



**Billing Code 4310–55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R5–ES–2014–0051; FXES111205000000–156–FF05E00000]**

**Receipt of an Application for an Incidental Take Permit for Piping Plover, from the Town of Orleans, MA, and Availability of Proposed Habitat Conservation Plan**

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

**ACTION:** Notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service or “we”), announce the availability of an application for an Incidental Take Permit (ITP) and a proposed Habitat Conservation Plan (HCP) from the Town of Orleans (Town) for public review and comment. We received the permit application from the Town for incidental take of the threatened piping plover (*Charadrius melodus*) resulting from the Town’s authorization and management of over-sand vehicle (OSV) activities over the next 3 years. Our preliminary determination is that the proposed HCP qualifies as low-effect under our final Handbook for Habitat Conservation Planning and Incidental Take Permitting

Process. To make this determination, we used our Low-Effect HCP Screening Form/Environmental Action Statement (EAS), the preliminary version of which is also available for review.

We provide this notice to (1) seek public comments on the proposed HCP and application; (2) seek public comments on our preliminary determination that the HCP qualifies as low-effect and is therefore eligible for a categorical exclusion under the National Environmental Policy Act (NEPA); and (3) advise other Federal and State agencies, affected Tribes, and the public of our intent to issue an ITP.

**DATES:** To ensure consideration, we must receive your written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Written comments may be submitted electronically by any one of the following methods:

*Electronically:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments on Docket No. FWS-R5-ES-2014-0051.

*U.S. mail:* Public Comments Processing, Attn: FWS-R5-ES-2014-0051; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike; Falls Church, Virginia 22041-3803.

**FOR FURTHER INFORMATION CONTACT:** Susi vonOettingen, by U.S. mail at U.S. Fish and Wildlife Service, New England Field Office, 70 Commercial Street, Suite 300, Concord, NH 03301; or via phone at 603–223–2541.

**SUPPLEMENTARY INFORMATION:** We received an application from the Town of Orleans for an ITP for take of the federally listed threatened piping plover (*Charadrius melodus*) resulting from the Town’s authorization and management of OSV activities over the next 3 years. To minimize and mitigate for the incidental take, the Town will implement a conservation program as described in its proposed HCP.

We prepared a preliminary EAS to comply with NEPA. The Service will evaluate whether the proposed action, issuance of an ITP to the Town of Orleans, is adequate to support a categorical exclusion.

This notice is provided pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) and NEPA (42 U.S.C. 4321, *et seq.*).

We are requesting comments on the proposed HCP and our preliminary determination that the plan qualifies as low effect under NEPA.

### **Availability of Documents**

The proposed HCP and preliminary EAS are available on the New England Field Office’s Web site at <http://www.fws.gov/newengland/>, or at <http://www.regulations.gov>

under Docket Number FWS–R5–ES–2014–0051. Copies of the proposed HCP, subsequently filed addendum to the HCP, and preliminary EAS will also be available for public review during regular business hours at the New England Field Office (see **FOR FURTHER INFORMATION CONTACT**). Those who do not have access to the Web site or cannot visit our office may 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) 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. 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 Town of Orleans is seeking a permit for the incidental take of piping plover for a term of 3 years. Incidental take of this species may occur as a result of the Town’s authorization and management of OSV activities along Nauset Beach South.

Proposed covered activities include authorization and implementation of the Town of Orleans OSV use program. The Town's proposed management of OSV activities would in one limited respect deviate from established State and Federal guidelines for managing recreational beaches to avoid the take of piping plovers. The Town proposes to add a late-breeding season OSV escort program across limited areas where OSVs would otherwise not be allowed due to nesting plovers' presence. The HCP and addendum explain how the escort program has been designed to minimize the potential to take unfledged plover chicks. It also contains a variety of on-site and off-site predator management measures developed to mitigate for the impact of the anticipated taking, and improve piping plover productivity.

The proposed action consists of the issuance of an ITP and implementation of the proposed HCP. One alternative to the proposed action was considered in the HCP: No action (i.e., operation of the project without an ITP and without avoidance, minimization, or mitigation of piping plover impacts). This alternative was deemed not practicable by the Town because the project would not have the important protections of the ITP and would not have the conservation benefits proposed by the Town.

### **National Environmental Policy Act**

We have made a preliminary determination that the Town of Orleans proposed HCP, including the proposed minimization and mitigation measures, will have a minor or negligible effect on the species covered in the plan, and that the plan qualifies as a "low-

effect” HCP as described in the Service’s HCP Handbook (61 FR 63854, December 2, 1996).

As further explained in the preliminary EAS, included for public review, our preliminary determination that the plan qualifies as a low-effect HCP is based on the following three criteria:

(1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;

(2) Implementation of the plan would result in minor or negligible effects on other environmental values or resources prior to implementation of the mitigation measures; and

(3) Impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Therefore, we initially conclude that the proposed ITP would qualify for a categorical exclusion under the NEPA, as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 8). Based on our review of public comments that we receive in response to this notice, we may revise this preliminary determination.

## **Next Steps**

We will evaluate the proposed HCP 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 preliminary EAS during a 30-day public comment period (see **DATES**). You may submit written comments by one of the methods in the **ADDRESSES** section.

We will post all public comments and information received electronically or via hard copy on <http://www.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, email 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).

**Martin Miller,  
Acting Assistant Regional Director.**

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