Updated Guidance on Verification Forms and Project Design Criteria (PDC) for the USACE-PRD NLAA Programmatic

The North Atlantic Division's Not Likely to Adversely Affect (NAD NLAA) Programmatic Consultation ("programmatic") was completed in 2017 and implemented a framework to streamline the ESA section 7 consultation process for all U.S. Army Corps of Engineers (USACE) projects that fit within the scope of the analysis. The programmatic was designed for routine projects with predictable and small impacts to Endangered Species Act (ESA) listed species and their habitat. At this point, five years later, a review of the process and associated PDC have been useful exercises, revisiting the original intentions of the programmatic. It is important to note that the NAD NLAA programmatic is not designed to fit large scale or novel projects within its scope. That said, the justification option provided in the verification form is an efficient way to include projects that are slightly outside the margins of what was analyzed, allowing for reasonable flexibility of use. Overall, the programmatic has been a successful endeavor, and has greatly reduced both our agencies' project workloads for those characterized as low impact, routine, and with predictable effects.

General project details to include on verification forms:

- Specific anticipated project start and end dates. If uncertain, provide your best estimates. Avoid including sentences like "ASAP", "as soon as all documentation is submitted", etc. Please use the MM/DD/YYYY format for database consistency.

- If "Other" is the appropriate project type/category for your consultation, make sure to specify the type of project in the designated cell.

- Provide the specific **town or city** where the project is located, not the county.

Project description details:

The following information is designed to assist Project Managers in ensuring that the most complete and up to date information is provided in the NAD Verification Forms, as part of the administrative record. Because these forms serve as a shortened and streamlined method to complete ESA consultation, it is important to include the following details in any evaluation of a given activity for consistency with the PDC and the existing Programmatic.

- Provide a concise but comprehensive description of the work being proposed. Include construction techniques and details related to all in-water work. Be sure to include a statement about the purpose/need of the action (e.g., if the action includes construction of a dock, explain what the expected usage is in order to account for any direct increases in associated vessel traffic).

- If any **time of year (TOY) restrictions** are proposed, make sure those are clearly stated in the project description. This will streamline the rest of the evaluation in the form and assist with data management for monitoring purposes.

- In section d) or e) of the verification form, if you report that the use of turbidity control measures is "not operationally feasible," you must include a brief statement in the project description explaining why that is the case in order to ensure adequate consideration has been given by the applicant to mitigative measures.

- If your project involves the construction of a replacement structure for an existing one, please clarify if the "old" structure will remain in place and/or if the new structure will be built in the same footprint. IF AVAILABLE/APPLICABLE: Provide the type and number of piles associated with the new and old structure proposed for removal. This information is helpful when evaluating the associated PDC and determining whether or not some PDC (e.g., PDC 13) need justification or not.

Habitat modification and area description:

- When reporting the bottom impacts resulting from the proposed project, make a clear differentiation between temporary (e.g., dredging) and permanent (e.g., pile driving) impacts (when applicable), and report the corresponding acreage for each.

- The longitude provided as part of the action area coordinates should be negative (western hemisphere).

- When addressing MLW and MHW in the action area, make sure the values reported correspond to water depths in the area. **There should be no negative numbers**.

- The stressor category should refer to the stressor that is expected to **extend the furthest** in the water body. We understand that the maximum extent is usually from vessel traffic and that the routes are usually not certain during the planning stage. In that case, the stressor category should be the stressor that extends the second furthest in the water body.
  ***Note*:** If you are consulting on an aquaculture project for which you made the determination that stressors such as turbidity or noise are not applicable, the stressor reported should be the "Gear footprint" and the extent should be the largest dimension of the proposed gear.

PDC evaluation guidance:

The table below provides guidance on how to evaluate the "Yes" and "N/A" cells for PDC that have been subject to occasional misinterpretations across different USACE districts over the past several years. This guidance is intended to serve as a consistent framework for the evaluation of these PDC, to avoid confusion, and to reduce iterative reviews between the agencies.

When a particular PDC cell is blank and **orange** (used only for illustrative purposes here) under the N/A column, it indicates that the PDC **cannot** be N/A (i.e., The PDC applies to all projects and MUST be evaluated in all situations). These PDC are expected to be met, or a justification for that particular PDC must be provided.

NOTE: If a PDC is not N/A (i.e., is relevant and applies to the action being evaluated), but does not meet the "YES" criteria, that PDC is **not considered to be met and both boxes should be left unchecked and a justification must be provided.**

PDC	Scenarios when the PDC is YES	Scenarios when the PDC is N/A
1	No portion of the proposed action will individually or cumulatively have an adverse effect on ESA-listed species or designated critical habitat.	
2	- Atlantic salmon is present in the action area AND the proposed action is in a coastal/estuarine area (outside tidally influenced areas of rivers). - Atlantic salmon is present IN a tidally influenced area of a river or stream, BUT the work will happen outside the TOY window.	Atlantic salmon do not occur in or near the action area –i.e., Do not show up in the GARFO S7 mapper.
3	Sturgeon species are present IN spawning grounds, AND the project follows the corresponding TOY restriction.	- Sturgeon species are not present in the action area – i.e., Do not show up in the GARFO S7 mapper. - Sturgeon species are present but NOT in spawning grounds at the time of year proposed for work.
4	Sturgeon species are present, IN overwintering grounds, AND the project follows the corresponding TOY restriction.	- Sturgeon species are not present in the action area – i.e., Do not show up in the GARFO S7 mapper. - Sturgeon species are present but NOT in overwintering grounds.
5	The project is within designated critical habitat for Atlantic salmon, but will not affect spawning or rearing areas (PBFs 1 – 7).	The project is not within designated critical habitat for Atlantic salmon – i.e., Critical habitat for Atlantic salmon does not show up in the GARFO S7 mapper.
6	The project is within designated critical habitat for Atlantic sturgeon, but will not affect hard bottom substrate in low salinity waters (PBF 1).	The project is not within designated critical habitat for Atlantic sturgeon – i.e., Critical habitat for Atlantic sturgeon does not show up in the GARFO S7 mapper.

PDC	Scenarios when the PDC is YES	Scenarios when the PDC is N/A
7	Work will result in no or only temporary/short-term changes in water temperature, water flow, salinity, or dissolved oxygen levels.	
8	- Species are likely to be present at the time of the project and the maximum extent of the stressor is at or below 50% of the width of the water body. - Species are not likely to pass through the action area at the time of year when project activities take place (e.g., rare occurrence).	
9	The project is within designated critical habitat for NARW, but there will be no effects on the PBFs.	The project is not within designated critical habitat for North Atlantic right whales – i.e., Critical habitat for NARW does not show up in the GARFO S7 mapper.
10	- There is no SAV present in the action area. - SAV is present in the action area, but it will NOT be affected by the proposed project.	
11	No blasting or use of explosives will occur.	
12	Pile driving is occurring during a TOY when the presence of ESA-listed species is likely, AND the noise is above behavioral thresholds; a “soft start” IS required.	- The project does not involve pile driving. - The project does not involve noise as a stressor. - The project involves pile driving, noise is a stressor BUT the presence of listed species is unlikely. - Noise is a stressor associated with the proposed action, BUT it does not exceed behavioral thresholds.
13	There are 50 or fewer piles proposed for a NEW structure to be installed. Replacement piles, or piles for building a structure in place of an old structure do not apply (i.e., do not count towards this limit).	- The project does not involve pile driving. - The project does not involve noise as a stressor.

PDC	Scenarios when the PDC is YES	Scenarios when the PDC is N/A
14	The peak and cumulative injury thresholds are not exceeded for any species that could be present in the action area.	- The project does not involve pile driving. - The project does not involve noise as a stressor.
17	- Methods that block access of animals to dredge footprint are being used. - Methods that block access are not operationally feasible or beneficial. - Methods that block access are not necessary because the presence of ESA listed species is limited to rare, transient individuals.	The entirety of the impingement/entrainment/capture stressor is not relevant to the action being evaluated.
18	The stressor category applies to the action AND the temporary intakes related to the action are equipped with appropriate sized mesh screening and do not have greater than 0.5 fps intake velocities. **Note:** *"Temporary intakes" refers to intakes related to construction, or a water treatment plant, for example.* ***It does not*** *refer to dredging. If the only temporary intake involved is dredging, then the PDC should be marked as N/A.*	- The entirety of the impingement/entrainment/capture stressor category is not relevant to the action being evaluated. - The stressor category applies to the action being evaluated, but there are no temporary intake structures related to the project.
19	- The stressor category applies to the action being evaluated AND there are no new permanent intake structures related to the project. By checking "Yes", you are confirming that such structures are not part of the action. - The stressor category applies, intake structures are proposed BUT are temporary.	The entirety of the impingement/entrainment/capture stressor category is not relevant to the action being evaluated.
20	- Methods to control turbidity are being used. - Methods to control turbidity are not operationally feasible or beneficial. - Methods to control turbidity are not necessary because the presence of ESA listed species is limited to rare, transient individuals.	The entirety of the turbidity stressor category is not relevant to the action being evaluated.

PDC	Scenarios when the PDC is YES	Scenarios when the PDC is N/A
22	Temporary discharges are involved. These must meet state water quality standards. **Note:** *"Temporary discharges" here focuses on point discharges/discharge pipes.*	- The entirety of the turbidity stressor category is not relevant to the action being evaluated. - No point discharges are proposed. - The only discharges involved are related to dredging or other turbidity generating activities.
23	Discharge pipes are proposed as part of the project but ONLY upgrades, relocations and improvements of these existing pipes are proposed. NO new construction of untreated discharges.	- The entirety of the turbidity stressor category is not relevant to the action being evaluated. - The turbidity stressor category is relevant to the action being evaluated, but there are no discharge pipes involved with the project.
29	The proposed action involves aquaculture or reef creation but will NOT result in the conversion of habitat type (e.g., hard bottom to soft bottom, or vice versa).	The proposed action does not involve any aquaculture or reef creation activities.
31	The stressor category applies to the project, there are whales or sea turtles present in the action area AND the corresponding buffers can be maintained. **Note:** If the vessel is navigating to a disposal site/activity, the conditions corresponding to the specific site must be included in the project description and special conditions section.	- The entirety of the vessel traffic stressor category is not relevant to the action being evaluated. - There are no sea turtles or whales present in the action area.

Additional guidance and resources:

- All justifications should provide an explanation of why the project is still NLAA and the effects on ESA-listed species are either (**THIS LANGUAGE MUST BE INCLUDED IN THE JUSTIFICATION**):
    - "…too small to be meaningfully measured or detected, and are therefore, insignificant.", or
    - "…extremely unlikely."

- To determine whether or not reinitiation of consultation is necessary, please make sure to review our **reinitiation guidance and triggers**.

- Consultations completed through the USACE-PRD programmatic remain active and are valid after being signed by both agencies unless 1) there are changes in the permit that trigger a reinitiation; or 2) a permit expires and a new consultation is needed.