

**From:** [Bob Eakes](#)  
**To:** [Patrick Field](#)  
**Cc:** [Mike Murray](#)  
**Subject:** Re: Re:  
**Date:** 09/19/2008 10:18 PM

---

Patrick,

I am not as combative as it sometimes seems. What does not seem to be allowed is that there are pretty clear recommendations from other places that don't jive with the consent decree or Walker's point of view or even the protocols.

I cannot find anything, anywhere on non listed birds which indicate that pre breeding behavior causes a closure.

I do find a very similiar amount of buffer used for CWB and AMOY and that is 50 yards and 75 yards for nesting. If needed, use fencing on the CWB.

Per Mike Murray and Mike Stevens, the reason for giving state species ESA protection is that if the state species is in decline then you can do it. What I don't see is any law or guidelines stating this. In the case of three birds with respect to the protocols, AMOY were not even listed when the protocols were written. Least terns are not in decline and one of the other terns is not listed today. To me, NPS is making this up as they go along.

If we cannot even discuss the draconian buffers in the consent decree then maybe I will get my feathers in an uproar.

Anyway, its late, two doctor appointments today in Norfolk, driving and having time to think about it, means I should quit typing.

Night,

Bob Eakes

----- Original Message -----

**From:** [Patrick Field](#)  
**To:** [Bob Eakes](#)  
**Sent:** Friday, September 19, 2008 9:25 AM  
**Subject:** Re:

BOB

Between you and me, in trying to listen between the lines in recent conversations, seems to me there are some ideas emerging for Cape Point from Walker and some others.

1. Move the pre-nesting closure west to provide more space for buffers that don't close the corridor later in the season.
2. Consider for CWB some kind of more intensive monitoring so that vehicles can pass even if they nest close to the corridor boundary
3. Work over time to create more habitat through allowing winter driving where there hasn't been in the past, mechanical efforts, or herbicides, to "move the habitat" away from the east beach.
4. Clarify with FWS the buffer requirements under the recovery plan.

5. Consider whether there is any "buffer" adjustments for non-ESA species allowable under law (say, within the east corridor, for AOC, you don't close it just to pre-nesting behavior of AOC, since the MBA considers take birds and eggs, not habitat, though the Organic Act may force a more narrow reading?).
6. Maybe there are other things too.

PAT

On 9/18/08 7:00 pm, "Bob Eakes" <bobeakes@aginet.com> wrote:

Maybe, thanks, at least maybe we can start but if it takes another week to say nothing then guess what.

I will respond tomorrow night,

Thanks again,

Bob Eakes

----- Original Message -----

**From:** Patrick Field <<mailto:pfield@cbuilding.org>>

**To:** Bob Eakes <<mailto:bobeakes@aginet.com>>

**Sent:** Thursday, September 18, 2008 1:34 PM

**Subject:** FW:

BOB

Is this a start at least from Walker?

PAT

----- Forwarded Message

**From:** "GOLDER, Walker" <[WGOLDER@audubon.org](mailto:WGOLDER@audubon.org)>

**Date:** Thu, 18 Sep 2008 13:24:14 -0400

**To:** 'Bob Eakes' <[bobeakes@aginet.com](mailto:bobeakes@aginet.com)>

**Cc:** Pat Field <[pfield@cbuilding.org](mailto:pfield@cbuilding.org)>

**Subject:** RE:

Bob,

Thanks for your patience. My thoughts and ideas apply ONLY to Cape Point. These are my thoughts and mine ONLY. I have

not discussed any of this with anyone. It would be greatly appreciated if I did not see this on your web site, Island Free Press, or any web site.

The constituency that I represent has a very real interest in protecting access to Cape Point. I don't have to tell you that it's a special place for everything it offers to everyone. You might be surprised how many folks come to Cape Point and other areas of the Seashore for the diversity of experiences it offers—birds, fish, wind, waves, etc. The folks who enjoy birds like to drive there also, but they like more to have something to see when they get there. And many folks who enjoy birds also enjoy fishing. So we are tasked with the challenge of trying to find a way to protect natural resources (birds, turtles, etc.) and allow people to get to Cape Point so they can fish, enjoy the birds, or just enjoy the scenery.

I agree that if a bird nests in the middle of a large closure, like Cape Point, it's not going to be a problem. I would like to find a way to encourage birds near the center or southern side of Cape Point. With the south side of Cape Point closed, as it was this season, there should be sufficient real estate to keep a corridor open up the north beach and provide an ORV corridor if birds don't try to nest on the eastern edge of the closure. I think the ORV route up the north beach could be widened a little to encourage nesting near the center or southern side of Cape Point. This would leave room to expand the closure to meet the buffer requirements and have ORV access to Cape Point. The exact distance of the corridor would have to be determined in March, before the pre-nesting closures go up.

Application of the required buffer distances is important to the success of the birds and it will be important if NPS faces legal challenges in the future. I don't think we can ignore them...

Walker Golder

Deputy Director

Audubon North Carolina

7741 Market Street, Unit D

Wilmington, NC 28411-9444

Tel: 910-686-7527

Fax: 910-686-7587

*DONATE ONLINE to protect NC's birds and habitats.*

<<https://loon.audubon.org/payment/donate/NCCRCD.html>>

-----Original Message-----

**From:** Bob Eakes [<mailto:bobeakes@aginet.com>]

**Sent:** Wednesday, September 10, 2008 5:14 PM

**To:** GOLDER, Walker

**Cc:** Mike Murray; Pat Field

**Subject:**

Hello Walker,

Hope you had as much fun at the past meeting as I.

I would like to open a thought process on Cape Point which does not bring anything else into play. I really do understand that it would be hard for either you or I to not use this thought process on other areas but I do not know how else to start the dialogue.

So, how do we start this.

I would suggest that any prenesting closure which is pretty much accepted by both sides not have a buffer system if the bird is inside of and removed from harm because of the size of the closure. An example would be a bird puts a nest inside the closure, maybe in the exact middle, and there should not be a reason for a great deal of concern because everything is closed around the nest already. So, a different species does the same and so on. If the closure takes in all of the buffer needed then I think NPS should monitor same but not make a great big deal of it.

If I did not make sense, write it off to being brain dead from the meeting and I will try again.

0075441

Bob Eakes

----- End of Forwarded Message