

0028881

**From:** [Mike Murray](#)  
**To:** [Sandra Hamilton](#)  
**Cc:** [Doug Wetmore](#)  
**Subject:** Chapter 1 comments  
**Date:** 10/07/2010 02:19 PM  
**Attachments:** [01\\_Chapter-1\\_2nd\\_Draft\\_FEIS\\_093010\[1\].mbm.doc](#)  
[CWB DFCs.rev100710\\_mbm.docx](#)

---

Sandy,

Our attached comments/edits of Chapter 1 include the revised DFCs for CWB. Other than the changes for CWB DFCs, we have very few comments. Also, attached is a revised calculation sheet (since yesterday) to fully explain the short-term target number for LETE.



01\_Chapter-1\_2nd\_Draft\_FEIS\_093010[1].mbm.doc



CWB DFCs.rev100710\_mbm.docx

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.

1

TABLE 5. DESIRED FUTURE CONDITIONS FOR COLONIAL WATERBIRDS

Variable	Short-Term Target <sup>a</sup>	Long-Term Target <sup>ba</sup>	Source
Annual peak number of least tern nests <sup>b</sup>	<del>434e</del> 5-year average of <del>46255</del> nests	5-year average of 577 nests20% increase over average number of nestsb achieved under short-term target	Long-term target equals 2009 peak count. Short-term target is mid-point between recurrent average (2007-2010) and the long-term target.2007 and 2008 Seashore colonial waterbird surveys (NPS 2008d, 2009k)a
Annual peak number of common tern nests <sup>b</sup>	<del>485e</del> 5-year average of <del>292424</del> nests	5-year average of 533783 nests20% increase over average number of nestsb achieved under short-term target	Long-term target equals the average number of nests that occurred in 1977-2004. Short-term target is the mid-point between recent average (2007-2010) and the long-term target. Goals of North Carolina's Waterbird Program: to maintain breeding populations at or near 1977-1983 levels (NCWRC 2007). 2007 and 2008 Seashore colonial waterbird surveys (NPS 2008d, 2009k)a
Annual peak number of gull-billed tern nests <sup>b</sup>	5-year average of <del>2140</del> nests17e	5-year average of 4047 nests20% increase over average number of nestsb achieved under short-term target	Long-term target equals the average number of nests that occurred in 1977-2004. Short-term target is the mid-point between recent average (2007-2010) and the long-term target. Goals of North Carolina's Waterbird Program: to maintain breeding populations at or near 1977-1983 levels (NCWRC 2007). 2007 and 2008 Seashore colonial waterbird surveys (NPS 2008d, 2009k)a
Annual peak number of black skimmer nests <sup>b</sup>	<del>75e</del> 5-year average of <del>13258</del> nests	5-year average of 244294 nests20% increase over average number of nestsb achieved under short-term target	Long-term target equals the average number of nests that occurred in 1977-2004. Short-term target is the mid-point between recent average (2007-2010) and the long-term target. Goals of North Carolina's Waterbird Program: to maintain breeding populations at or near 1977-1983 levels (NCWRC 2007). 2007 and 2008 Seashore colonial waterbird surveys

			(Cameron and Allen 2008; NPS 2009k)a
--	--	--	--------------------------------------

<sup>a</sup>Short-term target is to achieve the midway point between the long-term target and the recent average of the data points from the Seashore's 2007 - 201009 counts.

<sup>b</sup>Except for least terns, the long-term target for the respective species is to achieve the average number of nests that occurred at the Seashore in 1977 – 20041983 level of nesting at the Seashore. (average of 1977 and 1983 nest counts; there were no nest counts done in the years between 1977 and 1983). These years are consistent with the basis for statewide goals identified by the North Carolina Wildlife Resources Commission (NCWRC 2007). Least terns are currently nesting in greater numbers than the 1977-2004977 and 1983 average nest counts; therefore, the long-term target is to maintain a 5-year average count equal to the 2009 peak count.

<sup>a</sup>Short-term means 10 years (two 5-year periodic review cycles after implementation of plan)

<sup>b</sup>Long-term means 20 years (four 5-year periodic review cycles after implementation of plan)

three the Seashore<sup>a</sup> The targets did not take into account data from any surveys conducted prior to 2007 due to the uncertainty associated with survey methods, survey timing, data management, and data compiled for each survey year. Short and long term targets would be based on consistent colonial waterbird surveys using standardized survey methods conducted during the peak nesting period for each individual species. By surveying during the peak nesting period window, survey data can be compared to surveys conducted by the state for similar species.

<sup>b</sup>Colonies will be surveyed during the peak nesting period for each species, which generally is during the last week of May and the first week of June, but could be later, especially for black skimmers. “Nests” may include birds in incubating posture.

<sup>c</sup>The three year average (2007–2009) for each species was used to calculate a baseline percentage of the Seashore’s contribution towards the state’s goal for each species. The state goals shown below were established by the North Carolina Wildlife Resources Commission. An increase of 5% in the Seashore’s contribution towards the state goal was established as the short term target for each species.

	Least Tern	Common Tern	Gull-Billed Tern	Black Skimmer
State Goal	2,000	2,500	300	1,000
Cape Hatteras National Seashore 3-year average (number of nests)	334	60	2	25
% of state goal	16.70%	2.40%	0.66%	2.50%
Increase of 5% toward state goal	21.70%	7.40%	5.66%	7.50%
Short term target (number of nests)	434	185	17	75

1 with the Secretary of the Interior on all projects and proposals with the potential to impact federally  
 2 endangered or threatened plants and animals. It also requires federal agencies to use their authorities in  
 3 furtherance of the purposes of the ESA by carrying out programs for the conservation of endangered and  
 4 threatened species. Federal agencies are also responsible for ensuring that any action authorized, funded,  
 5 or carried out by the agency is not likely to jeopardize the continued existence of any endangered species  
 6 or threatened species or result in the destruction or adverse modification of designated critical habitat.  
 7 Section 9 of the Act makes it unlawful for a person to “take” a listed animal without a permit. The term  
 8 “take” is defined in the Act as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect  
 9 or attempt to engage in any such conduct.” Through regulations, the term “harm” is defined as “an act  
 10 which actually kills or injures wildlife. Such an Act may include significant habitat modification or  
 11 degradation where it actually kills or injures wildlife by significantly impairing essential behavioral  
 12 patterns, including breeding, feeding, or sheltering.” Listed plants are not protected from take, although it  
 13 is illegal to collect or maliciously harm them on federal land. The Act also imposes civil and criminal  
 14 penalties for violations of any provisions of the Act.

### 15 **Critical Habitat Designation for Piping Plovers**

16 Under the authority of Section 4 of the ESA, the USFWS must, to the maximum extent prudent and  
 17 determinable, designate critical habitat for protected species. “Critical habitat” refers to (1) specific  
 18 geographic areas occupied by the species at the time it is listed as threatened or endangered that contain  
 19 features essential for the conservation of a threatened or endangered the species and that may require  
 20 special management or protection; and (2) areas outside the areas occupied by the species at the time it is  
 21 listed that are nonetheless determined to be essential to the conservation of the species. On [October 21,  
 22 2008 \(73 FR 62816\)](#), the USFWS [published a revised designation for](#) the following areas as critical  
 23 habitat for the wintering population of the piping plover [in the Seashore](#): (1) Unit NC–1, Oregon Inlet; (2)  
 24 Unit NC–2, Cape Hatteras Point; (3) Unit NC–4, Hatteras Inlet; and (4) Unit NC–5, Ocracoke Island.  
 25 Unit NC–1 is approximately 5 miles long, and consists of about 485 acres of sandy beach and inlet spit  
 26 habitat on Bodie Island and Pea Island. Unit NC–2 comprises 646 acres and extends south approximately  
 27 2.8 miles from the ocean groin near the old location of the Cape Hatteras Lighthouse to the point of Cape  
 28 Hatteras, and then extends west 4.7 miles along South Beach to the edge of ramp 49 near the Frisco  
 29 campground. Unit NC–4 is approximately 5 miles long and consists of 410 acres of sandy beach and inlet  
 30 spit habitat on the western end of Hatteras Island and the eastern end of Ocracoke Island. Unit NC-5  
 31 consists of 502 acres on the western portion of Ocracoke Island beginning at the beach access point at the  
 32 edge of ramp 72 (South Point Road), extending west approximately 2.1 miles to Ocracoke Inlet, and then  
 33 back east on the Pamlico Sound side. [On February 6, 2009, Cape Hatteras Access Preservation Alliance  
 34 and Dare and Hyde Counties, North Carolina filed a legal challenge to the revised designation. On August  
 35 18, 2010, a U.S. District Court granted the government’s motion for summary judgment and dismissed  
 36 the case with prejudice, and the critical habitat designation for these four units remains in effect.](#) Under  
 37 Section 7(a)(2) of the ESA, if a federal action may affect a listed species or its critical habitat, the  
 38 responsible federal agency must enter into consultation with the USFWS to ensure that the affected  
 39 critical habitat would remain functional to serve its intended conservation role for the species.

### 40 **Antideficiency Act**

41 The *Antideficiency Act* is a series of statutes (originating from 16 Stat. 251 in 1870) that prohibit federal  
 42 managers from making or authorizing expenditures in excess of the amount available to them from  
 43 appropriations or other funds, unless authorized by law. Based on this, the plan/EIS created must be able  
 44 to be implemented through expected funding sources.

1 roads, or parking lots that are in an SNHA to ensure that the construction avoids impacts to any sensitive  
2 species.

### 3 **North Carolina Department of Transportation**

4 The North Carolina Department of Transportation (NCDOT) has various projects related to NC-12 and  
5 other Outer Banks access issues. The NCDOT is considering some long-term projects in response to the  
6 changing physical landscape of the area such as a bridge from Avon to Buxton, which is a possible area  
7 for a future inlet. The Outer Banks Task Force has developed a long-term management plan for NC-12  
8 that was considered during the development of this plan/EIS. NC-12 connects the communities located  
9 within Cape Hatteras National Seashore to the mainland of North Carolina. Island residents depend on the  
10 roadway for off-island community services, such as hospitals, emergency response, and waste collection.  
11 NC-12 is also the primary evacuation route for all permanent and temporary residents on the island when  
12 severe weather is approaching. Storms frequently cause the ocean to overwash NC-12 and deposit large  
13 quantities of sand over portions of the roadway. The storms sometimes damage NC-12, which interrupts  
14 access and services to the island and causes hardships for island residents. NC-12 must be continually  
15 repaired and maintained to prevent permanent loss of access on Hatteras Island. To address these issues a  
16 task force was formed comprising the NCDOT, NPS, U.S. Army Corps of Engineers (Corps), USFWS,  
17 NMFS, Federal Highway Administration (FHWA), Dare and Hyde counties, and the NCDENR. The  
18 mission of this task force is to develop a long-range protection and maintenance plan for the  
19 transportation system on the Outer Banks. As part of this task force, hot spots for erosion have been  
20 identified and include Northern Pea Island, Sandbag area, Rodanthe “S” curves, Buxton / Canadian Hole,  
21 Hatteras Village, and Ocracoke (OBTF 2009).

22 The NCDOT is proposing to build a new bridge to replace the existing Herbert C. Bonner Bridge,  
23 originally built in the 1960s, over Oregon Inlet before the end of the bridge’s reasonable service life. The  
24 NCDOT and the FHWA released a supplemental draft EIS regarding this replacement, and a supplement  
25 to the EIS was released in 2007 (OBTF 2007; FHWA 2007). In September 2008, NCDOT announced its  
26 preferred alternative, known as the Parallel Bridge with Phased Approach / Rodanthe Bridge Alternative.  
27 This alternative includes constructing a new Oregon Inlet bridge (Phase I) west of the existing structure,  
28 and later elevating NC-12 onto a series of bridges during Phases II-IV. Replacement of the Oregon Inlet  
29 bridge is expected to be complete in 2014 (NCDOT 2008).

### 30 **North Carolina Coastal Area Management Act**

31 Details regarding the CAMA were presented earlier in this document under the CZMA description on  
32 [page 41404039](#).

### 33 **Dare and Hyde County Planning Documents**

34 The development and implementation of this plan/EIS considered the planning efforts of Dare and Hyde  
35 counties, primarily with respect to the cumulative impacts analysis and consistency determination. Since  
36 1974, when the North Carolina General Assembly ratified the CAMA, each of the local governments in  
37 the twenty-county coastal region have been developing and updating land use plans. These land use plans  
38 have directed development in these areas and are responsible for the pattern of development we see today  
39 in Dare and Hyde counties. Both of these plans recognize the development that has occurred and the  
40 corresponding need for an increase in services as a result. These past patterns of land use development  
41 have influenced the amount of land available for habitat throughout the county, including portions of the  
42 counties located within the Seashore.