

CAHA BOTH

~~FQD 352~~
1068

Michael B Edwards
08/17/2005 03:30 PM
MDT

To: Mary Doll/CAHA/NPS@NPS
cc: Pete_Benjamin@fws.gov, Sandra Hamilton/DENVER/NPS@NPS
Subject: Re: Fw: Volusia County, FL Plover Case

Hi Mary,

I totally agree with Pete. This case hardly "lays to rest the vagaries of harrassment by ORV's being considered a take," rather it elaborates on the many factors that may apply in determining "harrassment." Different facts could lead to a very different outcome. For example, the court says that "human conduct would 'harass' plovers if it was so annoying as to make it difficult for them successfully to hatch and raise their young." Isn't this exactly what is happening at CAHA? CAHA isn't protecting adult birds in the overwintering season, but rather, your fact scenario seems more closely aligned with that in the Plymouth case, where there are active breeding grounds. In that case, the plaintiff's didn't even need to attempt to use the lesser (and easier to meet) standard of "harass", rather, "harm" was alleged, and "harm" was subsequently found by the court. Were I the ORV groups, I would be disinclined to cite this case for my cause.

Michael B. Edwards
National Park Service
WASO-EQD
PO Box 25287
Denver, CO 80225
PHONE: 303-987-6953
FAX: 303-987-6782

Mary Doll

Mary Doll
08/17/2005 03:42 PM
EDT

To: Michael B Edwards/DENVER/NPS@NPS
cc:
Subject: Fw: Volusia County, FL Plover Case

Thought you might be interested in this.

Mary H. Doll
Management Assistant
Outer Banks Group
National Park Service

Phone: (252) 473-2111, ext. 154
Fax: (252) 473-2595

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----- Forwarded by Mary Doll/CAHA/NPS on 08/17/2005 03:42 PM -----



Pete_Benjamin@fws.gov
v
08/15/2005 05:20 PM
AST

To: Mark_Hardgrove@nps.gov
cc: Mary_Doll@nps.gov, Pat_Reed@nps.gov, Sherri_Fields@nps.gov,
David_Rabon@fws.gov, Anne_Hecht@fws.gov
Subject: Re: Fw: Volusia County, FL Plover Case

Actually, it underscores exactly what I've been saying. The "line" for what constitutes take via harassment is harder to define than for other

08/15/2005 04:20

PM MST

Mark,

Here is the ruling on the plover "harassment" case from the Federal Middle District Court, Florida. It lays to rest the vagaries of harassment by ORVs being considered "take". Read on.....

Dave Goodwin

dave@obpa.org

<http://obpa.org>(See attached file: Plover Case Order.pdf) (See attached



file: Plover Case Order.pdf) Plover Case Order.pdf