

# **Certificate of Inclusion in the Massachusetts Habitat Conservation Plan for Piping Plover Nauset Beach, Orleans February 24, 2022**

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The United States Fish and Wildlife Service (“USFWS”) issued to the Massachusetts Division of Fisheries and Wildlife (“Division”) an Incidental Take Permit (“Permit”) No. TE01281C-0, on July 8, 2016, for a period of 25 years, pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA), as amended, 16 U.S.C. 1539(a)(1)(B). The Division’s Permit authorizes the “Take” of Piping Plover (*Charadrius melodus*) in accordance with the terms and conditions of the Permit, and the Massachusetts Statewide Habitat Conservation Plan (“HCP”). Under the Division’s Permit, the Town of Orleans (“Participant”) is authorized to perform Covered Activities that may result in the “Take” of Piping Plover, provided such covered activities are conducted in compliance with all applicable terms and conditions of the Division’s Permit and the HCP.

As the owner of the property depicted on Appendix 9, page 51 of Exhibit “A”, or an entity with written permission to use property, which is habitat supporting Piping Plovers, attached hereto and incorporated by reference into this Certificate of Inclusion (“COI”), you are entitled to the protection of the Division’s Permit for the activities that may result in a Take of Piping Plover as authorized by the HCP and by the Division in Conservation & Management Permit No. 022-391.DFW, including but not limited to the Impact Avoidance and Minimization Plan and the Mitigation Plan and other exhibits attached thereto (collectively, “CMP”), which the Division has issued to you pursuant to the Massachusetts Endangered Species Act, MGL c. 131A, (“MESA”) and the MESA regulations at 321 CMR 10.00. The CMP and all attachments thereto are depicted at Exhibit “A,” attached hereto and incorporated by reference into this COI.

This COI shall be valid for a period of three (3) years from the date signed by the Director of the Division unless otherwise suspended or revoked by DFW for noncompliance. However, plan participants are required to obtain reauthorization from the DFW on an annual basis, prior to carrying out covered activities in a given year. The Division may grant extensions or renewals of this COI or require the submittal of a new application for a COI, including in cases where your request for continued coverage under a COI would exceed the available number of statewide take allowances under the Division’s Permit because the Division cannot grant more take exposure allowances than allowable pursuant to the HCP. As set forth in Exhibit “A,” the Division reserves the right to unilaterally adjust on an annual basis the number of take exposures authorized pursuant to this COI.

The undertaking of activities authorized by this COI and the associated CMP does not relieve the Participant of its obligation to comply with any other applicable federal or state law or regulation or municipal bylaw, ordinance or regulation.

In the event the Participant fails to comply with the terms and conditions of the Division’s Permit, the HCP, or the CMP, the Participant shall be subject to enforcement action, including but not limited to, the immediate suspension or revocation of the COI and/or the CMP. The Division shall notify the USFWS within 2 business days of the Division’s discovery of the infraction, and within 1 business day of its

decision to suspend or revoke the COI. Administrative, judicial or other action on the part of the Division does not foreclose the possibility that the USFWS may seek its own remedy against Participant or the Division.

By signing this Certificate of Inclusion, you signify your election to receive Take Authorization to expose *up to two (2)* Piping Plover broods per year to covered activities under the Division’s Permit, subject to the terms and conditions in the Permit and the associated CMP. You also assent to the requirement under both the ESA and MESA, and as explained in the HCP, that beach use and management, excepting the above-listed covered activities, must comply with the State Guidelines and Federal Guidelines, effective at the time of COI issuance, or as amended during the term of the COI.

This Certificate of Inclusion does not impose additional regulatory control over the signatory nor require the signatory to provide additional information not called for in the HCP, Division’s Permit or COI, but instead ensures compliance with 50 Code of Federal Regulations, section 13.25(d).

Coverage under the Division’s Permit will become effective upon receipt of the executed COI by the Division and Participant, subject to all requirements of the Plan and COI Attachments. In the event the subject property is sold or leased, the Participant must inform the buyer or lessee of these provisions in writing with a copy to the Division. If the new owner or lessee desires to be covered under the ESA and MESA for Piping Plover take, it must: assent to the terms of the HCP, the Division’s Permit, and the CMP; demonstrate its financial ability and provide assurances to undertake the IAMP and mitigation plan requirements; demonstrate its eligibility under the provisions of the HCP. Otherwise the Participant should terminate the COI.


For the COI Holder’s convenience, **Table 1** summarizes important deadlines in the CMP (Exhibit A).

**Table 1.** Summary of CMP deadlines. All submittals and notifications shall be directed to Coastal.Waterbirds@mass.gov.

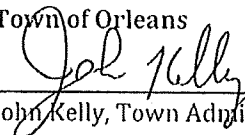
Requirement	Deadline	Notes
Escrow or Mitigation Fund deposit, with proof of payment submitted to the Division	February 15 of each year	Only for COI Holders funding offsite mitigation
Submission of annual scopes of work for mitigation activities for review and written approval by Division. Should include scopes of work for any contractors carrying out mitigation activities.	February 15 of Year 2 and Year 3 of permit	Only for COI Holders implementing on-site/internal mitigation programs
Submission, in writing, of updated contact information of the manager(s) responsible for permit compliance	March 15 of Year 2 and Year 3 of permit; or immediately should a new or additional manager be hired after the Activity has commenced	
Submission of proof that adequate funding has been secured to implement the annual requirements of the Plan consistent with the budget provided in the Plan.	March 15 of each year	
Contact Division to obtain written reauthorization to implement Covered Activities	March 15 of Year 2 and Year 3 of permit	
Initiate implementation of Guidelines by erecting symbolic fencing around all suitable habitat, unless expressly excepted by this permit	April 1 of each year	

Requirement	Deadline	Notes
Exposure of each new territory/pair/nest/brood to a Covered Activity; or installation of "Reduced Proactive Symbolic Fencing"	Applicant must notify the Division at least 24 hours in advance	Applicant must also notify the Division when the Covered Activity ceases
Provide the Division with implementation updates	Weekly, whenever Covered Activities are underway	
Submit all plover and tern monitoring data to PIPLODES and TERNODES	September 30 of each year	Guidance is available at: <a href="https://www.mass.gov/how-to/piping-plover-tern-on-line-data-entry-system">https://www.mass.gov/how-to/piping-plover-tern-on-line-data-entry-system</a>
Annual permit report	October 15 of each year	Guidance is available from the Division and in Table 4-7 of the MA HCP ( <a href="https://www.mass.gov/doc/piping-plover-habitat-conservation-plan/download">https://www.mass.gov/doc/piping-plover-habitat-conservation-plan/download</a> )
Submission of NHESP Rare Animal or Plant Observation Form for any state-listed species other than Piping Plovers or terns observed on the property	October 15 of each year	Submission through the Division's Heritage Hub online reporting system for rare species observations ( <a href="https://www.mass.gov/info-details/overview-of-the-heritage-hub">https://www.mass.gov/info-details/overview-of-the-heritage-hub</a> )

Massachusetts Division of Fisheries and Wildlife

  
Everose Schlüter, Assistant Director

2/24/2022  
Date

Town of Orleans  
  
John Kelly, Town Administrator

2/25/22  
Date

EXHIBIT A: Conservation & Management Permit  
(Includes Impact Avoidance & Minimization Plan (IAMP) and Mitigation Plan as attachments)