NHPA requirements in the permit because facilities are already subject to these and other existing federal laws and regulations. Requiring compliance with these provisions in the permit places undue emphasis upon these statutes in comparison to all other laws and regulations.

In response to the comments regarding endangered species, the ESA requires, among other things, that EPA ensure, in consultation with the FWS and/or NMFS that actions it authorizes or carries out are not likely to jeopardize the continued existence of threatened and endangered ("listed") species or result in the destruction or adverse modification of the designated critical habitat of listed species. In addition, the ESA generally prohibits EPA, as well as those seeking general permit coverage, from "taking" listed species without the prior authorization of the FWS/NMFS.

To fulfill its responsibilities under the ESA, EPA developed a series of conditions in the proposed permit which were reviewed by the services during the consultation. The consultation culminated in the issuance of a FWS/NMFS Biological Opinion that EPA's approach would not likely jeopardize listed species, adversely modify critical habitat, or result in takes. The consultation also resulted in changes to the conditions of the permit for endangered species protection. The revised conditions represent a simplified process that should be easier for permittees to comply with, yet will still ensure that storm water discharges authorized under this permit will not adversely affect endangered species.

The revised ESA conditions require that an applicant comply with the ESA and be granted coverage under the permit only if the storm water discharges and BMPs to be constructed are not likely to adversely affect the endangered species listed in Addendum H of the permit; or the applicant has received previous authorization under the ESA and established an environmental baseline; or the applicant is implementing other appropriate measures, as required by the Director, to address adverse affects. In addition, the applicant must certify that their storm water discharges and potential BMP construction activities are not likely to adversely affect the species listed in Addendum H of the permit. Addendum H is a county-by-county listing of the endangered species upon which the consultation is based. EPA believes this new process fully implements the requirements of the ESA and the outcome of the consultation with FWS and NMFS, and is protective of endangered species. EPA also considers

this revised approach to be a more practical and straightforward process for an applicant to gain coverage under the multi-sector general permit.

EPA expects that the vast majority of applicants will be able to meet the ESA certification requirement by either determining that no listed species are found in the county of the discharge or by determining that listed species found in the county are not in proximity to the discharge. EPA believes that requiring applicants to provide the certification commented upon is reasonable and necessary so that EPA may act to lawfully authorize an applicant's general permit coverage. See § 308(a)(A)(v).

EPA does not need to enforce every law and regulation through permitsonly those which create obligations on EPA for *its* actions (through statutes such as the ESA and the NHPA) that are in response to permit applications presented to EPA by persons seeking to comply with the CWA, e.g., applicants for NPDES permits.

As to permit coverage for existing facilities, "action" under the pertinent ESA regulations includes "all activities. . . of any kind authorized by federal agencies. . .[including] the granting of. . . permits.. . . " 50 C.F.R. § 402.02. Agencies must consult with the FWS or NMFS wherever an action may affect listed species. 50 C.F.R. § 402.14. Given that storm water discharges from existing facilities may have new or continuing effects on listed species (in addition to past effects), there was a clear need for coverage of existing facilities also to be adequately

In response to the comments raised regarding the NHPA, EPA recognizes that the National Historic Preservation Act ("NHPA") imposes obligations on the Agency to take into account the effect of permit issuance on historic properties. Today's general permit establishes a mechanism whereby the Agency can efficiently administer the permit and still take into account the effect of general permit coverage on historic properties consistent with its obligations under the NHPA. EPA will assure NHPA compliance primarily through the eligibility and certification requirements of the general permit. The general permit does not authorize discharges that (1) affect a property that is listed or eligible for listing on the National Register of Historic Places, unless (2) the applicant has obtained and is in compliance with a written agreement between the applicant and the State Historic Preservation Officer ("SHPO") that outlines all measures to be undertaken by the applicant to

mitigate and prevent adverse effects to the historic property. Applicants for general permit coverage must certify that they have read and are in compliance with the eligibility provisions of the permit.

The operation of this mechanism should assure compliance with the NHPA for any authorization to discharge provided under today's permit. EPA anticipates the first component of the eligibility/ certification mechanism will provide an adequate opportunity to take into account the effect on historic properties for the vast majority of discharges to be authorized under the permit. EPA anticipates that the preliminary evaluation by the applicant will quickly identify those discharges that may implicate concerns about historic preservation. The second component will allow for general permit coverage after effects have been effectively addressed (minimizing the need for an

individual permit).

EPA recognizes that the eligibility/ certification mechanism in today's permit will not resolve all historic preservation concerns that may arise due to control of storm water discharges. In some instances, the first component of the eligibility/ certification may not assure "no effect" on historic properties, for example, if the applicant's certification of eligibility is subsequently determined to be false. In such instances, the discharge would be "without a permit" based on the eligibility provisions. In some instances, the applicant and the SHPO may have difficulty in reaching agreement on how to resolve historic preservation concerns. Such instances may necessitate EPA intervention or issuance of an individual permit. The eligibility/ certification mechanism represents EPA's effort to assure Agency compliance with the National Historic Preservation Act consistent with the efficiencies of general permitting under the Clean Water Act.

Comprehensive Site Compliance **Evaluations**

The proposed permit contained requirements for facilities to perform and document comprehensive site compliance evaluations. The intent of the compliance evaluation is to: confirm the accuracy of the description of potential pollution sources at the site, determine the effectiveness of the storm water pollution prevention plan, and assess compliance with the permit. The evaluation should be conducted by members of the pollution prevention team. Deficiencies in the plan must be corrected within two weeks of the