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

March 2024



Town of Scarborough
Beach Management Agreement
2024 through 2026

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 (hereinafter referred to as "The Parties") developed the initial Beach Management Agreement (BMA) for the Town of Scarborough.

It is recognized that Scarborough Beaches are a multiple-use, natural resource with a significant appeal as a tourist destination and a vital economic component of the Scarborough community. As such, the demands for intensive recreational use by residents and visitors must co-exist with the Town's obligations and desire to preserve piping plovers and least terns and their habitat. The Parties acknowledge that the Town has ordinances pertaining to beach management, discussed in detail in this BMA and provided in Appendix 2. Additionally, the USFWS suggests the Town of Scarborough, to the extent practicable, follow the "*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"* as published by the USFWS. These guidelines are embedded within this agreement and a copy is attached (Appendix 3).

IMPORTANT! This agreement is in effect from April 1st through the day after Labor Day when ***nesting activity*** is occurring, *which is defined as when territorial pairs, nests, and chicks of piping plovers and/or least terns are present*. **When nesting activity is not occurring on The Town's beaches, these guidelines are not in effect.** The Town must keep in weekly communication with MDIFW or its designee to know when piping plover ***nesting activity*** is occurring. MDIFW will verify when nesting activity is occurring and will make the final determination when nesting activity is not occurring. Refer to Appendix 1 for contact information.

In 1998, MDIFW designated Pine Point Beach, Scarborough Beach, Ferry Beach, Western Beach, and Higgins Beach as Essential Habitat for nesting piping plovers and least terns under the Maine Endangered Species Act, which requires that municipal activities on these beaches be reviewed by MDIFW. Compliance with this agreement exempts the Town from Essential Habitat regulations for activities specifically addressed in Section IV. Other activities that occur in mapped Essential Habitat that are not addressed in this Agreement require MDIFW review.

This agreement allows the Town of Scarborough to continue their beach management program without filing state Incidental Take Plan's (ITP) for each Town activity that occurs near or within piping plover and/or least tern nesting and foraging areas, provided The Town implements protection measures outlined in this agreement.

There is an incentive for The Town to promote the nesting success of beach-nesting birds, including piping plovers and least terns as early in the season as possible. Piping plovers that nest successfully in April or May will fledge their chicks by mid-to-late June or early July whereas Least terns nest later in the

summer, usually fledging chicks in August. However, if earlier nesting fails, or the birds are forced to nest late, the nesting and chick rearing season will extend later into the peak summer months for beachgoers.

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 (MESA), and the east coast population is listed as Threatened under the federal Endangered Species Act (ESA). In Maine, the total number of pairs has ranged from a low of 6 pairs in 1983 to a high of 157 pairs recorded in 2023.

Least terns are beach-nesting seabirds that are colonial nesters often co-existing with piping plovers. While not federally listed, least terns are listed as Endangered under MESA, affording the same protection as piping plovers. Populations have fluctuated between 39 breeding pairs in 1982 to a high of 296 pairs in 2019 with 193 pairs in 2023. Higgins Beach has historically supported nesting least terns sporadically. An emphasis on restoring the dune grass on the MDIFW-owned portion of 'the spit' on the Higgins Beach Unit of the Scarborough Marsh Wildlife Management Area has resulted in six consecutive years of least terns nesting since 2018, with a high of 128 pairs in 2020.

Habitat loss and lack of undisturbed nest sites are two of the primary factors jeopardizing populations of piping plovers and least terns. 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 and least terns on Higgins Beach, Pine Point Beach, and Ferry Beach. Western Beach has a separate agreement through the Prouts Neck Country Club and Scarborough Beach is included in the Beach Management Agreement developed by MDIFW, USFWS, and the Bureau of Parks and Lands. The success of this agreement depends on the voluntary participation and cooperation of private landowners, the Town of Scarborough, USFWS, and MDIFW. 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.

DRAFT

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 and Least Terns

Beach Infrastructure and Maintenance

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

The Town does not place trash barrels on the beach near plover and least tern nest sites. If the Town does decide to place trash barrels on the beach, the Town must place them as far away from areas of plover and tern ***nesting activity*** as possible but no closer than 250 feet from a nest exclosure and no closer than 100 feet from stake and twine symbolic and/or electric fencing. Any Town vehicle picking up waste from the barrels each day shall have a trained spotter (trained by the MDIFW or its designee) walk in front of the vehicle which shall proceed no faster than walking speed.

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 MDIFW or its designee to know the location of nesting plovers and least terns and their chicks;
2. ATV operators are trained by MDIFW or its designee; and
3. ATV vehicles proceed not faster than walking speed.

B) Seaweed and Debris Cleanup.

Seaweed and debris cleanup may be conducted from April 1st through the day after Labor Day. Beach cleaning shall not occur within 250 feet on either side of nest exclosures or chicks and within 100 feet of stake and twine symbolic fencing. Wrack should remain on the beach within 250 feet of either side of nest exclosures and within 100 feet of stake and twine symbolic fencing. This gives the birds a buffer from disturbance by the vehicles and leaves important foraging habitat intact.

The Town has a Permit by Rule (PBR) for beach cleaning and raking at Pine Point Beach from Hurd Park south to the border of Old Orchard Beach. Beach cleaning activities and procedures authorized within the PBR are in accordance with the following guidelines.

Guidelines for Beach Cleaning Vehicles:

1. All vehicle entrances/exits to the beach shall be at public ways.
2. A spotter or Plover Monitoring Coordinator shall be present with all moving vehicles on the beach between April 1st and day after Labor Day.
3. Between April 1st and day after Labor Day, 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.

DRAFT

4. Presence of a spotter or Plover Monitoring Coordinator is not needed after the nesting season is complete as confirmed by MDIFW.

5. Instances of need for heavy seaweed removal have historically been few. However, should heavy seaweed removal require using heavy equipment, a trained spotter or Plover Monitoring Coordinator will be required on site. No such work will take place within 250 feet of nest exclosures and within 100 feet of stake and twine symbolic fencing.

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 March 31st. Beach cleaning shall be conducted only once per week from April 1st through day after Labor Day, unless authorized by the Town Manager for a specific reason.

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 piping 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.

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

All Public Safety or Town personnel assigned or normally required to use vehicles, including ATVs, on the beach shall annually receive specialized education and training from MDIFW or its designee 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. Training workshops shall be available for the 2024 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 and/or least tern chicks.

D) 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 piping plover coordinator will notify the property owner that such activities as fireworks, beach parties, clam bakes, beach games, fires, etc., could seriously threaten the birds' survival and must be avoided. Refer to Appendix 2 for additional restrictions.

1) No person shall engage in kite flying or utilize a sand surfer (wind-driven sand cart), kite surfer, parasail, or para board sail within 650 feet of an exclosure or symbolic stake and twine fencing from April 1st through day after Labor Day.

2) No person shall discharge or cause the discharge of any fireworks on any beach as per the amended Town Consumer Fireworks Ordinance, Chapter 608A.

Source: Chapter 610, Town Ordinances, Piping Plover Ordinance. (see Appendix 2).

3) No person shall utilize a bicycle, skateboard, Onewheel, or other wheeled recreational devices, excluding non-motorized carts and wagons, within 650 feet of an exclosure or symbolic stake and twine fencing from April 1st through day after Labor Day.

4) No person shall operate a drone within 650 feet of an exclosure or symbolic stake and twine fencing from April 1st through day after Labor Day unless reviewed by MDIFW.

E) Animal Control

Dogs and cats can be a significant source of disturbance and mortality for piping plovers and least terns. 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.

The Town of Scarborough is responsible for enforcing their Animal Control and Piping Plover and Least Tern 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. While the Town retains general enforcement discretion to issue warnings in circumstances where that is felt to be effective and appropriate, between April 1 and May 15, the Town will enforce

the aforementioned ordinances with zero tolerance, issuing tickets and fines for all violations. Other protective management actions include formal MDIFW evaluation for all beach management projects (trash pickup, seaweed, and debris cleanup etc.) within mapped Essential Habitats as authorized under MESA (12 M.R.S. Section 12808) and/or filing state Incidental Take Plan's for each Town activity that occurs near or within piping plover and least tern nesting and foraging areas.

See Appendix 3 for Town's Animal Control Ordinance, Chapter 604.

Horses are prohibited on the beaches from April 1st to September 30th.

Source: Chapter 604a, Town Ordinances, Horse Beach Permit Ordinance. (See Appendix 2)

F) Symbolic Stake-and-Twine Fencing and Exclosures

Symbolic Stake-and-Twine Fencing: Symbolic Fencing is temporary fencing and signage used to manage recreational use of the beach in the vicinity of plover and least tern nesting areas to protect nesting and feeding habitat for the plovers and least tern. 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 the MDIFW or its designee. Only persons authorized by MDIFW or its designee 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 its designee, 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.

d) Once nesting areas have been identified and staked, town crews will post signage that reads: "Protected Habitat, Dogs Prohibited."

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 or its designee, 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 MDIFW, will offer landowners the option to sign a blanket permission form approving fencing of plover nests. Nest exclosures shall be removed by MDIFW or its designee when plover nesting is completed.

[This is an incentive for managers (and landowners) to promote the nesting success of plovers. Plovers that initiate nesting 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: See Appendix 2 for Town's Piping Plover Ordinance, Chapter 610.

G) 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 (MDEP). 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 MDEP 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, MDEP, USFWS and the Corps to ensure that state and federal regulations are adhered to and that piping plovers are not adversely affected.

H) Monitoring

Piping plover nesting areas shall be monitored by trained 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 piping plover coordinator shall be incorporated into Community Services Programs and funded as part of that budget for the period April 1st through day after Labor Day, annually.

Responsibilities of the Coordinator include:

- Coordinate activities and communicate notable occurrences with MDIFW who will communicate with USFWS as needed (See Appendix 1 for contact information).
- Visit each beach at least 3 times/week from April 1 until plovers complete nesting (usually mid- to late-August).
- Document the number and location of nests, nest attempts, nest success, number of chicks fledged, and causes of egg or chick mortality if known.
- Maintain temporary fencing and signs and help erect nest exclosures.
- Recruit and train volunteers to regularly monitor the beaches and document piping plover nesting activities.
- Ensure observations by volunteers are recorded on the data sheets provided by MDIFW or its designee.
- The Coordinator will collect weekly reports from volunteer monitors, compile data, and act as liaison with the Town and state officials.
- Provide an end-of-season summary and copies of field data sheets from volunteers and forward them to MDIFW or its designee no later than September 30th.

- With respect to Western Beach, implement "no dog" restriction through public outreach, provide outreach materials to the gatehouse at Ferry Beach, and inform pet owners observed walking from Ferry Beach to Western Beach of the restriction. Immediately report and document violators to MDIFW or its designee. Document disturbance from dogs, pedestrians, or predators and report to MDIFW or its designee.
- Participate in training volunteers.
- If possible, attend the statewide pre- and post-season planning sessions for piping plover coordinators hosted by MDIFW.
- 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.

MDIFW or its designee will:

- train the Piping Plover Coordinator and volunteers
- provide stake, twine, signs, and materials for nest exclosures
- provide outreach materials as available
- provide enforcement as needed.

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.

I) Education and Outreach

Educational efforts will take many forms and will be coordinated with MDIFW or its designee. The Scarborough Leader will be the primary newspaper for dissemination of information as well as local public service TV. Information regarding piping plovers will be posted on The Town website and Facebook page:

http://www.scarboroughmaine.org/ or
facebook.com/scarboroughmaine

Through opportunistic, face-to-face meetings with property owners and beach users, volunteer monitors, the piping plover coordinator, MDIFW or its designee, The Town personnel who work on the

beaches, USFWS and others, will help educate the public about piping plover conservation and management and the importance of respecting piping plover and least tern nesting habitat.

In support of the volunteer monitoring program, MDIFW or its designee 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 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 and least terns.

VI) Time Frame of Agreement

Recognizing that habitat issues may arise that could require additional management, The Town, MDIFW, and USFWS will meet annually to review this agreement. This Agreement will commence April 1st, 2024, and terminate on the day after Labor Day, 2026.

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.

DRAFT

Signatories to the Agreement

_____ _____

Scarborough Town Manager **Date**

_____ _____

U. S. Fish and Wildlife Service **Date**

We the U.S. Fish and Wildlife Service approve of the Agreement except for Section IV (E) which references the 2014 Animal Control Ordinance, (Appendix 3). Specifically, the Animal Control Ordinance, Chapter 604-10 specifies that on all Scarborough beaches not designated as Restricted Areas, where piping plovers also nest, dogs are allowed off leash and under voice control all day prior to May 15. From May 15 to Labor Day dogs on these beaches may not be on the beach from 9:00 a.m. to 5:00 p.m., must be on a leash from 5:00 p.m. to dusk, and may be off leash and under voice control from dusk to 9:00 a.m. the following morning. This does not meet the Service's piping plover Guidelines because the Service believes that voice control is not effective at controlling dog behavior, and piping plovers are at risk of take from dogs on these beaches. We clarify our concerns in a letter to the Town dated March 23, 2015.

Please note that we recognize that the Animal Control Ordinance, Chapter 604-2, Section 11 (Appendix 3), specifies Restricted Areas where piping plovers nest and no dogs are allowed during the nesting season (Higgins and Ferry/Western Beach) or dogs are allowed during the nesting season on a leash only (Pine Point Beach) from April 1 to the day after Labor Day. Section 11 meets or exceeds the Services Guidelines.

_____ _____

Maine Department of Inland Fisheries and Wildlife **Date**

DRAFT

Appendix 1

WEEKLY CONTACT INFORMATION

Brad Zitske
Coastal Waterbird Biologist
MDIFW Augusta Headquarters
207-287-2345
Cell 207-485-1039
Brad.Zitske@maine.gov

Laura Zitske
Wildlife Ecologist, Coastal Birds Project Director
Maine Audubon
207-781-6180 x226
lzitske@maineaudubon.org

Appendix 2

Town of Scarborough Piping Plover Ordinance

Town of Scarborough Consumer Fireworks Ordinance

Town of Scarborough Animal Control Ordinance

Town of Scarborough Horse Beach Permit Ordinance

DRAFT

Appendix 3

USFWS 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

DRAFT