



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Maine Field Office – Ecological Services
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In Reply Refer To: 53411-2010-TA-0034
FWS/Region5/ES/MEFO

December 16, 2010

Catherine Rogers
Department of the Army
New England District, Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

Dear Ms. Rogers:

Thank you for your letter dated September 24, 2008 requesting information or recommendations from the U.S. Fish and Wildlife Service (Service). This letter provides the Service's response pursuant to Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531-1543), Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d, 54 Stat. 250) and the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661-667d).

Project Name: Camp Ellis Beach Shoreline Protection Project

Federally listed species

The federally threatened piping plover is known to occur in the project area. Piping plovers last nested at nearby Ferry Beach State Park in 2007. Eroded beach conditions in the Camp Ellis area have prevented plovers from nesting on this portion of Ferry Beach in recent years.

Your letter describes proposals to dredge about 410,000 – 460,000 cubic yards of sand from the Saco River Federal navigation project and nourish Ferry Beach. Adding 60 feet of berm width and minimizing erosion will create habitat for nesting piping plovers. It is imperative that the Corps consult with the Service on this project under Section 7 of the Endangered Species Act. As with other beach nourishment projects, we will require assurances from the Corps that this habitat will be managed in a way that will not result in the take of this federally-listed species. Throughout the Northeast, piping plover beach management agreements have been routinely requested by the Service where Corps dredging and beach nourishment may affect piping plover habitat. For example, a piping plover beach management agreement was required as part of the Scarborough River Maintenance Dredge Federal Navigation Project and will be required of the Wells Beach Nourishment Project.

As part of the consultation process, the Service requests that the Corps determine the ownership of Ferry Beach and develop a process to assure management of the beach for piping plovers. The Service and Maine Inland Fisheries and Wildlife currently have no piping plover beach



management plans with the town of Saco or private landowners on Ferry Beach, however, there are other beach management plans in Maine (Scarborough, Wells, Ogunquit, Old Orchard Beach) that could serve as models.

Below are the current standard piping plover special conditions that we request of the Corps include as terms and conditions in permits they issue throughout the Northeast region to avoid adversely affecting the piping plover.

1. Any suitable piping plover habitat created by work performed under this authorization shall be managed in accordance with the Service, Northeast Region, April 15, 1994 document titled, 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") for managing recreational beaches when federally listed piping plovers are present. See www.fws.gov/northeast/pipingplover/recguide.html.

2. Before work takes place, assurance of plover management must be provided to the Service through a management plan implemented by the permittee or a signed management agreement between the permittee and a qualified entity. The Service must approve the management plan. Permittees must contact Mark McCollough, U.S. FWS at (207) 866-3344 x115 or mark_mccollough@fws.gov for information on preparing a management agreement and its approval. Beach management agreements would meet this condition if:

- The plan contains signed permission from all landowner permissions to allow piping plovers to be managed on Ferry/Camp Ellis beach.
- Paths from private residences to the beach should be consolidated and shared.
- The town's piping plover manager will assume responsibility for installing and taking down stake and twine to symbolically fence plover nesting areas.
- Dogs can be present on the beach only on a leash during the piping plover nesting season (April 1 to September 1).

A signed copy of the Ferry Beach piping plover beach management plan should be attached to the Corps permit or authorization.

3. Beach nourishment in existing plover habitat should maintain a 10:1 slope and have no vegetation plantings.

4. Each year, a qualified piping plover monitor shall determine whether suitable piping plover nesting habitat exists at that site as evidenced by piping plovers, nest scrapes, or nests. If such habitat is present, it shall be posted with warning signs and/or "symbolic fencing" before April 1 of each year and managed according to the Guidelines. A qualified piping plover monitor is a person who has the skills, knowledge, and ability to conduct monitoring.) ("Symbolic fencing" refers to two strands of light-weight string, tied between posts to delineate at least a 50 meter radius around nest areas where pedestrians, domestic animals and vehicles should not enter.)

5. Each year, a qualified monitor shall conduct surveys and determine whether suitable piping plover nesting habitat exists at disposal sites that have received dredged material under this authorization. If such habitat is present, it shall be posted with warning signs and/or "symbolic fencing" by April 1 of each year and managed according to Guidelines referenced above.

6. On suitable piping plover nesting habitat, all construction and beach nourishment activities are prohibited during the period March 30 to September 1 of each year, unless the Service

(Supervisor, Maine Field Office, 17 Godfrey Drive, Suite #2, Orono, ME 04473 (207) 866-3344) is notified two weeks prior and:

- a. A qualified monitor is in place by April 1 to document location and activities of breeding plovers and to observe disposal activities relative to plover activities during the disposal period. In any calendar year pre-activity surveys shall begin at least one week prior to April 1 or one week prior to the commencement of any on-site project activity, whichever occurs first. On at least four non-consecutive days the piping plover monitor shall survey the project area (including landing, staging, operation, sand-transport and beach nourishment areas) for the occurrence of territorial, courting or nesting piping plovers. Each day's monitoring shall consist of two separate surveys conducted during different times of the tidal cycle;
- b. Dredge/disposal activities are located 100 meters or more from piping plover territories and/or nests;
- c. Plovers are monitored continuously and, if it is determined that piping plovers are disturbed by the activity, (1) all work ceases immediately and (2) the Service is notified immediately at (207) 866-3344 for further consultation. Piping plover monitoring field notes shall be provided to the Service upon request. Piping plover monitoring is the process of observing and recording data on piping plover breeding activities without causing disturbance to the birds under observation. Monitoring is done during the entire time project activities are being carried out on the beach. Monitoring includes, but is not limited to, detecting and recording locations of territorial and courting adults, locating nests and incubating adults, locating broods, interpreting piping plover behaviors, and documenting observations in legible, complete field notes. Except to determine the number of eggs in a newly discovered nest, monitoring is done using binoculars or spotting scopes from a distance of at least 50 meters;
- d. If a crushed nest or a dead piping plover chick or adult is found, the permittee immediately contacts the Division of Law Enforcement, U.S. FWS, Office of Law Enforcement, 70 Everett Avenue, Suite 315, Chelsea, MA 02150; (617) 889-6616.

If these conditions are met we would concur with a determination from the Corps that this project is not likely to adversely affect the piping plover and we could conclude this consultation informally. If these conditions cannot be met, we believe this project is likely to adversely affect the piping plover and we would enter into formal consultation with the Corps. The state of Maine Endangered Species Act, Sand Dune Regulations, and Natural Resource Protection Act will require similar assurances. We request that the Corps conduct a process of bringing state and federal regulators, municipality, and beach owners together to assure the beach nourishment project is conducted in such a way to avoid adverse effects and take of the threatened piping plover.

Other protected species

We have not reviewed this project for state-threatened and endangered wildlife, wildlife species of special concern, and significant wildlife habitats protected under the Maine Natural Resources Protection Act. We recommend that you contact the Maine Department of Inland Fisheries and Wildlife

Steve Timpano
Maine Department of Inland Fisheries and Wildlife
284 State St.

State House Station 41
Augusta, ME 04333-0041
Phone: 207 287-5258

I recommend that you contact the Maine Natural Areas Program for additional information on state-threatened and endangered plant species, plant species of special concern, and rare natural communities.

Lisa St. Hilaire
Maine Natural Areas Program
Department of Conservation
93 State House Station
Augusta, ME 04333
Phone: 207 287-8046

Bald eagles

Occasional, transient bald eagles (*Haliaeetus leucocephalus*) may occur in the area. Based on the information currently available to use, there are no bald eagle nests near your project. The bald eagle was removed from the federal threatened list on August 9, 2007 and is now protected from take under the Bald and Golden Eagle Protection Act (Eagle Act) and the Migratory Bird Treaty Act. "Take" means to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb. The term "disturb" under the Eagle Act was recently defined within a final rule published in the Federal Register on June 5, 2007 (72 Fed. Reg. 31332). "Disturb" means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle; 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior; or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.

Further information on bald eagle delisting and their protection can be found at <http://www.fws.gov/migratorybirds/baldeagle.htm>.

Please consult with our new national bald eagle guidelines, which can found at <http://www.fws.gov/migratorybirds/issues/BaldEagle/NationalBaldEagleManagementGuidelines.pdf>.

These Guidelines are voluntary and were prepared to help landowners, land managers and others meet the intent of the Eagle Act and avoid disturbing bald eagles. If you believe your project will result in taking or disturbing bald or golden eagles, please contact our office for further guidance. We encourage early and frequent consultations to avoid take of eagles.

Your letter requests initiation of consultation under Section 7(a)(2) of the ESA. You should continue to closely coordinate with our Maine Field Office during development of the Ferry Beach/Camp Ellis Beach and Saco River Federal Navigation Project, particularly as you consider impacts to the piping plover.

When the project details have been determined, the Service requests that the following information relating to endangered species be included in your Environmental Assessment. When the Service receives a final Environmental Assessment and letter providing assurances the recommendations outlined above will be met, we will concur with the Corps that there is "no adverse effect" of this project on piping plovers and conclude informal consultation.

Information to include:

- 1) A complete and final description of the action - The Service requires an Environmental Assessment (EA) that identifies the final choice of the site for disposal of sand. The deposition and nourishment actions are interrelated and interdependent. Details of both the deposition and nourishment projects should be outlined in the EA.
- 2) A final description of the specific area affected by the action - The Service will need maps describing the extent of the beach nourishment project(s).
- 3) A description of listed species/critical habitat that may be affected - A list of the threatened and endangered species and critical habitats affected by this project.
- 4) A description of the manner in which the listed species may be affected - A description of the direct, indirect, insignificant and discountable, and beneficial effects of the project on piping plovers should be included in the EA.
- 5) Relevant reports prepared on the proposal - The Service requests that a summary of the verbal and written reports by of the professional coastal geologist consulted as part of our informal consultation be included in the final EA.

At this time, the Service has no further comments to offer related to the potential impacts on fish and wildlife resources other than the piping plover. Pursuant to the Fish and Wildlife Coordination Act, we may offer additional comments as your planning process continues.

Please address all future correspondence on this project to the Maine Field Office, U. S. Fish and Wildlife Service, 17 Godfrey Drive, Suite #2, Orono, ME 04473 (not the New England Field Office in Concord, NH).

We encourage meetings with the Corps, state regulatory agencies, landowners, and the town of Saco. If the Corps arranges such meetings, we request that the Maine Department of Inland Fisheries and Wildlife (MDIFW) and Maine Department of Environmental Protection be present at these meetings. We understand, the state is considering similar conditions for state-permitting of this project. MDIFW has been a signatory to all other piping plover beach management plans in Maine. If you have any questions, please call Mark McCollough, endangered species biologist, at (207) 866-3344 x115.

Sincerely,



Antonio Bentivoglio,
Acting Project Leader
Maine Field Office

cc: Steve Timpano, MDIFW