



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2018–0091; FXES11120500000-189-FF05E00000]

Amended Habitat Conservation Plan, Application for an Incidental Take Permit for Piping Plover, Massachusetts Division of Fisheries and Wildlife; Draft Finding of No Significant Impact

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of documents; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce receipt of an application from the Massachusetts Division of Fisheries and Wildlife (MADFW) to amend its Habitat Conservation Plan For Piping Plover for unavoidable take of the federally listed threatened Atlantic Coast piping plover incidental to otherwise lawful activities, specifically recreational activities and beach operations on piping plover breeding beaches in Massachusetts. We are making available the draft amendment, MADFW's application, and our draft Finding of No Significant Impact under the

National Environmental Policy Act that evaluates the impacts on the human environment associated with the proposed amendment. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments until [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) 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 website at <http://www.regulations.gov>. In the Search box, enter FWS–R5–ES–2018–0091, 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–2018–0091; Division of Policy, Performance and Management Programs; 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 <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section 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; by phone at 603–223–2541; or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce receipt of an application from the Massachusetts Division of Fisheries and Wildlife (MADFW) to amend its Habitat Conservation Plan For Piping Plover (HCP) for unavoidable take of the federally listed threatened Atlantic Coast piping plover (*Charadrius melodus*) incidental to otherwise lawful activities, specifically recreational activities and beach operations on piping plover breeding beaches in Massachusetts, and the associated permit that the Service approved on July 8, 2016. The proposed amendment would facilitate HCP implementation by addressing unusual circumstances where a limited number of sites need additional management flexibility.

The Service is making available the draft amendment and the MADFW's application. Through this notice we also announce the availability of a draft Finding of No Significant Impact (FONSI) under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) that evaluates the impacts on the human environment associated with the proposed amendment. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

We received an application from the MADFW for an amendment to the HCP and ITP (Incidental Take Permit; Federal Fish and Wildlife Permit number TE01281C-0) to increase the site-specific allowable exposure to take of piping plover pairs from certain

covered activities at a limited number of sites in limited circumstances. The Service's proposed action is issuing an amended ITP in response to the MADFW's proposed changes to how it intends to allocate site-specific exposure of piping plovers to take.

The 2016 HCP generally limits site-specific take exposure to 15 percent of breeding pairs except that the MADFW may allow take exposure of 30 percent of breeding pairs at up to five sites; sites with fewer than seven pairs are allowed take exposure of one breeding pair. The amendment would deal only with the exception to the general take exposure limit of 15 percent, increasing the maximum exposure to 75 percent at eight sites statewide. The deviation in maximum exposure would occur only in association with "Use of Roads and Parking Lots in the Vicinity of Unfledged Chicks" and "Oversand Vehicle (OSV) Use in the Vicinity of Unfledged Chicks." Under the amended HCP, the general maximum allowable take exposure would remain at 15 percent for all covered activities; however, at up to eight sites, the MADFW could allow take exposure of up to 75 percent of breeding pairs, including at sites with fewer than seven pairs, from the two covered activities mentioned above. The proposed action would not (1) increase the statewide take level authorized under the ITP; (2) change the covered species, covered activities, or conservation strategy including required mitigation; or (3) extend the ITP duration.

Under NEPA, this notice advises the public that we have gathered the information necessary to determine whether and how the draft amendment to the HCP under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA), may impact the human environment, and whether supplementation of the EA is warranted.

Availability of Documents

You may obtain copies of the proposed amendment to the HCP and draft FONSI on the internet at the New England Field Office's website at <https://www.fws.gov/newengland/> or at <https://www.regulations.gov> at Docket No. FWS-R5-ES-2018-0091. Copies of the proposed HCP amendment and draft FONSI also can be made 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

The 2016 ITP issued to the MADFW authorized take caused by 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/dfg/nhosp/species-and-conservation/ma-shorebird-management-guidelines.pdf>, accessed March 20, 2018); *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 March 20, 2018)). The HCP functions as an umbrella plan to allow the MADFW to extend incidental take coverage via Certificates of Inclusion (COI) to approved landowners and beach managers to implement a suite of covered activities if they meet the eligibility and COI application

requirements described in the HCP. The MADFW, as the permit holder, manages and implements the statewide conservation program outlined in the HCP to minimize and mitigate for the impacts of the incidental take. The MADFW is also responsible for administering the Massachusetts Endangered Species Act and its implementing regulations (MESA; MGL c. 131A; 321 CMR 10.00) and issues separate MESA conservation and management permits for piping plovers and other State-listed species that may be impacted by the implementation of the HCP's covered activities.

The proposed amendment would facilitate implementation of the HCP and address limited circumstances where there is a need to exceed the current maximum allowable take exposure of 30 percent at five sites statewide. Again, this is an exception to the general limit of 15 percent that would apply elsewhere. As currently written, the exception to site-specific take exposure limit of the 2016 HCP creates an obstacle to a few beach operators who might otherwise benefit from participating in the HCP. For small beaches, multiple pairs of plovers nesting at critical access points could preclude all access if take exposure is restricted to 30 percent or less, because sites with three to seven pairs of piping plovers are currently limited to take exposure of one to two plover nests, broods, or territories. Beaches with roads and parking lots adjacent to piping plover breeding habitat may experience occasions when the majority of the pairs congregate their nests or young at critical recreational access points resulting in the total closure of parking lots or improved roads. The proposed action would increase the maximum allowable take exposure from 30 percent of the breeding pairs at up to five sites to 75 percent of breeding pairs at up to eight sites, statewide.

The proposed amendment is largely an administrative change, because it would not change how the HCP is implemented, but would only alter MADFW's flexibility in allocating the annual statewide take exposure. The amendment would not affect the 2016 HCP's sliding scale method for determining the annual allowable take of broods, nests, or territories based on the 3-year running statewide population average. In addition, the amendment would apply to only two covered activities: "Use of Roads and Parking Lots in the Vicinity of Unfledged Chicks" and "OSV Use in the Vicinity of Unfledged Chicks." It would not apply to "Recreation Management and Beach Operations." Additionally, the proposed amendment would not alter limits on the habitat, broods, or pairs affected through reduced proactive fencing, reduced buffers around nests, or nest moving.

The FONSI anticipates some site-specific impacts to piping plovers as a result of the increase in allowable take exposure and associated decrease in productivity at up to eight sites. However, the FONSI anticipates that the impacts to the piping plover and the human environment statewide will be essentially the same as those previously analyzed in our 2016 Environmental Assessment (EA), because at a full allocation of authorized take, for any increase in breeding pairs exposed to take at one site, the MADFW would have to make a corresponding reduction in the remaining number of pairs that could be exposed to take at other sites. Moreover, the nature of the activities being conducted has not changed.

National Environmental Policy Act

When we issued the initial permit to the MADFW, we thoroughly analyzed the associated impacts to the human environment in our EA, concluding our NEPA analysis with a Finding of No Significant Impacts. We prepared a draft FONSI on the proposed action and have made it available for public inspection (see **Availability of Documents**). In it, we tentatively determine that the proposed action would not cause significant impacts on the human environment and that supplementation of the EA is not warranted. We base that preliminary conclusion on: the limited nature of the proposed amendment that the deviation from the maximum exposure limit at a site would apply in a minority of situations; the manner in which the activities will be conducted has not been altered; and, the overall take allocation remains unchanged.

Public Comments

The Service invites the public to comment on the proposed HCP amendment and draft FONSI 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 website at <https://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—may be made publicly

available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

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).

Paul Phifer,
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Northeast Region.

Dated: February 14, 2019.

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