



MASSWILDLIFE

## DIVISION OF FISHERIES & WILDLIFE

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[MASS.GOV/MASSWILDLIFE](https://www.mass.gov/masswildlife)

February 29, 2024

Fain Hackney  
Fool's High Tide, LLC  
c/o Reynolds, Rappaport, Kaplan & Hackney, LLC  
Edgartown, Massachusetts 02539

Chilmark Conservation Commission  
Town Offices  
P.O. Box 119  
Chilmark, MA 02535

RE:    Applicant:            Fain Hackney  
      Project Location:     25 East Lane  
      Project Description:   Install and Maintain Cobble and Sand Renourishment  
      DEP Wetlands File No.: 012-0924  
      **NHESP File No.:     24-17136**

Dear Commissioners and Applicant:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the "Division") received a Notice of Intent in compliance with the rare wildlife species section of the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.37). The Division also received the MESA Review Checklist and supporting documentation for review pursuant to the MA Endangered Species Act Regulations (321 CMR 10.18).

The Division has determined that this Project, as currently proposed, will occur **within** the actual habitat of the following species:

<u>Scientific Name</u>	<u>Common Name</u>	<u>Taxonomic Group</u>	<u>State Status</u>
<i>Sternula antillarum</i>	Least Tern	Bird	Special Concern
<i>Charadrius melodus</i>	Piping Plover	Bird	Threatened

State-listed species and their habitats are protected in accordance with the MESA and state-listed rare wildlife habitats are protected pursuant to the rare wetland wildlife provisions of the WPA. The Piping Plover is also protected as a Threatened species pursuant to the U.S. Endangered Species Act (ESA, 50 CFR 17.11).

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In Massachusetts, generally, these coastal birds can be found from April – September. Piping Plovers and Least Terns are ground-nesting shorebirds that will establish nests on sparsely vegetated, sandy areas of coastal beaches and dunes. Their nests are comprised of shallow depressions in the sand that may be lined with shell fragments or pebbles. Piping Plovers, terns and their nests are particularly vulnerable to predators, unleashed pets, and human disturbance. After hatching, Piping Plover and Least Tern chicks are not capable of flight. During this period Piping plovers and their unfledged chicks will often range widely to forage along the shore.

The purpose of the Division's review of the proposed project under the WPA regulations is to determine whether the project will have any adverse effects on the Resource Areas Habitats of state-listed species. The purpose of the Division's review under the MESA regulations is to determine whether a Take of state-listed species will result from the proposed project.

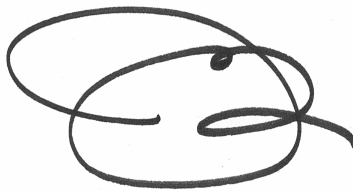
Based on the information provided and the information contained in our database, it is the opinion of the Division that this project, as currently proposed, **must be conditioned in order to avoid adverse effects to the Resource Area Habitats of state-listed wildlife species (310 CMR 10.37, 10.58(4)(b), 10.59) and must be conditioned in order to avoid a prohibited Take of state-listed species (321 CMR 10.18(2)(a)). To avoid adverse effects to the Resource Area Habitats and to avoid a prohibited Take of state-listed species, the conditions attached to this letter must be met.**

Provided the attached conditions are included in any approving Orders of Conditions issued by the Conservation Commission, and the applicant complies with all the attached conditions, the project will not result in an adverse impact to the resource area habitats of state-listed wildlife species pursuant to the WPA and will not result in a prohibited Take pursuant to the MESA. A copy of the final Order of Conditions shall be sent to the NHESP simultaneously with the applicant as stated in the Procedures section of the WPA (310 CMR 10.05(6)(e)).

This determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.18. Any changes to the proposed project or any additional work beyond that shown on the site plans may require an additional filing with the Division pursuant to the MESA. This project may be subject to further review if no physical work is commenced within five years from the date of issuance of this determination, or if there is a change to the project.

Please note that this determination addresses only the matter of state-listed species and their habitats. If you have any questions regarding this letter please contact Emily Holt, Endangered Species Review Assistant, at Emily.Holt@mass.gov, (508) 389-6385.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse Leddick". The signature is stylized and somewhat abstract, with several loops and a long horizontal stroke at the end.

Jesse Leddick  
Assistant Director

cc:

Attachment: List of Conditions

# List of Conditions

Applicant: Fain Hackney  
Project Location: 25 East Lane  
Project Description: Install and Maintain Cobble and Sand Renourishment  
**NHESP File No.:** 24-17136  
**Heritage Hub Form ID:** RC-84006  
**Approved Plan:** SITE PLAN PROPOSED BEACH RENOURISHMENT - PREPARED FOR: FOOL'S HIGH TIDE, LLC  
CHILMARK, MA  
**Plan date:** DECEMBER 19, 2023 **Revised Date:** N/A

**To avoid adverse effects to the Resource Area Habitats and to avoid a prohibited Take of state-listed species, the following condition(s) must be met:**

1. **Time of Year Restriction:** To avoid impacts to state-listed nesting coastal birds, the installation and maintenance of the cobble and sand nourishment shall not occur during the period of **April 1 – August 31**, unless a plan for the monitoring and protection of state-listed coastal birds has been approved in writing by the Division. Any approved monitoring and protection plan must be implemented under the direct oversight of a qualified shorebird monitor, as determined by the Division,
  - a. If nourishment is anticipated during the nesting period (April 1 – August 31), then prior to the start of work the Applicant must submit the name and/or organization selected to conduct the shorebird monitoring for written pre-approval by the Division.
  - b. At minimum, the monitoring and protection plan must include an initial survey of the entire work area inclusive of equipment access routes. The qualified monitor must conduct the survey (not more than 48 hours prior to the start of work) for the presence of state-listed shore bird nests, “scrapes”, or territories within 100 yards of the proposed work area to determine if state-listed terns, Piping Plovers, their nests or territories are present and shall report their findings to the Division and the Conservation Commission. No work may occur within 100 yards of nests, scrapes, or unfledged chicks. Please note the Division may determine that additional protection measures or monitoring are required based upon the anticipated project duration, time of year, scope of work, etc.
2. **State-listed Species Protection:** The applicant has the responsibility of protecting breeding Piping Plovers or state-listed species of terns that may be on this section of beach. Therefore, the applicant must allow regular monitoring for the presence of Piping Plovers and terns by a qualified shorebird monitor, as determined by the Division, during the period April 1 – August 31 and shall allow any nests, scrapes, or unfledged chicks to be protected with symbolic fencing (warning signs and twine fencing).
3. **Authorization Duration:** This authorization is valid for 5 years from the date of issuance. Work may be completed at any time during this 5-year period in compliance with the conditions herein. Thereafter, the Applicant must re-file pursuant to the MESA.
4. **Notice:** Upon filing for renewal, extension, or amendment of the Orders of Conditions, the Applicant shall contact the Division for written response regarding impacts to Resource Area habitat of state-listed wildlife.