



MASSWILDLIFE

## DIVISION OF FISHERIES & WILDLIFE

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**MASS.GOV/MASSWILDLIFE**

Jack Buckley, *Director*

### MA ENDANGERED SPECIES ACT (G.L. c.131A) CONSERVATION AND MANAGEMENT PERMIT

DATE	April 20, 2018
CONSERVATION PERMIT NO.:	018-322.DFW
NHESP FILE NO.	18-37710
PERMIT HOLDER	Department of Conservation and Recreation
ACTIVITY	Use of reduced proactive symbolic fencing associated with recreational beach management and use of a road to access an additional parking area in the vicinity of unfledged Piping Plover chicks, Horseneck Beach State Reservation, Westport, MA

Pursuant to the authority granted in the Massachusetts Endangered Species Act ("MESA") (G.L. c. 131A) and its implementing regulations (321 CMR 10.23), the Director of the Massachusetts Division of Fisheries & Wildlife (the "Division") hereby issues a Conservation and Management Permit to the Department of Conservation and Recreation (the "Permit Holder"). This permit and associated Department of Conservation and Recreation Certificate of Inclusion in the Massachusetts Habitat Conservation Plan (HCP) issued in accordance with the Endangered Species Act (ESA) for Piping Plover, dated April 20, 2018 (the "COI"), authorize the Taking of the State and Federally listed Piping Plover which is listed as "Threatened" pursuant to the MESA and "Threatened" pursuant to ESA arising out of reduced proactive symbolic fencing and the use of a road to access additional parking in the vicinity of unfledged Piping Plover chicks more particularly described in documents attached hereto (the "Activity"), at Horseneck Beach State Reservation, Westport, Massachusetts (the "Property"). This permit also authorizes the Taking of the state-listed Least Tern (*Sternula antillarum*), listed as Special Concern pursuant to MESA, associated with reduced proactive symbolic fencing.

During a given beach season, a maximum of 3 Piping Plover territories, breeding pairs or broods could be exposed to reduced proactive symbolic fencing and use of a road and up to 25 Least Tern territories or breeding pairs could be exposed to reduced proactive symbolic fencing. However, intensive monitoring of the site, the installation of symbolic fencing should a Piping Plover and/or Least Tern pair(s) nest and intensive monitoring of chicks with the ability to temporarily halt traffic, close the road and a variety of other impact avoidance and minimization procedures required by way of this Permit and the HCP will significantly decrease risk.

Under the authority granted by and in accordance with MGL c131A§3 and 321 CMR 10.23, the Director may permit the Taking of a State-listed Species for conservation and management purposes provided that there is a long-term Net Benefit to the conservation of the impacted species. If the Director determines that the applicant for a permit has avoided, minimized and mitigated impacts to the State-listed Species consistent with the following Performance Standards, then the Director may issue a conservation and management permit, provided:

**MASSWILDLIFE**

- (a) the applicant has adequately assessed alternatives to both temporary and permanent impacts to State-listed Species;
- (b) an insignificant portion of the local population would be impacted by the Activity or Activity, and;
- (c) the applicant agrees to carry out a conservation and management plan that provides a long-term Net Benefit to the conservation of the State-listed Species that has been approved by the Director, as provided in 321 CMR 10.23(5), and shall be carried out by the applicant.

The Director has determined that the applicant for this permit has met the above noted Performance Standards and that the conservation and management plan described herein provides a long-term Net Benefit to the affected state-listed species.

Pursuant to this permit, impact avoidance and minimization measures including signage, traffic management, staff training, and enhanced chick monitoring will be implemented in order to minimize disturbance and the risk of direct nest or chick mortality; selective predator management will be implemented in order to reduce nest and chick loss and increase production of chicks and fledglings.

Therefore, the Activity can be permitted pursuant to the MESA. This Conservation and Management Permit (the "Permit") is issued to condition the Activities and to provide a long-term Net Benefit to the affected species.

In accordance with the document submitted to the Division entitled:

- "Piping Plover Habitat Conservation Plan Certificate of Inclusion Request, Horseneck Beach State Reservation", dated March 15, 2018; revised April 18, 2018 (the "Plan"; Attachment A).

Incorporated by reference into this permit, and any other plans and documents referenced herein, this Conservation and Management Permit is issued with the following conditions:

**Conditions:**

1. This Permit authorizes the exposure of up to three Piping Plover territories, breeding pairs or broods to the Activities, road use and reduced proactive symbolic fencing; up to 25 unfledged Least Tern chicks to reduced proactive symbolic fencing, subject to limitations described in Attachment A, and set forth in this Permit and the COI.
2. All Activities must be confined to the Department of Conservation and Recreation-owned Property shown in Figure 1, 2 and 3 of Attachment A
3. Other than the exceptions authorized by this Permit, the Permit Holder shall carry out beach use and management in compliance with the relevant State Guidelines and Federal Guidelines for management of recreational beaches with breeding plovers and terns effective during the term of the Permit.
4. This Permit authorizes only otherwise lawful activities. All activities carried out pursuant to this Permit must be carried out in accordance with applicable local, state, and federal statutes and regulations.

5. As set forth in the COI, all activities authorized by this Permit must be carried out in accordance with the Final Massachusetts Division of Fisheries & Wildlife Habitat Conservation Plan for Piping Plover (HCP), dated June 2016, and Incidental Take Permit (ITP) No. TE01281C-0, dated July 8, 2016. The COI, HCP and ITP are incorporated by reference into this Permit. By acceptance of this Permit, the Permit Holder acknowledges receipt of copies of the COI, HCP and ITP, official copies of which are located at the Division's field headquarters, 1 Rabbit Hill Rd., Westborough, MA.
6. Division representatives shall have the right to enter and inspect the Property subject to this Permit at reasonable hours to evaluate permit compliance and require the submittal of any reasonable information not otherwise required by this Permit but deemed necessary by the Division to complete its evaluation.
7. Any change to the proposed Plan shall require the Permit Holder to inquire of the Division, in writing, whether the change is significant enough to require the filing of a new Conservation and Management Permit Application, and or require additional long-term Net Benefit for affected State-listed species. The Division retains the right to require the submittal of additional, reasonable information to evaluate the plan change.
8. Prior to implementing the Plan, the Permit Holder shall notify the Division in writing of the name, address, business and home telephone numbers of the manager responsible for compliance with this Conservation and Management Permit. The Permit Holder shall provide updated information in writing to the Division should a new or additional manager be hired after the Activity has commenced.
9. The Permit Holder shall notify the Division at least 24 hours prior to initiating any covered Activity affecting a new Piping Plover brood or pair and Least Tern pairs not previously exposed.
10. Prior to the implementation of the Plan or any covered activity in any given year, the Permit Holder shall provide the Division with proof that it has secured adequate funding to implement the annual requirements of the Plan consistent with the budget provided in the Plan.
11. Impact avoidance and minimization procedures to protect Least Terns and Piping Plovers shall be implemented in accordance with the Plan.
12. Interim and annual reporting shall be conducted in accordance with the Plan.
13. Beginning during spring 2018, the Permit Holder shall carry out selective predator management in accordance with the plan set forth in Attachment A. Prior to carrying out covered activities in 2019 and 2020, the Permit holder shall provide annual selective predator management scopes of work, developed by qualified experts, for review and approval by the Division. The Division-approved annual scope of work shall be carried out by the Permit Holder in advance of implementing the Activity in that year. The Permit Holder shall be responsible for meeting the mitigation ratios and commitments set forth in Part 14 of Attachment A, and may be required by the Division to perform supplemental work in the following beach season to address year to year changes in the plover or tern breeding populations, as described in the HCP.
14. In accordance with the HCP, the Permit Holder must obtain written reauthorization from the Division to carry out covered activities prior to the 2019 and 2020 beach seasons. No covered activities may be carried out in 2019 or 2020 prior to receipt of written reauthorization. As set

forth in the HCP, the Division may, in its sole discretion, reduce the allowable Take exposure for those years or decline to reauthorize any exposure.

15. A violation of any condition of this Permit, COI, HCP or the ITP will result in an unauthorized Take pursuant to M.G.L. c. 131A or under the HCP or ITP may be subject to civil and or criminal penalties pursuant to M.G.L. c. 131A. In the event of such non-compliance, the Division may suspend, or revoke this Permit and the COI. The Permit Holder shall have the right to request an appeal within 30 days of any suspension or revocation of this Permit or COI in accordance with the requirements of Condition No. 16 below.
16. Notice of Appeal Rights: This Determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.23. Any person aggrieved by this decision shall have the right to an adjudicatory hearing at the Division pursuant to M.G.L. c. 30A, s.11 in accordance with the procedures for informal hearings set forth in 801 CMR 1.02 and 1.03.

Any notice of claim for an adjudicatory hearing shall be made in writing and be accompanied by a filing fee in the amount of \$500.00. The notice of claim shall be sent to the Division by certified mail, hand delivered or postmarked within 21 days of the date of the Division's Determination to:

Jack Buckley  
Director  
Division of Fisheries and Wildlife  
Field Headquarters  
One Rabbit Hill Road  
Westborough, MA 01581


Any notice of claim for an adjudicatory hearing shall include the following information:

1. The file number for the Activity;
  2. The complete name, address and telephone number of the person filing the request, and the name, address and telephone number of any authorized representative;
  3. The specific facts that demonstrate that a party filing a notice of claim satisfies the requirements of an "aggrieved person," including but not limited to (a) how they have a definite interest in the matters in contention within the scope of interests or area of concern of M.G.L. c. 131A or the regulations at 321 CMR 10.00 and (b) have suffered an actual injury which is special and different from that of the public and which has resulted from violation of a duty owed to them by the Division;
  4. A clear statement that an adjudicatory hearing is being requested;
- A clear and concise statement of facts which are grounds for the proceeding, the specific objections to the actions of the Division and the basis for those objections; and the relief sought through the adjudicatory hearing; and a statement that a copy of the request has been sent by certified mail or hand delivered to the applicant and the Record Owner, if different from the applicant.



Mark Tisa, Deputy Director  
Massachusetts Division of Fisheries & Wildlife

On this 20<sup>th</sup> day of April 2018, before me, the undersigned notary public, personally appeared Mark Tisa, Deputy Director, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.



Emily Melissa Holt, Notary Public  
My Commission expires: July 12, 2024

**Conservation Permit 018-322.DFW**

**Issued this 20<sup>th</sup> day of April, 2018**

**Permit Expires: 1 December 2020**



**MASSWILDLIFE**

ACKNOWLEDGEMENT AND ACCEPTANCE OF ALL TERMS OF THIS CONSERVATION PERMIT

The undersigned below agrees that commencement of any work authorized by and described in this Conservation and Management Permit constitutes acknowledgement and acceptance of all terms of this permit.

Priscilla Geigis, Deputy Commissioner Department of Conservation and Recreation

COMMONWEALTH OF MASSACHUSETTS

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public

\_\_\_\_\_

SEAL

My commission expires: \_\_\_\_\_

## **Distribution List**

Priscilla Geigis, Department of Conservation and Recreation  
Jorge J. Ayub, Department of Conservation and Recreation  
DEP Southeast Regional Office, Wetlands Program  
Susi vonOettingen & David Simmons, USFWS