



**DIVISION OF  
FISHERIES & WILDLIFE**

1 Rabbit Hill Road, Westborough, MA 01581  
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**MASS.GOV/MASSWILDLIFE**

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

DATE	April 15, 2020
CONSERVATION PERMIT No.:	020-349.DFW
NHESP FILE No.	17-36416
PERMIT HOLDER	Town of Chatham
ACTIVITY	(1) Recreation and Beach Operations Associated with Reduced Proactive Symbolic Fencing (2) Recreation and Beach Operations Associated with Reduced Symbolic Fencing Around Nests and (3) Oversand Vehicle Use in the Vicinity of Unfledged Piping Plover and Least Tern Chicks, North (Nauset) Beach, Chatham, 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 Town of Chatham (the "Permit Holder"). This permit and associated Town of Chatham Certificate of Inclusion (the "COI") in the Final Massachusetts Division of Fisheries & Wildlife Habitat Conservation Plan (HCP) for Piping Plover, dated June 2016, issued in accordance with the Incidental Take Permit (ITP) No. TE01281C-0 for Piping Plover, dated July 8, 2016, 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, reduced symbolic fencing around nests, and oversand vehicles in the vicinity of unfledged Piping Plover chicks more particularly described in documents attached hereto (the "Activities"), at North (Nauset) Beach, Chatham, 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 the oversand vehicles in the vicinity of unfledged Least Tern chicks.

During a given beach season, a maximum of 2 broods of Piping Plovers may be exposed to covered Activities. In addition, up to 20 unfledged Least Tern chicks may be exposed to oversand vehicle (OSV) use. However, a variety of 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

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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:

- (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 Activities, 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, multiple impact avoidance and minimization measures—including but not limited to monitoring of habitat subject to reduced proactive symbolic fencing, intensive monitoring of incubating adults subject to reduced symbolic fencing, pedestrian vehicle escorting, enhanced monitoring of unfledged chicks during OSV travel windows, speed limits, narrow width of travel corridor, signage, traffic management, and staff training—will be implemented in order to minimize the risk of direct mortality. Funding will be provided for off-site selective predator management to benefit Piping Plovers and Least Terns.

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:

- “Massachusetts Habitat Conservation Plan for Piping Plover, Request for Certificate of Inclusion for 2020-2022 Certificate of Inclusion, North (Nauset) Beach, Chatham, Massachusetts,” last revised March 2020 (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 two Piping Plover broods to the Activities: (1) Recreation and Beach Operations Associated with Reduced Proactive Symbolic Fencing (2) Recreation and Beach Operations Associated with Reduced Symbolic Fencing Around Nests and (3) OSV Use in the Vicinity of Unfledged Piping Plover Chicks. Additionally, up to 20 unfledged Least Tern chicks may be exposed to the use of OSVs, subject to limitations described in Attachment A, and set forth in this Permit and the COI.
2. All Activities must be confined to the Town-owned Property shown in Figure 1 of Attachment A and any other privately owned properties shown in the Figure, provided that the Permit Holder has provided in advance to the Division written permission from the owner for the Town to use the property to carry out activities authorized by and in accordance with this permit.

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 HCP and ITP. 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.
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 Piping Plovers and Least Terns shall be carried out for all 3 years and implemented in accordance with the Plan.
12. Interim and annual reporting shall be conducted in accordance with the Plan, including submittal of an annual report by October 15 of each year.
13. The Division shall be notified by October 15 each year, in the form of an NHESP Rare Animal or Plant Observation Form, of any state-listed species other than Piping Plovers and terns that are observed on the property. Preferably, notification will be through the Division's data submittal tool, the Vernal Pool & Rare Species (VPRS) Information System. VPRS and our paper

observations forms can be found at: <http://www.mass.gov/dfw/nhesp/vprs>.

14. Prior to April 1, 2020, the Permit Holder shall execute the escrow agreement shown in Attachment B and fund the escrow account with \$11,600. Prior to carrying out covered activities in 2021 and 2022, the Permit holder shall provide additional funding of up to \$11,600 per year by February 15 of that year in order to ensure that a minimum of \$5,800 of mitigation funding is provided for each Piping Plover brood or nest exposed to covered activities.
15. In accordance with the HCP, the Permit Holder must obtain written reauthorization from the Division to carry out covered activities prior to the 2021 and 2022 beach seasons. No covered activities may be carried out in 2021 or 2022 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.
16. 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 and 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. 17 below.
17. 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:

Mark S. Tisa  
Director  
Division of Fisheries and Wildlife  
Field Headquarters  
One Rabbit Hill Road  
Westborough, MA 01581

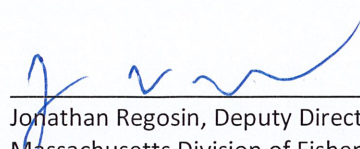
Any notice of claim for an adjudicatory hearing shall include the following information:

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;
5. 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

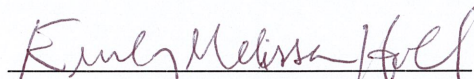
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sought through the adjudicatory hearing; and a statement that a copy of the request has been sent by certified mail or hand delivered to the applicant and the Record Owner, if different from the applicant.

  
Jonathan Regosin, Deputy Director  
Massachusetts Division of Fisheries & Wildlife

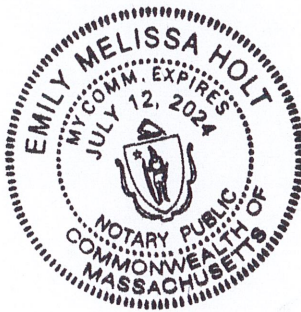
On this 15<sup>th</sup> day of April 2020, before me, the undersigned notary public, personally appeared Jonathan Regosin, Deputy Director, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, 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 020-349.DFW**

**Issued this 15<sup>th</sup> day of April 2020**

**Permit Expires: 1 December 2022**



ACKNOWLEDGEMENT AND ACCEPTANCE OF ALL TERMS OF THIS CONSERVATION PERMIT

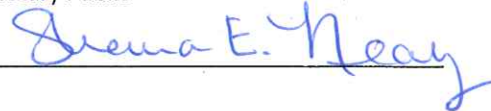
The undersigned below agrees that commencement of any work authorized by and described in this Conservation and Management Permit constitutes acknowledgement and acceptance of all terms of this permit.

  
Robert A. Duncanson, Director, Department of Health & Natural Resources  
Town of Chatham

COMMONWEALTH OF MASSACHUSETTS

On this 22<sup>nd</sup> day of April, 2020, before me, the undersigned notary public, personally appeared Dr. Robert Duncanson, 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.

Notary Public



SEAL



**SHANNA E. NEALY**  
Notary Public

Commonwealth of Massachusetts

My Commission Expires

My commission expires: October 30, 2020

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## **Distribution List**

Robert A Duncanson, Town of Chatham  
Theodore Keon, Town of Chatham  
Paul Wightman, Town of Chatham  
Chatham Board of Selectman  
Chatham Town Manager  
Chatham Conservation Commission  
Nathan Sears, Town of Orleans  
DEP Southeast Regional Office, Wetlands Program  
David Simmons, USFWS  
Susi von Oettingen, USFWS

# **Certificate of Inclusion in the Massachusetts Habitat Conservation Plan for Piping Plover North (Nauset) Beach, Town of Chatham April 15, 2020**

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The United States Fish and Wildlife Service ("USFWS") issued to the Massachusetts Division of Fisheries and Wildlife ("DFW") 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 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 Permit, the Town of Chatham ("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 Permit and the HCP.

As the owner of the property depicted in Figure 1 of Exhibit "A", or an entity with written permission to use property including Piping Plovers or their habitat, attached hereto and incorporated by reference into this Certificate of Inclusion ("COI"), you are entitled to the protection of the Permit for the activities that may result in a Take of Piping Plover as authorized by the HCP and by DFW in Conservation & Management Permit No. 020-349.DFW, including but not limited to the Impact Avoidance and Minimization Plan and the Mitigation Plan and other exhibits attached thereto (collectively, "CMP"), which DFW 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 DFW 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. DFW 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 Permit because DFW cannot grant more take exposure allowances than allowable pursuant to the Plan. As set forth in Exhibit "A," DFW reserves the right to unilaterally adjust on an annual basis the amount of take exposure 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 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. DFW shall notify the USFWS within 2 business days of DFW's discovery of the infraction, and within 1 business day of its decision to suspend or revoke



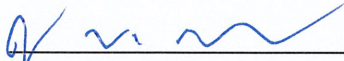
the COI. Administrative, judicial or other action on the part of DFW does not foreclose the possibility that FWS may seek its own remedy against Participant or DFW.

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 DFW'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, Permit or COI, but instead ensures compliance with 50 Code of Federal Regulations, section 13.25(d).

Coverage under the Permit will become effective upon receipt of the executed COI by DFW 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 DFW. 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, Permit, and 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.

**Massachusetts Division of Fisheries and Wildlife**

  
Jonathan Regosin, Deputy Director

April 15, 2020

**Town of Chatham**

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Robert A. Duncanson, Director of Health & Natural Resources

\_\_\_\_\_  
Date

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