

BOROUGH OF CAPE MAY POINT

BEACH MANAGEMENT PLAN

For the Protection of Federally and State-Listed Species

February 2024

**IN COOPERATION
WITH:**

New Jersey Department of Environmental
Protection Fish and Wildlife
Endangered and Nongame Species

Program and

United States Department of the
Interior Fish and Wildlife
Service
New Jersey Field
Office

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INTRODUCTION

A. PURPOSE

The purpose of this management plan is to provide a framework for cooperation among the Borough of Cape May Point (Borough), the New Jersey Fish and Wildlife's (NJFW) Endangered and Nongame Species Program (ENSP), the New Jersey Department of Environmental Protection's (NJDEP) Division of Parks and Forestry, Office of Natural Lands Management (ONLM) and the United States Fish and Wildlife Service's (USFWS) New Jersey Field Office (NJFO) in the stewardship of federally and State-listed endangered and threatened beach-nesting birds and flora (listed species) that may potentially occur on the Borough's beaches. Through this plan, the parties seek to provide for the long-term protection and recovery of listed species' populations in the Borough and the State, while balancing potentially conflicting missions if species should occur. In the plan, the parties define and describe the roles and responsibilities of the Borough, the NJFW, and the USFWS in the protection and management of listed species within the Borough. Protective statutes and regulations are summarized in Section B of this Introduction.

Through this management plan, the parties endeavor to increase the potential of nesting of listed bird species and to foster the continued recovery of listed plant species in the Borough by reducing detrimental human activities and decreasing predation. Through this plan, the parties hope to effect a progressive shift of specific beach management responsibilities to the Borough and citizens of Cape May Point, particularly for those aspects of management that protect listed species from activities permitted, encouraged, sponsored, or performed by the Borough. This plan is the result of meetings and discussions among the Borough staff and officials; the NJFW; and the USFWS.

This management plan is consistent with the USFWS's Recreational (Appendix A) and Fireworks (Appendix B) Guidelines, and with the State Coastal Zone Management Rules (Appendix C). This plan also satisfies the Terms and Conditions of the December 2005 Programmatic Biological Opinion between the USFWS and the U.S. Army Corps of Engineers, Philadelphia District (Corps) (Appendix D) with respect to municipal management planning for the Borough, and is intended to meet the conditions of permits issued by the New Jersey Department of Environmental Protection's (NJDEP) Division of Land Resource Protection (DLRP) requiring management planning in municipalities receiving beach nourishment. Development and implementation of USFWS and NJFW approved plans is also directed by the Final Natural Resources Restoration Plan (2004) that resulted from the *Anitra* Oil Spill that occurred in the Delaware Bay in May 1996 and moved north along New Jersey's Atlantic Coast.

The parties to this plan acknowledge that the aforementioned guidelines, rules, terms, and conditions may be periodically revised, and agree to adjust the management of

listed species as appropriate to ensure continued compliance, including revision of this plan if necessary.

B. APPLICABLE LAWS AND REGULATIONS

1. Federal

Clean Water Act (33 U.S.C. 1344 *et seq.*) (CWA): Regulates discharges into waters of the United States. The CWA is administered by the U.S. Environmental Protection Agency and the Corps.

Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA): Establishes that endangered and threatened animals and plants are of aesthetic, ecological, educational, historical, recreational, and scientific value to the nation and its people. Section 4 provides for listing wildlife and plants as threatened or endangered, including criteria for listing and de-listing species. Section 6 authorizes cooperative agreements and funding for States to establish programs for conservation of threatened and endangered species. Section 7 directs all Federal agencies to consult with the USFWS regarding any proposed Federal action that may affect a federally listed species. Section 9 prohibits take of federally listed wildlife and restricts collection, destruction, and transport of endangered plants. Section 10 establishes permits for scientific collection, and permits for take of listed wildlife that is incidental to an otherwise lawful non-Federal action contingent upon preparation of a Habitat Conservation Plan. Implementing Federal regulations are found at 50 CFR 17 and 50 CFR 402. The Federal list of threatened and endangered species is found at 50 CFR 17.11 and 17.12. The ESA is administered jointly by the USFWS and the National Marine Fisheries Service.

Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-712) (MBTA): prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests except when specifically authorized by the U.S. Department of the Interior. The MBTA is administered by the USFWS.

2. State

New Jersey Endangered and Nongame Species Conservation Act of 1973, as amended (N.J.S.A. 23:2A *et seq.*): Establishes a list of wildlife species designated by the State of New Jersey as threatened and endangered, and prohibits taking, possessing, transporting, exporting, processing, selling, or shipping listed species. Implementing State regulations are found at N.J.A.C. 7:25-4. The State list of threatened and endangered wildlife is found at N.J.A.C. 7:25-4.13 and 4.17. The Act is administered by the ENSP.

New Jersey Endangered Plant Species List Act (N.J.S.A. 13:1B *et seq.*): Finds that plant species have medicinal, genetic, ecological, educational and aesthetic value to the citizens of New Jersey and that the perpetuation of many native plant species is in jeopardy. The Act establishes an official State list of endangered plants found at

N.J.A.C. 7:5C1-1 *et seq.* The Act is administered by the Office of Natural Lands Management (ONLM).

New Jersey Coastal Zone Management Rules (N.J.A.C. 7:7): Constitute the substantive rules of the NJDEP regarding the use and development of coastal resources, to be used primarily by the DLRP in reviewing permit applications under the New Jersey Coastal Area Facility Review Act (N.J.S.A. 13:19-1 *et seq.* as amended to July 19, 1993) (CAFRA), the New Jersey Wetlands Act of 1970 (N.J.S.A. 13:9A-1 *et seq.*), the New Jersey Waterfront Development Law (N.J.S.A. 12:5-3), Water Quality Certification (Section 401 of the CWA), and Federal Consistency Determinations (Section 307 of the Federal Coastal Zone Management Act (104 Stat. 4779; 16 U.S.C. 3951 *et seq.*)). The Rules are administered by the DLRP.

C. LISTED SPECIES

1. Species Known to Occur on the Borough of Cape May Point Beaches

(a) American oystercatcher (*Haematopus palliatus*)

American Oystercatchers are territorial nesters, nesting on New Jersey beaches from April – August. They make their nests on beaches by scraping a shallow depression in the sand just above the high tide line and also nest on back bay islands. One pair of Oystercatchers nested on the Borough’s beaches in 2020. Oystercatchers are a State species of concern.

2. Species That May Potentially Occur on the Borough of Cape May Point Beaches

The following species have been documented as using the Borough’s beaches or could become established in the future. The parties to this plan will work cooperatively to manage these species. The habitat management and species protections laid out in this plan are expected to be sufficient to protect the following species if they become established; therefore, plan revision would likely not be necessary.

(a) Piping Plover (*Charadrius melodus*)

Piping plovers are small, territorial shorebirds present on the New Jersey shore between March and August. Nests consist of a shallow scrape in the sand located above the high tide line. Flightless chicks are led by their parents to feeding areas, including the intertidal zone. The plover diet consists of invertebrates. Piping plovers have not been documented in the Borough, but significant populations have nested in close proximity at South Cape May Meadows in the past (Cape May Point State Park and The Nature Conservancy). Piping plovers are federally listed as threatened, State-listed as endangered, and protected by the MBTA.

(b) Least Tern (*Sterna antillarum*)

Least terns are small, colonial-nesting sea birds, present on the New Jersey shore between April and September. Nests consist of a shallow scrape in the sand located

above the high tide line. Flightless chicks remain in the colony, where they are fed by their parents. The least tern diet consists of fish. Least terns have not been documented in the Borough, but could become established in the future because significant populations currently nest in close proximity at South Cape May Meadows (Cape May Point State Park and The Nature Conservancy). Least terns are State-listed as endangered and protected by the MBTA.

(c) Seabeach Amaranth (*Amaranthus pumilus*)

Seabeach amaranth is an annual plant, visible on New Jersey's Atlantic coastal beaches between May and November. Seabeach amaranth is usually found growing in nearly pure sand. The species requires sparsely vegetated upper beach habitat that is not flooded during the growing season. Seeds are dispersed by wind and water, and are present on the beach year-round. Seabeach amaranth is federally listed as threatened and State-listed as endangered.

(d) Seabeach evening primrose (*Oenothera humifusa*)

Seabeach evening primrose is a perennial plant of beach and dune habitats and is State-listed as endangered.

(e) Seabeach Sandwort (*Honckenya Peploides*)

Seabeach sandwort is a perennial plant occurring in beach and salt marsh habitats. Seabeach sandwort is State-listed as endangered under the EPSLA.

(f) Red Knot (*Calidris canutus rufa*)

Red knots are long distance migrants that breed in the Arctic and winter as far south as Tierra del Fuego, South America. While small numbers of red knots are present in New Jersey year round, most are seasonal visitors to New Jersey beaches, stopping during spring (mid-May through early June) and fall (late-July through November) migration periods to rest and refuel. The spring migration is timed to coincide with the spawning season for the horseshoe crab (*Limulus polyphemus*). Horseshoe crab eggs provide a rich, easily digestible food source for migrating birds. Mussel beds on New Jersey's southern Atlantic coast are also an important food source. Some red knots have been documented foraging on the Borough's beaches. Red knots are federally listed as threatened under the ESA, State-listed as endangered under the ENSCA, and protected by the MBTA.

D. GOVERNMENT ENTITIES

Borough: Borough of Cape May Point, Cape May County, New Jersey.

Corps: U.S. Army Corps of Engineers, Philadelphia District. The Corps' Regulatory Program issues permits for placement of fill material in waters of the United States and for construction activities in navigable waters, pursuant to Section 404 of the Federal

CWA and Section 10 of the Rivers and Harbors Act of 1899 (30 Stat. 1151, as amended; 33 U.S.C. 403 *et seq.*), respectively. Corps permits are required for activities such as wetland fill, beach nourishment, and construction or maintenance of ocean groins and jetties. The Corps' Civil Works Planning Program carries out shore protection, flood control, navigation, and ecosystem restoration projects as directed by Congress, including the New Jersey Shore Protection Study that includes beach nourishment in the Borough.

DLRP: New Jersey Department of Environmental Protection, Division of Land Resource Protection. The DLRP administers the State permitting program for activities in wetlands and within New Jersey's Coastal Zone. Permits from the DLRP are required for activities such as disturbance of wetlands, beach and dune maintenance, construction or maintenance of structures on the beach, beach nourishment, and construction or maintenance of groins, jetties, seawalls, and bulkheads.

ENSP: New Jersey Department of Environmental Protection, Fish and Wildlife, Endangered and Nongame Species Program. The ENSP is responsible for listing, monitoring, and managing State-listed wildlife species, and administration of the New Jersey Endangered and Nongame Species Conservation Act.

NJDEP: New Jersey Department of Environmental Protection. The NJDEP is the State Department that oversees environmental laws and policies, and includes the DLRP, the NJFW, and the ONLM.

NJFW: New Jersey Department of Environmental Protection, Fish and Wildlife. The NJFW is charged with protecting and managing the State's fish and wildlife to maximize their long-term biological, recreational, and economic values. In addition to the ENSP, the NJFW includes the Bureaus of Wildlife Management, Freshwater Fisheries, Marine Fisheries, Shellfisheries, and Information and Education, and the Office of Environmental Review.

NJFO: New Jersey Field Office, Ecological Services, U.S. Fish and Wildlife Service. Within New Jersey, the NJFO's responsibilities include review of Federal water-resources projects, monitoring and management of federally listed species (both wildlife and plants), and administration of the ESA.

OEM: The Borough Office of Emergency Management. The OEM is the Borough office responsible for managing States of Emergency.

ONLM: New Jersey Department of Environmental Protection, Division of Parks and Forestry, Office of Natural Lands Management. The ONLM is responsible for administration of the New Jersey Natural Heritage Database on biodiversity resources, promulgation and amendment of New Jersey's Endangered Plant Species List, and administration and management of State- owned lands designated to the Natural Areas System.

USFWS: U.S. Fish and Wildlife Service. The USFWS is the principal agency through which the Federal government carries out its responsibilities to conserve, protect, and enhance the nation’s fish and wildlife and their habitats for the continuing benefit of the people. The primary responsibilities of the USFWS are migratory birds, endangered species, certain marine mammals, anadromous fish, and wildlife resources on Federal land.

E. ACRONYMS AND DEFINITIONS

ATV: all-terrain vehicle.

beach nourishment: addition of sand in designed contours to extend a beach and the nearshore shallows seaward.

Biological Opinion: a document that includes: (1) the opinion of the USFWS as to whether or not a proposed Federal action is likely to jeopardize the continued existence of federally listed species; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on federally listed species. Issuance of a Biological Opinion concludes formal consultation between the USFWS and a Federal action agency pursuant to Section 7 of the ESA, and an accompanying Incidental Take Statement authorizes, if appropriate, limited incidental take of federally listed wildlife in the course of implementing the Federal action.

brood: a group of young birds hatched at one time and cared for by the same parents.

Conservation Measures: actions to benefit or promote the recovery of listed species that are included by a Federal agency as an integral part of a proposed action. These actions will be taken by the Federal agency and serve to minimize or compensate for project effects on the federally listed species impacted by the proposed action. Conservation Measures are usually included in a Biological Opinion.

consultation: the process required by Section 7 of the ESA through which the USFWS works with a Federal action agency to determine if a proposed Federal action is likely to adversely affect a listed species under USFWS jurisdiction, or jeopardizes the continued existence of such a species. Federal actions include actions that are carried out, funded, or authorized by a Federal agency.

Declared Emergency: a state declared by Borough, County, State, and/or Federal governments in anticipation of, during, or following an event that threatens human health, safety, or property. Throughout this plan, “State of Emergency” (SOE) signifies a state of Declared Emergency. The term “emergency” is defined below.

The New Jersey Coastal Zone Program Permit Rules (N.J.A.C. 7:7-1.1 *et seq.*) require prior authorization to conduct any action under a declared SOE in the event of an emergency or to avert a threat to property. The ESA’s exception is limited to “bodily

harm”. Therefore, actions taken to avert a threat to property can only be conducted after (1) a formal declaration of an SOE, (2) with prior authorization from the NJDEP under N.J.A.C. 7:7-21 and (3) with the prior advice from the USFWS that the action is not likely to result in a “take” of a federally protected species. Communication with the NJFW would apply in (1) – (3) should actions be requested to avert a threat to property.

Within the Borough, the Mayor or Office of Emergency Management (OEM) declares all Emergencies, and the OEM manages the Emergency. A copy of the Emergency Declaration Document is on file at the Borough’s Municipal Clerks Office, 215 Lighthouse Avenue, Cape May Point, NJ 08212. Once the Emergency has been declared, the OEM, Mayor, or Chief of Police confirm and notify the Borough Clerk. Activities responding to a State of Emergency (SOE) may include the following:

SOE Beach Nourishment: placement of clean sand on the beach to protect human life or health or public or private structures, signified by a Declared Emergency and eligibility for DLRP permits under N.J.A.C. 7:7-3 as referred to in N.J.A.C. Section 7:7-2 of the New Jersey Coastal Zone Management Rules. Emergency Beach Nourishment is included in the definition of “SOE Post-storm Beach or Dune Restoration.”

SOE Clean-up: removal from the beach of large debris that poses a threat to human health or safety using vehicles and equipment, signified by a Declared Emergency.

SOE Raking: mechanical beach raking necessary to remove from the beach debris that poses a threat to human health or safety (*e.g.*, medical waste, hazardous materials), signified by a Declared Emergency.

SOE Post-storm Beach or Dune Restoration: activities listed at Section 7:7-10.3 of the New Jersey Coastal Zone Management Rules to restore beaches or dunes impacted by coastal storms with a recurrence interval equal to or exceeding a 5-year storm event, signified by a Declared Emergency and eligibility for DLRP permits under N.J.A.C. 7:7-3 as referred to in N.J.A.C. Section 7:7-2 of the New Jersey Coastal Zone Management Rules. Placement of sand and other materials (beach nourishment) and sand scraping (defined below) are among the activities listed at 7:7-2.

emergency: a situation presenting imminent risk to human life, health or safety.

emergency vehicle: a vehicle responding to an emergency.

essential vehicle: a vehicle required to provide for safety, law enforcement, maintenance of public property, or access to private dwellings not otherwise accessible.

feral: wild, untamed or un-owned, referring to animals that are normally pets such as cats or dogs.

Fireworks Guidelines: the USFWS document entitled *Guidelines for Managing Fireworks in the Vicinity of Piping Plovers and Seabeach Amaranth on the U.S. Atlantic Coast* (Appendix B).

fledged: able to fly. Piping plover, least tern, and black skimmer chicks are presumed to have survived the nesting season once fledged; monitoring and management restrictions are usually relaxed once all chicks are fledged. For management purposes, piping plover chicks are considered fledged at 35 days of age or when observed in sustained flight for at least 15 meters, irrespective of age.

growing season: the time of year when seabeach amaranth is present on the beach; usually May 15 through November 30.

harass: an act 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: an act which 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.

incidental take: take of listed fish or wildlife species that results from, but is not the purpose of, carrying out an otherwise lawful activity.

listed species: for the purposes of this plan, a species that is: (1) listed or proposed for listing as endangered or threatened, or designated as a candidate for listing, by the USFWS pursuant to the ESA and its implementing Federal regulations; (2) listed as endangered or threatened by the State pursuant to the New Jersey Endangered and Nongame Species Conservation Act and its implementing State regulations; (3) listed by the State as endangered pursuant to the New Jersey Endangered Plant Species List Act; and/or (4) listed as a State species of concern by the NJFW or the ONLM.

nesting area: an area occupied by nesting piping plovers, least terns, and/or black skimmers in the current or recent nesting seasons, including areas used for courtship, territorial displays, egg-laying and incubation, and chick brooding and foraging.

nesting season: the time of year when nesting piping plovers, least terns and/or black skimmers are present on the beach; usually March 15 through August 31 if both plovers and colonial nesters are present.

Plant Protection Strip: an area located immediately adjacent to the landward limit of the beach (*e.g.*, primary dune, boardwalk, bulkhead, etc.) that incorporates special conditions related to raking, scraping, and driving, which are intended to promote establishment of listed beach plants by limiting activities that disturb seed banks.

Plant Protection Strip fencing: PVC posts, erected with signs when available (but not flagging, string, or tape), to identify the locations of Plant Protection Strips.

predator enclosure: staked wire fencing that encircles a piping plover nest as a barrier to predators while permitting passage of plover adults and chicks; netting is normally installed on the top of the structure to prevent entry by avian predators.

predation management: activities to reduce the adverse effects of predators on listed bird species, including but not limited to monitoring, minimizing food sources, use of predator enclosures, and predator population control through trapping or other means of removal.

productivity: a measure of piping plover, least tern, and black skimmer nesting success measured as chicks fledged per pair of nesting birds.

Programmatic Biological Opinion: a Biological Opinion that addresses a Federal program rather than a single Federal action; such programs typically guide implementation of future agency actions by establishing standards, guidelines, or governing criteria to which future actions must adhere.

Recreational Guidelines: the USFWS document entitled *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* (Appendix A).

routine: not associated with a State of Emergency (SOE).

sand scraping: mechanical redistribution of sand from the lower beach profile to the upper beach profile, or alongshore; also known as sand mining or sand transfer.

service animal: any guide dog, signal dog, or other animal individually trained to provide assistance to a person with a disability (*e.g.*, seeing-eye dogs).

SOE: State of Emergency; see Declared Emergency.

supervised beach: a life-guarded bathing beach.

symbolic fencing: string-and-post fencing marked with flagging and signs, intended to protect listed species by restricting human entry into an area.

take: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect a listed species, or attempt to engage in any such conduct.

Terms and Conditions: specific methods by which a Federal action agency must implement actions necessary or appropriate to minimize the extent of incidental take of federally listed wildlife in the course of carrying out an otherwise lawful Federal action. Terms and Conditions are usually included in an Incidental Take Statement that accompanies a Biological Opinion.

wrack: organic material including seaweed, seashells, driftwood, and other materials deposited on beaches by tidal action; often forms a “wrack line” along the high water mark.

II. MANAGEMENT ZONES

Two management zones are identified on the Borough beaches consisting of one Precautionary, and one Recreational Zone (see Figure 1), that are based on the potential use by beach-nesting birds and potential colonization by listed plants. The relative importance of protective management practices in each management zone considers existing human uses, habitat conditions, and potential distribution and occurrence of listed species.

PRECAUTIONARY ZONE: *(From a line drawn from the Cape May Point Science Center to the Lighthouse Beach Jetty and across to the border of the Cape May State Park, inclusive of all beach between).*

Recreational uses will be accommodated consistent with species protections. Limited uses include emergency access, hand cleaning of debris, and outfall pipe and beach/dune maintenance and inspections when necessary. Raking and off-road vehicle use will be prohibited year-round in a “Plant Protection Strip”, comprising the landward 25% of the beach, to encourage colonization by beach plants, except during a SOE.

RECREATIONAL ZONE: *(From a line drawn from the Cape May Point Science Center to the Lighthouse Beach Jetty, westward to Alexander Ave, inclusive of all beaches between).*

This zone is comprised of the developed recreational beaches. Any listed species documented in this zone will receive protection as required by applicable State and Federal laws and regulations. Raking and off-road vehicle use will be prohibited year-round in a “Plant Protection Strip”, comprising the landward 10% of the beach, to encourage colonization by beach plants, except during a SOE.

Figure 1: The Borough of Cape May Point's Beach Management Zones



III. RECOVERY GOALS

Piping Plover:

- 1 nesting pair
- Productivity greater than or equal to the USFWS recovery goal of 1.5 chicks fledged per pair.

American Oystercatcher:

- 1 to 2 pairs

Least Tern:

- One active colony with at least moderate productivity (≥ 0.5 to ≤ 1.00 chicks fledged per pair) when a colony is present.

Seabeach amaranth:

- The presence of plants and to effectively protect any plants that occur.

Red Knot:

- The presence of red knot and to effectively protect any red knots that may occur.

IV. MANAGEMENT ISSUES

Management issues form the basis or framework for this plan. The major issues are defined, and the roles and responsibilities of each party to the plan are set forth to address each issue.

A. BIOLOGICAL MONITORING

Background

Basic biological information is routinely collected about potential listed species on the Borough of Cape May Point's beaches. The NJFW monitors beach-nesting birds to determine habitat use, numbers of nesting pairs, nest locations, and reproductive success. The USFWS or ONLM surveys and monitors (when funding is available) seabeach amaranth to determine plant numbers, size, reproductive status, location, and condition. Additional plants of concern that may occur are recorded incidentally during the seabeach amaranth surveys. This information is essential in evaluating species trends and progress towards recovery, and in assessing the effectiveness of beach management practices.

NJFW/USFWS Actions

- The NJFW will continue surveys, monitoring, and management of nesting birds

throughout the Borough's beaches, as per agreement with the USFWS pursuant to Section 6 of the ESA. The NJFW currently monitors one time every 10 days up until July (at which point monitoring is stopped or greatly reduced because the period has passed when nesting birds are likely to occur). The NJFW will increase monitoring of the Borough's beach to at least 3 days per week during the nesting season, including weekends and holidays if birds are present.

- The USFWS or ONLM will conduct (subject to available funding) annual seabeach amaranth surveys that include the Borough to monitor population trends and distribution, and plans to initiate limited early-season survey work to identify seabeach amaranth plants at risk of damage or destruction.
- The NJFW and the USFWS will promptly report any new or expanded occurrence of a listed species to the Borough.
- The NJFW and the USFWS will regularly report relevant biological information to the Borough (see Section G).

B. PREDATION MANAGEMENT

Background

Predation is a major factor impairing piping plover and least tern productivity in the nesting areas near the Borough. The NJFW has not intensely monitored predator populations in the Borough, but based on presence of predators at adjacent nesting sites at the South Cape May Meadows (Cape May Point State Park and The Nature Conservancy), it is believed the primary predators in the Borough are gulls (*Larus* spp.), crows (*Corvus* spp.), and coyote (*Canis latrans*). Other potential predators include raccoons (*Procyon lotor*), Norway rats (*Rattus norvegicus*), striped skunks (*Mephitis mephitis*), red foxes (*Vulpes vulpes*), and feral cats (*Felis catus*). Reducing predation will involve reducing or eliminating provisions of food from refuse and hand feeding, using predator exclosures, educational outreach, and if necessary, predator removal.

Borough Actions

- The Borough will review existing municipal ordinances regarding feral cats, and free-roaming cats and will revise these or enact new ordinances or policies as appropriate to:
 - Develop an educational program to promote and phase in the American Bird Conservancy's "Cats Indoors" program for its residents and seasonal visitors.

Information regarding the "Cats Indoors" program is available at:

<https://abcbirds.org/program/cats-indoors/>

- The Borough has established a program for all cats through licensing and registration (Ordinance Code §54-21 through 23). This will allow all cats to be registered and assist the Borough in monitoring potential cat issues that may conflict with beach-nesting birds.
- Enforce the current Cape May Point Ordinance Code 54-21 “Licensing and Declaration and Prevention of Nuisance of and by Cats” (adopted 3-8-1984, amended 2-11-1993)
- Enforce New Jersey’s “No Animal Abandonment” statute (N.J.S.A 4:22-20(a)(b)).
- Through the Animal Control Officer, the Borough will conduct removal of cats in problem areas when necessary, preferably through humane live trapping. If the Animal Control Officer is unable to effectively manage cats in problem areas, the Borough will explore other alternatives with the NJFW assistance. Primary responsibility for control of feral cat populations lies with the Borough.
- The Borough will emphasize the importance of its ordinance prohibiting dogs, cats and any other animals on the beach.
- By ordinance, the Borough prohibits dogs, cats, and any other animals (except service animals) from April 1 through October 31 within all beaches (Precautionary and Recreational Zones) (Borough Ordinance Code §58- 14(P)). Service animals are required to be leashed and are prohibited from entering fenced areas.
 - The Borough will enforce the seasonal prohibition of animals on the beach through the Borough’s Police Department, and will take any other necessary steps to provide adequate enforcement such as posting signs regarding the pet prohibition at each entrance to the beach.
- Consistent with current State and local regulations, the Borough will not actively block measures to control predator populations recommended and/or undertaken by the NJFW or the USFWS. The Borough will not enact any new ordinances to prohibit predation management activities.
- By way of signature to this plan, the Borough gives the NJFW and the USFWS written permission to engage in predator control activities on Borough beaches, including removal of foxes and other predators including herbivores of seabeach amaranth. The Borough will be primarily responsible for control of the feral cat population. If the Borough is unable to effectively manage or needs assistance with the control of the feral cat population, NJFW will assist the Borough with control efforts.
- See also Education and Outreach (Section F).

NJFW Actions

- The NJFW will monitor the extent of predation on nesting birds within the Borough (Section A), and will include this in the information reported to the Borough (Section G)
- The NJFW will erect predator exclosures on piping plover nests where and when appropriate. Use of predator exclosures to reduce plover nest predation may be attempted prior to undertaking predator removal; this decision will be made by the NJFW on a case by case basis. In addition, control of predator populations may be necessary to reduce predation on plover chicks, or on least tern and black skimmer eggs and chicks, none of which are protected by exclosures.
- Any predator population control (other than for feral cats) will be the responsibility of the NJFW. The NJFW will pursue control when necessary and appropriate.
- The NJFW will notify the Borough Clerk and the Borough Police at least 2 days before engaging in any predator control activities; by way of this plan the Borough grants the NJFW permission for these activities, as indicated above. The NJFW will adopt the Borough's recommendations for timing, methods, or other aspects of control operations to the extent possible.
- If the Borough is unable to obtain assistance from the Borough's Animal Control Officer with cat removal, the NJFW will assist the Borough in exploring other alternatives, including carrying out removal with a contract vendor.

USFWS Actions

- Upon request and within the limits of available staff time and funding, the USFWS will assist the Borough and/or the NJFW in control of predator populations, such as arranging for removal through the U.S. Department of Agriculture's Animal and Plant Health Inspection Service-Wildlife Services (APHIS-WS) or other qualified vendors.

C. HUMAN DISTURBANCE

Background

The broad area of human disturbance includes any human activities that directly or indirectly harm or harass listed plants or birds, including interference with incubation and care of chicks. Recreational beach users and municipal employees may directly harm listed species by crushing beach-nesting bird eggs or plants. In addition, unfledged plover, tern, and skimmer chicks are highly sensitive to disturbance. Nesting birds may experience low reproductive success if exposed to frequent harassment by vehicles, pedestrians, sunbathers, pets, or kites.

Borough Actions

- The Borough will assist the NJFW and ONLM with pre-season symbolic fencing (only if birds are identified), or will identify volunteers to assist with this task if needed. (See NJFW Actions, below).
- The Borough will be responsible for erecting and maintaining Plant Protection Strip fencing so that it is functional year-round.
- In the event that any unfenced seabeach amaranth plants are threatened by human activities (*e.g.*, plants near a beach access structure, a Borough-sponsored clean-up or event in an area of species occurrence), the Borough will erect and maintain symbolic fencing, posted with appropriate signs, as recommended by the USFWS. The Borough will remove fencing once all plants are gone or the threat is abated, as recommended by the USFWS. (See USFWS Actions, below.)
- As needed, the Borough will seek land owner permission for symbolic fencing and other activities to protect and manage listed species, when and where listed species occur on privately owned portions of the beach.
- The Borough will regulate permanent and temporary private structures and storage of private property on the beach (*e.g.*, catamarans, volleyball nets, shelters) as needed to protect listed species or their habitat.
- Within the Precautionary Zone, the Borough will not designate any new recreational areas (*e.g.*, supervised beaches) or take any actions to promote increased recreational use without written concurrence from the NJFW and the USFWS that such designation or action would not adversely affect listed species or their habitats.
- The Borough will work with the NJFW and the USFWS to regulate existing and new recreational activities as needed to protect listed species.
- The Borough will prohibit and discourage kite flying and drone flying within 200 meters of posted nesting areas between March 15 and August 31 through Borough Ordinance Code: 58-14 (Q), signs, and education.
- In the Recreational Zone, the Borough may conduct, permit, or sponsor any organized recreational activities or events (*e.g.*, tournaments, races, games, musical events) at any time with no restrictions unless the Borough has been notified that listed species are present. If listed species are present, the Borough will adopt restrictions such as timing, fencing, or alternate locations as recommended by the NJFW and/or the USFWS.
- In the Precautionary Zone, the Borough will schedule organized events only between September 1 and March 14, unless the NJFW and the USFWS have indicated in writing that the event will not affect listed species (*e.g.*, nesting activity or the growing season has concluded for the year, or listed species are absent from the event area). For events scheduled in the Precautionary Zone between September 1 and November 30, the Borough will implement the USFWS fencing recommendations to protect seabeach amaranth, if present.

- The Borough will continue to prohibit use of recreational vehicles on Borough beaches on a year-round basis.
- The Borough Police Department maintains supervised and unsupervised beaches throughout the Borough. Patrols are conducted on ATVs and four-wheel drive vehicles. The Borough will implement driving restrictions in the Precautionary and Recreational Zones consistent with the USFWS’s Recreational Guidelines (Appendix A) and the Borough’s Beach Vehicle Use Regulations (Appendix E) and necessary plant protections. Specifically:
 - Police will not drive in the Precautionary Zone between March 15 and August 31, unless no listed species are present, in which case restrictions may be lifted as of July 15. From September 1 through November 30, police will maintain the maximum distance possible from red knots (if present) and drive at low speeds to avoid disturbing birds. This assumes that any listed plant will be fenced before August 31. Police will not drive within the Plant Protection Strip year-round.
 - Within the Recreational Zone, there will be no driving restrictions for police vehicles, outside of the Plant Protection Strip, unless the Borough has been notified that listed species are present. Police will not drive within the Plant Protection Strip year-round. If listed species colonize the Recreational Zone, the Borough will coordinate with the NJFW and the USFWS to develop a Vehicle Use Policy that is consistent with the Recreational Guidelines.
 - No restrictions apply when Police or Fire are responding to an emergency as defined in this plan.
- In addition to Police patrols, municipal vehicles are occasionally driven on Borough’s beaches (*e.g.*, Borough Public Works Department, Beach Patrol, and Beach Tag Program).
- Other than Police Emergency Responses, no municipal vehicles (except Public Works for routine outfall maintenance and beach clean-ups; see Beach Management and Maintenance Section E of the Plan) will be driven in the Precautionary Zones between March 15 and August 31 (unless no listed species are present) unless responding to an emergency or a SOE as defined in this plan. Municipal vehicles will not drive in the Plant Protection Strip year- round.
- No driving restrictions will apply in the Recreational Beach Zone unless the Borough has been notified that listed species are present. If listed species colonize the Recreational Beach Zone, the Borough will include non-Police municipal vehicles in the Recreational Zone Vehicle Use Policy to be developed with the NJFW and the USFWS. The policy will be consistent with the Recreational Guidelines if plovers establish nesting in the Recreational Zone. Municipal vehicles will not drive in the Plant Protection Strip year-round.
- If work is necessary within the Precautionary Zone, it will be completed between

August 31 and March 14, unless no listed species are present, in which case restrictions may be lifted as of July 15. If work on access paths or outfall maintenance in the Precautionary Zones is needed after March 14, the Borough will consult with NJFW and/or USFWS (use after business hours contact number for NJFW if necessary) regarding listed species presence before beginning any work, to allow for clean-ups until March 31. However, clean-ups may be stopped immediately in the Precautionary Zone if necessary during this time (March 15 – March 31) if listed species are present and may be adversely impacted. Contractor and vendor vehicles will not be driven through Plant Protection Strips in any beach zone.

- With the exception of the Plant Protection Strip, no driving restrictions will apply in the Recreational Beach Zone unless the Borough has been notified that listed species are present. Driving will be prohibited within the Plant Protection Strip year-round. If listed species colonize the Recreational Zone outside of the Plant Protection Strip, the Borough will include non-Police municipal, contractor, vehicles in the Recreational Zone Vehicle Use Policy to be developed with the NJFW and the USFWS. The policy will be consistent with the Recreational Guidelines if plovers establish nesting in the Recreational Zone.

The Borough will inform, in writing, all appropriate Borough Departments (*e.g.*, Police, Public Works, Borough Clerk, Beach Patrol, Beach Tag) and any contractors to avoid vehicle travel in the Precautionary Zones from March 15 through August 31 (if no beach nesting birds are present, than July 15). The written notification will also inform all Departments to maintain the maximum distance possible from red knots (if present) and drive at low speeds to avoid disturbing birds from the lifting of the driving restriction through November 30, and of the need to avoid vehicle travel year-round in all Plant Protection Strips, except in bonafide emergency or SOE situations.

NJFW Actions

- With Borough assistance if needed, the NJFW will be responsible for pre-season fencing (if birds present or history of nesting is established), and will continue to post signs for all nesting areas. The NJFW will conduct pre-season fencing with symbolic fencing in areas of suitable nesting habitat as necessary and appropriate (in any Beach Zone) in late March or early April. The NJFW will coordinate annually with the Borough regarding the extent of areas that will be pre-season fenced.
- The NJFW will post all active nesting areas (in any Beach Zone) with appropriate signs and symbolic fencing, including enlarging or adjusting pre-season fencing based on observed nesting activity. Within the limits of available funding, the NJFW will also assist in symbolic fencing and posting of limited areas identified by the USFWS where seabeach amaranth or other listed plants are at risk of being damaged (primarily in vicinity of beach nesting birds).
- The NJFW will remove fencing within 10 days of the end of any nesting activity,

unless fencing is needed longer to protect seabeach amaranth. The NJFW, the USFWS, and the Borough will cooperate to remove seabeach amaranth fencing in a timely manner (see USFWS Actions, below). All symbolic fencing will be removed promptly when it no longer provides protection to listed species.

- The NJFW will inform the Borough's Municipal Clerk, Chief of Police, Superintendent of Public Works, and Beach Patrol Supervisor within 2 working days of any areas that have been fenced.
- The NJFW will provide a timely response to Borough notification of planned events, and will provide recommendations to protect listed species.

USFWS Actions

- Subject to Corps or other funding, the USFWS (or its designee) will conduct limited early-season surveys to identify areas where seabeach amaranth or other listed plants are at risk of being damaged or destroyed, in order to make symbolic fencing recommendations.
- Subject to Corps or other funding, the USFWS (or its designee) will assist the Borough with any symbolic fencing needed after August 31 to protect seabeach amaranth. Fencing will provide at least a 3-meter buffer surrounding each plant, and will be removed by December 1 or sooner if no longer needed. The USFWS will provide seabeach amaranth and Plant Protection Strip signs, as available, to post where needed.
- The USFWS will provide a timely response to Borough notification of planned events, and will provide recommendations to protect listed species.

D. FIREWORKS

Background

Listed species in the vicinity of fireworks launch site can be directly harmed (eggs or chicks injured or destroyed, plants crushed) by explosions, debris, equipment, or launch personnel. Listed species within a fireworks viewing area, which may be distant from the launch site, may be directly harmed by spectators, illegal pyrotechnics, and off-road vehicle patrols by public safety personnel. In addition, listed birds are indirectly affected by fireworks. Normal breeding, feeding, and sheltering activities can be disrupted by noise and activity at both launch and viewing areas, and increased trash in viewing areas attracts predators. Many of these impacts are worsened because fireworks events are conducted at night, limiting visibility of plants, eggs, chicks, and symbolic fencing.

Borough Actions

- The Borough does not have Borough sponsored fireworks displays. If, in the future the Borough had a display it would be consistent with USFWS's Guidelines and the actions below. The Borough will inform the NJFW and the USFWS, in writing, of any planned fireworks events and the location proposed at least 30 days in advance.
- The Borough will coordinate with the NJFW and the USFWS to arrange for a listed species survey and fencing within a firework's primary and secondary viewing areas in the week preceding a fireworks event.
- To protect listed species in the Precautionary Zone, the Borough will take the following protective measures:
 - Keep the launch and primary viewing area as far away from the Precautionary Zone as long as nesting/foraging areas remain limited to the Precautionary Zone and North of Coral Ave. in order to reduce potential disturbance of beach nesting birds that may be nesting along Cape May State Park located to the east.
 - Provide adequate law enforcement and other personnel to the Precautionary Zone (if necessary) during events to enforce listed species protections, including prohibiting entry in fenced areas and use of illegal personal fireworks. The Borough will coordinate with the NJFW to determine the number of required enforcement personnel.
 - Prohibit driving of municipal, contractor, and vendor vehicles in the vicinity of nesting areas during these nighttime events, unless responding to an emergency. Law enforcement patrol vehicles and any other essential municipal vehicles will remain on the street behind the dunes, from which personnel can access the beach front on foot. Driving will also be prohibited within the Plant Protection Strips.
 - Ensure that monitors and enforcement personnel receive accurate, current information about the locations of listed species so they can minimize any disruptions from their own activities.
 - Prohibit all pets except service animals on the beach (especially near nesting areas) during fireworks events, and ensure compliance with this prohibition. Service animals near active nesting areas will be required to stay on a leash and will not be permitted in fenced areas.
 - Remove any trash or litter from the vicinity of nesting areas immediately following the event, except any trash located within fenced areas, which will be left until daylight and then removed by or under the supervision of the NJFW monitors. Further, any vehicles needed to remove trash will be operated during daylight hours, under supervision of a NJFW monitor, and consistent with the Recreational Guidelines.
- If nesting becomes established within the Recreational Zone, the Borough will

continue the above protective measures in the Precautionary Zone and will take the following additional actions:

- Relocate the primary viewing area and/or the launch site to minimize disturbance to nesting birds to the extent possible. In no case will a launch area be closer than 0.75 mile to a nesting area unless the NJFW and the USFWS concur in writing that the proposed launch site is not likely to adversely affect listed birds.
- Extend to nesting areas in the Recreational Zone all the protective measures listed above for the Precautionary Zone, and work with the NJFW to implement all relevant additional protective measures listed in the Fireworks Guidelines, including enhanced survey efforts, expanded fencing (100-foot instead of 50-foot buffers), and control of beach access and parking lots.

NJFW Actions

- The NJFW will provide a timely response to any request from the Borough to review specific fireworks plans and will provide recommendations to protect listed species.
- To protect listed species in the Precautionary Zone, the NJFW will take the following protective measures:
 - Provide a monitor to the Precautionary Zone during fireworks events to assist the Township in enforcement of listed species protections.
 - Provide a monitor the following day as needed to oversee trash removal from fenced areas, and any trash removal requiring a vehicle.
- If nesting becomes established within the Recreational Zone, the NJFW will continue the above protective measures in the Precautionary Zone, and will take the following additional actions:
 - Review proposed relocated primary viewing areas and/or launch sites to determine if fireworks events are likely to adversely affect listed birds.
- Extend to nesting areas in the Recreational Zone all the protective measures listed above for the Precautionary Zone, and will also work with the Borough to implement all relevant additional protective measures listed in the Fireworks Guidelines, including enhanced survey efforts, expanded fencing, and control of beach access and parking lots.

USFWS Actions

- The USFWS will provide a timely response to any request from the Borough to review specific fireworks plans and will provide recommendations to avoid impacts to listed species.

- The USFWS will conduct in a timely manner consultation with the U.S. Coast Guard regarding authorization of Borough fireworks events pursuant to Section 7 of the ESA.
- Subject to the availability of funding, the USFWS will survey, or coordinate with the ONLM to survey, the primary viewing area for listed beach plants within the Recreational Zone and the Precautionary Zone within the week preceding the event. The USFWS or the ONLM will also erect symbolic fencing around seabeach amaranth or other listed plants to provide a minimum 3-meter buffer zone around plants.

E. BEACH MANAGEMENT AND MAINTENANCE

Beach maintenance includes activities that the Borough undertakes to physically maintain the Borough's beaches and dunes, including mechanical beach raking, refuse and large debris removal, dune maintenance, beach nourishment, sand scraping, and oversight of beach access structures. These activities can impact habitat quality, disturb nesting birds, and destroy nests, chicks, and plants.

1. Beach Raking

Background

Beach rakes can inadvertently destroy unprotected nests, kill chicks, remove plants, and plant seeds. Beach raking can also diminish the suitability of nesting habitat by removing shell fragments and sparse vegetation. Habitat quality is also diminished by removal of natural wrack, an important foraging area for piping plovers and a key growing zone for seabeach amaranth. Beach raking is regulated by the New Jersey Coastal Zone Management Rules. In the Precautionary Zone raking restrictions are from March 15 to November 30, unless no listed species appear by July 15 (or as otherwise determined by NJFW and/or USFWS), in which case, raking restrictions may be lifted. However, the Plant Protection Strip, comprised of the back 25% of the width of the beach, will remain unraked year-round to encourage the colonization of beach plants. Within the Recreational Zones, there will be no raking restrictions (unless listed species are present), with the exception of the Plant Protection Strip, which will be maintained along the back 25% of the beach, in which raking will be prohibited year-round.

Borough Actions

- Unless otherwise regulated or prohibited by the New Jersey Coastal Zone Management Rules, no raking restrictions will apply in the Recreational Zone unless the Borough has been notified that listed species are present, except within the Plant Protection Strip. Raking will be prohibited in the Plant Protection Strip year-round. The USFWS recommends using PVC posts with signs (without string or flagging) to demarcate the Plant Protection Strip. If any plants occur, they will be fenced with a

3-meter buffer for protection. If listed species colonize the Recreational Zone, the Borough will include raking in the Recreational Zone Vehicle Use Policy to be developed with the NJFW and the USFWS. The policy will be consistent with the Recreational Guidelines if plovers establish nesting in the Recreational Zone and will include protective measures for seabeach amaranth.

- The Borough will not rake the Precautionary Zones between March 15 and November 30 except during a SOE (*i.e.*, potentially harmful debris must be removed from the beach to protect public health and safety). The Borough will consult with the USFWS and NJDEP on a case-by-case basis after July 15, the raking restriction may be lifted; however, the Borough will continue to incorporate a Plant Protection Strip, in which raking will be prohibited year-round, to provide opportunities for colonization by listed beach plants. The USFWS recommends using PVC posts with signs (without string or flagging) to demarcate Plant Protection Strips. If any plants occur, they will be fenced with a 3-meter buffer for protection.
- The Borough will notify the NJFW and the USFWS promptly upon the Declaration of an Emergency (notice by fax with confirmation of receipt is acceptable). In any Beach Zone, the Borough will implement the protective measures listed in Table 1 when conducting SOE Raking in the vicinity of an active nesting area or seabeach amaranth occurrence. When implemented with these protective measures, the NJFW and the USFWS will not object to SOE Raking in any Zone to remove medical waste, hazardous trash, or other unusual debris; SOE Raking may proceed once any required authorizations are obtained from the DLRP.

NJFW and USFWS Actions

- The NJFW will monitor nesting activity and regularly inform the Borough through the Municipal Clerk's office, Police, Beach and Public Works Departments of nest and brood locations so that changes in raking procedures affected by nesting status can be implemented on a timely basis.
- The NJFW and the USFWS will promptly review requests from the Borough for SOE Raking and any raking request after July 15 in the Precautionary Zone, and will make recommendations to protect listed species.
- The NJFW and/or the USFWS will provide an on-site monitor during SOE Raking, if determined that it is needed.
- The NJFW and the USFWS will recommend to the DLRP that normal raking prohibitions in the Precautionary Zone be waived to permit SOE Raking and other provisions in the Plan that will be carried out with the protective measures listed in Table 1.
- The NJFW or the USFWS will provide education to rake operators and other

Borough offices as requested regarding the need to avoid raking or driving within the Plant Protection Strip.

- The USFWS will provide seabeach amaranth and Plant Protection Strip signage, as available, for use on symbolic fencing and PVC posts demarcating Plant Protection Strips.

Table 1. Seasonal Protections for Listed Species When Motorized Vehicles or Equipment are Required to Respond to a State of Emergency (SOE)

| | Protections for Listed Birds | Protections for Listed Plants | Protections for All Listed Species |
|---|---|---|---|
| December 1- March 14 | | <ul style="list-style-type: none"> No vehicles will drive in Plant Protection Strips year-round. | |
| March 15 - April 15 | <ul style="list-style-type: none"> SOE response will be supervised by the NJFW monitors. | | <ul style="list-style-type: none"> vehicles will minimize removal of wrack material; and SOE response will proceed in accordance with any other recommendations of the NJFW or the USFWS to protect listed species. |
| May | <ul style="list-style-type: none"> vehicle use will take place during daylight hours; vehicles will not exceed 5 miles per hour when and where unfledged plover chicks are present; | <ul style="list-style-type: none"> vehicles will avoid crushing or removing seabeach amaranth and State-listed plants. No vehicles will drive in Plant Protection Strips year-round. | |
| June | | | |
| July | <ul style="list-style-type: none"> vehicles will not enter fenced areas; and | | |
| August | <ul style="list-style-type: none"> vehicles will temporarily halt or change route as requested by the NJFW monitors to avoid harassment of listed birds. | | |
| September | | | |
| October | | | |
| November | | | |
| December | | | |
| <p>EMERGENCY CONTACTS: New Jersey DEP Fish and Wildlife – Endangered and Nongame Species Program Christina Davis 609-628-1919 (office) or 609-960-6614 (cell) or christina.davis@dep.nj.gov Emily Heiser 609-628-0401 (office) or 609-775-5579 (cell) or Emily.Heiser@dep.nj.gov U.S. Fish and Wildlife Service – New Jersey Field Office 609-646-9310</p> | | | |

2. Large Debris Removal

Background

Large debris washes up on Borough beaches and must be removed periodically. Annual clean-ups are conducted through NJDEP authorized Beach Clean Programs (Ocean Conservancy's "Adopt a Beach Fall Cleanup" and the NJDEP "Adopt a Beach Program"). Additional clean-ups are sometimes carried out by the Borough Community Organizations. Removal of large debris requires motorized vehicles and equipment that can impact listed species.

Borough Actions

- No restrictions on clean-ups will apply in the Recreational Zone unless the Borough has been notified that listed species are present. If listed species colonize the Recreational Zone, the Borough will include clean-ups in the Recreational Zone Vehicle Use Regulations to be developed with the NJFW and the USFWS. The Regulations will be consistent with the Recreational Guidelines if plovers establish nesting in the Recreational Zone and include protective measures for seabeach amaranth. No vehicles will drive within the Plant Protection Strip year-round.
- The Borough will not conduct, sponsor, or authorize routine clean-ups in the Precautionary Zone between March 15 and August 31 (or by July 15, if no listed species are present). If any clean-ups cannot be completed by March 15, the Borough will consult with the NJFW and USFWS for listed species presence to allow for clean-ups until March 31. However, clean-ups may be stopped immediately in the Precautionary Zone if necessary during this time (March 15 – March 31), if listed species are present and may be adversely impacted.
- Vehicles engaged in routine, Borough sponsored clean-ups of the Precautionary Zone between September 1 and November 30 will remain at or below the high water line to protect listed plants; the Borough will notify the NJFW and the USFWS at least 10 days prior to such a clean-up.
- The Borough will notify the NJFW and the USFWS promptly upon Declaration of an Emergency (notice by fax with confirmation of receipt is acceptable). In any Beach Zone, the Borough will implement the measures listed in Table 1 when conducting SOE Cleanups in the vicinity of an active nesting area or seabeach amaranth occurrence. When implemented with these protective measures, the NJFW and the USFWS will not object to SOE Clean-ups to remove hazardous trash or other unusual debris to protect public health and safety; SOE Clean-ups may proceed once any required authorizations are obtained from the DLRP.

NJFW and USFWS Actions

- The NJFW will assist the Borough, as needed, in coordinating with NJDEP authorized Beach Clean Programs to schedule annual NJDEP-sponsored clean-ups

in the Precautionary Zone between September 1 and March 14.

- The NJFW and the USFWS will provide timely review of notifications of Borough- sponsored clean-ups (both routine and SOE), and will provide recommendations to protect listed species.
- The NJFW and/or the USFWS will provide a monitor to oversee SOE Clean-ups in the Precautionary Beach Zone between March 15 and August 31.

3. Refuse Containers

Background

The Borough adheres to the same “Carry In-Carry Out” refuse plan as the adjacent Cape May Point State Park. Therefore, no potential adverse impacts to birds or plants associated with vehicle use are anticipated.

4. Dune Management and Invasive Plant Species Control

Background

Steep, stabilized dunes do not provide suitable habitat for the beach-dependent listed species included in this plan. The dune management goal in the Precautionary Zone is the development of a more natural dune system, featuring an irregular face, occasional breaches, and a low-lying sparsely vegetated fore-dune. Limiting the width of the dune zone is also important to ensure sufficient low, unstabilized, sparsely vegetated back beach habitat, which is essential to listed species. A more natural dune system can also provide habitat for diverse native vegetation and wildlife. Dune creation and maintenance are regulated by the New Jersey Coastal Zone Management Rules (Section 7:7-10). Invasive plant species (*e.g.*, Asiatic sand sedge [*Carex kobomugi*]), either exotic or native, can degrade or eliminate native habitat for listed species.

Borough Actions

- The Borough will adopt recommendations of the NJFW and the USFWS to manage dunes and control invasive plant species in the Precautionary Zone in ways that enhance suitability of habitat for listed species, and provide for adequate storm protection. Dunes will be managed to promote a diverse assemblage of native vegetation and in accordance with N.J.A.C. 7:7-10. Invasive species control may include, but is not limited to, herbicide application or physical removal. (Note that routine dune management activities do not include beach raking or scraping.)
- The Borough will provide plans for review by the NJFW and the USFWS at least 30 days before carrying out routine dune management or invasive plant species control

activities at any time of year in the Precautionary Zone, or in the vicinity of any nesting area or seabeach amaranth occurrence that may be documented in the Recreational Zone. The Borough will incorporate any recommendations of the NJFW or the USFWS to protect listed species and their habitats.

- The Borough will not construct/install sand fence along dunes in the Precautionary Zone unless an emergency condition exists, and then only in consultation with the NJFW and the USFWS.
- There will be no restrictions on routine dune management or invasive species control in Recreational Zones unless listed species are present. Work done in the vicinity of listed nesting birds will be scheduled between September 1 and March 14. Work in the vicinity of a seabeach amaranth occurrence will be carried out between December 1 and May 14. Both seasonal restrictions will apply where seabeach amaranth coincides with listed nesting birds.
- Routine dune management activities in the Precautionary Zone will take place between September 1 and March 15, unless no listed species are present, in which case restrictions may be lifted as of July 15. Work in the vicinity of a seabeach amaranth occurrence will be carried out between December 1 and May 14.
- For routine dune management or invasive plant species control in the vicinity of a nesting area in any beach Zone, the Borough will schedule work between September 1 and March 14. Work in the vicinity of a seabeach amaranth occurrence will be carried out between December 1 and May 14. Both seasonal restrictions will apply where seabeach amaranth coincides with listed birds.
- The Borough will coordinate any SOE Post-storm Beach or Dune Restoration with the NJFW and the USFWS. The need for such activities will be signaled by a Declared Emergency, and eligibility for DLRP permits under Section 7:7-3 of the New Jersey Coastal Zone Management Rules. The Borough will notify the NJFW and the USFWS promptly upon Declaration of an Emergency (notice by fax with confirmation of receipt is acceptable).
- In any Beach Zone, the Borough will implement the protective measures listed in Table 1 when conducting SOE Restoration activities in the vicinity of an active nesting area, migrating red knots, or seabeach amaranth occurrence. When implemented with these protective measures, the NJFW and the USFWS will not object to SOE Restoration activities; SOE Restoration may proceed once any required authorizations are obtained from the DLRP. The parties anticipate that SOE Restoration activities will have low potential to impact listed species, as suitable nesting/growing habitat is likely to be damaged or destroyed by the erosional or storm event(s) that caused the SOE.

NJFW and USFWS Actions

- The NJFW and the USFWS will provide technical assistance to the Borough to develop dune management strategies that enhance suitability of habitat for listed species while meeting storm protection needs.
- The NJFW and USFWS will provide technical assistance to the Borough for controlling invasive plant species to enhance suitability of habitat for listed species. The NJFW and the USFWS recommendations will promote a diverse assemblage of native dune vegetation, and will be consistent with N.J.A.C. 7:7-10.
- The NJFW and the USFWS will provide a timely response to any request from the Borough to review specific routine dune management activities, and will provide recommendations to protect listed species and their habitats.
- The NJFW and the USFWS will provide timely recommendations upon Borough notification of SOE Post-storm Beach or Dune Restoration activities.
- The NJFW and/or the USFWS will provide a monitor to oversee SOE Beach or Dune Restoration activities, as necessary.

5. Beach Nourishment

Background

The Corps is in the construction phase of a 50-year beach nourishment program that includes 2.5 miles of beach including the Lower Cape May Meadows and all Cape May Point beaches located to the east of the Cape Ave Jetty. Initial nourishment of Borough beaches under the Corps program took place in 2003. Routine renourishments are scheduled approximately every 4 years.

Prior to beach nourishment, many sites within the Corps Program Area (Program Area) for beach nourishment activities that are now occupied by piping plovers and seabeach amaranth had become unsuitable due to previous shoreline stabilization efforts. Sandy beach habitats had eroded and new habitats were precluded from forming by the extensive system of hard stabilization structures and upland development found along the New Jersey coast. Nourishment of oceanfront beaches can create nesting habitat for piping plovers and suitable sites for seabeach amaranth.

It can be anticipated that, following initial construction of the Federal nourishment projects within the Program Area, creation of potentially suitable habitat for piping plovers and seabeach amaranth will occur in areas where these species are currently absent, or in the case of seabeach amaranth, are present in only very low numbers. It should also be noted that although the Corps nourishment projects will create sandy

beach habitat that may attract piping plovers, the habitat created can be expected to be of lesser quality than habitat that is formed through natural coastal processes such as overwash. Habitat creation alone will not create a beneficial effect for either species if the habitat is suboptimal and does not provide foraging opportunities for plover chicks or if disturbance from municipal and recreational users cannot be managed to avoid the loss of nests or chicks or loss of plants.

Pursuant to Section 7 of the ESA, the Corps completed formal consultation with the USFWS for beach nourishment activities under the USFWS's December 2005 Programmatic Biological Opinion (PBO) on the effects of Federal beach nourishment, renourishment, stabilization, and restoration activities along the Atlantic Coast of New Jersey within the Corps, Philadelphia District on the federally listed (threatened) piping plover (*Charadrius melodus*) and seabeach amaranth (*Amaranthus pumilus*).

Relevant conservation measures proposed by the Corps for protection of federally listed species and reasonable and prudent measures imposed by the USFWS to minimize take of federally listed species are specified within the USFWS's PBO and are applicable to all projects carried out under the Corps program. To be exempt from the take prohibitions of Section 9 of the ESA, the Corps must implement all pertinent reasonable and prudent measures and terms and conditions, as stipulated in the USFWS's PBO, to minimize the impact of anticipated incidental take of piping plovers and seabeach amaranth.

Nourishment or operation and maintenance activities will be scheduled and sequenced to avoid or minimize construction activities during the piping plover nesting season within known piping plover nesting areas, or to avoid disturbing migrating red knots, if present. For areas where habitat conditions have changed substantially, such that a suitable habitat is no longer present, a case-by-case evaluation of the site will be conducted by the USFWS in coordination with the Corps and the NJDEP. All construction activities will avoid any delineated locations of seabeach amaranth to the greatest practicable extent.

In the future, the Borough and/or the NJDEP may decide to sponsor beach nourishment in the Borough to supplement the Corps' program. In addition, the Borough and/or the NJDEP may conduct beach nourishment as part of an SOE post-storm beach or dune restoration. Whether routine or SOE, any beach nourishment outside of the Corps program would require Federal and State permits from the Corps and the DLRP, respectively.

Borough Actions

- The Borough will work with the USFWS, NJDEP, and the Corps to implement the provisions of the 2005 PBO, and of each streamlined consultation, during each re-nourishment of the Borough's beaches under the Corps' nourishment program. Key provisions of the PBO include fencing, avoidance, and possibly salvage and replacement of seabeach amaranth plants; and a seasonal restriction (March 15 to

fledging of the last chick) on construction within 1,000 meters of piping plover nesting areas, as defined in this plan.

- The Borough will work with the USFWS and the Corps to ensure that any routine nourishment activities sponsored by the NJDEP and/or the Borough (requiring Federal permits) include conservation measures at least as protective as the provisions of the PBO that governs implementation of the Corps' beach nourishment program. Protection would be achieved mainly through seasonal restrictions on construction within 1,000 meters of plover nesting areas, and fencing, avoidance, and possibly salvage and replacement of seabeach amaranth plants.
- SOE beach nourishment may be necessary when conditions pose a clear danger to human life or health (*e.g.*, ocean front beach erosion has occurred that makes public access points onto the beach dangerous or impossible to use) or pose a clear danger of damage to public or private structures lying landward of the ocean-front seawall or primary dune line, such as private homes, public buildings, streets, water lines and sewer lines. Placement of clean fill material is among the activities listed at N.J.A.C. 7.7-10; therefore, SOE beach nourishment qualifies as "SOE post-storm beach or dune restoration" as defined in this plan.
- The Borough will coordinate any SOE post-storm beach or dune restoration (including SOE Beach Nourishment) with the NJFW and the USFWS. The need for such activities will be signaled by a Declared Emergency, and eligibility for DLRP permits under Section 7:7-3 of the New Jersey Coastal Zone Management Rules. The Borough will notify the NJFW and the USFWS promptly upon Declaration of an Emergency (notice by fax with confirmation of receipt is acceptable).
- In any Beach Zone, the Borough will implement the protective measures listed in Table 1 when conducting SOE Restoration activities in the vicinity of listed species. When implemented with these protective measures, the NJFW and the USFWS will not object to SOE Restoration activities; SOE restoration may proceed once any required authorizations are obtained from the DLRP and the Corps. The parties anticipate that SOE restoration activities (including SOE beach nourishment) will have low potential to impact listed species, as suitable nesting/growing habitat is likely to be damaged or destroyed by the erosional or storm event(s) that caused the SOE.

NJFW Actions

- The NJFW will provide current information on the status and locations of listed birds before and during any renourishment (whether sponsored by the Corps, the NJDEP, or the Borough) to aid in the implementation of relevant Conservation Measures and Terms and Conditions.

- In the course of planning for beach nourishment projects, the NJFW will provide: (1) current and historical nesting data and locations, and (2) recommendations for habitat enhancements that could be incorporated into the project.
- The NJFW will provide a timely response to any request from the Borough to review specific beach nourishment plans.
- The NJFW will provide timely recommendations upon notification of SOE Post-storm Beach or Dune Restoration activities that include SOE Beach Nourishment.

USFWS Actions

- The USFWS will provide updated information of the locations of seabeach amaranth before and during any renourishment (whether sponsored by the Corps, the NJDEP, or the Borough) to aid in the implementation of relevant Conservation Measures and Terms and Conditions.
- In the course of planning for beach nourishment projects, the USFWS will provide: (1) current and historical locations of seabeach amaranth, and (2) recommendations for habitat enhancements that could be incorporated into the project.
- The USFWS will work with the Corps to complete promptly streamlined consultation for each re-nourishment of the Borough's beaches under the Corps' program.
- The USFWS will work with the Corps, the applicant, and the Borough to complete promptly consultation regarding Corps permits to authorize routine or SOE beach nourishment sponsored by the NJDEP and/or the Borough.
- Regardless of the project sponsor, the USFWS will provide the Borough with copies of relevant documents resulting from the consultation process regarding beach nourishment, including key sections of Biological Opinions.
- The USFWS will provide timely recommendations upon notification of SOE Post-storm Beach or Dune Restoration activities that include SOE beach nourishment.

6. Sand Scraping

Background

Use of motorized equipment to conduct sand scraping (mechanical redistribution of sand; also called sand transfers or sand mining) can directly harm listed species by crushing eggs, chicks, plants, or seeds; can harass nesting or foraging birds through

disturbance; and can adversely impact habitats for listed species by creating ruts and removing shells, wrack, and natural debris. Sand scraping is regulated by the New Jersey Coastal Zone Management Rules. The Borough will prohibit sand scraping in the Precautionary Zone year round.

Borough Actions

- No restrictions on sand scraping will apply in the Recreational Zone unless the Borough has been notified that listed species are present, with the exception of the Plant Protection Strip consisting of the back (landward) 25% of the beach. Scraping will be prohibited in this Plant Protection Strip year-round. If listed species colonize the Recreational Zone (outside of the Plant Protection Strip) and remain beyond August 31, the Borough will develop appropriate policies for sand scraping with NJFW and the USFWS. The policy will be consistent with the Recreational Guidelines if listed species are present in the Recreational Zone.
- The Borough will not conduct sand scraping in the Precautionary Zone at any time of the year except as a necessary part of SOE Post-storm Beach or Dune Restoration.
- Mechanical redistribution of sand is among the activities listed at N.J.A.C. 7.7-10.3; therefore, sand scraping under SOE conditions qualifies as “SOE Post-storm Beach or Dune Restoration” as defined in this plan.

The Borough will coordinate any SOE Post-storm Beach or Dune Restoration with the NJFW and the USFWS. The need for such activities will be signaled by a Declared Emergency, and eligibility for DLRP permits under Section 7:7-3 of the New Jersey Coastal Zone Management Rules. The Borough will notify the NJFW and the USFWS promptly upon Declaration of an Emergency (notice by fax with confirmation of receipt is acceptable).

In any Beach Zone, the Borough will implement the protective measures listed in Table 1 when conducting SOE Restoration activities in the vicinity of an active nesting area or seabeach amaranth occurrence. When implemented with these protective measures, the NJFW and the USFWS will not object to SOE Restoration activities; SOE Restoration may proceed once any required authorizations are obtained from the DLRP and the Corps. The parties anticipate that SOE Restoration activities will have low potential to impact listed species, as suitable nesting/growing habitat is likely to be damaged or destroyed by the erosional or storm event(s) that caused the SOE.

F. EDUCATION AND OUTREACH

Background

This component of the management plan encompasses all of the management issues

discussed above for the purposes of reducing predation, human disturbance, and the detrimental impacts of beach maintenance. Education and outreach include on-site, off-site, and social media distribution of educational materials, educational displays, lectures, beach walks, interpretive signs, and other elements that provide information on the biology of listed species, the impact of various human activities and predators, and recommended actions to help protect and restore populations of listed species.

Borough Actions

- Through the *Cape May Point Taxpayer Newsletter*, social media, and/or other formats, the Borough will inform residents, vacation homeowners, and renters about protections for listed species and dunes, refuse policies, the Borough's pet ordinance, and activities prohibited or discouraged on the beach. The Borough will also publish periodic updates on the nesting success, population status, species biology, and management activities for listed species (information provided by the agencies).
- Through the *Cape May Point Taxpayer Newsletter*, social media, and/or other formats, the Borough will inform residents, vacation homeowners, and renters about the importance of keeping cats indoors. The information will discourage cat owners from allowing their pets to roam freely outdoors, and from abandoning pet cats. The newsletter articles will also discourage feeding feral cats.

NJFW and USFWS Actions

- The NJFW and the USFWS will assist the Borough in developing educational outreach materials by supplying existing materials and necessary information, and providing technical review.
- The NJFW and the USFWS will provide information for the *Cape May Point Taxpayer Newsletter* articles and/or other publications. Upon request of the Borough, the agencies will author articles within limits of available staff time.
- The USFWS will provide copies of the "Seabeach Amaranth" fact sheet developed by the ONLM (as needed), and the USFWS's "Beach Management Planning" and "Piping Plover" factsheets upon request and as available. NJFW will provide brochures on beach-nesting birds upon request and as available.
- The NJFW and the USFWS will place interpretive signs on the beach annually regarding listed species, as available and if birds colonize the Borough. The NJFW and the USFWS will consult the Borough in placing interpretive signs.
- The NJFW will conduct beach walks to show beach nesting bird areas and nesting activity to Cape May Point Officials as requested by the Borough and scheduled at least once per season, if birds colonize the Borough.
- Upon request of the Borough, the NJFW and/or the USFWS will conduct periodic educational talks and/or beach walks for the Borough employees, contractors,

residents, or visitors within limits of available staff time.

G. OTHER PROVISIONS

- The NJFW and the USFWS will regularly inform the Borough regarding changes in listed species locations, distribution, populations, habitat, and/or nesting activity that may affect any of the provisions of this plan or that would be of general interest to the Borough.
- The NJFW will provide regular notifications regarding nesting activity including but not limited to biweekly faxes or e-mails during the nesting season sent to the Municipal Clerk, Chief of Police, Director of Public Works and the Beach Supervisor. The faxes or e-mails will provide the current locations of nests and chicks, the NJFW management activities, and other important information.
- The NJFW and the USFWS will provide the Borough with a brief summary of endangered species recovery status and management, with recommendations, by the end of each calendar year.
- The NJFW and the USFWS will provide maps of species locations within the Borough, upon request.
- The NJFW and the USFWS will work with the Borough to support implementation of this Plan.