

Piping Plover Habitat Conservation Plan (HCP) Work Group
May Meeting
May 9, 2014
Hyannis, Massachusetts
Draft Meeting Summary

The Massachusetts Division of Fisheries and Wildlife convened the first meeting of a Working Group of municipalities, land managers, and affected stakeholder groups to initiate a process for creating a statewide Habitat Conservation Plan for Piping Plover management. A list of attendees is attached.

Introductions and Background

The participants introduced themselves. Jon Regosin, MA DFW, noted that the goal of this process is for the Commonwealth, in close consultation with stakeholders, to develop a mechanism through a state-wide Habitat Conservation Plan (HCP) that promotes the conservation of the federally and state listed Piping Plover while providing increased flexibility for beach managers.

Habitat Conservation Plans (HCP) and Incidental Take

Susi VonOettingen, US FWS, presented general information on HCPs and related Incidental take permits (ITPs). Presentation slides are available at:

<http://www.cbuilding.org/project/massachusetts-piping-plover-habitat-conservation-plan>

A HCP is required as part of an application for an incidental take permit under Section 10 for non-federal actors (Section 7 refers to obligations other federal agencies have to consult with the FWS when proposing actions). HCPs describe the anticipated effects of the proposed taking, how the proposed impacts will be minimized/mitigated, and how the HCP will be funded.

An incidental take is incidental to, and not the purpose of, carrying out an otherwise lawful activity. The Endangered Species Act (ESA) recognizes that non-federal projects may “take” federally listed species while ensuring overall their long-term survival and enhancement. This requires a HCP (Section 10 of ESA). The HCP process involves other agencies to ensure compliance with federal, state, and local laws and strives to be a transparent process (NEPA portion must be public). This process uses good science and the best available information. In preparing a HCP, species that are currently “candidates” or proposed for listing must be treated as if they are listed (e.g., Red Knot). It should be noted that actions under a HCP to benefit a target species might benefit several species (or, have impact to them as well).

The USFWS has two roles to play in this process. The FWS wants and will serve as a technical advisor on biological/ecological issues, permit requirements, permitting process/NEPA, and implementation during the HCP process. But the Service is also the regulator for compliance and thus there may be discussions best left to the state and stakeholders, and not the FWS.

The applicant's role/responsibility is to understand ESA section 10 and NEPA, secure funding for HCP and NEPA document preparation, and to ensure that it meets the issuance criteria. The HCP should be prepared in compliance with the ESA regulations and policies. Funding should be secured for implementation of the HCP. Without a clear implementation plan, including funding, a HCP would not be approved.

Components of the HCP to consider include: permit duration (years), determined incidental take (how many individuals), conservation measures, management program, monitoring program (to ensure take is not exceeded), and other issues. There are several key criteria necessary to fulfill in order to have a HCP issued: taking will be incidental, any take will be minimized or mitigated, and any take will be will not reduce the likelihood of survival or recovery of the wild population.

Regarding public engagement, when HCPs are large in scale, it is beneficial to have a steering committee. Additionally, subcommittees may be formed (e.g., species working groups, liaison team, funding team).

A participant asked: how would the State process overlay with the Federal process? FWS noted that the HCP is an umbrella permit, granted to the State, which would authorize a certain amount of take throughout Massachusetts. The HCP would be granted to the State and beach managers would go to the State for a HCP "sub-permit" (certificate of inclusion) and a State-MESA permit.

Status of the Piping Plover

Susi VonOettingen, US FWS, presented on the general status of the Piping Plover. Presentation slides are available at: <http://www.cbuiding.org/project/MAHCP>.

Ms. VonOettingen noted the following. Although Piping Plovers are doing well in Massachusetts, it is very unlikely that the Atlantic Coast population would meet Federal delisting requirements in the near future. There are 5 delisting requirements that would need to be met. Of the five, two key metrics for the recovery of the species are abundance (with a geographic distribution) and productivity. First, there must be at least 2000 breeding pairs distributed among 4 recovery units, three in the US and one in Canada. This includes: Atlantic Canada – 400 pairs; New England - 625 pairs; NY/NJ – 575 pairs; and, DE/MD/VA/NC – 400 pairs. Second, a five-year average breeding productivity of 1.5 chicks/pair/year in each of the 4 recovery units is required. The other three criteria include verifying adequacy of 2000 pairs to maintain long-term heterozygosity and allelic diversity, long-term agreements to assure

protection and management to maintain target population and productivity, and long-term maintenance of wintering habitat are required for delisting.

Although New England is above recovery goals, the other regions are below those goals, and all regions now face the increasing uncertainty (sea-level rise, storm frequency) posed by climate change. Massachusetts's recent productivity numbers are also of some concern. In New England, the last three years, there have been over 800 pairs. But Eastern Canada has been only at 200 (about 50% of the goal), New York and New Jersey around 400 the last few years (about 66% of the goal), and the Southern at around 400, close to but just short of the goal.

Participant Expectations for the Process and the HCP

Participants were given the opportunity to name their concerns, expectations, and hopes for the process and developing a state-wide HCP. A summary of comments, without attribution, are noted below.

Overall Goals

- Long-term recovery
- Greater flexibility
- Balance
- Fair and reasonable access
- Solutions through cooperation and collaboration
- Increased stakeholder support and buy-in
- Streamlined process (rather than town-by-town HCPs)
- Updated Orders of Conditions from the original DEP/CC wetlands documentation
- A state-wide framework recognizing the uniqueness of particular resources/geographies
- Recognizing and dealing with climate change/sea level rise

Potential Activities to be Part of a HCP

- Reduced buffers for symbolic fencing
- Seaweed accumulation management (beach-raking)
- Increasing volunteers and pooling resources for needed activities
- Parking area/main access road management when plovers nest near or on
- Escorts of ORV's around pinch points
- Coordination with US Army Corps of Engineers (ACOE) beach restoration/nourishment
- Working with and addressing over wash (both as a threat to the nests and eggs as well as an opportunity for increasing habitat)
- Habitat management such as reducing overgrown vegetation, restoring better habitat for the birds
- Increasing monitoring and management in remote or under sourced areas to determine full extent of numbers
- On site mitigation
 - Possible to have "trading" within a jurisdiction or town?

- Off site mitigation
 - How far can the geography extend -- to winter habitat?
- State-wide improved communication and communication tools such as common messages, hand outs, a clearinghouse of information/resources

Predator Management

The participants also discussed the role that predator management might or not play in this process and in a HCP. Many expressed the view that predation from particular individual foxes, raccoons, gulls, and others is a substantial problem limited further recovery and that it needs to be addressed for successful conservation. However, many, though not all, participants do not see lethal predator control as a politically or necessarily principled option to protect plover nests and young. Some noted that it is important to be clear about what predator management is about: it is about targeting problematic individuals, not whole species or classes of animals. Participants suggested a range of possible ideas noted below.

- Lethal control as a last resort, but a tool in some cases
- A tiered approach with lethal control as the last of many other efforts
- Innovative, non-lethal pilots or innovations
- Education on the focus on individuals, not species
- Utilizing existing hunting season permits/seasons as a framework for intensifying or focusing efforts where most needed
- Involving USDA and its role
- Bringing in experts to explore a host of innovative options

Approach to the HCP

Jon Regosin, MA FWS, laid out an overall, draft approach to how the HCP might be constructed. It would likely include these key components.

- Level of Take – Statewide limits
- Types of take
- Site-specific Eligibility Requirements
- System to ensure equitable distribution of take among sites
- Impact minimization
- Net benefit Mitigation
 - On-site Options
 - Off-site (Pay into “bank”; requires enough banking credits to be available)

The participants discussed various issues this raised. US FWS reminded people that the USFWS has limited flexibility with handling plover issues due to laws and regulations as well as staff resources. The Commonwealth noted that for the HCP, the annual take limit for Massachusetts will likely be set based on the plover population size in prior years. The level of take will be

restricted to nests or unfledged chicks (no take of adults or fledged young). The Commonwealth also noted that there will need to be a discussion on how the take permits will be distributed, especially when more towns or entities want them than there are ITPs to grant given the population. The group also discussed the role of current activities above and beyond expected actions in the protocols and if they could be given “credit.” It was noted actions taken to meet requirements and prevent take cannot be counted as “extra credit” mitigation. All agreed this is complicated and would have to bear further dialogue. Participants also discussed the idea of off-site mitigation. For example, on or off-site plover management areas could be established (no vehicles, no pets, predator enclosures, predator control, etc.) to create possible credits and off-site mitigation might be channeled toward wintering ground conservation efforts elsewhere as long as the MA population of birds is known to winter in such places (i.e. the Bahamas).

Process and Timeline

The participants then discussed the process and timeline for moving forward. The participants made suggested changes to the process protocols. A revised draft will be distributed to the group soon after the meeting.

The MA DFW noted that they would reach out to other potentially interested towns and let them know of the process. To accomplish the HCP in a timely manner, participants noted that they will need to work diligently beginning with half-day monthly meetings starting in June. Additionally, stakeholders would have to do some work between meetings to keep things moving as well as staying in touch with the Service to ensure that the work is on the right track. A federal grant has been applied for to fund the development of the HCP, and the Commonwealth should hear back on this around mid July. If this doesn’t come through, the process will be more difficult, but MassWildlife is committed to continuing with developing the state-wide HCP.

The FWS noted the timelines for submitting a HCP, completing a EA, and various FWS reviews. The FWS will provide a standard timeline for use. The group noted that to get the HCP in place for the 2016 season. The following would need to take place:

- Submit a HCP to the USFWS by the end of 2014.
- The Service would then have a decision by late 2015, although USFWS guidance documents suggest that this could be sooner.
- Individual permits under the state-wide permit could be issued by the spring/bird 2016 season.

The facilitator and DFW noted that they would prepare a meeting summary and send around a scheduler for future meetings, revised meeting protocols, and the FWS timeline, once received.

Attendees

Name	Affiliation
Kerin McCall	Plymouth
Sean Summers	Chatham
Robert Duncanson	Chatham
Mark Galkowski	Sandwich
David DeConto	Sandwich
John Hodgson	Orleans
Nina Coleman	Barnstable
Russell Hopping	TTOR
Kathy Parsons	MassAudubon
Luanne Johnson	Biodiversity Works
Jon Regosin	MassWildlife
Carolyn Mostello	MassWildlife
Ann Canedy	Barnstable
Daniel Gilmore	DEP
Ellen Jedrey	MassAudubon
Jack Buckley	MassWildlife
Kerry Muldoon	Yarmouth
Andrew Vitz	Mass Wildlife
Scott Morris	MBBA/Nauset Beach
Jorge J. Ayub	MA DCR
Nathan Sears	Orleans