BEACH MANAGEMENT AGREEMENT BETWEEN MAINE DEPARTMENT OF INLAND FISHERIES AND WILDLIFE, MAINE AUDUBON, U.S. FISH AND WILDLIFE SERVICE AND TOWN OF SCARBOROUGH, MAINE

APRIL 2009



In 2009, representatives of The Town of Scarborough (The Town), the U.S. Fish & Wildlife Service (USFWS), the Maine Department of Inland Fisheries and Wildlife (MDIFW), and Maine Audubon developed the following Beach Management Agreement for the Town of Scarborough.

This agreement allows the Town of Scarborough to continue their beach management program without filing federal and state Incidental Take Plan's (ITP) for each Town activity that occurs near or within Piping Plover nesting areas, as long as The Town implements protection measures outlined in this agreement.

To be effective for the 2009 piping plover nesting season, this agreement must be signed by March 31, 2009.

I) Introduction

The Piping Plover is a small, sandy-colored shorebird that nests on beaches from Newfoundland to South Carolina. This species is imperiled throughout much of its range in the United States and Canada. Once common on sandy beaches in southern Maine, the Piping Plover is listed as Endangered under the Maine Endangered Species Act. The Atlantic coast population of Piping Plovers is also federally listed as Threatened. In 2008, only 22 pairs of Piping Plovers nested in the entire state of Maine.

Habitat loss and lack of undisturbed nest sites are two of the primary factors jeopardizing populations of Piping Plovers. Historically, Maine had more than 30 miles of suitable nesting beaches that may have supported up to 200 pairs of Piping Plovers. However, construction of seawalls, jetties, piers, homes, parking lots, and other structures along Maine's sand-beaches has dramatically reduced the extent of suitable nesting habitat. The capability of the remaining habitat to support nesting plovers has been further reduced by continued development and intense recreational use. Ensuring availability of this limited habitat is essential for the continued existence of Piping Plovers and other coastal wildlife, such as the state-endangered Least Tern.

II) Authority to Enter Agreement

Maine Endangered Species Act of 1975

Federal Endangered Species Act of 1973

III) Geographic Scope of Agreement

The intent of this agreement is to provide a means to protect Piping Plovers on Higgins Beach, Pine Point, Jones Creek Beach and Ferry Beach. The success of this agreement depends on the voluntary participation and cooperation of private landowners and the Town of Scarborough. Private property owners will be encouraged to take advantage of the Town of Scarborough's willingness to assist them with resource management applicable to their property.

This agreement does not supersede or replace any local, state, or federal statutes, regulations, or guidelines that apply to private properties.

IV) Beach Management Guidelines for Piping Plovers

A. Beach Infrastructure and Maintenance

1) Daily trash pickup of waste in town barrels located on the beaches and rights of way.

The Town must place trash barrels as far away from plover nesting areas as possible but no closer than two hundred and fifty feet (250) from a nest exclosure. The Town and MDIFW will work to determine appropriate placement of trash barrels in the areas where Plovers are nesting. The Town vehicle picking up waste from the barrels each day shall have a trained spotter walk in front of the vehicle when on Scarborough beaches during the plover-nesting period (April 15 through August 31). Trash pickup can be done by All Terrain Vehicle (ATV) without a spotter if: 1) personnel picking up trash are in weekly communication with The Town's Piping Plover coordinator and Maine Audubon to know the location of nesting plovers and their chicks; 2) ATV operators are trained by Maine Audubon or MDIFW staff; and 3) ATV vehicles proceed not faster than walking speed.

2) Seaweed and debris cleanup.

Seaweed and debris cleanup may be conducted from April 1 through the Friday after Labor Day.

a. Guidelines for Beach Cleaning Vehicles:

1. All vehicle entrances/exits to the beach shall be at public ways.
2. A spotter shall be present with all moving vehicles on the beach between April 15 and August 31.
3. Between April 15 and August 31, all vehicles entering the beach shall travel at least 50 ft. from the grass edge of the beach, close to the high

water mark, to assure no conflicts between nest initiation and vehicular traffic.

4. No spotter is needed after the nesting season is complete as confirmed by Maine Audubon.

b. Frequency and Reporting of Beach Cleaning Activities:

1. Cleaning crew Supervisor shall maintain a simple logbook or sheet to record the date, time, and location of each beach cleaning activity.
2. The Public Works Department shall maintain records of cleaning activities in their offices.
3. Beach cleaning may be conducted as needed up to April 15. Beach cleaning shall be conducted only once per week from April 15 through August 31, unless authorized by the Town Manager for a specific reason.

c. Guidelines for Spotters during Beach Cleaning Activity:

The following guidelines shall be followed wherever territorial pairs, nests, or chicks of Piping Plovers are present.

1. One spotter shall guide all vehicle traffic on the beach.
2. All vehicles shall proceed at "walking speed."
3. Spotters shall use the map provided by the plover coordinator prior to commencing beach cleaning activities.
4. Spotters shall record observations of eggs, birds, and nests every 100 feet of the beach prior to vehicular access to that section. If the spotter does not observe plover activity, the cleaner will rake that 100 foot section while the spotter stands and watches in that zone.
5. The spotter shall proceed to the next area (approximately 100 feet down the beach), spotting, locating, and watching before giving the signal to allow the vehicles to enter the area.
6. Beach cleaning shall not occur within 250 feet on either side of nest exclosures or chicks. This gives the birds a buffer from disturbance by the vehicles and leaves additional foraging habitat intact.

3) Police, Emergency, and Non-Emergency Vehicle use.

All Public Safety or Town personnel assigned or normally required to use vehicles, including ATV's, on the beach shall annually receive specialized education and training from Maine Audubon or MDIFW in the spotting and protection of plover habitat. All other personnel shall have training materials and aids available to assist in spotting plover habitat when required to respond to either an emergency or a non-emergency incident. At least two employees shall respond to any non-emergency incident within a plover nesting area,

with one employee acting as the spotter. Audubon training workshops shall be available for the 2009 nesting season and each year thereafter.

Non-emergency activities, such as removal of dead or injured marine mammals, shall require at least two responders, one of which will act as the spotter to and from the scene. All emergency response personnel will account for and avoid nesting sites and chicks to the maximum extent practicable, consistent with the nature and urgency of the emergency. However, it is the policy of the Town of Scarborough that such essential vehicles will avoid driving on the wrack line whenever possible and will avoid frequent driving on the beach in a way that would create deep ruts that could impede movement of Piping Plover chicks.

B. Recreational Activities

Homeowners are responsible for the protection of any Piping Plover present on their property and to ensure that their family members and guests are aware of the precautions that must be observed. If plovers are located in the property owners' area, the Plover Coordinator will notify the property owner that such activities as beach parties, clam bakes, volleyball, fires, etc., could seriously threaten the birds' survival and must be avoided. Refer to Section D for additional restrictions.

1) No person shall engage in kite flying within 650 feet of an exclosure or symbolic stake and twine fencing from April 15 through August 31.

2) No person shall discharge or cause the discharge of any fireworks on any beach on which Piping Plovers are nesting from April 15 until all chicks are fledged.

3) No person shall utilize a sand surfer (wind-driven sand cart), parasail, or para board sail within 650 feet of an exclosure or symbolic stake and twine fencing from April 15 through August 31.

C. Animal Control

Dogs and cats can be a significant source of disturbance and mortality for Piping Plovers. It is in the best interest for pet owners to keep dogs and cats off beaches during the nesting season to prevent violating the state and federal Endangered Species Acts should their pet kill, harm, or harass a Piping Plover. Violations will result in State and Federal prosecution of responsible parties. USFWS guidelines state that dogs be leashed at all times.

The Town of Scarborough is responsible for enforcing their Animal Control and Piping Plover Ordinances. Failure to do so will be considered a breach of this

agreement and gives MDIFW the option to implement other protective management actions as identified by the Maine Endangered Species Act.

Town of Scarborough Piping Plover Ordinance, Chapter 610 requires all dogs to be on leash and kept at least 150 feet away from piping plover fencing.

According to Town of Scarborough Animal Control Ordinance, Chapter 604-10 the following restrictions apply to dogs on beaches:

a. No dog shall be present on any beach at any time unless the dog is accompanied by a responsible party who has voice control over the dog and who is carrying a leash in the hand of the responsible party which can be used to restrain the dog.

b. No dog shall be present on any beach between the hours of 9:00 a.m. and 5:00 p.m. from June 15th through September 15th.

c. When otherwise allowed to be present on a beach pursuant to this section, all dogs must be leashed at the following times:

- At all times from June 15th through September 15th, except that a dog under the voice control of its owner or a responsible party shall be permitted to be unleashed between sunrise and 9:00 a.m. (The purpose of this exception is to allow individuals to walk, jog, run or engage in other physical exercise with their dogs in the early hours of the morning.)
- Whenever the owner or responsible party has been directed by a law enforcement officer to leash the dog.

d. Whenever a portion of a beach has been roped off, fenced off or otherwise demarcated and posted as a protected area in order to protect the nesting site of a piping plover or of any another endangered species protected under federal law, no dog shall enter such protected area, and no dog shall approach within 150 feet of such protected area unless the dog is attached to a leash held by a responsible party so that the responsible party can physically restrain the dog from entering the protected area.

Horses, ponies and other large domesticated animals are prohibited on the beaches from May 2 to October 14. (Title 17: Crimes, 127: Trespass, Section 3853-A).

D. Symbolic Fencing and Exclosures

1). Symbolic Fencing

Symbolic Fencing is temporary fencing and signage used to manage recreational use of the beach in the vicinity of plover nesting areas to protect nesting and feeding habitat for the plovers. Ideally, plover nesting areas will be fenced and signed as soon as courtship and nest scraping activity are observed.

a) Plover nesting areas are fenced using wooden stakes, baling twine, and signs erected by MDIFW or Maine Audubon. Only persons engaged in Piping Plover monitoring should enter the fenced areas. Ideally, fenced areas should extend 150 feet along the wrack line on either side of the nest.

b) Fenced areas around nests may be smaller than 150 feet if MDIFW or Audubon determines that the birds are accepting of human activity. In other instances, fencing may be expanded if the 150-foot radius is deemed inadequate to protect incubating adults and unhatched eggs. In many instances, fenced areas may encompass more than one nest.

c) Nesting territories shall be monitored frequently (daily if possible) until nests are located. Symbolic fencing shall remain on the beach until all chicks in the vicinity have fledged.

c) Once nesting areas have been identified and staked, MDIFW will provide signage that reads: "Protected Habitat, Dogs Prohibited." Town and MDIFW will coordinate for the installation of said signs.

2) Nest Exclosures

Nest exclosures consist of 2 x 4 inch welded, wire fence supported by metal stakes placed around Piping Plover nests in an eight-foot radius. Plover nests that are not quickly fenced are vulnerable to predation and disturbance. When Piping Plover nests are present, the Town of Scarborough, in conjunction with MDIFW and Maine Audubon, will create or arrange for the placement of an exclosure around such nests in accordance with USFWS guidelines and authorization issued by MDIFW. In an effort to afford plovers the immediate protection they require, The Town of Scarborough, or Maine Audubon, will offer landowners the option to sign a blanket permission form approving fencing of plover nests. Nest exclosures shall be removed when plover nesting is completed.
[This is an incentive for managers (and landowners) to promote the nesting success of plovers. Plovers that nest successfully in April will have fledged chicks by mid-to-late June. The nesting and chick rearing season of re-

nesting or late nesting plovers will extend into July and August, the peak summer months for beachgoers.]

Once such exclosures have been erected, the following prohibitions shall apply:

a) No person shall enter into an exclosure, except for wildlife management purposes authorized by the Maine Department of Inland Fisheries and Wildlife or the United States Fish and Wildlife Service.

b) No person shall remove or disturb the wrack (wrack is seaweed and other debris that accumulates at the high tide line) located within 250 feet of the exclosure.

c) No owner of a dog shall cause or permit their dog to enter the exclosure or shall fail to prevent that dog from entering the exclosure. When approaching a beach area where plover fencing is present, all dogs shall be leashed and kept at least 150 feet away from the symbolic fencing in order to avoid disturbing the nesting pair and destroying their nest. (*Chapter 610, Piping Plover Ordinance and Chapter 604, Section 604-2, Animal Control).*

E. Responsibility

Activities within the sand dune system at Scarborough Beaches occur within a protected resource area under the jurisdiction of the Maine Department of Environmental Protection (DEP). The U.S. Army Corps of Engineers (Corps) has federal jurisdictional responsibilities within the sand dune system. Many projects and activities (such as moving sand, altering vegetation, repairs to jetties and seawalls) require a permit from DEP and/or the Corps. Therefore, all proposed beach nourishment, sand fencing, planting, and trail plans should be coordinated with the Town of Scarborough and reviewed by MDIFW, DEP and the Corps to ensure that state and federal regulations are adhered to and that piping plovers are not adversely affected.

F. Monitoring

Piping Plover nesting areas shall be monitored by town employees or volunteers each week throughout the nesting season to ascertain nesting status, number and location of nests, nest success, the success of young, and any re-nesting. Frequent visits will track the survival and movements of family groups.

The position of Plover Coordinator shall be incorporated into Community Services Programs and funded as part of that budget for the period April 1 through August 31, annually. The Plover Coordinator will recruit and schedule volunteer monitors. The Coordinator will communicate with landowners as to what is planned and will solicit their support for the monitoring project. For Scarborough beaches, letters will be the primary means of communication. The

Coordinator will collect daily reports from volunteer monitors, compile data, and act as liaison with The Town and state officials. Neither the Coordinator nor volunteer monitors will be involved in enforcement of regulations. The task of negotiating for the purchase and installation of protective fencing will remain the responsibility of MDIFW.

Volunteer monitors shall be required to commit to training and a weekly commitment of time. They shall attend periodic meetings for program review and reinforcement of training. Monitors shall fill out a standardized, daily report including the number of hours spent on the beach and deliver it to established collection point for pick up by the Coordinator. Monitors shall report on the location of piping plover nests and on adherence to the provisions of this beach management plan. Monitors shall be provided free parking in town parking lots while conducting their monitoring duties.

G. Education and Outreach

Educational efforts will take many forms and will be coordinated with Maine Audubon and MDIFW. The Scarborough Leader and Current will be the primary newspapers for dissemination of information as well as local public service TV.

Through opportunistic, face-to-face meetings with property owners and beach users, volunteer monitors, the Plover Coordinator, Maine Audubon, The Town personnel who work on the beaches, and others, will help educate the public about Piping Plover conservation and management and the importance of respecting Piping Plover nesting habitat.

In support of the volunteer monitoring program, Maine Audubon will conduct annual training sessions for beach volunteer monitors and seasonal plover biologists in May; this training will include information regarding plover biology, plover conservation/management, monitoring protocol, recordkeeping, and regulations, including dogs on the beach. Maine Audubon's "Volunteer Monitoring Handbook", which contains background and training materials, regulations, and daily monitoring check-off sheets, will be the primary resource for training.

V) Permit Review Process

Landowners and the Town of Scarborough must apply for and obtain all appropriate, necessary environmental permits before conducting activities or projects that require environmental review. This Agreement does not negate this responsibility and legal requirement, nor does it supersede or replace state and federal laws.

This Agreement does facilitate state and federal environmental review and permitting provided such activities and projects are consistent with other federal and state statutes. Concurrence from the USFWS on any future project that could affect plovers or their habitat within the geographic area subject to this Agreement is contingent upon the successful implementation of all Piping Plover protection measures described in this Agreement and demonstration that these protection measures have proven adequate in avoiding "take" (harass, harm, pursue, hunt, shoot, kill, trap, capture, or collect) of the federally-threatened piping plover (U.S. Fish and Wildlife Service 1973).

Situations, activities, or projects may arise that were not addressed in this Agreement that affect Piping Plovers on Scarborough beaches. Successful resolution of such eventualities requires communication and coordination – landowners and the Town of Scarborough are encouraged to seek early and frequent consultation with MDIFW and USFWS prior to initiating activities or projects that may affect Piping Plovers.

VI) Time Frame of Agreement

Recognizing that habitat issues may arise that could require additional management, The Town, Maine Audubon, Federal and State Officials will meet annually to review this agreement. This Agreement will commence May 1, 2009 and terminate on October 1, 2011.

VII) Amendments

Amendments to this agreement can be made with the concurrence of all signatory parties to the agreement. Amendments shall be documented in writing, dated, signed by all parties, and attached to the agreement. Amendments will be considered annually at the pre-nesting season meeting.

Signatories to the Agreement

Scarborough Town Manager

Maine Audubon Society

U.S. Fish and Wildlife Service

Maine Department of Inland Fisheries & Wildlife