



United States Department of the Interior



FISH AND WILDLIFE SERVICE
New England Field Office
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Concord, New Hampshire 03301-5087

March 10, 2006

Ms. Carol Richie
Seacoast Area Feline Education and Rescue Inc.
P.O. Box 1531
Hampton, NH 03843

Dear Ms. Richie:

This letter is in regard to the Seacoast Area Feline Education and Rescue (SAFER) program to encourage and assist with feral cat feeding stations near beaches in the Towns of Seabrook and Hampton, New Hampshire. Promoting cat feeding stations and Trap, Neuter and Release (TNR) programs in areas where federally-listed threatened piping plovers (*Charadrius melodus*) occur has resulted in the documented mortality of piping plovers by cats, an unauthorized taking under the Endangered Species Act of 1973, (ESA) as amended (16 U.S.C. § 1531 et seq.).

Many people believe that cats should be permitted to roam free and exercise their predatory instincts; however, domestic cats are not native to North America and are, therefore, an introduced predator and not part of a naturally functioning ecosystem. It has been estimated that hundreds of millions of birds and small mammals are killed annually by free-roaming cats (Hatley 2003). Piping plovers, which are the focus of intensive recovery efforts by federal, state, and numerous other partners, are highly vulnerable to cat predation. Two essential plover behaviors make them especially susceptible to cats. First, adult plovers are famous for feigning a broken-wing to distract predators away from their nests and chicks, then flying away at the last minute. Unfortunately, a plover may not be able to actually escape from a predator that is more agile than those that are native to their natural environment. We believe this was the fate of at least one adult plover killed at Seabrook Beach in 2005. Second, plover chicks are precocial, which means that they must move around on the beach to feed themselves during the approximately 25 days before they become capable of flight. Again, this behavior makes them highly vulnerable to cat predation during this life-stage. In light of these behaviors, we advise you as president of SAFER that releasing or maintaining feral cats within dispersal distance of a piping plover breeding site may cause take in violation of the ESA.

Predation of nests and chicks of the piping plover has been an ongoing issue at Seabrook and Hampton Beaches. New Hampshire Fish and Game biologists have documented cat tracks within piping plover nesting areas. Moreover, cat predation was likely the most significant cause of chick and adult plover mortality in 2002, 2004 and 2005. In 2003, the Seabrook Conservation Commission chairperson wrote to the Selectmen of the Town of Seabrook, requesting that the

town take steps to prevent feeding stations and remove feral cats from the beach area. In 2005, two cats with SAFER-notched ears were removed from Hampton Beach State Park and turned over to a representative of SAFER for holding until after the plover season. However, it is our understanding that the cats have since been returned to the Hampton Beach area and therefore may continue to disturb and/or predate nesting piping plovers upon the birds' return this spring.

Through this letter, the Service informs you that should free-ranging cats from managed cat colonies in Seabrook and Hampton kill, injure, harass or harm nesting piping plovers or their young, SAFER may be liable for this unauthorized take in violation of Section 9 of the ESA and its implementing regulations. Unless a cat colony is confined to an escape-proof enclosure that prevents cats from ranging at-large, SAFER and associated volunteers are unable to ensure that cats from a managed colony would not prey upon or harass piping plovers or their young and, thus, cause take of a federally-listed species.

The following information is provided to assist SAFER in understanding its responsibilities for protecting federally-listed threatened and endangered species.

- Under the ESA and its implementing regulations, it is unlawful for any person to "take" a threatened species, or cause such take to occur. 16 U.S.C. § 1538(a)(1)(G); 50 C.F.R. §§ 17.31(a), 17.21(a & c).
- The ESA defines "take" to mean: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. 16 U.S.C. § 1532(19).
- The ESA defines "person" to mean "an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States." 16 U.S.C. § 1532(13).
- The Service's regulations further define harassment and harm. Harassment in the definition of "take" in the Act means an intentional or negligent act or omission that 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. 50 C.F.R. § 17.3. Harm in the definition of "take" in the Act means any act that actually kills or injures wildlife. Such acts may include significant habitat modification or degradation where the act actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

The ESA provides a variety of enforcement mechanisms, including the imposition of civil penalties, criminal fines, and the ability for third parties to bring citizen lawsuits. See, e.g., 16 U.S.C. § 1540(a), (b) & (g).

As shown above, an entity that carries out, authorizes, or encourages others to engage in an activity that is likely to result in take of a federally-listed species, such as the establishment and maintenance of a managed TNR cat colony, may be held responsible for violations of Section 9 of the ESA. To ensure protection of federally-listed species, the Service strongly advises

SAFER to discontinue its current practice of encouraging and maintaining the establishment of feral cat colonies through cat-feeding stations and TNR activities within five miles of any piping plover beaches, including Seabrook and Hampton Beaches.

We would be pleased to meet with you and members of your organization to further discuss this matter. Thank you for your cooperation and please contact Susi von Oettingen of this office at 603-223-2541, extension 22, if you have any questions.

Sincerely yours,

Michael J. Amaral
Acting Supervisor
New England Field Office

Literature Cited

Hatley, P. J. 2003. Feral cat colonies in Florida: The fur and feathers are flying. Report to the U.S. Fish and Wildlife Service. University of Florida Conservation Clinic. 37 pp.

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