



United States Department of the Interior

FISH AND WILDLIFE SERVICE

New England Field Office
70 Commercial Street, Suite 300
Concord, NH 03301-5087
<http://www.fws.gov/newengland>



REF: Biological Opinion Extension Request
Piping Plover Flexible Management
Cape Cod National Seashore, MA
NPS reference N1621

February 26, 2015

Mr. George F. Price, Jr.
Superintendent
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667

Dear Mr. Price:

This responds to your January 26, 2015 request for formal section 7 consultation under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), and specifically regards extending the U.S. Fish and Wildlife Service's (Service) May 11, 2010 Biological Opinion (BO) addressing flexible management of federally listed threatened piping plovers (*Charadrius melodus*) on Cape Cod National Seashore (Seashore) in Massachusetts. This letter formally amends the BO to extend through December 31, 2020.

This amended BO is premised on information provided in your January 26, 2015 letter and discussions between Seashore and New England Field Office (NEFO) staff. The Service reviewed a summary of the flexible management implemented in 2013 and 2014, noting that flexible management was not implemented in either year, therefore no take occurred. We also reviewed the most recent rangewide and regional population information for piping plovers to determine whether the proposed extension would result in significant changes to the 2010 BO and Incidental Take Statement. The New England Recovery Unit piping plover population has consistently exceeded (or been within three pairs of) the 625-pair abundance goal since 1998. Moreover, the Massachusetts population currently exceeds the New England Recovery Unit goal. Since flexible management was not implemented in the last two years of the extension and the current regional and statewide population are above the recovery goal, we concur that the proposed flexible management remains consistent with respect to the project purpose and location (e.g., flexible management at no more than two pedestrian beaches), and number of potentially affected piping plovers (no more than three pairs) at the Seashore, and that an extension will not alter the BO determination and Incidental Take Statement.

The amendments and updates to the BO are described below. Specific language is identified for addition to or replacement of sections addressing the Consultation History, Description of the Proposed Action, Status of the Species, Environmental Baseline, Conclusion and Incidental Take Statement.

I. CONSULTATION HISTORY

The Consultation History in the BO is amended to include the following consultation activity relating to the requested extension of existing flexible management through 2020:

January 26, 2015 – Re-initiation letter from the Seashore requesting an extension of the BO through 2020.

II. BIOLOGICAL OPINION

This amended BO addresses the effects of all activities associated with the Seashore's proposed management of pedestrian access in occupied piping plover breeding habitat at one to two beaches in the context of the Seashore's ongoing intensive piping plover conservation program. The amendments reflect an extended period of flexible management implementation through 2020, include updated plover population information, and clarify general piping plover management at the Seashore.

DESCRIPTION OF THE PROPOSED ACTION

No changes to the scope of the proposed action are proposed.

Amend the second paragraph on page 4 of the BO to extend the period of implementation through 2020 and clarify ongoing piping plover management as follows:

The proposed flexible management will be implemented as needed during the 2015, 2016, 2017, 2018, 2019 and 2020 breeding seasons. Otherwise, the Seashore will monitor and manage piping plovers as prescribed in the Service's *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* (Guidelines), hereby incorporated into the BO by reference. Off-road vehicle use at the Seashore will continue to be managed as prescribed in the 1998 Negotiated Rule and the 2007 Finding of No Significant Impact; these documents are hereby incorporated into the BO by reference. No other flexible management will occur until the Seashore has finalized a Comprehensive Shorebird Management Plan, completed NEPA review and consultation under section 7 of the ESA. The Comprehensive Shorebird Management Plan will identify and address the need for future flexible management, as well as additional conservation measures that might be used to offset losses from potential flexible management actions. Conservation measures not included in the proposed flexible management being addressed in this BO could include the use of selective predator management to enhance piping plover and other shorebird productivity, as well as mitigation actions not otherwise identified in this proposed action.

STATUS OF THE SPECIES

Rangewide Status and Recovery Objective

Amend the second paragraph, page 10 of the BO to update the rangewide status of the species as follows:

Since listing under the ESA, the Atlantic Coast population has increased roughly 240 percent, from approximately 790 pairs to a preliminary estimate of 1,898 pairs in 2012 (http://www.fws.gov/northeast/pipingplover/pdf/preliminary2012_18April2013.pdf) (accessed February 19, 2015), while the United States portion of the population has tripled from approximately 550 pairs to a preliminary estimate of 1,719 pairs. Even discounting apparent increases in New York, New Jersey, and North Carolina between 1986 and 1989, which likely were due in part to increased census effort, the population nearly doubled between 1989 and 2007. Population increases since 1989 have been highest in New England, followed by New York and New Jersey. Most growth in the Southern (DE-MD-VA-NC) recovery unit occurred between 2003 and 2005, while the Atlantic Canada population fluctuates from year to year with increases often quickly eroded in subsequent years (USFWS 2010).

Amend the first full paragraph, page 11 of the BO to update the New England Recovery Unit information as follows:

The New England Recovery Unit target is a minimum of 625 pairs. In 2012, preliminary estimates show there were approximately 879 nesting pairs of piping plovers in New England (http://www.fws.gov/northeast/pipingplover/pdf/preliminary2012_18April2013.pdf) (accessed February 19, 2015). Although the New England Recovery Unit population has exceeded (or been within three pairs of) the abundance goal since 1998, the average productivity is below the 1.5 chicks/pair threshold needed to maintain a secure population. Inclement weather and increased predation on both adults and young are the primary contributing factors that have been identified as limiting productivity in recent years.

ENVIRONMENTAL BASELINE

Amend the 2012 amended BO to update the following paragraph:

Following the preparation of the BO and completion of formal section 7 consultation, the Seashore implemented flexible management for one piping plover nest at Marconi Beach in 2010. A minimal buffer was established around the nest, allowing pedestrians to pass by at high tide. Subsequently, the nest was washed away and further flexible management was not required. Flexible management was not implemented in 2011, 2012, 2013 or 2014 because piping plover nests were not located near pedestrian access points that met the flexible management criteria.

Action Area

No changes to the Action Area.

Effects of the Action

No changes to the Effects of the Action.

Cumulative Effects

No changes to the Cumulative Effects.

CONCLUSION

Replace paragraphs two and three on page 17 in order to update piping plover population information as follows:

The scale and context of the proposed action, affecting a maximum of 400 meters within a management unit that routinely has 11 kilometers or more of symbolically fenced habitat, as well as containing additional areas of very intensively-managed habitat, are critical components of this evaluation. Under a worst case scenario, a reduction in productivity of up to three of 68 to 85 (2010 to 2014 data) otherwise well-protected pairs at the Seashore in a recovery unit with 879 pairs (New England recovery unit, preliminary 2012 abundance estimate) is not anticipated to significantly affect overall annual productivity for the Seashore or the New England Recovery Unit. However, we note that any further reductions in protections without compensatory management would be cause for increasingly cautious evaluation. Further reductions at the Seashore of protected nesting habitat beyond what has been proposed would quickly accelerate more serious adverse effects, including effects on productivity and abundance of breeding pairs.

Additional factors incorporated into our analysis of whether the proposed flexible management would jeopardize the continued existence of piping plovers include conservation measures to reduce the extent of take—specifically, symbolic fencing erected around unanticipated nests within the flexible management area, outreach to minimize pedestrian disturbance to nesting plovers, and maintenance of a refuge area for chicks within the flexible management area. Furthermore, project effects will occur in the context of a recovery unit that has been at or near its target for recovery since 1998 and within a management unit (the Seashore) where piping plover abundance has increased from 18 pairs in 1985 to a high of 87 pairs in 2009.

III. INCIDENTAL TAKE STATEMENT

Replace paragraph one on page 18 in order to extend the period of allowable incidental take to 2020 as follows:

The Service anticipates that incidental take of the federally threatened piping plover is likely to occur as a result of the loss or degradation of up to 400 meters of suitable nesting habitat in 2015, 2016, 2017, 2018, 2019 and 2020 when erosion would restrict pedestrian access at one or two selected beaches.

Mr. George F. Price, Jr.
February 26, 2015

5

Reasonable and Prudent Measures

No changes to Reasonable and Prudent Measures.

Terms and Conditions

No changes to Terms and Conditions.

Reporting and Monitoring Requirements

No changes to Reporting and Monitoring Requirements.

CONSERVATION RECOMMENDATIONS

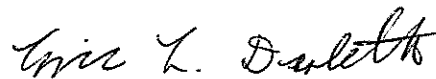
No changes to Conservation Recommendations.

Reinitiation Notice

No changes to Reinitiation Notice.

In summary, the enclosed May 11, 2010 BO is formally amended by the modifications outlined in this letter and is effective through December 31, 2020. Thank you for your cooperation, and please contact Ms. Susi von Oettingen at (603) 223-2541, extension 22, if you need any further assistance.

Sincerely yours,



Acting For
Thomas R. Chapman
Supervisor
New England Field Office

Enclosure

Mr. George F. Price, Jr.
February 26, 2015

6

cc: Reading file
Jason Taylor/CCNS via email
Mary Hake/CCNS via email
Jon Regosin/MADFW via email
ES: SvonOettingen:2-26-15:603-223-2541