

Federal Fish and Wildlife Permit number TE01281C-1

Appendix E – Amendment to the Massachusetts Division of Fisheries & Wildlife (DFW) Habitat Conservation Plan For Piping Plover

Amendment

to the

Massachusetts Division of Fisheries & Wildlife (DFW)

Habitat Conservation Plan For Piping Plover

Prepared by

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Federal Fish and Wildlife Permit number TE01281C-1

TITLE: Amendment to the Massachusetts Division of Fisheries & Wildlife (DFW) Habitat Conservation Plan For Piping Plover

PERMIT: Federal Fish and Wildlife Permit number TE01281C-0

SPECIES: Atlantic Coast Piping Plover (*Charadrius melodus*)

PLANNING AREA: The plan area is the area in which plan participants will conduct covered activities and where conservation actions will be implemented. Under this HCP, the plan area includes an approximately 300-yard wide zone along the entire coastline of Massachusetts, with the exception of one small area in Mount Hope Bay. This includes all currently and recently occupied piping plover habitat delineated as priority habitat by the Massachusetts Division of Fisheries and Wildlife (DFW) (321 CMR 10.00), as well as other beach and dune areas that could support breeding piping plovers in the future. As both natural processes (such as erosion and accretion) and human activities (such as beach nourishment and the disposition of dredge spoils) can result in the creation, loss, and shifting of piping plover breeding habitat over time, the plan area is defined so as to automatically adjust to include a 300-yard zone as measured from the shifting coastline.

TAKE: Annual statewide limits on take exposure are based on the 3-year rolling average of the Massachusetts piping plover breeding population size. See HCP, Section 3.3.2.1, Statewide Limits on Take Exposure.

FUNDING PLAN: See HCP, Section 5.4, Cost and Funding

MONITORING PLAN: See HCP, Section 4.4.1, Monitoring

DURATION OF PERMIT: 26 years

INTRODUCTION

The proposed amendment to the Massachusetts Division of Fisheries & Wildlife (DFW) Habitat Conservation Plan For Piping Plover (HCP) and the Federal Fish and Wildlife Permit TE01281C-0 will facilitate implementation of the HCP and address circumstances where there is a need to exceed the exception in the 2016 HCP for take exposure of 15% of the breeding pairs at a site. The site-specific take exposure limits in the 2016 HCP create an unnecessary obstacle to beach operators who would otherwise benefit from participating in the HCP. In particular, sites with 3 to 7 pairs of piping plovers are currently limited to exposing 1 to 2 (if up to 30% exposure is allowed) nests, broods or territories to take. For small beaches with limited pedestrian access, multiple pairs of plovers nesting at critical access points could preclude all pedestrian access if take exposure is restricted to 30% or less of pairs at a site. For beaches with roads and parking lots adjacent to piping plover breeding habitat, there may be occasions when the majority of the pairs congregate their nests and/or young at critical recreational access points resulting in the total closure of parking lots or improved roads. Increasing the allowable take exposure of 30% of the breeding pairs at a site at up to 5 sites (at the DFW's discretion) with an exception for "take exposure of up to 75% of breeding pairs at a site at up to 8 sites (at the DFW's discretion)" would provide benefits for recreational beach users, and also for the Massachusetts piping plover population through increased implementation of the HCP conservation measures (i.e. mitigation).

The proposed amendment would only apply to the following two covered activities: Use of Roads and Parking Lots in the Vicinity of Unfledged Chicks and OSV Use in the Vicinity of Unfledged Chicks. The proposed amendment would not alter limits on the habitat/broods/pairs affected through reduced proactive fencing. As the Incidental Take Permit holder, the entity responsible for management and implementation of the HCP, and the agency responsible for administering the Massachusetts Endangered Species Act and its implementing regulations (MGL c. 131A; 321 CMR 10.00; MESA), the DFW may require COI applicants requesting to expose more than 30% of the breeding pairs to implement additional avoidance, minimization, and/or mitigation measures beyond those required in the 2016 HCP.

EFFECTS ANALYSIS

Because the effects of the HCP on the covered species are determined by the statewide limits on take exposure set forth in Section 3.3.2.1 of the HCP, and the requested amendment will not alter or allow these statewide limits to be exceeded, the requested change will not alter the effects of the HCP on the covered species.

The Biological Opinion assumed that the HCP is fully subscribed and that these statewide take limits are being met. Given the mobility of this avian species and the low impacts of the covered activities on statewide fecundity and survivorship, the distribution of covered activities among sites does not affect the biological impacts of HCP on the Piping Plover in Massachusetts. Similarly, the proposed amendment has no effect on how the Conservation Strategy will be implemented (all participants will need to meet the required impact minimization and mitigation requirements), and does not alter the DFW's ability to achieve the biological goals and objectives of the plan (as these are a function of implementation of the Conservation Strategy). Because the biological impacts of the HCP as analyzed in the HCP and the EA are based on statewide limits on the covered activity, and the proposed amendment does not alter these limits, the proposed

amendment does not increase impacts to the Massachusetts or Atlantic Coast populations of the covered species, its habitat, or the environment.

In summary, the proposed amendment is purely procedural, in that it affects how take exposure authorizations are allocated among sites but does not change the biological effects of the HCP, or its Conservation Strategy.

PROPOSED AMENDMENT

The following sections from the approved HCP are proposed for amendment:

Chapter 1. Introduction

Section 1.3.2 Migratory Bird Treaty Act

- Remove the following language from the fourth sentence: "...MBTA provides no process for authorizing the incidental take of MBTA-protected birds; however, the..." to avoid potential confusion with the Department of the Interior's current interpretation of the Migratory Bird Treaty Act as clarified in the December 22, 2017 M-opinion (M-37050) and subsequent guidance. The ITP will continue to serve as a Special Purpose Permit under the MBTA for moving piping plover nests as described in HCP Section 1.2.1 and Section 3.2.2.3.

Chapter 5. Plan Implementation, Assurances, and Funding

Section 5.2.2.3 Plan Participants

- Replace footnote 5, page 1-5 with "The DFW may increase the allowable exposure to 75% at up to eight sites per year (see Section 5.2.2.3)".
- Replace footnote 11, page 3-2 with "The DFW may increase the allowable exposure to 75% at up to eight sites per year (see Section 5.2.2.3)".
- Replace the fourth bullet, page 5-9 with "Summary of exceptions to the restrictions on the number of territories/nests/broods affected (15% vs. 75%) and habitat impacts (2 acres/10% vs. 4 acres/20%) employed for the covered activities (as provided for in the Plan).
- Replace the fourth sentence in the second full paragraph, page 5-14 with "Although the DFW supports this approach, which will help to equitably distribute take exposure allowances, in order to meet recreational objectives, the DFW reserves the right to increase the allowable exposure to 75% at up to eight sites per year (Section 5.2.2.3, "Site Determination").
- Add an additional bullet after the last bullet on page 5-16 with "If requesting an exception to the standard site-specific take exposure limit (15%), include a description of proposed impact avoidance, minimization and/or mitigation measures that meet or exceed the minimum standards set forth in the Plan¹".

¹ The DFW is requiring this as the Incidental Take Permit holder and the entity responsible for implementation of MESA

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