

0020494

**From:** [Thayer Broili](#)  
**To:** [Mike Murray](#)  
**Subject:** Fw: Recovery Plan v. FONSI  
**Date:** 02/22/2008 09:43 AM  
**Attachments:** [Comparisons RP v FONSI.doc](#)

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More on comparison of the recovery plan v. "our plan". In light of the remarks by FWS in the Tuesday discussion, it may be moot, but Britta feels that there may still be a need for clarification that the recovery plan would be interpreted by FWS to shut down the spits and points to ORV traffic.

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----- Forwarded by Thayer Broili/CAHA/NPS on 02/22/2008 09:28 AM -----

**Doug  
McGee**

To: Thayer Broili/CAHA/NPS@NPS  
cc:  
Subject: Re: Recovery Plan v. FONSI

02/21/2008  
03:33 PM  
EST

Hi Thayer,  
If you have any questions, give me a call.

Thanks  
Doug McGee  
Lead Avian BioTech  
Resource Management Division  
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P.O. Box 190 Buxton, NC 27920



(252) 475-8315 [Comparisons RP v FONSI.doc](#)

Comparisons of the PIPING PLOVER (*Charadrius melodus*) Atlantic Coast Population; Revised Recovery Plan to the Finding of No Significant Impact/BO as written by USF&W on CAHA's Interim Protected Species Management Strategy

Issues addressing management in the Recovery Plan in Section G:

- Available data indicate that a **50 meter buffer** distance around nests will be adequate to prevent harassment of the majority of incubating piping plovers. **However, fencing around nests should be expanded in cases where the standard 50 meter-radius is inadequate to protect incubating adults or unfledged chicks** from harm or disturbance. Data from various sites distributed across the plover's Atlantic Coast range indicates that larger buffers may be needed in some locations (see Table 3, page 12). This may include situations where plovers are especially intolerant of human presence, or where a 50 meter-radius area provides insufficient escape cover or alternative foraging opportunities for plover chicks.

The FONSI states:

“When plover nests are found, CAHA staff would collect data on bird behavior, location of nests, and presence of predators. CAHA staff would ensure adequate buffers are provided within existing closures or create buffers for the nests that are found outside of existing closures. A **150-foot buffer**, from which all recreational uses would be restricted, would be established around any piping plover nests, **with additional buffer provided if warranted based on observed bird behavior.**”

The measures and expansion language are approximately equal.

- In cases where the nest is located less than 50 meters above the high tide line, fencing should be situated at the high tide line, and a qualified biologist should monitor responses of the birds to passersby, documenting his/her observations in clearly recorded field notes. Providing that birds are not exhibiting signs of disturbance, this smaller buffer may be maintained in such cases.

The FONSI states nothing about proximity to high tides, but as a rule, if it were less than the required buffer to the high-tide line, we would install a full-beach closure to the low-tide line.

- On portions of beaches that receive heavy human use, areas where territorial plovers are observed should be symbolically fenced to prevent disruption of territorial displays and courtship. Since nests can be difficult to locate, especially during egg-laying, this will also prevent accidental crushing of undetected nests. If nests are discovered outside fenced areas, fencing should be extended to create

a sufficient buffer to prevent disturbance to incubating adults, eggs, or unfledged chicks.

The FONSI doesn't specifically address heavy-use beaches, but does state:

1. In general, because of the dynamic nature of the CAHA beaches and inlets, the actual management may change by location and time, and new sites (bars, islands) may require additional management, or management actions may become inapplicable for certain sites due to changes in ground conditions.
  2. Areas with symbolic fencing (string between posts) are closed to recreational access (both ORV and pedestrian).
  3. ORV access is provided for in this action to the extent practicable. Between April 1 and August 31, a 100- to 150-foot wide ORV corridor would be established in recent breeding areas, e.g. at a spit or Cape Point. The corridor would be delineated by a row of posts below the dune line. Education materials and opportunities would be provided for visitors regarding wildlife values and susceptibility of the wrack to foot and ORV traffic. In areas of reduced corridor width (i.e. narrower than 100 feet), a reduced speed limit of 10 mph would be posted. The "breeding season" ORV corridor at each site would be reopened to its designated width after all chicks fledge. The general 150-foot ORV corridor would be re-established September 1.
  4. Essential vehicles would enter restricted areas only as necessary and in accordance with guidelines in the .Essential Vehicles. section of the Revised Recovery Plan for the piping plover (USFWS, 1996a). Vehicles would not exceed 10 miles per hour.
- Pets should be leashed and under control of their owners at all times from April 1 to August 31 on beaches where piping plovers are present or have traditionally nested. Pets should be prohibited on these beaches from April 1 through August 31 if, based on observations and experience, pet owners fail to keep pets leashed and under control.

The FONSI states:

Pets already must be crated, caged, restrained on a leash, or otherwise physically confined at all times in all areas of CAHA (36 CFR Sec 2.15 Pets). Pets would be prohibited within any avian closure.

- Kite flying should be prohibited within 200 meters of nesting or territorial adult or unfledged juvenile piping plovers between April 1 and August 31.

The FONSI states only:

Plovers are also intolerant of kites, particularly as compared to pedestrians, dogs, and vehicles; biologists believe this may be because plovers perceive kites as potential avian predators (Hoopes et al., 1992).

We have no signage prohibiting kite flying, so Law Enforcement is reticent to write warnings and/or tickets.

- Fireworks should be prohibited on beaches where plovers nest from April 1 until all chicks are fledged

Fireworks are prohibited in the park.

#### Protection of Nests

- All suitable piping plover nesting habitat should be identified by a qualified biologist and delineated with posts and warning signs or symbolic fencing on or before April 1 each year. All vehicular access into or through posted nesting habitat should be prohibited. However, prior to hatching, vehicles may pass by such areas along designated vehicle corridors established along the outside edge of plover nesting habitat. Vehicles may also park outside delineated nesting habitat, if beach width and configuration and tidal conditions allow. Vehicle corridors or parking areas should be moved, constricted, or temporarily closed if territorial, courting, or nesting plovers are disturbed by passing or parked vehicles, or if disturbance is anticipated because of unusual tides or expected increases in vehicle use during weekends, holidays, or special events.

The FONSI states:

Recent breeding habitat for the piping plover (based on last three years of breeding/nesting data) would be closed to the public with symbolic fencing (posts and signs) by April 1<sup>st</sup> each year. Observation activity will follow essential vehicle guidelines in the piping plover recovery plan so as to minimize disturbance. The presence of territorial or courting plovers outside of existing closures could further extend these initial closures (ensuring a 150 foot buffer for the observed birds). All closures would be removed if no territorial/mating/nesting activity has been seen by July 15<sup>th</sup> or when areas have been abandoned for a two-week period, whichever comes later.

- If data from several years of plover monitoring suggests that significantly more habitat is available than the local plover population can occupy, some suitable habitat may be left unposted if the following conditions are met:
  1. The Service OR a State wildlife agency that is party to an agreement under Section 6 of the ESA provides written concurrence with a plan that:
    - A. Estimates the number of pairs likely to nest on the site based on the past monitoring and regional population trends.

AND

- B. Delineates the habitat that will be posted or fenced prior to April 1 to assure a high probability that territorial plovers will select protected areas in which to court and nest. Sites where nesting or courting plovers were observed during the last three seasons as well as other habitat deemed most likely to be pioneered by plovers should be included in the posted and/or fenced area.

AND

- C. Provides for monitoring of piping plovers on the beach by a qualified biologist(s). Generally, the frequency of monitoring should be not less than twice per week prior to May 1 and not less than three times per week thereafter. Monitoring should occur daily whenever moderate to large numbers of vehicles are on the beach. Monitors should document locations of territorial or courting plovers, nest locations, and observations of any reactions of incubating birds to pedestrian or vehicular disturbance.

AND

- 2 All unposted sites are posted immediately upon detection of territorial plovers.

The FONSI states:

Breeding areas used by the plovers at some time during **the past ten breeding seasons would be observed three times a week and any new potential habitat two times a week.** Potential new habitat means habitat recently created, usually by storms, e.g. overwash passes, blowouts, etc. Breeding piping plover monitoring would begin April 1. A range of observation activities would occur for bird species across pre-nesting, nesting, migration, and over- wintering life-stages and include such things as: observing and noting adult behavior, identifying scrapes, nests, eggs, broods, and chicks, providing outreach and education material to visitors, and ensuring safe

passage of visitors past resource areas or toward alternate routes. Training and personnel used are described above in Overarching Framework.

Protection of Nests

- Sections of beaches where unfledged piping plover chicks are present should be temporarily closed to all vehicles not deemed essential. (See the provisions for essential vehicles below.) Areas where vehicles are prohibited should include all dune, beach, and intertidal habitat within the chicks' foraging range, to be determined by either of the following methods:
  1. The vehicle free area should extend 1000 meters on each side of a line drawn through the nest site and perpendicular to the long axis of the beach. The resulting 2000 meter-wide area of protected habitat for plover chicks should extend from the ocean-side low water line to the bay-side low water line or to the farthest extent of dune habitat if no bay-side intertidal habitat exists. However, vehicles may be allowed to pass through portions of the protected area that are considered inaccessible to plover chicks because of steep topography, dense vegetation, or other naturally-occurring obstacles.

OR

2. The Service OR a State wildlife agency that is party to an agreement under Section 6 of the ESA provides written concurrence with a plan that:
  - A. Provides for monitoring of all broods during the chick-rearing phase of the breeding season and specifies the frequency of monitoring.

AND

- B. Specifies the minimum size of vehicle-free areas to be established in the vicinity of unfledged broods based on the mobility of broods observed on the site in past years and on the frequency of monitoring. Unless substantial data from past years show that broods on a site stay very close to their nest locations, vehicle-free areas should extend at least 200 meters on each side of the nest site during the first week following hatching. The size and location of the protected area should be adjusted in response to the observed mobility of the brood, but in no case should it be reduced to less than 100 meters on each side of the brood. In some cases, highly mobile broods may require protected areas up to 1000 meters, even where they are intensively monitored. Protected areas should extend from the ocean-side low water line

to the bay-side low water line or to the farthest extent of dune habitat if no bay-side intertidal habitat exists. However, vehicles may be allowed to pass through portions of the protected area that are considered inaccessible to plover chicks because of steep topography, dense vegetation, or other naturally-occurring obstacles. In a few cases, where several years of data documents that piping plovers on a particular site feed in only certain habitat types, the Service or the State wildlife management agency may provide written concurrence that vehicles pose no danger to plovers in other specified habitats on that site.

#### Timing of Vehicle Restrictions in Chick Habitat

- **Restrictions on use of vehicles in areas where unfledged plover chicks are present should begin on or before the date that hatching begins and continue until chicks have fledged.** For purposes of vehicle management, plover chicks are considered fledged at 35 days of age or when observed in sustained flight for at least 15 meters, whichever occurs first.

When piping plover nests are found before the last egg is laid, restrictions on vehicles should begin on the 26th day after the last egg is laid. This assumes an average incubation period of 27 days, and provides a 1 day margin of error.

**When plover nests are found after the last egg has been laid, making it impossible to predict hatch date, restrictions on vehicles should begin on a date determined by one of the following scenarios:**

1. **With intensive monitoring: If the nest is monitored at least twice per day, at dawn and dusk (before 0600 hrs and after 1900 hrs) by a qualified biologist, vehicle use may continue until hatching begins. Nests should be monitored at dawn and dusk to minimize the time that hatching may go undetected if it occurs after dark. Whenever possible, nests should be monitored from a distance with spotting scope or binoculars to minimize disturbance to incubating plovers.**

OR

2. **Without intensive monitoring: Restrictions should begin on May 15 (the earliest probable hatch date). If the nest is discovered after May 15, then restrictions should start immediately.**

If hatching occurs earlier than expected, or chicks are discovered from an unreported nest, restrictions on vehicles should begin immediately.

If ruts are present that are deep enough to restrict movements of plover chicks, then restrictions on vehicles should begin at least 5 days prior to the anticipated hatching date of plover nests. If a plover nest is found with a complete clutch, precluding estimation of hatching date, and deep ruts have been created that could reasonably be expected to impede chick movements, then restrictions on vehicles should begin immediately.

The FONSI states:

During the first week following hatching of plover chicks, CAHA would provide for continual observation of the chicks during daylight hours. A 600 to 3,000 foot-buffer will be established on either side of the brood; the exact size to be based on observation of adult and chick behavior and the terrain conditions at the site. Based on observed behavior (i.e. mobility of the brood) and the capability to continually monitor, the buffer zone could be reduced after the first week to no less than 300 feet, but may require expansion up to 3,000 feet. The resource closure would be relocated as needed to ensure continued protection of the brood. If the resource closure impedes or overlaps with the ORV corridor, CAHA would adjust the ORV corridor whenever possible to allow ORV passage or attempt to identify an alternate route. If an alternate route is not available, a bypass route would be considered (see bypass criteria). The bypass route would be closed at night if buffer zone for the plover brood is less than 600 feet. The beach will be closed to recreation access down to the waterline, if necessary, to allow chicks access to foraging areas.

AND

When plover nests are found, CAHA staff would collect data on bird behavior, location of nests, and presence of predators. CAHA staff would ensure adequate buffers are provided within existing closures or create buffers for the nests that are found outside of existing closures. A 150-foot buffer, from which all recreational uses would be restricted, would be established around any piping plover nests, with additional buffer provided if warranted based on observed bird behavior.

For adult plovers observed two times foraging outside of an existing resource closure, the closure will be expanded to include the foraging site which may include soundside or inlet shoreline. If the expansion of the buffer restricts ORV access, an alternate ORV route or by-pass would be sought. If no viable alternate route or by-pass can be established, ORV use will be restricted in the area. Staff would erect predator exclosures directly over piping plover nests when they contain 3-4 eggs. Nesting areas would be monitored for predator tracks and USDA trappers would target red and gray fox, raccoons, and cats for removal. In specific situations, opossum, mink, nutria and muskrats may also be taken if they are identified as predators at specific sites. Such take will be permitted through the North Carolina Wildlife Resources Commission.



And Section G ends with:

### **Site-Specific Management Guidance**

- The guidelines provided in this document are based on an extensive review of the scientific literature and are intended to cover the vast majority of situations likely to be encountered on piping plover nesting sites along the U.S. Atlantic Coast. However, the Service recognizes that site-specific conditions may lead to anomalous situations in which departures from this guidance may be safely implemented. The Service recommends that landowners who believe such situations exist on their lands contact either the Service or the State wildlife agency and, if appropriate, arrange for an on-site review. Written documentation of agreements regarding departures from this guidance is recommended.
- In some unusual circumstances, Service or State biologists may recognize situations where this guidance provides insufficient protection for piping plovers or their nests. In such a case, the Service or the State wildlife agency may provide written notice to the landowner describing additional measures recommended to prevent take of piping plovers on that site.

## **Appendix I**

### **Guidelines for Conducting Surveys for Piping Plovers in Atlantic Coast Wintering Habitat**

- The following guidelines have been adapted from J. Fussell (1990) and T. Eubanks (1992) and are included in the recovery plan to assist individuals in conducting piping plover surveys along the Atlantic Coast. These guidelines should assist U.S. Fish and Wildlife Service biologists in ensuring that useful information is collected by federal action agencies for Section 7 consultations.

Surveying piping plovers can be difficult because they appear to depend on a variety of habitats throughout the winter season, and habitat use varies depending on tidal regime, weather conditions, season, and disturbance. Plovers are often found in tight clusters on prime feeding sites, and may be overlooked, especially in large shorebird concentrations. While some ornithologists find censusing of plovers on roosting habitat to be the most efficient (Fussell 1990), an inexperienced eye may easily miss a cluster of roosting plovers because they are often huddled down in the sand or along the wrack line (Eubanks 1992).

The following are important considerations for conducting piping plover winter surveys:

1. **Consult Available Information:** Prior to conducting a survey, consult the local FWS' Field Office and/or state nongame/heritage program for the most up-to-date listing of known piping plover wintering sites in the state (also see list of known and potential piping plover wintering sites on the southern Atlantic Coast, Appendix K). Available information on a site may negate the need for a survey, or may vary the scope and/or intensity of the survey. It is important to note the nearest known plover occurrence in relation to the project site, because it may provide some insight into possible piping plover occurrence within the survey/project area.
2. **Survey Timing and Frequency:** In order to determine presence of piping plovers at a site, a series of field surveys should be conducted during the winter period. It is recommended that at least 1 survey be conducted per week (or 4 surveys per month) over a 3-month period. Surveys should preferably be conducted during December and January when the plovers are most sedentary, and during one month in the migration period (August 1 - October 15 or February 15 - April 15). Piping plovers exhibit diurnal shifts in habitat use, thus observations should be conducted for a minimum of 5 hours during daylight hours and should be evenly distributed throughout this period. Survey time periods should be conducted during daylight hours from 30 minutes after sunrise to 30 minutes before sunset and should include a wide range of tidal conditions and habitat types. The amount of time necessary to survey each site will obviously depend on the amount and type of habitat to be covered. Areas should be surveyed slowly and thoroughly (large mixed flocks of roosting shorebirds especially need to be thoroughly and carefully searched in order to locate piping plovers).
3. **Other pertinent data:** Surveyors should note the presence or absence of other shorebird species during each survey. This information may be helpful in assessing the probability of piping plovers frequenting a specific coastal site. Also, weather conditions and tidal stage should be noted because habitat use may vary depending on these factors. Habitats with and without plovers should be characterized.
4. **Surveyor Qualifications:** Surveyors should be knowledgeable about shorebird identification, and be capable of discerning a piping plover in winter plumage from other small plovers. Surveyors should also be familiar with plover ecology and behavior to ensure a thorough survey.
5. **Survey Conditions:** Surveys should not be conducted during poor weather (heavy winds > 25 mph, heavy rains, severe cold) since birds may seek protected areas during these times.
6. **Recording of Data:** Daily surveys should be recorded and summarized and plover locations should be recorded on maps indicating areas surveyed and habitat types. A sample form for data collection is provided below.

The FONSI states:

CAHA will monitor for fall and spring migrating or wintering plovers on a regular cycle, five days a week, for 11 months (July . May) following protocols on Migratory, Wintering, and Beached Shorebird Monitoring at Southeast Coast Network Parks (November, 2005). This will allow for plover observations in both high use areas as well as low use areas. The sampling intensity could be changed based on an evaluation of the sampling protocol after the first year.

We are currently working through a winter protocol for the 2008 non-breeding season and will have a draft out soon.