

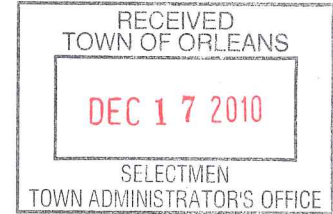


Division of Fisheries & Wildlife

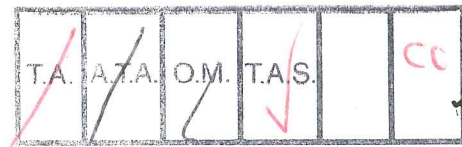
Wayne F. MacCallum, *Director*

December 14, 2010

Mr. John Kelly
Town Administrator
Town of Orleans
19 School Road
Orleans, MA 02653



Re: Beach management and state-listed birds



CC ✓ ALL BOS
Park Supt
+ Return

Dear Mr. Kelly:

Since the meeting originally scheduled by State Representative, Jeff Perry, for Wednesday, November 10th to discuss the use of recreational vehicles on beaches with nesting Piping Plover and terns was cancelled, I wanted to be sure you understood what the Town of Orleans would need to do to have more flexibility in managing recreational activity than it currently has.

As you know, the Massachusetts Division of Fisheries and Wildlife lists the Piping Plover as *Threatened*, and the Least Tern as a *Special Concern* species, pursuant to Massachusetts' Endangered Species Act (MESA) and its implementing regulations (MGL C. 131A; 321 CMR 10.00). Protection under MESA is afforded not only to adult Piping Plovers and Least Terns, but also to their eggs, chicks, and habitats. Habitats of Piping Plovers and Least Terns are also protected by the rare species provisions of the Massachusetts Wetlands Protection Act (310 CMR 10.37).

In 1993, the Division issued *Guidelines for Managing Recreational Use of Beaches to Protect Piping Plovers, Terns, and Their Habitats in Massachusetts*. The *Guidelines* are intended to assist beach managers and property owners in protecting Piping Plovers, terns, and their habitats and avoiding potential violations of MESA and the Wetlands Protection Act. The Division's *Guidelines* were subsequently incorporated into the *Guidelines for Barrier Beach Management in Massachusetts* that were drafted by the Massachusetts' Barrier Beach Task Force and issued by Massachusetts' Office of Coastal Zone Management in 1994. Management of recreational activities that deviates from the *Guidelines* is likely to result in a prohibited "take" of Piping Plovers or Least Terns, or in adverse effects to their habitats.

This past summer we were contacted by the Town's Parks and Beach Superintendent, who asked if it was permissible to escort recreational vehicles past unfledged Least Tern chicks in

Natural Heritage & Endangered Species Program

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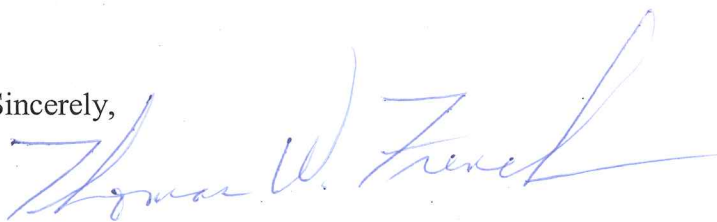
the Pochet section of Nauset (North) Beach in Orleans. We indicated that failure to exclude vehicles from sections of beach where unfledged terns are present is likely to result in a prohibited "take". However, escorting recreational vehicles past a limited number of Least Tern chicks at Nauset Beach could be permitted under a Conservation and Management Permit, provided this activity occurred as part of an overall plan that, when fully implemented, would provide a "net benefit" to the local population of Least Terns. The requirements and process for getting a Conservation and Management Permit are detailed in regulation (321 CMR 10.32).

One of the requirements of a Conservation and Management Permit is that the applicant must provide a long term net benefit to compensate for any harm allowed. These beneficial actions, therefore, must be commensurate with the level of "take" that will likely result from the proposed actions. At Nauset Beach, depending on the level of increased recreational access that is desired, the standard of "net benefit" for Least Terns might be achieved by one of several management actions, including, but not necessarily limited to: 1) authorizing and funding qualified contractors (e.g., USDA-Wildlife Services staff) to remove key predators of Least Tern eggs or chicks on Nauset beach, 2) install, maintain, and monitor the effects of electric fencing to protect tern nests and chicks from mammalian predators, 3) provide funding to support increased monitoring and management that would benefit Least Terns at sites other than Nauset Beach, or 4) carry out or fund other actions that would increase reproductive success or improve habitat quality for Least Tern, either on or off-site. Requests for modest levels of flexibility, such as that requested this past summer, would require relatively modest levels of mitigation. To date, the Town has not made use of the permitting process to request more flexibility.

As you may be aware, this year the Division issued a Conservation and Management Permit to the Town of Barnstable that allowed self-contained vehicles to be escorted past a limited number of unfledged Least Tern chicks at Sandy Neck in late summer. To meet the performance standard of "net benefit", the town was required to: 1) put wooden chick shelters on the beach, in an effort to reduce rates of tern chick loss to predators, 2) assess the efficacy of the chick shelters in reducing predation, and 3) experiment with video cameras as a means of assessing causes and severity of predation on tern nests and chicks. We will be reviewing the Town's final report that is a condition of their permit, in order to determine if continuation or modification of these actions will be adequate to meet the standard of "net benefit", or if other mitigation will be necessary in order to permit similar escorting in 2011.

We recognize and appreciate the considerable efforts made by the staff of Orleans' Park and Beaches Department to monitor and protect state and federally protected beach-nesting birds, while concurrently managing high levels of recreational use on Orleans' beaches. Our staff continue to be available to provide technical assistance to the Town of Orleans if, in the future, it desires to submit an application for a Conservation and Management Permit that would facilitate recreational access while providing a net benefit to Least Terns and / or Piping Plovers. The Division's website at http://www.mass.gov/dfwele/dfw/nhosp/regulatory_review/cons_mgt_permit.htm provides more information on the application process.

Sincerely,

A handwritten signature in blue ink that reads "Thomas W. French". The signature is fluid and cursive, with a large, sweeping initial 'T'.

Thomas W. French, Ph.D.
Assistant Director

cc: Margie Fulcher, Chairwoman – Board of Selectmen
Susi Von Oettingen, U.S. Fish and Wildlife Service