



February 19, 2016

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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

**RE: Massachusetts Division of Fisheries and Wildlife
Draft Habitat Conservation Plan for Piping Plover**

To Whom It May Concern:

The Association to Preserve Cape Cod (APCC) is the Cape's leading nonprofit environmental and advocacy organization. Founded in 1968 and today representing over 5,000 members across the region, APCC's mission is to preserve, protect and enhance the natural resources of Cape Cod. APCC has reviewed the Massachusetts Division of Fisheries and Wildlife (DFW) Draft Habitat Conservation Plan for Piping Plover (HCP) and offers the following comments.

Summary

APCC supports efforts to facilitate recreational activities on Massachusetts beaches when and where feasible, but not to the extent that piping plover exposure to those activities increases direct impacts on the species that result in harm or death to adult plovers, chicks or eggs. Such impacts to individual plovers should not be a justifiable consequence of accommodating increased recreational access in plover habitat areas. Although good progress has been made in increasing the number of breeding pairs in Massachusetts, it is premature to declare a success in species recovery efforts. Permitted activities should not compromise protections of plover that result in measurable adverse impacts to the population or to the breeding program.

APCC supports a greater emphasis on measures to avoid and minimize impacts to plovers, and encourages DFW to explore additional efforts that will further reduce the likelihood of impacts to the species.

Background

The stated purpose of the HCP is to *"advance piping plover conservation and recovery in Massachusetts while maintaining and improving the public access, recreational opportunities, and economic activity associated with the state's beaches."* The HCP describes covered activities that potentially expose piping plovers to "take." The take of piping plover will be authorized by an incidental take permit (ITP) issued to the DFW by the U.S. Fish and Wildlife Service (FWS) in association with the HCP. Covered activities in the HCP are:

- Permitting the use of roads and parking lots in the vicinity of unfledged chicks.

- Increasing flexibility for recreation and beach operations, including:
 - Reduced symbolic fencing around nests in certain areas
 - Reduced proactive symbolic fencing of piping plover habitat in certain areas
 - Permitting piping plover nests to be physically moved away from certain areas of recreation and beach operations
- Permitting escorted over-sand vehicle (OSV) use in the vicinity of unfledged piping plover chicks

The HCT proposes to mitigate incidental take from the above covered activities through:

- selective lethal predator management
- enhanced monitoring and enforcement
- public outreach
- conservation research
- habitat improvements, including potential vegetation removal to increase habitat area

However, according to the FWS, the only mitigation measure that will fulfill federal Endangered Species Act (ESA) permitting requirements is selective predator management.

Based on current estimates of 655 breeding pairs of plover in Massachusetts, the HCP estimates that 3.4 percent “upper bound estimate” and 1.7 percent “realistic estimate” of chicks will be subject to a take as a result of the permitted activities in the plan. In this case, "take" means chicks actually killed or lost. These percentages amount to 22.27 chicks (3.4 percent) and 11.13 chicks (1.7 percent) allowed as a take per year. The plan also assumes a 5 percent risk of adult mortality associated with each incidence of covered activities.

Use of Roads and Parking Lots in the Vicinity of Unfledged Chicks

In considering the allowance of roads and parking lots to be used in the vicinity of unfledged chicks, every attempt should be made to create a protective buffer or barrier between chicks and human activity. The proposed use of trained staff to monitor, manage and direct activity at these sites is critically important in helping ensure that any potential impacts to plovers are avoided or minimized.

Reduced Symbolic Fencing Around Nests

Under this proposed covered activity, fencing buffers around nests would be reduced from the existing 50-yard restriction in limited locations, and recreational and beach operational activities would be permitted in areas that would otherwise have been fenced under existing guidelines. Less intense monitoring could be allowed. APCC is concerned that reduced symbolic fencing around nests would unnecessarily increase potential for adverse impacts to nests and chicks. APCC is particularly concerned that the plan includes the possibility of less intense monitoring at these sites. With a reduction in the area of protective fencing, continuous, vigilant monitoring is especially important to ensure that adults do not abandon nests or that human activities do not otherwise imperil the success of nesting attempts.

Reduced Proactive Symbolic Fencing of Piping Plover Habitat

As described in the HCP, the extent of symbolic fencing of piping plover habitat would be reduced in order to provide more access for beach-goers. This proposed action is directed at suitable habitat and not habitat currently occupied by piping plover, seemingly making this scenario not as likely to result in adverse impacts to plovers. However, a reduction in proactive symbolic fencing around suitable plover nesting habitat, especially habitat historically used by breeding pairs, could result in unmanaged human traffic within the habitat area that frightens plover pairs away from these potential nesting locations, possibly resulting in failure of the pair to successfully reproduce during that breeding season. Continuous monitoring should be required so that appropriate fencing can be immediately erected if courtship behavior or nest scraping is observed within the unfenced area.

Moving Piping Plover Nests Away from Recreation and Beach Operation Areas

Under the HCP, parking lots and access points may be allowed to stay open, which could increase the risk of piping plover nest destruction or abandonment if nests are built in those areas. The HCP would permit some nests to be moved under certain circumstances, following an established protocol. According to the HCP, nest moving has been done in other regions of the country in situations when flooding threatens the nest. However, the plan does not provide information about the rate of success vs. nest abandonment when nest moving is attempted. APCC recommends that nest moving should be attempted only as a last resort, when the nest is in imminent danger of being abandoned or destroyed. Restricting area around the nest to the extent possible should be undertaken first.

OSV Use in the Vicinity of Unfledged Piping Plover Chicks

The HCP proposes to allow escorted OSVs to drive past a limited number of unfledged piping plover broods. In these circumstances, individual vehicles are to be escorted on foot by a passenger of the vehicle, or a single individual will escort a caravan of up to 50 vehicles. APCC does not support allowing OSV access to areas where unfledged chicks are located under the procedure described in the HCP. Even though OSV operators would be required by the HCP to attend an orientation, it appears that the passenger escorts are not subject to this training. Relying on private citizens to safely guide a vehicle or vehicles through areas occupied by unfledged chicks is far too risky and invites incidents that would likely result in the death of chicks or even adult plovers. There is too much potential for citizen escorts to not spot chicks or to not respond appropriately when chicks are spotted.

Selective Predator Management as Mitigation

As noted above, based on guidance provided by the FWS during plan development, the only mitigation measure being proposed to fulfill ESA permitting requirements is selective predator management. According to the HCP, the plan *“commits the DFW to ensure that, on an annual basis, sufficient selective predator management will be carried out to offset the take associated with implementation of that year’s covered activities. Predator management will be designed to benefit 2.5 breeding pairs for every brood, nest, or territory exposed to take from covered activities. Selective predator management to benefit an additional 0.5 breeding pairs will be implemented for each instance of the Use of Roads and Parking Lots in the Vicinity of Unfledged Chicks covered activity.”*

APCC acknowledges the negative impact predation on plover nests and chicks has had on piping plover recovery goals, and realizes that selective predator management using lethal control may sometimes be necessary to sustain breeding productivity. However, lethal control should be used only as a last resort when other non-lethal measures have failed, and should be limited to targeting specific “bad actor” individuals known to prey on plover nests and chicks.

APCC cannot support the predator management program as proposed in the HCP, which essentially establishes a predetermined quota of predators to be lethally removed to compensate for allowing plover take—including an anticipated percentage of plover mortality—in order to accommodate enhanced beach accessibility and recreational uses. According to the HCP, predator removal will take place in late winter or early spring, before plovers arrive and presumably before individual predators can be identified as targeting plovers. As described in the HCP, the predator lethal management plan hardly appears to be “selective.”

APCC strongly supports adoption of other strategies to discourage predation of nests and chicks before resorting to lethal control, particularly those measures that would reduce the attraction of predators to beach areas. This would include an aggressive education and enforcement program to remove food sources in the form of trash and food waste from beaches and parking lots. APCC encourages such proactive measures to be included in the HCP.

Education, Outreach and Enforcement

APCC supports the education, outreach and enforcement programs described in the HCP as conservation actions to benefit piping plover populations. As mentioned above, greater enforcement of litter removal regulations in order to discourage predator activity in beach areas should also be included in these proposed actions.

Vegetation Management

The DFW proposes to implement a habitat improvement pilot project that would remove vegetation at two to five sites, with a limit of not more than 0.5 acre per site to be affected. In considering removal of existing vegetation, caution should be exercised to ensure that the vegetation community in question is not aiding in minimizing beach erosion or dune stability. Removal of beach area vegetation could, among other impacts, potentially adversely affect existing plover habitat by exacerbating beach erosion. A study of the town of Brewster’s coastal area conducted by APCC in 2015 showed a correlation between the presence of some vegetation communities and shoreline stability.

Climate Change Impacts

The HCP contains little discussion of the potential for adverse impacts to piping plover conservation efforts as a result of sea level rise and climate change. One consequence of climate change is the loss of plover breeding habitat due to coastal erosion and narrowing beaches. Loss of beach area will also likely increase conflicts between the need to protect plover habitat and demands to accommodate pedestrian and OSV beach use. The HCP should include climate change planning as part of its plover conservation plan.

Adaptive Management and Monitoring

APCC strongly supports the proposed inclusion of adaptive management in the HCP. Conservation planning in the HCP should be capable of responding immediately to changes in plover populations or to unexpected outcomes from a proposed action. APCC also strongly endorses the critically important monitoring component of the plan, which according to the HCP will be closely integrated with adaptive management.

Conclusion

A piping plover Habitat Conservation Plan should include efforts to accommodate beach access and recreational interests when and where feasible, but should not do so to the extent that piping plover individuals are unnecessarily exposed to take. Instead of justifying an anticipated number of plover

subjected to a take as a consequence of increased recreational access, and then compensating for those impacts with lethal predator control, the HCP should place a greater emphasis on avoiding and minimizing the risk of take to piping plover.

Thank you for this opportunity to provide comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Edward DeWitt', with a stylized flourish at the end.

Edward DeWitt
Executive Director

A handwritten signature in black ink, appearing to read 'Don Keeran', with a long horizontal flourish extending to the right.

Don Keeran
Assistant Director