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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

**[FWS–R5–ES–2015–0182; FXES11120500000–167–FF05E00000]**

### **Draft Environmental Assessment, Habitat Conservation Plan, and Application for an Incidental Take Permit for Piping Plover, Massachusetts Division of Fisheries and Wildlife**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability, receipt of application.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service or USFWS), have received an application from the Massachusetts Division of Fisheries and Wildlife (MADFW) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA). We are considering issuing a 25-year permit to the applicant that would authorize take of the federally threatened piping plover incidental to otherwise lawful activities, specifically recreational activities and beach operations on piping plover breeding beaches in Massachusetts. Pursuant to the ESA and the National Environmental

Policy Act (NEPA), we announce the availability of the MADFW's ITP application and draft habitat conservation plan (HCP), as well as the Service's draft environmental assessment (EA), for public review and comment. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

**DATES:** We will accept comments received or postmarked on or before [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Standard Time on the closing date.

**ADDRESSES:** You may submit written comments by one of the following methods:

*Electronically:* Go to the Federal eRulemaking Portal Web site at <http://www.regulations.gov>. In the Search box, enter **FWS-R5-ES-2015-0182**, which is the docket number for this notice. Click on the appropriate link to locate this document and submit a comment.

*By hard copy:* Submit by U.S. mail or hand-delivery to Public Comments Processing, Attn: **Docket No. FWS-R5-ES-2015-0182**, Division of Policy, Performance and Management; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, ABHC-PPM; Falls Church, VA 22041-3803.

We request that you send comments by only one of the methods described above. We will post all information received on the Web site at: <http://www.regulations.gov>. This

generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Thomas Chapman, by mail at U.S. Fish and Wildlife Service, New England Field Office, 70 Commercial Street, Suite 300, Concord, NH 03301; or by phone at (603) 223-2541.

**SUPPLEMENTARY INFORMATION:** We received an application from the MADFW for an ITP to take the federally threatened piping plover (*Charadrius melodus*) over a 25-year period. The ITP would authorize take resulting from recreational activities and beach operations that deviate from State and Federal guidelines for avoiding take (*Guidelines for Managing Recreational Use of Beaches to Protect Piping Plovers, Terns and Their Habitats in Massachusetts* (MADFW 1993; <http://www.mass.gov/eea/docs/czm/stormsmart/beaches/barrier-beach-guidelines.pdf>, accessed December 21, 2015); *Guidelines For Managing Recreational Activities In Piping Plover Breeding Habitat On The U.S. Atlantic Coast To Avoid Take Under Section 9 Of The Endangered Species Act* (USFWS 1994; <http://www.fws.gov/northeast/pipingplover/pdf/recguide.pdf>, accessed December 21, 2015)). A conservation program to minimize and mitigate for the impacts of the incidental take would be implemented by the MADFW as described in the draft Massachusetts Division of Fisheries and Wildlife Habitat Conservation Plan for Piping Plover.

To comply with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (NEPA), we prepared an EA that describes the proposed action, issuance of an ITP to the MADFW, and possible alternatives and analyzes the effects of the proposed action and alternatives on the human environment. We will evaluate whether the EA's analysis is adequate to support a Finding of No Significant Impact.

### **Availability of Documents**

You may obtain copies of the proposed HCP and draft EA on the internet at the New England Field Office's Web site at <http://www.fws.gov/newengland/> or at <http://www.regulations.gov> at Docket Number **FWS-R5-ES-2015-0182**. Copies of the proposed HCP and draft EA will also be available for public review during regular business hours at the New England Field Office, 70 Commercial Street, Suite 300, Concord, NH 03301. Those who do not have access to the internet or cannot visit our office can request copies by telephone at (603) 223-2541, or by letter to the New England Field Office.

### **Background**

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the ESA as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1538). However, under

section 10(a)(1)(B) of the ESA, we may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(2)(A) of the ESA requires an ITP applicant to submit an HCP that specifies the steps the applicant will take to minimize and mitigate the impacts of the taking. Regulations governing ITPs for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The MADFW is seeking a permit for the incidental take of the piping plover for a term of 25 years. Incidental take of this species may occur as a result of recreational activities and beach operations that deviate from State and Federal guidelines for managing piping plovers. The proposed covered activities include: (1) the use of roads and parking lots in the vicinity of unfledged piping plover chicks; (2) recreational activities and beach operations associated with reduced symbolic fencing around nests (temporary stake and twine or rope with signage erected around piping plover nests and habitat to delineate no entry areas for over-sand vehicles (OSVs) and pedestrians); (3) recreational activities and beach operations associated with reduced proactive symbolic fencing of piping plover habitat; (4) the moving of piping plover nests for recreational access and beach operations; and (5) OSV use in the vicinity of unfledged piping plover chicks. The proposed conservation strategy in the applicant’s proposed HCP is designed to avoid, minimize, and mitigate the impacts of covered activities on the piping plover. The HCP’s stated purpose is to advance piping plover conservation and recovery in Massachusetts while maintaining and improving recreational beach access and beach operations.

To achieve plover conservation and limited flexibility for recreational activities and beach operations, the HCP identified broad program goals, including: (1) a framework to maintain a “viable and robust” piping plover population in Massachusetts; (2) community support for piping plover conservation; and (3) streamlining the State and Federal permitting processes for site-level management flexibility. The MADFW intends to extend its take authorization to issue Certificates of Inclusion (COIs) to approved landowners and beach managers (referred to as Plan participants) who: (1) engage in the covered activities described in the HCP; (2) meet the COI eligibility and application requirements described in the HCP; and (3) agree to implement the HCP, required ITP conditions, and the MADFW conservation and management permit (required for State-listed species, including the piping plover). Plan participants are required to develop implementation avoidance and minimization plans (IAMPs) that are based on conservation measures outlined in the HCP and to implement mitigation to offset the take of piping plover adults, chicks, and nests. The HCP conservation strategy’s primary avenue for mitigation is selective predator management that would be implemented on site or off site. Additional education, outreach, and law enforcement efforts could be implemented by Plan participants, but because the impacts of these measures are not quantifiable, these measures are not considered to offset the anticipated take.

The HCP outlines a sliding scale for estimating the annual allowable take of broods, nests, or territories based on the 3-year running statewide population average. The scale ranges from 0 take if the statewide population is below 500 breeding pairs to a maximum take exposure of 7 percent of the statewide population if the statewide population is at or exceeds 655 breeding pairs. Therefore, the annual amount of take over

the 25-year permit duration could range from a low of no nests, broods, or territories exposed to take to a high of 7 percent of the statewide population's nests, broods, or territories exposed to take. The Service has estimated the potential take to be the highest level of annual take, 70 broods per year, based on a statewide population estimate of 1,000 breeding pairs. This estimate is based on the estimated Massachusetts carrying capacity of 1,100 breeding pairs and the assumption that carrying capacity is unlikely to be reached during the permit term.

The proposed action is the issuance of an ITP and implementation of the proposed HCP. The MADFW considered two alternatives to the proposed action in its HCP: a reduced take alternative under which expanded OSV use in the presence of unfledged plover chicks would not be included, thereby reducing the amount of take allocated under the HCP, and an activity-by-activity alternative whereby the MADFW and beach landowners or managers of recreational beaches would apply to the Service for individual ITPs for take associated with recreational activities and beach operations.

### **National Environmental Policy Act**

In compliance with NEPA, we analyzed the impacts of the proposed project, issuance of an ITP and implementation of the HCP, and a reasonable range of alternatives. Based on this analysis and any new information resulting from public comment, we will determine if there are any significant impacts caused by the proposed action. We have prepared a draft EA on the proposed action and have made it available

for public inspection online or in person at the New England Field Office (see **Availability of Documents**).

NEPA requires that a range of reasonable alternatives to the proposed action be described. The draft EA analyzes three alternatives: a no action alternative, the proposed action, and a shorter permit term alternative.

### **Next Steps**

We will evaluate the plan and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue a permit. If the requirements are met, we will issue the permit to the applicant.

### **Public Comments**

The Service invites the public to comment on the proposed HCP and draft EA during a 30-day public comment period (see **DATES**). You may submit comments by one of the methods shown under **ADDRESSES**.

### **Public Availability of Comments**

We will post all public comments and information received electronically or via hard copy on our Web site at: <http://regulations.gov>. All comments received, including names and addresses, will become part of the administrative record and will be available to the public. Before including your address, phone number, electronic mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—will be publicly available. If you submit a hard copy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

## **Authority**

This notice is provided pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

**Dated:** January 13, 2016

**Paul Phifer,**  
**Assistant Regional Director,**  
**Ecological Services,**  
**Northeast Region.**

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