

Managing beaches for piping plovers in New England

What landowners need to know

We use our coastal beaches for recreation, they protect adjacent land from storms, and they provide habitat for wildlife. Coastal beaches from North Carolina to Newfoundland are the summer home for the uncommon piping plover, a small shorebird protected as threatened under the Endangered Species Act.

To balance the continued survival of the piping plover with the enjoyment of coastal beaches, special management practices are required.

Piping plover basics

These small, sand-colored shorebirds arrive on our beaches in late March to early April. The males establish territories and begin courting the females. The males make several scrapes – small, shallow depressions in the sand. The females choose which scrape to use and usually lay four eggs. The eggs hatch in about 25 days.

The tiny, down-covered chicks are quickly able to follow their parents and learn where to find marine worms, beetles, crustaceans, mollusks and other invertebrates. The plover's richest food sources are located in the ocean and bayside intertidal zone, ephemeral pools, the wrack line and sparse vegetation.



Heidi Hanlon/USFWS

Piping plover chicks in nest

Piping plovers and disturbance

The small size of piping plover chicks, their camouflage coloring, and their habit to remain motionless when a threat approaches put them at high risk from human disturbance. When people, pets, kites and fireworks come too close to a nest, they may flush the incubating parents. When the parents leave the nest, the eggs can become overheated or cool down, damaging the developing chicks. Hand-held kites, kite-buggies, and surfkites are especially alarming to plovers; scientists believe plovers see kites as threatening predatory birds.

Very young chicks can also be trapped in the ruts left by vehicles. Beach raking machines can scoop up and kill chicks and remove a vital food source for chicks and adults. Pets, especially dogs off-leash, can harass and kill chicks too.

The **intertidal zone** is the sand area exposed during low tide and underwater during high tide.

The **wrack line** is the beach area where organic material accumulates, including seaweed, seashells, driftwood and other natural materials.

A **symbolic fence** consists of one or two strands of string tied between posts to delineate areas where beach users should not enter.

Special management for piping plovers

Beach management practices can help or harm the survival of piping plovers on our coastal beaches. Below is a partial list of special management practices that will help piping plovers.

To best determine which of these management practices to follow on your property, you will want to meet with a piping plover biologist or monitor. Beach managers and landowners are urged to implement these recommendations to lessen the chance of violating the Endangered Species Act.



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Piping plover parent with chick

In New England, we highly recommend the following management practices from April 1 through Aug. 31:

1. Install a symbolic fence around plover courtship habitat and at least 50 meters (55 yards) from plover nests. This will prevent disturbance to nesting adults, protect eggs and provide a safe place for newly hatched chicks.
2. Ensure all human activities are outside the fenced area.
3. Post warning signs along the fence.
4. Require dogs to be on leashes. We recommend short leashes.
5. Prohibit feral cats and keep pet cats indoors.
6. Do not leave or bury trash on beaches (trash attracts predators).
7. Work with a plover monitor or biologist to identify what areas of the beach should not be raked.
8. Prohibit kite flying within 200 meters (219 yards) of fenced areas.
9. Prohibit fireworks on beaches with plovers.
10. Implement motor vehicle management recommendations in the recreational activities guidelines (see Web page).

The complete "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" can be found at <http://www.fws.gov/northeast/pipingplover/recguide.html>.

Endangered Species Act responsibilities

Under the Endangered Species Act, any person may be held responsible for the take of a threatened species.

Endangered Species Act definitions

Threatened species are plants and animals likely to become endangered within the foreseeable future throughout all or a significant portion of their ranges.

Person refers to any individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the federal government, or of any state, municipality, or political subdivision of a state.

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

Harass means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.

Harm means an act that actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

Federal penalties for the take of a piping plover adult, chick or egg under the Endangered Species Act

Criminal

- Up to 6 months imprisonment and/or
- Up to a \$25,000 fine

Civil

- \$12,000 – for a knowing violation
- \$500 – for a strict liability violation



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Piping plover

For more information about piping plovers, see http://www.fws.gov/northeast/piping_plover

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Energy and Environmental Affairs

MA Endangered Species Act (MESA) Overview

Note: The 14th Edition of the Natural Heritage Atlas has not yet been released. Until the 14th Edition is published, the 13th Edition (2008) Atlas will remain in effect.



Bartram's Shadbush, Threatened.
Photo by Paul Somers.

The Massachusetts Endangered Species Act (MESA) was enacted in December 1990 (M.G.L. c. 131A). Implementing regulations were promulgated in 1992 and most recently revised and implemented as of October 15, 2010 (321 CMR 10.00).

The Massachusetts Endangered Species Act protects rare species and their habitats by prohibiting the "Take" of any plant or animal species listed as Endangered, Threatened, or Special Concern by the MA Division of Fisheries & Wildlife. "Take" is defined as, "in reference to animals to harass, harm, pursue, hunt, shoot, hound, kill, trap, capture, collect, process, disrupt the nesting, breeding, feeding or migratory activity or attempt to engage in any such conduct, or to assist such conduct, and in reference to plants, means to collect, pick, kill,

transplant, cut or process or attempt to engage or to assist in any such conduct. Disruption of nesting, breeding, feeding or migratory activity may result from, but is not limited to, the modification, degradation or destruction of Habitat." Permits for "taking" rare species for scientific, educational, conservation, or management purposes can be granted by the Division of Fisheries & Wildlife.

The Massachusetts Endangered Species Act and its implementing regulations establish procedures for the listing and protection of rare plants and animals and outline project review filing requirements for projects or activities that are located within a Priority Habitat of Rare Species ("Priority Habitat"). The MESA regulations also provide clear review timelines and establish an appeal process for agency actions.

For projects within Priority Habitat, options under MESA may include one or more of the following:

- [Request state-listed species information](#)
- [Consult with Review staff for project planning purposes](#)
- [MESA Project Review and determinations](#)
- [MESA Conservation and Management Permit](#)
- [Survey protocols and scientific collection permits](#)

Click [here](#) for additional information on MESA grandfathering, emergencies, appeals, and penalties.

Information Requests

Site specific state-listed species information for regulatory review can be requested from the NHESP by submitting a [MESA Information Request Form](#) . This is not required as part of a MESA Project Review, however, it may be useful for project proponents to request this information prior to development of site plans.

If you are requesting information for habitat management or conservation purposes and you are a non-profit conservation group, government agency or working with a government agency fill out a [Data Release Form](#) . Do not fill out a MESA Information Request Form.

Pre-filing Consultation

For large projects, we suggest that proponents contact the NHESP early in the planning stage to discuss potential MESA issues. In order to engage a review biologist in a pre-filing consultation, submit a project narrative, conceptual site plans, locus map and any other pertinent information regarding the proposed project. This can be done in conjunction with the Information Request process.

MESA Project Review

If a project falls within Priority Habitat of Rare Species and does not qualify for a MESA filing exemption, proponents must file with the NHESP. Priority Habitat is defined as "the geographic extent of Habitat for state-listed species" as delineated



Regulatory Review Contact Information

Regulatory Review Forms

[MESA Information Request Form](#)

[MESA Project Review Checklist](#)

[Data Release Form](#)

[Application Guidelines for MESA CMP](#)

[Commercial Scientific Collection Permit Application](#)

[See All](#)

MESA Resources

[MA Endangered Species Act \(MESA\) Overview](#)

[10.14 Exemptions from Review for Projects or Activities](#)

[10.13 Projects or Activities Not in Priority Habitat](#)

[MESA Fee Schedule](#)

[MESA Decisions & Applications](#)

[See All](#)

Regulatory Review Resources

[Regulatory Review](#)

[Regulatory Review Contact Information](#)

[Regulatory Review Fact Sheet](#)

[Regulatory Review FAQs](#)

[MA Endangered Species Act \(MESA\) Overview](#)


[See All](#)

MA Endangered Species Act (MESA)

by the Division pursuant to 321 CMR 10.12. The NHESP understands that there are project proponents who have taken significant action towards implementing a project in reliance on an earlier edition of the Atlas that showed that the project site was not located in Priority Habitat but have since been mapped. Some such projects may not be subject to MESA review if certain permitting milestones have been met pursuant to 10.13(2). MESA also includes Performance Standards for Obtaining a No Take Determination for Certain Activities pursuant to 321 CMR 10.18(5).

Proponents should note that if they are required to file with the local Conservation Commission pursuant to the Wetlands Protection Act and the proposed project is within Estimated Habitats for rare wetland wildlife, a copy of the filing must be submitted to the NHESP, even if the project qualifies for a MESA filing exemption.


See Regulatory Review for more information on the project review process.

Click [here](#) for a list of recently submitted projects filings and final decisions and [here](#)  for a table outlining the MESA Determinations by fiscal year for FY2008-FY2012.

Conservation & Management Permits

If during the MESA Project Review it is determined that a project will result in a "take" of a state-listed species, the project may be eligible for a Conservation and Management Permit (321 CMR 10.23).


To be eligible for a Conservation & Management Permit, the applicant must first (1) assess alternatives to both temporary and permanent impacts to state-listed species. Thus, certain projects that can be redesigned to avoid a "Take" may not be eligible for a Conservation & Management Permit. The Permit applicant must also (2) demonstrate that a proposed project will impact an insignificant portion of the local population of an affected state-listed species. Finally, the applicant must (3) design and implement a conservation and management plan that provides a long-term Net Benefit to the conservation of the affected state-listed species.

For more information, see the MESA Conservation and Management Permit Process page and read our Guidelines for preparing a Conservation and Management Permit Application .

[Click here](#) for a list of recently submitted permit applications and issued Permits.

Survey Protocols and scientific collection permits

Rare Species Survey Protocols - If necessary, the NHESP may request that a project proponent retain a qualified biologist to conduct a Rare Species Habitat assessment or survey for rare species. Please read this section for more information about Rare Species Habitat Assessments, Botanical Survey Protocols and Mussel Transplant Protocols.

Commercial Scientific Collection Permit Application  - Biologists conducting surveys for project proponents must be in possession of a valid Commercial Scientific Collection Permit for the project site in order to handle any state-listed species.



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[Return to Home](#)

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- [Contact Finder](#)

- [Ecological Services Home](#)
- [Emergency Consultation Procedures Hurricanes - Fires - ETC](#)
- [Consultation](#)
- [Listing and Critical Habitat Program](#)
- [Recovery](#)
- [Section 10 Permits](#)
 - [Frequently Asked Questions](#)
 - [National Permit Site](#)
- [Working with States](#)
 - [General Information](#)
 - [Press Releases](#)

- [Habitat Conservation & Environmental Contaminants](#)
- [Contaminants](#)
- [FERC Activities](#)
 - [Emergency Response Process](#)
 - [Fire Programmatic Plan](#)
 - [Field Office Contacts](#)
 - [Hurricane Response Letter](#)
 - [Retardant Use Plan](#)
 - [Salvage Timber -- Mississippi](#)

Habitat Conservation Plans and Incidental Take Permits

Frequently Asked Questions

- [What is a "Habitat Conservation Plan" and an "Incidental Take Permit"?](#)
- [Who Needs an Incidental Take Permit?](#)
- [What are the benefits of an Incidental Take Permit and Habitat Conservation Plan to a private landowner?](#)
- [What species can be included in an HCP?](#)
- [Are Incidental Take Permits needed for listed plants?](#)
- [What is the process for getting an Incidental Take Permit?](#)
- [What needs to be in an HCP?](#)
- [Who approves the application and HCP?](#)
- [What other laws besides the Endangered Species Act are involved?](#)
- [Who is responsible for NEPA compliance?](#)
- [Does the public get to comment on an HCP? How do public comments affect an HCP?](#)
- [Who monitors HCP compliance, and what happens if someone fails to comply?](#)

1. What is a "Habitat Conservation Plan" and an "Incidental Take Permit"?

FWS authorizations called "Incidental Take Permits" are required when **non-federal activities** will result in "take" of threatened or endangered species (as defined in the Endangered Species Act, or ESA). The FWS's decision to issue a permit is based upon a conservation plan, which must accompany an application for incidental take. This

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- [Section 7 Flowchart - Emergency](#)
- [NEPA](#)
- [Division of Conservation Partnerships](#)
- [Strategic Habitat Conservation](#)
- [Priorities of the Southeast Region](#)
- [Partners for Fish & Wildlife](#)
 - [How Can I Help](#)
 - [Definitions](#)
 - [Candidate Conservation Pilot Action Plan](#)
 - [Criteria](#)
 - [Highlights](#)
 - [Strategic Plan](#)
 - [State Fact Sheets](#)
- [Coastal Program](#)
 - [General Information](#)
 - [Coastal Grant Program](#)
 - [CBRA](#)
 - [Coral Reef Mitigation Report](#)
 - [Strategic Plan](#)
 - [Fact Sheets](#)
 - [U.S. Ocean Action Plan](#)
- [National Wetlands Inventory](#)
- [Partnerships in the Spotlight](#)

type of plan is often referred to as a "Habitat Conservation Plan" or "HCP." The purpose of the HCP and permit is to allow these activities by determining and minimizing the level of take and minimizing and mitigating for that take to the maximum extent practicable.

 [Return to Top](#)

2. Who Needs an Incidental Take Permit?

Anyone who believes that his/her "otherwise lawful activities" will result in take of a listed species. Staff from the [field office for your area](#) can help you determine whether your proposed project or action is likely to result in take and whether the permitting process is an option to consider. FWS personnel can also provide technical assistance to help you design your project so as to avoid take.

 [Return to Top](#)

3. What are the benefits of an Incidental Take Permit and Habitat Conservation Plan to a private landowner?

They allow a landowner to legally proceed with an activity that would otherwise result in illegal take of a listed species. In addition, an HCP and Incidental Take Permit provide a landowner with certainty about the kinds of activities that can legally be conducted on his or her land now, and in the future. An HCP also allows a landowner to determine how best to meet the agreed-upon fish and wildlife management goals.

 [Return to Top](#)

4. What species can be included in an HCP?

The species in an HCP are those that the applicant chooses to include. The FWS encourages inclusion of all listed species, species that are proposed and candidates for listing, and other species if enough information is available to analyze the impacts of the activity or project and determine adequate mitigation for those species.

 [Return to Top](#)

5. Are Incidental Take Permits needed for listed plants?

There are no federal prohibitions under the ESA for the take of listed plants on nonfederal lands, unless taking of those plants is in violation of state law. Before the FWS issues a permit, however, the effects of the permit on listed plants must be analyzed.

 [Return to Top](#)

6. What is the process for getting an Incidental Take Permit?

U.S. Fish and Wildlife Service: Endangered Species Program

While [field office](#) personnel provide you detailed guidance throughout the process, development of an HCP is driven by the applicant's schedule. The applicant is in charge of deciding whether to pursue a permit and who will assist in planning. Personnel from the FWS are there to give you technical and procedural guidance and to process applications. The necessary components of a completed permit application are: a standard application form and the HCP. The length of time to complete the permitting process depends on the complexity of issues involved, the completeness of the documents submitted by the applicant, and the willingness of the applicant to work with the FWS to resolve the details of the HCP process. Once a completed application is forwarded to the FWS's Regional Office, the typical processing time to issuance/denial of the application is about 100 days. Small, non-controversial applications have been processed in as little as 70 days.

 [Return to Top](#)

7. What needs to be in an HCP?

Contents of a complete HCP are defined in section 10 of the ESA and its implementing regulations. They include:

- Impacts likely to result from the proposed taking of one or more federally listed species.
- Measures the permit applicant will undertake to monitor, minimize, and mitigate for such impacts; the funding that will be made available to implement such measures; and the procedures to deal with unforeseen circumstances.
- Alternative actions to the taking that the applicant analyzed, and the reasons why the applicant did not adopt such alternatives.
- Other, agreed-upon measures that may be necessary or appropriate to ensure success of the HCP.

 [Return to Top](#)

8. Who approves the application and HCP?

The Deputy Regional Director of the FWS's Southeast Region decides whether to issue a permit based on findings that:

- the taking will be incidental to an otherwise lawful activity;
- the impacts will be minimized and mitigated to the maximum extent practicable;
- adequate funding will be provided to ensure that the HCP will succeed;
- the taking will not appreciably reduce the likelihood of the survival and recovery of the species; and
- any other necessary measures specific and agreed-upon for the project are met.

 [Return to Top](#)

9. What other laws besides the Endangered Species Act are involved?

In issuing these permits, the FWS must comply with the National Environmental Policy Act (NEPA) and all other statutory and regulatory requirements. HCPs require an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). It is important to note that a permit's validity is contingent upon the project complying with all other state, local, and federal laws. For example, obtaining a permit from the FWS

does not preclude the need to obtain approval from local governments regarding land use and zoning and other issues outside of the authority of the FWS.

 [Return to Top](#)

10. Who is responsible for NEPA compliance?

The FWS is responsible for NEPA compliance. Sometimes the FWS does not have sufficient staff resources to prepare all appropriate NEPA documents in the time frames desired by most permit applicants. Applicants are encouraged to assist the FWS in preparation of the NEPA documentation for the project. The FWS will be actively involved in preparing the NEPA document and is required to make an independent evaluation of the environmental issues, ensure the accuracy of the information presented, and take responsibility for the document's scope and content.

 [Return to Top](#)

11. Does the public get to comment on an HCP? How do public comments affect an HCP?

The ESA requires public comment on the application for a permit, usually for a 30-day period via an announcement in the Federal Register, a daily publication of the Federal Government. Subscriptions to the Federal Register are available and most regional libraries and government repository libraries have subscriptions. After the close of the public comment period, the FWS evaluates the information, views, and concerns of the public and these must be considered in the permit decision.

 [Return to Top](#)

12. Who monitors HCP compliance, and what happens if someone fails to comply?

The FWS or any party designated as responsible in the permit and/or associated agreements (e.g., state wildlife agency or local government) will monitor the project for compliance with its terms and conditions. Generally, the terms and conditions of the permit will identify important milestones and accomplishments that must be achieved for the permit to remain valid. Certainly, it is in the interest of both the FWS and the entity holding the permit to quickly resolve non-compliance issues. The affected [FWS field office](#) actively monitor permits after they have been issued. However, violation of the terms of an Incidental Take Permit are a violation of the ESA. The penalties are prescribed by law.

 [Return to Top](#)

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