



**DIVISION OF
FISHERIES & WILDLIFE**

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

DATE	March 3, 2020
CONSERVATION PERMIT NO.:	020-345.DFW
NHESP FILE NO.	16-35448
PERMIT HOLDER	Town of Barnstable
ACTIVITY	(1) Recreation and Beach Operations Associated with Reduced Proactive Symbolic Fencing of Piping Plover Habitat and (2) Oversand Vehicle Use in the Vicinity of Unfledged Piping Plover and Least Tern Chicks and Diamond-backed Terrapins, Sandy Neck Beach Park, Barnstable, 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 Barnstable (the "Permit Holder"). This permit and associated Town of Plymouth 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 the ESA, arising out of reduced proactive symbolic fencing and the use of oversand vehicles in the vicinity of unfledged Piping Plover chicks, more particularly described in documents attached hereto (the "Activities"), at Sandy Neck Beach Park, Barnstable, Massachusetts (the "Property"). This permit also authorizes the Taking of the state-listed Least Tern (*Sternula antillarum*) and Diamond-backed Terrapin (*Malaclemys terrapin*), listed as Special Concern and Threatened, respectively, pursuant to MESA, associated with the aforementioned Activities and essential vehicle traffic on the Marsh Trail.

During a given beach season, a maximum of 2 broods of Piping Plovers may be exposed to the covered Activities, reduced proactive symbolic fencing and oversand vehicle (OSV) use. In addition, up to 15 unfledged Least Tern chicks may be exposed to OSV use. Diamond-backed Terrapin adults, nests, and hatchlings are also exposed to some mortality risk associated with the Marsh Trail. However, a variety of procedures required by way of this Permit and the HCP will significantly decrease risk.

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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:

- (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 intensive monitoring, signage, traffic management, a narrow travel corridor, and staff training—will be implemented in order to minimize disturbance and risk of direct mortality of Piping Plovers and Least Terns. Funding will be provided for off-site selective predator management to benefit Piping Plovers and Least Terns. To minimize disturbance and risk of direct mortality to Diamond-backed Terrapins, nests will be relocated if found on the Marsh Trail and protected from predators with milk crates. Hatchlings will be collected for headstarting to augment the Great Marsh population.

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 Piping Plover Habitat Conservation Plan Certificate of Inclusion Request 2020,” dated December 2019 (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 of Piping Plover Habitat and (2) OSV Use in the Vicinity of Unfledged Piping Plover Chicks. In addition, up to 15 unfledged Least Tern chicks may be exposed to the use of OSVs. Diamond-backed Terrapins may also be exposed to essential vehicle traffic on the Marsh Trail. All Activities are subject to limitations described in Attachment A, and set forth in this Permit and the COL.
2. All Activities must be confined to the Town-owned Property shown in Figures 1 and 1a 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 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 affecting Piping Plovers or Least Terns.
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, Least Terns, and Diamond-backed Terrapins shall be carried out for all 3 years and implemented in accordance with the Plan.
12. Finding, relocation, and caging of Diamond-backed Terrapin nests and headstarting shall be carried out as described in the Plan by qualified personnel approved and permitted in writing in advance by the Division. A Scientific Collection Permit must be obtained from the Division. Reporting for Diamond-backed Terrapin must include, but is not limited to, nest site location and relocation information (GPS Coordinates) and total number of hatchlings for headstarting.

13. Interim and annual reporting shall be conducted in accordance with the Plan, including submittal of an annual report by October 15 of each year. Observations of Diamond-backed Terrapins and their nests shall be reported to the Division as detailed in Condition 14.
14. 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>.
15. 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.
16. 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.
17. 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. 18 below.
18. 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

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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 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 S. Tisa, Director
Massachusetts Division of Fisheries & Wildlife

On this 3rd day of March 2020, before me, the undersigned notary public, personally appeared Mark S. Tisa, 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 020-345.DFW

Issued this 3rd day of March, 2020

Permit Expires: 1 December 2022



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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.

Nina Coleman

Signatory, Town of Barnstable

COMMONWEALTH OF MASSACHUSETTS

On this 1st day of April, 2020, before me, the undersigned notary public, personally appeared Nina Coleman, proved to me through satisfactory evidence of identification which was personally known to me 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

[Signature]



THERESA A. MCDONALD
Notary Public
Commonwealth of Massachusetts
My Commission Expires
January 8, 2027

My commission expires: _____

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Distribution List

Nina Coleman, Town of Barnstable

Sean Kortis, Town of Barnstable

Barnstable Board of Selectman

Barnstable Conservation Commission

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 Sandy Neck Beach Park, Town of Barnstable March 3, 2020

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 Barnstable ("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. 020-345.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



Mark S. Tisa, Director

March 3, 2020

Town of Barnstable



Nina Coleman, Sandy Neck Park Manager

April 1, 2020
Date

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