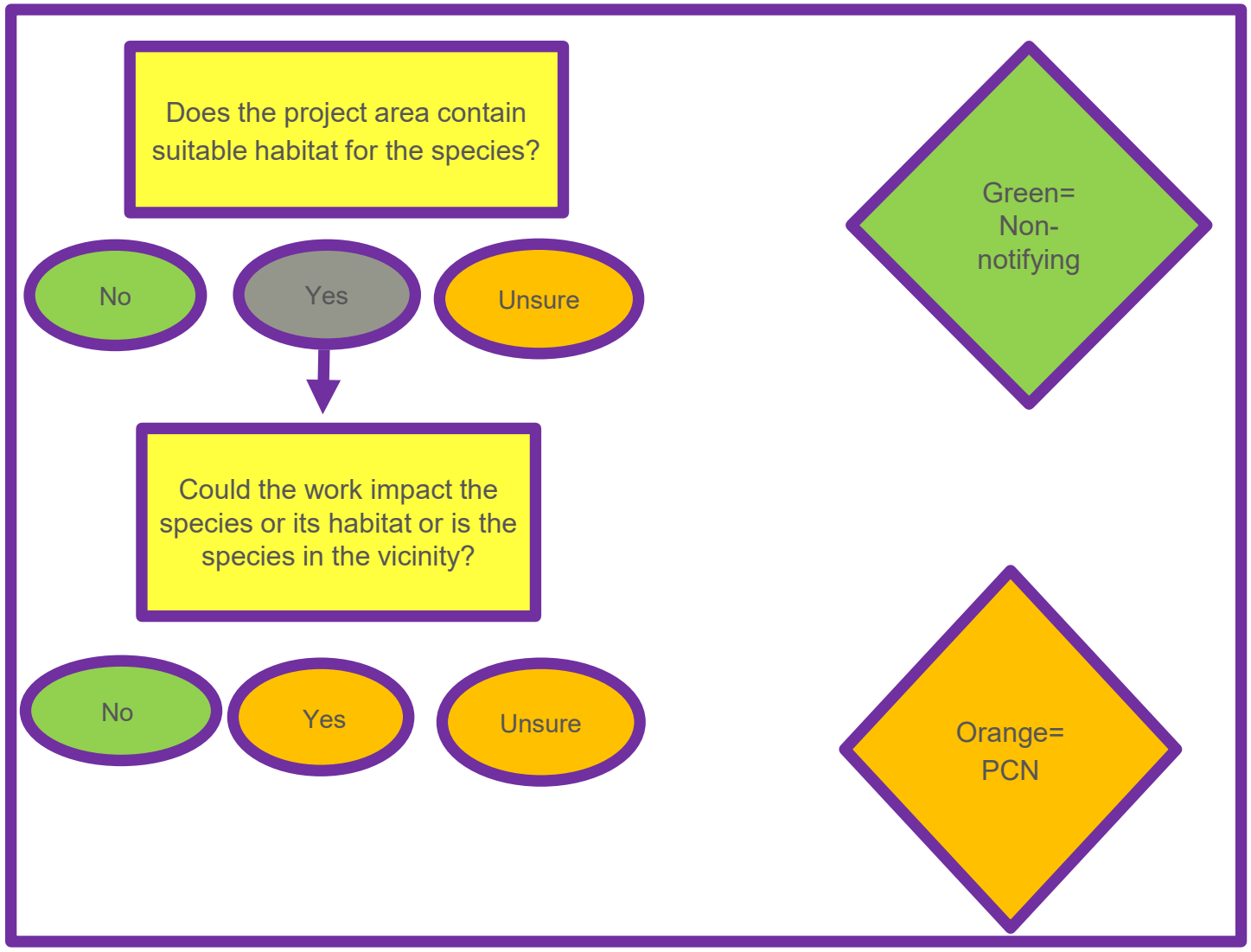
This applies to all 50 NWPs in New England

# PROPOSED OR LISTED SPECIES



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# GC 18 ENDANGERED SPECIES NON-FEDERAL APPLICANTS PROPOSED OR DESIGNATED CRITICAL HABITAT

**CRITICAL HABITATS**

There is 1 critical habitat wholly or partially within your project area under this office's jurisdiction.

| NAME | STATUS |
|---|---|
| Rufa Red Knot *Calidris canutus rufa*<br>https://ecos.fws.gov/ecp/species/1864#crithab | Proposed |

In or Near Critical Habitat

| # | Species | In or Near Critical Habitat | Area(acres) |
|---|---|---|---|
| 1 | Atlantic Sturgeon | Gulf of Maine Unit 1: Penobscot River | 27.11 |
| 2 | Atlantic Salmon | Penobscot Basin Salmon Habitat Recovery Unit | 43.09 |

# GC 18 ENDANGERED SPECIES APPLICANTS WITH AN HCP

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal permittee should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA consultation conducted for the ESA section 10(a)(1)(B) permit.

If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity.

45 day clock from complete PCN submittal to tell permittee if section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required

# SPECIAL ESA PROCEDURES REGARDING BATS

In accordance with 50 CFR 402.08 of the ESA regulations, NAE has designated applicants seeking authorization for work in New England as non-federal representatives to perform Section 7 ESA consultation under certain circumstances when the northern long-eared bat (NLEB) and/or the tricolored bat (TCB) are on the OSL from the IPaC website.

NLEB. Kaylan Hubbard.

TCB. Merlin Tuttle.

# NLEB & TCB DKEY

Applicants are authorized to conduct informal Section 7 ESA consultation when they receive certain outcomes utilizing the Northern Long-Eared Bat and Tricolored Bat Range-Wide Determination Key (NLEB & TCB Dkey) on the IPaC website.

USACE issued a public notice on 04/28/26 with detailed instructions for applicants on utilization of the NLEB & TCB Dkey:

**https://go.mil/bkyn0zssty**

# NLEB & TCB DKEY

Potential effects to bats analyzed in NLEB & TCB Dkey:

Tree cutting
Roadways
Lighting
Blasting and drilling
Bridges
Culverts
Proximity to hibernacula and/or maternity roost trees

# NLEB & TCB DKEY

Applicants who utilize the NLEB & TCB Dkey in IPaC to evaluate effects of the proposed activity will receive one of three outcomes:

1) No Effect

2) May affect, not likely to adversely affect (NLAA)

3) May affect

Note: You must check the letter issued in IPaC. There can be two different outcomes for the NLEB & TCB.

# NLEB & TCB DKEY
# NO EFFECT

"No Effect" technical guidance letter

Consultation completed for NLEB and/or TCB.

GC 18 still applies to any other proposed or listed species or proposed or designated critical habitat.

Monarch butterfly. Sarah Rayner.

Green sea turtle. Bernard Dupont.

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# NLEB & TCB DKEY
# NO EFFECT QUIZ

## MAMMALS

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| Rufa Red Knot *Calidris canutus rufa*<br>There is **proposed** critical habitat for this species. Your location does not overlap the critical habitat.<br>Species profile: https://ecos.fws.gov/ecp/species/1864 | Threatened |

## INSECTS

| NAME | STATUS |
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| Monarch Butterfly *Danaus plexippus*<br>There is **proposed** critical habitat for this species. Your location does not overlap the critical habitat.<br>Species profile: https://ecos.fws.gov/ecp/species/9743 | Proposed Threatened |

# NLEB & TCB DKEY
# NO EFFECT

No Effect

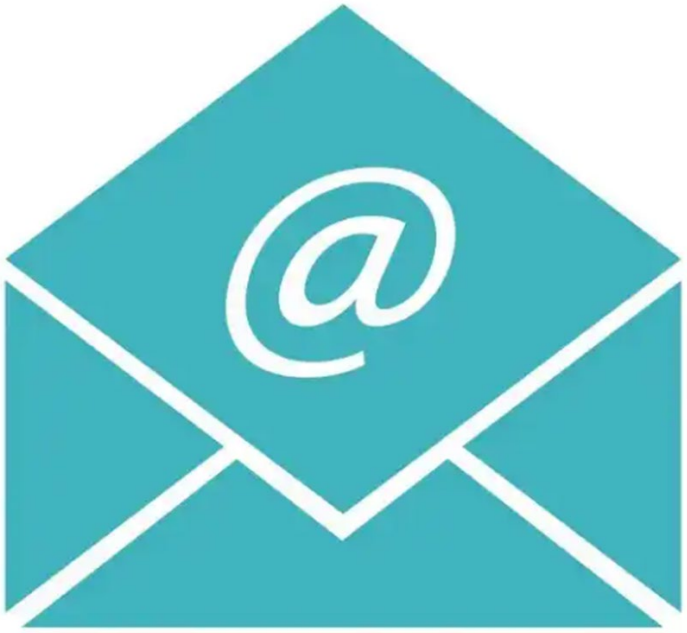
If no other species or critical habitat might be affected or are in the vicinity and no other general conditions or regional conditions trigger a PCN, applicant can determine that project qualifies for non-notifying NWP.

# NLEB & TCB DKEY NO EFFECT

No Effect

If using a non-notifying NWP, applicant must submit Dkey results to the following email inbox:

cenae-r-esa@usace.army.mil



Applicant won’t receive confirmation email and there’s no waiting period. This is so NAE can track usage of the NLEB & TCB Dkey.

# NLEB & TCB DKEY
# NO EFFECT

No Effect

If a PCN is required, submit the OSL and NLEB & TCB Dkey letter via the Regulatory Request System (RRS).

# NLEB & TCB DKEY
# NLAA

NLAA

Consultation complete after 15 day waiting period required by USFWS.

A PCN is still required. However, processing time for NWP verification should be reduced if applicant completes consultation in advance of PCN submittal.

Submit OSL and NLEB & TCB Dkey letter with PCN in RRS.

# NLEB & TCB DKEY MAY AFFECT

"May Affect"

Consultation not complete

NAE must do individual Sec 7 ESA consultation with USFWS.

PCN required.

Submit OSL and NLEB & TCB Dkey letter with PCN in RRS.

# NLEB & TCB DKEY MAY AFFECT

"May affect" is not an effect determination under the ESA:

1) Project may qualify for "may affect, not likely to adversely affect" (NLAA) through informal consultation.

2) Project may be "may affect, likely to adversely affect" (LAA) and require formal consultation.

Contact USACE early as LAA projects could cause considerable permitting delays and project may be able to be modified to reduce impacts down to NLAA level.

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# QUESTIONS?

ESA local operating procedures:
**https://go.mil/3f2kysisp4**

NLEB & TCB Dkey instructions:
**https://go.mil/bkyn0zssty**

ESA email inbox for “no effect” Dkey letters:
**cenae-r-esa@usace.army.mil**

Piping plover with chick. National Audubon Society.