

From: [Mike Murray](#)
To: [Britta Muiznieks](#)
Subject: Re: Chapt 4 comments
Date: 11/23/2009 12:06 PM
Importance: High

Britta,

Your comments look fine. Does this complete your input (or what sections are you still working on)?

For simplicity, I suggest you just submit them as an email list (like you sent me) and tell Sandy that it is a list of comments (not in Track Changes). Two thoughts:

1) Please **identify the context for the page numbers given** (i.e., is it the page number in the 11/06/09 draft Chap 4 or the page number in my Track Changes edits of that document) **and add the line number(s)** for each comment, so the Louis Berger folks can find the location easily.

2) With regard to WIPL's, the references to WIPL in the FONSI and in the Consent Decree are somewhat vague, so we have to make some generalizations based on what is specified:

Alternative A - We should assume that WIPL nests and chicks (if they occur outside of PIPL pre-nesting areas) would receive similar buffers as stated for AMOY and CWB nest (150-300 ft, responsive to individuality in bird's behavior) and chicks (150 - 300 ft and responsive to individuality in bird behavior), with no additional closures for WIPL foraging. (I deduced this by comparing the references to WIPLs in alternative D in the EA, where WIPL buffers are often the same as for PIPL, vs. what is stated for the Selected Alternative in the FONSI, where WIPL are treated long with the other "non-listed species.")

Alternative B - WIPL are mentioned in several locations in the Consent Decree (e.g., paragraph 4, last sentence), but no specific buffers for WIPL are mentioned; however, there are various sections in the CD (paragraph 22) stating NPS authority to impose and enforce "more protective measures" (than what is specified in the CD). Based on that, I think NPS is free to determine what the WIPL buffer should be under the CD. What would make sense to me would be to apply the CD buffers for either PIPL or AMOY to WIPL. I can live with whichever version you think is most biologically appropriate for WIPL (based on sensitivity to disturbance and mobility of chicks).

In any case, will have to live with somewhat vague guidance for WIPL buffers in alternatives A and B, and go with a practical interpretation as described above.

Thanks,

Mike Murray
Superintendent
Cape Hatteras NS/ Wright Brothers NMem/ Ft. Raleigh NHS
(w) 252-473-2111, ext. 148
(c) 252-216-5520
fax 252-473-2595

CONFIDENTIALITY NOTICE

This message is intended exclusively for the individual or entity to which it is

addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure.

▼ Britta Muiznieks/CAHA/NPS

Britta Muiznieks/CAHA/NPS
 To Mike Murray/CAHA/NPS@NPS
 cc
 11/23/2009 10:46 AM Subject Chapt 4 comments

Mike-

This ended up being a lot more complicated than tracking changes in the document itself. Hopefully the comments below will make sense. I feel like I backtracked because I had already made changes to the original Chapt 4 (not your latest version). I couldn't just cut and paste the changes into this email because the track changes don't show up and wouldn't make sense unless the changes were accompanied by comments. I have not sent them on to Sandy because I wanted you to take a look at them first. This is as far as I have gotten but will continue to plug away at it. I'm not sure if it is too late for these comments or whether it just complicates things even more.

- Pg. 329-Timing of the PIPL pre-nesting closures and non-federally listed species. The PIPL pre-nesting closures would occur at the start rather than before the breeding season for American oystercatchers. However, the PIPL pre-nesting closures would benefit the Wilson's plover as the timing of breeding for the two species should be similar and nests are expected to occur in similar habitat. The piping plover closures would provide some protection to terns and black skimmers that nest at the spits, Cape Point/South Beach as they tend to initiate nesting in May and June, but will not provide protection to birds nesting outside of the closures. If this change is made it will affect various sections of the document.
- *Permitting/Carrying Capacity Requirement*-alternative A (Pg. 333) and alternative B (Pg. 341). Under alternative A, lack of a permit system would have long-term, moderate, adverse impacts. Lack of a carrying capacity is not expected to impact state-listed/special status species as ORVs would not be allowed in resource protection areas, and outside these areas ORV use would be allowed. Note: The state-listed species can and will forage outside of the resource protection areas. Least terns and skimmers forage over the water so impact to them would be negligible, however, American oystercatchers do regularly forage on the ocean shoreline and in the sound outside of the resource protection areas. Impacts to American oystercatchers would be long-term, (minor to moderate??), adverse.

Under alternative B (Pg. 341, Lines 33-34), it states: There would be no impacts related to *(the lack of a) carrying capacity, as described under alternative except possibly for American oystercatchers when they forage on the ocean shoreline outside of established closures.*

- *Overall Impact of Recreation and Other Activities***Red knot** (Pg 334, lines

14-15). "The lack of a permitting system, seasonal **no** night driving restrictions, and allowing pets at the Seashore during the **non-breeding** season would contribute to these adverse impacts."

Seasonal night driving restrictions would not affect the red knot since they are not here in the summer when the seasonal restrictions would be in place and allowing pets at the Seashore during the breeding season wouldn't impact them either. However, pets on the seashore during the non-breeding season would affect them.

- **Cumulative Impacts.** (Pg 334, Lines 16-18). The following cumulative assessment applies to all the state-listed / special status bird species addressed in this section of the EIS, since so many of the cumulative effects applied similarly to all of these species. Given the early nesting of the AMOY, similar nesting of the Wilson's plover and the non-breeding status of the red knot can we really say this?
- Local and NPS past, current and future planning effort. (Pg 335, line 24). I recommend adding another sentence to the end of this paragraph in light of the 3-4 known vehicle strikes to AMOY's last year. Insert: "If visitation to the Outer Banks increases significantly, this would increase the likelihood of American oystercatcher vehicle strikes when they fly back and forth across Highway 12 to forage in the Pamlico Sound from their nesting sites on the ocean shoreline."
- **Colonial waterbirds** (Pg 336, lines 18-23). It would be false to say that surveying and pre-nesting closures for this species may miss early nesters. The timing is fine but pre-nesting closures established for PIPL may not be adequate. I would recommend something like the following: "Impacts would be long-term, moderate to major, adverse as no pre-nesting closures are established specifically for colonial waterbirds. Buffer distances (150-300 feet) may not provide adequate protection especially if buffer distances are based on observed bird behavior and birds are not being continuously observed/monitored. The lack of a permitting system, no night driving restrictions, and allowing pets in the vicinity of breeding birds would also contribute to adverse impacts."
- **Conclusion -Wilson's plover** (Pg 336, lines 24-31). Surveying and pre-nesting closures shouldn't miss early nesters. We assume that Wilson's plovers would nest at the same time as the piping plovers. Because so few Wilson's nest on the seashore (only 1 nest has ever been recorded), could we say the impacts are minor OR because there is only one nest, would it make any impacts to the nest that much more critical (i.e. moderate adverse)? I would recommend using the following:

Impacts would be long-term, (minor?) ~~to moderate~~, adverse, as the habitat is thoroughly surveyed for Wilson's plover during piping plover surveys and if Wilson's plover are present, some disturbance may be caused during the walk through surveys. Some benefits may occur from the pre-nesting closures established for piping plovers as the timing of breeding for the two species should be similar and nests are expected to occur in similar habitat. No buffer distances are recommended for nesting Wilson's plover (possibly because nesting had not been documented on the Seashore until 2009). The lack of a permitting system, **no** night driving restrictions, and allowing pets **in the vicinity of breeding birds** would also contribute to these adverse impacts.

The FONSI (Pg 5, paragraph 1 and Table 2, Pg 35) does not address closure sizes for nesting Wilson's plover. Page 5 says that "the park will establish resource closures when nesting is observed" but no guidance is given to size. Do we assume nesting would occur inside the pre-nesting closures for piping plovers? Do we assume in alternative A that the closure size would be adequate? The FONSI (Pg 6, paragraph 4) does discuss the management of non-federally listed chicks. It says that "the Seashore will standardize the initial buffer distance around all species of non-federally listed chicks at 150 feet to 300 feet, which may then vary in size within that range dependent on best professional judgement based on the adult's reaction to human disturbance. Because chicks would usually occur inside the pre-nesting closure could we assume the protection is adequate? Should alternative A have a long-term, negligible, adverse impact? Could it be negligible because we have only documented one nest for this species in the Seashore?

- **Red knot** (Pg. 336, lines 37-38; Pg 342, lines 17-20, Pg 343, lines 21-23).

Pg 336, lines 37-38. Red knots are not here during their breeding season and seasonal night driving restrictions would not benefit these birds either. I recommend the following changes be made: "The lack of a permitting system, ~~seasonal~~ no night driving restrictions during the time period when the red knots are present, and allowing ORVs, people and pets ~~at the Seashore during breeding season~~ in the vicinity of foraging birds would contribute to these adverse impacts."

Pg 342, lines 17-20-replace with: Red Knot. Impacts to red knot from recreation and other activities would be long-term, moderate adverse. Red knots will utilize winter closures established for piping plovers resulting in some long-term benefits but protection would not be complete since red knots utilize the entire ocean shoreline. No night driving restrictions during the time period when the red knots are present and allowing ORVs, people and pets near these birds while foraging would also contribute to the adverse impacts of this alternative.

Pg. 343, lines 21-23-replace the following sentence: Although this species can utilize closures for other species, including non-breeding closures, no specific management measures would be implemented, increasing the possibility of disturbance to the species from recreational use. With: Red knots will utilize winter closures established for piping plovers resulting in some long-term benefits but protection would not be complete since red knots utilize the entire ocean shoreline. The lack of a permitting system, no night driving restrictions during the time period when the red knots are present, and allowing ORVs, people and pets near these birds while foraging would also contribute to the adverse impacts of this alternative.

- *Establishment of Pre-nesting Closures* (Pg. 337, lines 8-11). The following: "Trained NPS biologists or field technicians would survey Cape Point and South Beach, Hatteras Spit, and the northern and southern ends of Ocracoke at least once every two days from March 15 to April 15, and daily from April 16 to July 15. The Seashore would monitor Bodie Island Spit at least daily from March 15 to July 15." should be moved down to the Survey and Monitoring section.
- *Surveys and Monitoring* (Pg 337, lines 16-20). This section/paragraph should start with surveys and nesting-not brood mobility. This paragraph should be moved down.

- *Surveys and Monitoring*(Pg 337, lines 8-11). The following paragraph should be added to the survey frequency paragraph from above (lines 8-11): In areas other than the spits and Cape Point/South Beach, staff would continue to survey recent American oystercatcher breeding areas two times per week from March 15 to June 15 and surveys for colonial waterbirds would two times per week from May 1 to June 15. Because surveys would be restricted to recent breeding areas, surveys may not detect American oystercatcher or colonial waterbirds that establish territories in new habitat or historic nest sites. Wintering and non-breeding American oystercatchers, Wilson's plover, and red knot would be surveyed during piping plover surveys conducted at the spits and Cape Point. There would be no winter and non-breeding surveys for colonial waterbirds.

American oystercatcher and colonial waterbird nests would be observed at least three times per week. American oystercatcher broods would be observed once daily, while colonial waterbird broods would be observed at one-day to two-day intervals. Wilson's plover nests and broods would be observed incidental to piping plover monitoring. For all state-listed/special status species, when broods are mobile, more frequent observations would be provided along with enforcement presence. Monitoring would end when all chicks have fledged.

- *Buffer and Closure Establishment* (Pg 337, Lines 36-46; Pg 338, Lines 1-6). This entire section in my opinion should be in the *Establishment of Pre-nesting Closure* section above. This section should be where closures are established for breeding behavior and nests.
- Pg 338, Line 10. If NPS observes ~~pre-nesting and/or~~ breeding behavior of ... You can't observe pre-nesting behavior. Breeding behaviors are defined in the CD.
- *Buffer and Closure Establishment*(Pg 337-338). I suggest inserting the following paragraph:

By clearly defining triggers for closure establishment, alternative B would provide more benefits to American oystercatchers and colonial waterbirds, by increasing closures sizes and reducing the time it takes to implement closures to protect species, thereby reducing disturbance to potential and nesting pairs. If breeding behavior, including but not limited to territorial behavior, courtship, mating, confirmed scrapes, or other nest-building activities, is observed outside of existing closures, NPS would automatically establish prescribed species-specific buffers, rather than providing flexible buffers based on observations of bird behavior as would occur under alternative A. If breeding behavior is observed, appropriate buffers would be established within 8 daylight hours. If an active nest or chicks are discovered outside of an existing closure, protective measures would be established immediately and appropriate buffers would be established within 6 daylight hours. Symbolic fencing consisting of wooden post, bird usage signs, string and flagging tape, would be installed as soon as NPS staff can reasonably be mobilized to erect the fencing.

- Pg 338, Lines 20-23. I would modify the existing sentence in the following way:

Under alternative B, people, their pets, and vehicles could still come into direct contact with state-listed/special status species prior to the detection of breeding activity by NPS staff although it would be to a much lesser extent than under

alternative A. Larger buffer distances and timely installation of resource closures for observed breeding behaviors would minimize disturbance to pairs during territory establishment.

- *Education and Outreach*(Pg. 339, line 30). I would recommend expanding the sections on public outreach. The current paragraph describes how the public receives information at the visitor's centers about state-listed/special status species and their ecology and the measures the park is taking to protect the species. I would recommend adding the following sentence:

The public would also be informed through the Weekly Beach Access Reports, Weekly Resource Management Reports, Google Earth, and information available on the Park's website.

- Wilson's plover (Pg. 340, Lines 38-39 and Pg. 343, lines 6-7). There is no guidance in the CD for Wilson's plover therefore cannot include establishment of larger, pre-set buffers as a beneficial impact

Pg 340-Wilson's Plover. Establishment of piping plover pre-nesting closures earlier in the season ~~that could be used by other species and establishment of larger, pre-set buffers~~ would result in long-term beneficial impacts to Wilson's plover.

Pg 343-Wilson's Plover. Establishment of piping plover pre-nesting closures earlier in the season ~~and establishment of larger, pre-set buffers~~ would result in long-term beneficial impacts to Wilson's plover.

- *ORV and Pedestrian Access*(Pg. 340, Lines 22-30). I think the following is from the Interim Plan/FONSI (not the CD):

At the spits, Cape Point and South Beach, alternative B would designate an approximately 100-foot (30-meter) wide ORV corridor above the mean high tide line in breeding areas used within past three years and would delineate the corridor with posts placed up to 100 feet above the high tide line. In areas of reduced corridor width (i.e., less than 100 feet), traffic signs would be posted indicating a 10 mph speed limit. The ORV corridor would be adjusted whenever possible to allow vehicle passage, except during the breeding season when buffers would not be reduced to accommodate an ORV corridor. If the ORV corridor is not feasible for safety reasons or insufficient area, an alternate ORV route would be identified if possible. If no alternate route is available, Seashore staff would consider establishing a bypass route, if feasible, although due to the size of buffers this is unlikely to occur.

Replace with wording from the CD:

18. **Ocean Backshore Closures:** For the benefit of all bird species, sea turtles, and seabeach amaranth, from March 15 to November 30, in all locations not in front of the villages, outside of the pre-nesting areas described above, and open to ORV use, NPS shall provide an ORV-free zone in the ocean backshore at least 10 m wide and running the length of the site, wherever backshore habitat exists, provided there is sufficient beach width to allow an ORV corridor of at least 20 m above the mean high tide line. This zone shall be adjacent to the toe of the primary dune whenever a primary dune exists (i.e., ORVs should be restricted to a corridor between the mean high tide line and the edge of the zone of the protected backshore). For the 2008 breeding season only, ocean backshore closures shall be established no later than June 1.

- Pg 340, lines 40-42. I recommend adding the clarification that AMOYs will forage outside of the protection of their closures during incubation and brood rearing.

"...the prescribed buffer. Even after closures have been established, American oystercatchers will leave the closures to forage and during this time will not be protected from disturbance. Compliance with closures..."

- *Overall Impact of Recreation and Other Activities.* American oystercatcher (Pg. 342, line 5). Modify to include: Because the birds are not under constant observation, disturbance may go undetected and the established buffers may not be large enough to afford adequate protection in all nesting locations.
- Wilson's Plover (Pg 342, lines 4-7). Impacts to Wilson's plover from recreation and other activities would be long-term, minor, ~~to moderate~~ adverse.

GENERAL COMMENTS

- Pg 254 and 327. Duration: Short-term effects would be one to two breeding seasons for piping plover. I recommend "Short-term effects could be a one time event or an event occurring for up to two breeding seasons for piping

plover. I don't know if this issue was discussed at some point or not.

- Need to consistently use commas after long-term/short-term (e.g. long-term, moderate beneficial). There are also times when there is "impacts" at the end of the sentence requiring an additional comma (e.g. long-term, minor to moderate, beneficial impacts). In a few locations there is an "and" that is not used consistently in the document (e.g. long-term, moderate, and beneficial).
- I prefer the word "install" over "erect" for references to putting in closures. Another word pops into my mind when I see the word "erect"... :) (Maybe it's just me!)
- Closures are different than buffers. A 30' X 30' closure would be the same as a 15' buffer. We need to be careful to use the word closures when referring to the size of turtle closures.
- We should refer to sea turtle nesting season (not breeding season) since the breeding season implies (at least to me) that they breed on the Seashore. They breed in the water but nest on the Seashore.

Britta Muiznieks
Wildlife Biologist
Cape Hatteras National Seashore

252-995-3740-**Office**
252-475-8348-**Cell**
252-995-6998-**FAX**