



Western Snowy Plover Habitat Conservation Plan Final Environmental Impact Statement

Volume II: Response to Comments • August 2010



Western Snowy Plover Habitat Conservation Plan
Final Environmental Impact Statement
Volume II: Response to Comments

Prepared for:

U.S. Fish and Wildlife Service
2127 SE OSU Drive
Newport, OR 97365
Contact: Laura Todd
541.867.4558

Prepared by:



317 SW Alder Street, Suite 800
Portland, OR 97204
Contact: Kim Marcotte
503.248.9507

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Acronyms and Abbreviations

APHIS	U.S. Animal and Plant Health Inspection Service
ATV	all-terrain vehicle
BLM	U.S. Bureau of Land Management
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
Corps	U.S. Army Corps of Engineers
CZMA	Coastal Zone Management Act
DEIS	draft environmental impact statement
DLCD	Department of Land Conservation and Development
DPS	distinct population segment
EA	emphasis area
ESA	Endangered Species Act
FEIS	final environmental impact statement
FWS	U.S. Fish and Wildlife Service
HCP	habitat conservation plan
HRA	habitat restoration area
IA	Implementing Agreement
ITP	incidental take permit
NEPA	National Environmental Policy Act
OAR	Oregon Administrative Rules
ODFW	Oregon Department of Fish and Wildlife
OHV	off-highway vehicle
OPRD	Oregon Parks and Recreation Department
ORS	Oregon Revised Statutes
RMA	recreation management area
ROD	Record of Decision
SNA	State Natural Area
SPMA	snowy plover management area
USFS	U.S. Forest Service

Chapter 1 Introduction

1.1 Introduction

As discussed in Chapter 1, “Purpose and Need,” of Volume I of this Final Environmental Impact Statement (FEIS), the Oregon Parks and Recreation Department (OPRD) has submitted an application to the U.S. Fish and Wildlife Service (USFWS) for an incidental take permit (ITP) in accordance with Section 10(a)(1)(B) of the Federal Endangered Species Act (ESA), as amended. To meet the requirements of Section 10 of the ESA, OPRD prepared the *Western Snowy Plover Habitat Conservation Plan* (Oregon Parks and Recreation Department 2008), which was submitted for public review in the fall of 2007.

As required by the National Environmental Policy Act (NEPA), a Draft Environmental Impact Statement (DEIS) was prepared and circulated for public review by USFWS (U.S. Fish and Wildlife Service 2007). The DEIS analyzed OPRD’s request for ITP coverage for management actions that could affect snowy plover, as well as two alternative management strategies. The 60-day public comment period for the DEIS and draft habitat conservation plan (HCP) was held from November 5, 2007 through January 4, 2008. Comments were also accepted during two extended public comment periods between February 26 and March 12, 2008; and between April 17 and June 19, 2009.

Revisions to the DEIS based on public comments are presented in Volume I of this FEIS. This volume, Volume II, presents the comments that were received during the public comment period and responses to all substantive comments. OPRD has also revised the draft HCP in response to public comments.

1.2 Public Comments on the DEIS

A total of 103 comment letters were received during the public review and comment period. Four comments letters were submitted by Federal agencies, one comment letter was submitted by a State agency, 11 comment letters were submitted by local agencies, 10 comment letters were submitted by non-governmental organizations, and 77 comment letters were submitted by the general public. NEPA requires that a Federal lead agency consider all comments received during the review and comment period, and provide a response to all comments that are considered substantive. Responses to all substantive comments received during the public comment and review period are provided in Volume II of this FEIS.

1.3 Public Review of this FEIS

This FEIS has been filed with the Environmental Protection Agency (EPA), and a Notice of Availability (NOA) has been published in the *Federal Register* announcing the availability of the FEIS for public review and comment. After a minimum 30-day comment period during which additional comments on the FEIS may be submitted, USFWS will issue a Record of Decision (ROD) stating its decision. The ROD will also include a discussion of the alternatives considered, the environmentally preferable alternative, the factors considered with respect to the alternatives, environmental commitments and mitigation measures to be applied to the action, any monitoring and enforcement programs that will need to be established, any significant comments on the FEIS, and USFWS's responses to those comments.

1.4 Organization of Volume II of the FEIS

- Chapter 1, "Introduction"
- Chapter 2, "Master Responses"
- Chapter 3, "Federal Agency Comments and Responses"
- Chapter 4, "State Agency Comments and Responses"
- Chapter 5, "Local Agency Comments and Responses"
- Chapter 6, "Non-Governmental Organization Comments and Responses"
- Chapter 7, "General Public Comments and Responses"
- Chapter 8, "References"
- Chapter 9, "List of Preparers"

Chapter 2 Master Responses

Introduction

A review of the comments made on the Draft Environmental Impact Statement (DEIS) revealed that some comments were made frequently, demonstrating a common concern among those submitting written comments. To allow presentation of a response that addresses all aspects of these related comments, Master Responses have been prepared for those topics that were raised in a number of comments from agencies, interested groups, and members of the public. These Master Responses are intended to allow a well-integrated response that addresses all facets of a particular issue, in lieu of piecemeal responses to individual comments, which may not have portrayed the full complexity of the issue.

MR-1 – Potential Effects on Wintering Populations of Snowy Plover

A number of comments requested additional information on how the potential effects of the covered activities on wintering populations of snowy plovers were considered in the DEIS and habitat conservation plan (HCP). This analysis, as presented in Volume I of this Final Environmental Impact Statement (FEIS), considers the potential effects of recreational activities on foraging, migrating, and wintering shorebirds, including western snowy plovers (Section 3.7, “Wildlife and Their Habitat”). As acknowledged in that section, recreation activities may temporarily displace foraging or wintering shorebirds, flush foraging adult shorebirds from optimal habitat into less than suitable habitat and into harm’s way, and/or affect young shorebirds or chicks as they leave protected management areas to forage on the adjacent wet sand. Although the potential effects of these activities on wintering populations of shorebirds would increase over the next 25 years as recreational use on the Oregon coast increases, it is likely that the effects would be limited to the temporary displacement of birds. For snowy plovers, it is unlikely that such effects would rise to the level of “take.” As such, OPRD has not requested incidental take coverage for the potential effects of the covered activities on wintering populations of snowy plovers, and has not included specific conservation measures in the HCP to address such effects.

It is possible, however, that the way the public recreates on the covered lands and/or the way snowy plovers utilize the Ocean Shore could change in the future, such that the effects of the covered activities on non-breeding populations of snowy plovers could result in incidental take. To address this concern, the changed circumstances

section of the HCP has been updated to outline a process for considering potential effects on wintering populations of snowy plovers in the future, if needed.

Specifically, as described in HCP Section 5, “Conservation Plan,” it is not anticipated that recreation activities during the winter will have any adverse effects to plovers so OPRD is not requesting take coverage for effects to snowy plovers outside of the breeding season. If adverse effects to snowy plovers are determined to be occurring in the future, OPRD will either avoid take of snowy plovers or will amend its permit.

MR-2 – Covered Lands and the Implementation of Recreational Use Restrictions within Snowy Plover Management Areas and Recreation Management Areas

A number of comments requested clarification on the geographic extent to which recreational use restrictions would be implemented within the designated boundaries of snowy plover management areas (SPMAs) and recreation management areas (RMAs). To clarify how and where these restrictions would be implemented, the definition of the covered lands and the nature and location of the recreational use restrictions within those covered lands has been updated in Volume I of this FEIS, and summarized below. These revisions are presented as clarifications and do not change the outcome of the analysis that was presented in the DEIS.

As described in Chapter 1, “Purpose and Need” of Volume I of the FEIS, the definition of covered lands has been updated to exclude Federal lands within the Ocean Shore. Federal land ownership occurs within the Ocean Shore landward of the mean high tide line. However, because any actions occurring on these lands are the responsibility of the Federal landowner, all Federal lands that occur within the Ocean Shore are no longer considered part of the covered lands that would be managed under the project alternatives. Figure 1-2 presented in Volume I of this FEIS has been updated to show the location of the mean high tide line in relation to the Ocean Shore boundary.

Related to this clarification, it should also be noted that the HCP and FEIS have been updated to indicate that an RMA would also be considered occupied if the adjacent federally owned lands (outside the covered lands) became occupied.

Under Alternative 1, OPRD would continue to issue recreational use restrictions at the Bandon habitat restoration area (HRA) and at RMAs that are either occupied or at RMAs that are adjacent to occupied sites outside the covered lands. In the event that populations of snowy plovers began to nest outside of areas that are already currently occupied, OPRD would provide protections for individual nests located within the

covered lands. OPRD would not issue restrictions for unoccupied sites within the covered lands under Alternative 1.

Under Alternatives 2 and 3, OPRD would implement the restrictions described in Chapter 2, “Alternatives,” at the occupied or targeted SPMA listed in Chapter 2. The extent of the restrictions would be determined through consultation with USFWS as described in the site management plan and would be limited to the management boundary. In the event that an SPMA became occupied prior to completion of a site management plan, OPRD would implement recreational use restrictions within the full extent of the SPMA. OPRD would implement these restrictions until a USFWS-approved site management plan is developed.

At occupied RMAs or at RMAs adjacent to occupied sites outside the covered lands, OPRD would implement recreational use restrictions in cooperation with the landowner as directed by the USFWS-approved site management plan. If an RMA or the land adjacent to the RMA is occupied, but a site management plan does not exist, OPRD would automatically implement recreational use restrictions within the full extent of the RMA. OPRD would issue and enforce these recreational use restrictions until an agreement is reached between USFWS and the landowner, and/or a site management plan is developed, and OPRD is notified of any changes that may modify recreational use restrictions to a more focused area.

If an RMA is unoccupied, OPRD would only implement recreation use restrictions at the request of the landowner and after consultation with USFWS and collaboration with ODFW. The extent of the restrictions would be determined through consultation with USFWS and would be limited to the boundary of the RMA.

For the purposes of conducting the analysis presented in Volume I of the FEIS, it was assumed that recreational use restrictions would be implemented within the full extent of the SPMA or RMA boundary. This assumption considered the greatest potential for effects on recreational use and access under each alternative. In reality, although recreational use restrictions could be implemented anywhere within an RMA or an SPMA, such restrictions would likely be limited to a smaller area where focused snowy plover management would occur. The specific location and geographical extent of that management and the associated recreational use restrictions could be refined during development of site management plans for each area, and would be contingent on the occupancy status of each site.

It should also be noted that although recreational use restrictions would not necessarily be implemented within the entire boundary of an SPMA, those boundaries would define the limits for further development within the associated State Park. In other words, although the public would continue to be allowed to recreate in many portions of SPMA in accordance with the HCP, development in an SPMA (e.g., campgrounds, boat ramps) would be prohibited over the term of the incidental take permit (ITP).

MR-3 – Restrictions on Dog Exercising

A number of comments either supported or opposed the proposed restrictions on dog exercising in SPMA and RMA under the HCP. For information about the geographic extent of the proposed recreational use restrictions and the mechanisms for implementing the restrictions within the Ocean Shore, please see MR-2. The presence of dogs on beaches occupied by snowy plovers can adversely affect the species (George pers. comm. 1997; Point Reyes Bird Observatory unpublished data; Page et al. 1997; Fahy and Woodhouse 1995; Lafferty 2001 in U.S. Fish and Wildlife Service 2007; Williams et al. 2009). Unleashed dogs sometimes chase snowy plovers and destroy nests, and repeated disturbances by dogs can interrupt brooding, incubating, and foraging behavior of adult snowy plovers. Interactions with dogs can also cause chicks to become separated from their parents, and attract predators to the location of eggs and chicks. In 2008, of the eight documented failed nests, one occurred as a result of trampling by a dog (Lauten and Castelein pers. comm.). With the understanding that the presence of dogs on Oregon's beaches could result in take of snowy plovers, management of that use was included as a covered activity in the HCP, and restrictions to minimize those potential effects were included in the conservation measures.

Under the HCP, dog exercising would be restricted from key areas during the nesting season. Specifically, dogs would be prohibited at occupied SPMA and RMA between March 15 and September 15. Dogs would also be required to be on a leash during the same time period at actively managed, unoccupied SPMA and RMA, unless prohibited by other regulations. These restrictions may not apply to the entire delineated extent of an SPMA or RMA, but could apply to a smaller focused management area, as described in MR-2. It is likely that there would be areas within occupied SPMA and RMA where dogs would be allowed on leash during the nesting season. Of the 365 miles of beach along the Oregon coast, restrictions on dog use would only potentially be implemented along approximately 48 miles (recreational use restrictions are currently seasonally implemented along 19.8 miles of the Ocean Shore), unless otherwise modified through implementation of the adaptive management measures. Most of the areas where the restrictions would be applied are located at a distance from high recreational use areas.

For the purposes of the analysis presented in Volume I of the FEIS, the most restrictive scenario was analyzed in which dog restrictions would apply within the entire management boundary of an SPMA or RMA. Even with this conservative approach, as noted in Section 3.3, "Recreation," in Volume I of the FEIS, there are alternate beach locations at each SPMA and RMA where dogs would be allowed unrestricted on the beach. These areas are most often located immediately adjacent to the restricted area and are often reached via the same access points. Tables 3.3-6 and 3.3-7 in Volume I of the FEIS list the alternate locations for each proposed

SPMA and RMA where similar recreational uses could be accommodated under Alternatives 2 and 3, respectively.

The restrictions on dog use proposed in the HCP are necessary to minimize the potential for dogs to adversely affect snowy plovers. In addition, as discussed in Section 3.3, “Recreation,” of Volume I of the FEIS, in the majority of cases, there would be an alternate beach location that could be accessed from the same access point as an SPMA or RMA where dog exercising would be allowed.

MR-4 – Extension of Northern Boundary of Bandon SPMA

Several comments recommended that the area north of the Bandon SPMA, outside the currently designated HRA, be managed for nesting populations of snowy plovers. In response to those comments, USFWS and OPRD have extended the boundary of the Bandon SPMA to the southern edge of the China Creek access parking lot, thereby increasing the linear distance of that SPMA by 0.48 mile. The revised geographic extent of the expanded Bandon SPMA is illustrated in Figure 1-9 of Volume I of this FEIS. As described in MR-5, OPRD’s management of this expanded SPMA replaces the proposal for future management of the Pistol River SPMA under the draft HCP. Management prescriptions and recreational use restrictions at the expanded SPMA would be the same as those described in the draft HCP for the Bandon SPMA (occupied SPMA), and would be outlined more specifically in the site management plan that would be developed 1 year after the ITP has been issued.

MR-5 – Management of Unoccupied SPMAs

A number of comments requested clarification on how the determination was made of where and in what order unoccupied SPMAs would be managed under the HCP. Numerous comments questioned why management at Pistol River and Netarts Spit was deferred and why Pistol River had been chosen for management at all. In general, the determination of which SPMAs would be managed for snowy plovers was based on land ownership or management responsibility, snowy plover occupancy or the potential for occupancy, and the potential for conflicting uses (such as heavy recreational use or high predator populations) to occur in a managed area.

Under the draft HCP (Alternative 2), up to five currently unoccupied areas were identified for potential management over the term of the 25-year ITP. Three SPMAs at Columbia River South Jetty, Necanicum Spit, and Nehalem Spit were proposed for initial management by OPRD to establish nesting populations of snowy plovers. Two additional SPMAs at Netarts Spit and Pistol River could also have been

managed for nesting populations of snowy plovers under the draft HCP if (1) Columbia River South Jetty, Necanicum Spit, or Nehalem Spit were to become occupied, and (2) one of six specifically identified RMAs was not managed for snowy plovers under a USFWS-approved site management plan. Under those circumstances, OPRD had committed to managing Netarts Spit and Pistol River (in that order) for nesting populations of snowy plovers to ensure that a minimum of three unoccupied SPMA's were actively managed at any given time over the term of the 25-year ITP.

Columbia River South Jetty, Necanicum Spit, and Nehalem Spit were identified by OPRD and USFWS as the areas under OPRD ownership with the greatest potential to provide snowy plover nesting habitat in the future. In addition, USFWS, ODFW, and OPRD determined that these three areas could help ensure the survivability of the species by distributing the population along the Oregon coast (current populations are clustered on the southern coast).

Conversely, the decision to defer OPRD management of the Pistol River and Netarts Spit SPMA's was based on biological constraints specific to each of those sites. At high tide, the beach at Netarts Spit is very narrow in places and is highly erodible along its expanse. Although the site is isolated and current recreational use on the spit is minimal, snowy plovers have not been observed at this site since 1982. The absence of nesting snowy plovers indicates that there is likely some other biological factor limiting their use of this site (possibly human disturbance, unsuitable habitat, or predation), although the exact cause is unknown. At the Pistol River SPMA, the beach is highly susceptible to the meandering Pistol River, which could change directions and alter current habitat at the site. Blowing sand is also common at this site and corvid activity is high. The last observance of snowy plovers was in November 1978. Understanding these conditions, USFWS and OPRD determined that both Netarts Spit and Pistol River would only be viable options for snowy plover management in the future if other sites that inherently provide better potential habitat were not successful.

Some comments voiced strong local opposition for management and implementation of recreational use restrictions at the Pistol River SPMA, and other comments voiced strong support for increased management at other areas more likely to support populations of snowy plover in the future. After considering these comments, USFWS and OPRD have decided to remove the option for management of the Pistol River SPMA from the HCP. In its place, OPRD will expand the northern boundary of the Bandon SPMA to include the China Creek area, as described in MR-4. The remaining components of the proposal for management at unoccupied SPMA's remain the same. That is, SPMA's at Columbia River South Jetty, Necanicum Spit, and Nehalem Spit would initially be managed for nesting populations of snowy plovers, and an SPMA at Netarts Spit would be considered for management under the conditions described above.

MR-6 – Recreational Use on Oregon’s Ocean Shore

A number of comments questioned the ability of OPRD to limit recreational use of and access to the Ocean Shore, given OPRD’s mandate under the Beach Bill. Other comments called for further restrictions on recreational use opportunities. Other comments noted that assurances provided for public access under the Beach Bill should not supersede the requirements of the Federal Endangered Species Act (ESA).

The Public Trust Doctrine of law provides that the State of Oregon holds submerged and submersible land in trust for the benefit of all people. Under this doctrine, the general public has a right to fully enjoy these resources for a wide variety of public uses, including navigation, commerce, recreation, and fishing. According to the courts and with few exceptions, the people of Oregon own the bed and banks of all navigable streams, rivers, and lakes up to the ordinary high water line. This land is commonly referred to as “submerged and submersible land.” In addition, the people of Oregon own all land subject to tidal influence (with the exception of those parcels the State may have sold since statehood). This land is commonly referred to as “tidelands.” However, access to these navigable waters is not guaranteed (e.g., private property, areas closed for wildlife). OPRD is allowed through State Rule, which is authored by State statute, to determine the types of allowable access on its lands or those lands it regulates under the Beach Bill.

With passage of the Beach Bill in 1967, the State’s policy was to preserve and maintain its jurisdiction over ocean beaches for the public’s use (Oregon Revised Statutes [ORS] 390.610(1)). The Beach Bill also declared that public interest in such land requires the State to do what is necessary to preserve and protect scenic and recreational uses of Oregon’s seashore and ocean beaches (ORS 390.610(4)). Under this authority, OPRD must balance the provision of recreational use opportunities with its mandate to protect and preserve natural and scenic resources. The statutory authority to make regulations and provisions deemed necessary for use and administration of park areas is found under ORS 390.124 and ORS 390.660, and under ORS 390.635 and ORS 390.620 for the Ocean Shore. This authority is implemented under Oregon Administrative Rules (OAR) 736-021-0040(3) and in cooperation with Federal agencies per the Federal Coastal Zone Management Act (CZMA). OPRD is allowed through State Rule to determine the types of allowable access. In other words, OPRD is responsible for Oregon beaches and is the primary agency that has the authority to close beaches and enforce such closures. For information regarding the issuance of recreational use restrictions on federally owned lands, please see MR-2.

Neither USFWS nor OPRD have asserted that the Beach Bill supersedes the requirement of the Federal ESA or that it precludes a landowner’s ability or obligation to protect federally listed species. Rather, the text in the HCP states that

OPRD has a statutory obligation to work with landowners to ensure that such limitations are implemented in accordance with the Beach Bill.

MR-7 – Snowy Plover Recovery and the HCP

A number of comments requested clarification on how the HCP relates to the USFWS goal for recovery of the Pacific Coast population of snowy plover along the Oregon coast. The *Final Recovery Plan for the Pacific Coast Population of the Western Snowy Plover (Charadrius alexandrinus nivosus)* was published by USFWS in September 2007 (U.S. Fish and Wildlife Service 2007). The primary objective of the recovery plan is to remove the Pacific Coast population of the snowy plover from the List of Endangered and Threatened Wildlife and Plants by (1) increasing population numbers distributed across the range of the Pacific Coast population of the snowy plover; (2) conducting intensive ongoing management for the species and its habitat and developing mechanisms to ensure management in perpetuity; and (3) monitoring snowy plover populations and threats to determine success of recovery actions and refine management actions. Recovery criteria for Oregon include maintaining an average of 250 breeding adults in Washington and Oregon for 10 years; maintaining a yearly average productivity of a least 1 fledged chick per male in each recovery unit in the last 5 years prior to delisting; and ensuring that mechanisms have been developed and implemented to assure long-term protection and management of breeding, wintering, and migrations areas, as outlined in the recovery plan.

In general, recovery plans are guidance documents that set forth the actions and management direction necessary to downlist and delist species. The purpose of a recovery plan is not to provide details regarding mitigation for project impacts. They are also not intended to place the burden of recovery on one entity or agency. Conversely, the conservation strategies proposed by OPRD in the HCP are intended to minimize and mitigate, to the maximum extent practicable, the potential effects of the covered activities on snowy plovers, and to ensure that incidental take associated with those activities does not reduce the likelihood of survival and recovery of the species in the wild. Implementation of the HCP would support snowy plover recovery in that conservation measures prescribed in the HCP—including active management of areas currently unoccupied by snowy plovers—would help the species reach recovery goals for numbers of breeding adults, productivity, and distribution. However, contributions toward recovery of the species realized as a result of the HCP would be a benefit of the plan, but not a mandatory requirement.

MR-8 – HCP Funding Commitments

A number of comments requested clarification on the funding commitments in the HCP, particularly those specific to enforcement, habitat restoration and maintenance, and public outreach and education. Based on those comments, OPRD has updated Section 7, “Implementation, Organization, and Structure,” of the HCP to incorporate more recent baseline funding information for the Bandon HRA, and has updated monetary commitments to reflect costs to manage unoccupied and occupied SPMA at a 2-year funding interval (biennium). A summary description of those funding commitments is provided below. The effectiveness of the conservation measures, including the adequacy of the funding commitments in the HCP, will be assessed each year in an annual compliance report and evaluated every 5 years by OPRD, USFWS, and ODFW.

OPRD staffing commitments to program administration and management action administration are summarized in Table 7.2 of the HCP. It should be noted that these staffing commitments are in addition to the in-kind costs noted below. Staffing commitment “costs” are not specifically estimated due to the difficulty in ascertaining how much staff time would be required on an annual basis to complete these responsibilities.

Law Enforcement

OPRD has committed to continue to fund positions for three full-time beach rangers along the Oregon coast over the term of the 25-year permit. In addition, they have committed to provide \$20,000 per year (per occupied SPMA) to hire senior State Troopers or county sheriff personnel to augment other enforcement activities by OPRD staff and beach rangers, as necessary (Table 7.5 in the HCP). OPRD will also provide funds for the continued use of volunteers and docents at both occupied and actively managed unoccupied SPMA to inform beach users of restrictions (Tables 7.4 and 7.5 in the HCP).

Habitat Restoration and Maintenance

The funding commitment for habitat restoration and maintenance has also been updated to reflect the anticipated 2007-2009 biennium expense associated with habitat maintenance at the Bandon SPMA. As outlined in Table 7.4 of the HCP, OPRD has committed to spend up to \$50,000 to restore habitat (up to 40 acres) at each actively managed, unoccupied SPMA, as necessary. These funds would be allocated for each SPMA over a 2-year period (biennium). In addition, OPRD has committed to spend an additional \$2,000 per acre per year at each SPMA to maintain

habitat restored in previous years, not to exceed \$60,000 in any biennium (Table 7.5 in the HCP).¹

Public Outreach and Education

OPRD has committed to providing \$2,000 per biennium for each actively managed, unoccupied SPMA, and \$5,000 per biennium at each occupied SPMA, to provide materials to start interpretive programs and to pay for docent travel (Tables 7.4 and 7.5 in the HCP). An additional \$1,000 per biennium would be provided at each occupied SPMA to cover the costs of constructing symbolic fencing (ropes, signs, and fence posts).

MR-9 – Use of Exclosures

A number of comments requested clarification on how and when exclosures would be used around snowy plover nests, particularly those found outside of designated RMAs and SPMA. Under the draft HCP, if a snowy plover nesting site was found outside of an occupied or targeted SPMA or RMA, OPRD had committed to installing a nest exclosure and limited fencing around the individual nest. Several commenters expressed concern that automatically installing exclosures around nests outside of managed sites would facilitate predation of nests, unnecessarily attract people to nest locations, and possibly encourage snowy plovers to continue to nest in areas not specifically set aside for management.

In consideration of the above comments, the HCP and the alternatives in the FEIS have been revised to reflect that any determination to place an exclosure around a nest outside of a designated RMA or SPMA would be based on site-specific conditions (predator populations, recreational use level) and informal discussions with USFWS.

The FEIS has also been updated to indicate that, under Alternatives 2 and 3, OPRD would implement nest protections anywhere within the covered lands, including RMAs. At RMAs, OPRD would work with the underlying or adjacent landowner to implement these protections, but such protections would not be contingent on their participation.

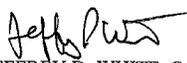
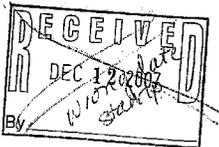
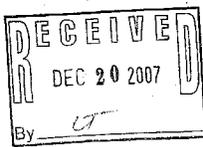
¹ The \$10,000 difference in funding commitments between habitat restoration (up to \$50,000 in any biennium) and habitat maintenance (up to \$60,000 in any biennium) is attributable to the commitment to maintain 50 acres of habitat at the Bandon SPMA and 40 acres of habitat at all other actively managed SPMA.

Chapter 3 Federal Agency Comments and Responses

Introduction

This chapter includes comment letters submitted by Federal agencies. Four individual comment letters from Federal agencies were received during the public comment period. A copy of each comment letter is presented with the substantive comments marked and individually identified. The responses to these comments follow each comment letter. In some cases, responses were not considered necessary. Changes made as a result of the comments were incorporated into Volume I of this Final Environmental Impact Statement (FEIS) and the habitat conservation plan (HCP) as indicated in the responses.

Comment Letter FA-1

FA-1	
 DEPARTMENT OF THE AIR FORCE AIR EDUCATION AND TRAINING COMMAND	
17 December 2007	
MEMORANDUM FOR U.S. Fish and Wildlife Service, Newport Field Office ATTENTION: Ms. Laura Todd 2127 SE OSU Drive Newport OR 97365-5258	
FROM: 336 TRG/CC 811 W Los Angeles Ave Fairchild AFB WA 99011	
SUBJECT: Comments on the Western Snowy Plover Habitat Conservation Plan Draft Environmental Impact Statement, Habitat Conservation Plan and Incidental Take Permit Application.	
1. The USAF 336th Training Group has no specific comments on the Draft Environmental Impact Statement; however, we would like to stay involved and informed with the process.	
2. Our use and the timing of our use in the Bayocean Area (OR-3) is critical to meet national training requirements for Survival, Evasion, Resistance and Escape Specialist training. We would like to be involved with any Site Management Plans that may be developed for the Bayocean Spit (via land owner or Oregon Department of Fish and Wildlife).	FA-1-1
3. We have been very closely involved with meeting necessary conservation measures to avoid, minimize and mitigate impacts on the Western Snowy Plover through our existing permit with Oregon Parks and Recreation Department. We would like to ensure our use is considered in the Incidental Take permit for a 25 year period at our current Bayocean training site. Additionally, our existing permit terminates in 2012 and it's our desire to renew this permit with Oregon Parks and Recreation Department, securing use of this valuable training site for future use.	FA-1-2 FA-1-3
4. Thank you for the opportunity to provide comment. If you have any questions concerning our use of the Bayocean Area (OR-3), please contact SSgt Brad Elliott at (509) 247-3549 or Mr. Robert Ploof at (509) 247-9341.	
CC: Karen Soenke Mary Baker	 JEFFREY D. WHITE, Colonel, USAF Commander, 336th Training Group
	 

Response to Comment FA-1-1

As noted in MR-2, the covered lands have been updated to exclude federally owned lands. Therefore, the majority of the Bayocean Spit site, which is federally owned, is not the subject of the HCP. Therefore, a site management plan governing management of Bayocean Spit for snowy plovers would be developed by the U.S. U.S. Fish and Wildlife Service (USFWS) and the landowner, the U.S. Army Corps of Engineers (Corps). Participation in the development of that plan should be

coordinated directly with USFWS and the Corps. From the mean high tide line to the low high tide line (the covered lands adjacent to federally owned lands), the conservation measures would be implemented as described in the HCP and summarized in MR-2.

Response to Comment FA-1-2

Issuance of an incidental take permit (ITP) for take associated with the covered activities in the HCP would be specific to Oregon Parks and Recreation Department (OPRD) management activities on the covered lands. Although cumulative effects on snowy plovers at Bayocean Spit will be considered in the context of that assessment, the effects of the U.S. Air Force's training activities at Bayocean Spit would need to be considered during a separate consultation with USFWS.

Response to Comment FA-1-3

It is assumed that the comment is referring to an Ocean Shore permit from OPRD that provides for the use of the Ocean Shore for a specific activity, in this case military activities. In the event that the Corps decides to actively manage the land adjacent to the Bayocean Spit Recreation Management Area (RMA) to attract nesting snowy plovers, OPRD would follow the prescriptions in the HCP for management of an unoccupied RMA at that site, which means that driving would be restricted during the nesting season. Once the site became occupied, OPRD would implement additional restrictions at the RMA in collaboration with the Corps, and, likely, in compliance with a USFWS-approved site management plan. It is possible that the currently permitted activities would not be allowed to continue in certain areas during the nesting season; however, outside of the RMA, those decisions would be made as part of a separate Section 7 consultation between USFWS and the Corps.

FA-2

FA-2

Attachment 1

EXAMPLES – Jurisdictional disagreement in the Habitat Conservation Plan.

Page 1-3 (paragraph 2) “As part of this HCP, OPRD will apply restrictions on recreation and management of the Ocean Shore to reduce the potential for take of snowy plovers, **regardless of ownership.**” (FS emphasis)

Page 1-7 (paragraph 5) “Under OPRD’s Ocean Shore management authority, it will restrict recreation use for occupied RMAs automatically in collaboration with the USFWS.”

Page 2-5 (paragraph 2) “The Ocean Shore includes the area from extreme low tide to the actual or statutory vegetation line whichever is most landward.” (point of disagreement when high beach is federal land)

Page 3-5 (paragraph 1) “There are over 40 different recreation related activities that occur on the Ocean Shore (Appendix D) of which 29 are the primary reason people go to the beach (Shelby and Tocarczyk 2002). **OPRD is responsible for managing the people engaged in these activities (ORS 390.635).** (FS emphasis)

Page 5-1 (paragraph 2) “Eleven of these management areas are identified as RMAs and are owned by other landowners where OPRD only has authority to restrict recreation activities on the Ocean Shore.”

Page 5-10 (paragraph 4) “[Note: although OPRD only has snowy plover conservation management control for the six SPMA’s it owns or leases, it also has management control over all recreation activities that occur along the entire Ocean Shore.]” (FS believes it has management authority /control over recreation activities occurring on federal lands above mean high tide.)

Page 5-13 (last paragraph) “Because of the Beach Rule, landowners who desire to restrict recreational use on the beach portion of their ownership to protect snowy plover cannot do so without a permit from OPRD”

Page 5-14 (paragraph 1) “Federal agencies have restricted public access to snowy plover nesting areas in an effort to minimize potential take. However, **they do not have the authority to implement such restrictions** and, therefore, must request a recreational use restriction permit from OPRD.” (FS emphasis; FS disagrees)

Page 5-14 (paragraph 2) “However, **OPRD will require recreational use restrictions** to be applied to *occupied* RMAs through a State Rule to reduce the potential for effects on snowy plovers. Permit issuance decisions would be made in collaboration with USFWS and ODFW based on” (FS emphasis; FS disagrees)

Page 5-14 (paragraph 3) “OPRD will also approve recreational restriction permits requested by Federal, County, and private landowners for unoccupied RMAs after coordinating with the USFWS”

Page 5-33 “**OPRD would also implement recreational use restrictions at the 11 other areas targeted for snowy plover management** under certain conditions. These areas are owned by other landowners and are classified as RMAs to signify OPRD’s authority to manage recreation on the Ocean Shore portion of their ownership. (FS emphasis)



United States
 Department of
 Agriculture

Forest
 Service

Siuslaw National Forest

4077 Research Way
 Corvallis, OR 97333
 541 750-7000

File Code: 2670-2
 Date: April 2, 2004

Mr. Michael Carrier
 Oregon Parks and Recreation Department
 1115 Commercial Street, N.E.
 Salem, OR 97301-1002

Dear Mr. Carrier:

This letter provides comment from the Siuslaw National Forest on two documents. The first is the Draft Habitat Conservation Plan (DHCP) for the Western snowy plover, and the second is the Draft Ocean Shore Management Plan (DOSMP).

We commend the Oregon Parks and Recreation Department for their efforts in developing the DHCP and the DOSMP. Both documents reflect considerable work by your staff to gather key information and present a very complex management challenge that will be helpful to all entities responsible for the management of ocean shore resources.

Draft Habitat Conservation Plan (DHCP)

The DHCP discusses OPRD jurisdiction on the ocean shore on pages 26-27 and indicates that the legislation (codified at ORS 390.610-390.770) established a public recreational easement on beaches seaward of the vegetation line regardless of ownership. However, we believe that where the defined zone is federal land (National Forest System (NFS) lands), federal jurisdiction applies. This is based on our most recent discussions within the Forest Service, that there exists no record that Federal ownership underlying the defined zone, has ever been ceded.

FA-2-8

The Siuslaw National Forest accomplishes many acres of Western snowy plover habitat enhancement each year that reduces the amount of European beachgrass in selected locations. The potential for such change to the vegetation line should be recognized on page 27 when describing the ocean shore and on maps that show actual areas of suitable nesting for plovers in relation to Emphasis Area (EA) boundaries.

FA-2-9

It appears that in some instances when a trail comes out to a beach there is a gap or break in the EA. We recognize, as the recreation survey has shown, that there is an increase in recreation use at such locations. We recommend not making such breaks, but instead specifically qualifying that where and when recreational activities are high in very localized areas or where recreationists simply must pass through the dry sand to reach the wet sand, the type of management prescribed for the entire EA may or may not be implemented in these instances.

FA-2-10

Some differences exist between the DHCP EA management actions and existing Forest management. Most of these differences can be attributed to the fact that the entire EA is subject to either yearlong or seasonal management actions and not just the known nesting areas that are roped and signed during each breeding season. The Forest is not able to rope and sign all dry sand portions of each EA due to staffing and budget constraints and applies that degree of

FA-2-11

protection to only areas of nesting. We recognize that broods require some degree of protection and that the size of many EA's is based on buffering nesting areas to afford that protection. Our compliance efforts (volunteers and possibly a docent program) will include these brood movement zones in addition to the adjacent nesting area.

FA-2-11
 continued

Some of the activities and their proposed management actions agree with our ongoing management on plover beaches. Examples of these are ATV/OHV, fireworks, driftwood collection and removal, motor vehicles, and other wet sand activities.

The following provides comment for those management actions that are different across the board from our present means of protection.

Camping

Camping is not currently prohibited yearlong on NFS lands in occupied EA's and during the breeding season in unoccupied EA's as prescribed in the DHCP management actions. However in striving to make our plover management consistent with the Oregon Dunes National Recreation (ODNRA) Management Plan across all plover areas, camping may be prohibited in all occupied EA's during the nesting season and the DHCP lends support to this measure. We believe camping need only be restricted during the nesting season in occupied EA's and not yearlong, even if it is by permit only as called for in the DHCP.

FA-2-12

Dogs

The DHCP prohibits dogs on the wet and dry sand during the breeding season in all occupied and unoccupied EA's. Currently dogs are required to be leashed and use only wet sand areas adjacent to roped and signed areas and prohibited within all roped and signed areas during the breeding season. A complete prohibition of dogs on wet and dry sand throughout all EA's may be more than is necessary and would take substantial staff time to gain compliance. Many recreationists understand keeping dogs on leash outside roped and signed areas although compliance of this too takes valuable staff time.

FA-2-13

Pedestrian Traffic

The DHCP prohibits pedestrian traffic on dry sand in occupied EA's during the breeding season. Currently the only restriction on pedestrian traffic within EA's is within roped and signed areas of dry sand during the breeding season. A complete prohibition on pedestrian traffic on all dry sand areas throughout all EA's may be more than is necessary or feasible. However, we recommend that in some local circumstances even wet sand closures may be warranted when relatively small areas are more easily and effectively managed with this tool.

FA-2-14

Equestrian

The DHCP prohibits horse use in occupied EA's during the breeding season on the dry sand and would require a permit for the wet sand. All EA's are currently open for horse use on the wet sand and prohibited within roped and signed areas of the dry sand during the breeding season. We recommend that horse use along with other beach uses be monitored to gain information related to the potential for increases, but we do not agree that permits for horse use are necessary at this time.

FA-2-15



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	FA-2			FA-2
<u>Kite flying and Other Dry Sand Activities</u>				
The DHCP prohibits kite flying and other dry sand activities in occupied EA's during the breeding season. These activities are currently prohibited in the roped and signed dry sand restricted areas during the breeding season in all EA's. We think the management agency should have the discretion to allow or restrict activities based on site-specific factors such as location and intensity of use in each EA and not impose across the board restrictions that may not be warranted.	FA-2-16	<u>Tahkenitch South EA</u>		FA-2-23
The following comments are unique to each EA proceeding from north to south on the Siuslaw National Forest.		This EA is unoccupied and will have phased in management actions between 2011 and 2015 according to the DHCP. Currently the only management action in place is a prohibition on motorized vehicles and protection of individual nests as they are discovered. Depending on how this EA is re-colonized by plovers, some or all of the additional management actions may or may not be needed.		
<u>Sand Lake Spit North EA</u>		<u>North Umpqua River EA</u>		FA-2-24
This area is listed as unoccupied and our data support that determination. The Siuslaw National Forest manages activities in the vicinity of Sand Lake Spit North but there are no NFS lands within the EA per se. The predominant ownership in the Sand Lake Spit North is Tillamook County and not Forest Service.	FA-2-17	This EA is unoccupied and will have phased in management actions between 2016 and 2020 according to the DHCP. Currently the only management action in place is a prohibition on motorized vehicles and protection of individual nests as they are discovered. Depending on how this EA is re-colonized by plovers, some or all of the additional management actions may or may not be needed. This EA is mapped to include land along the north side of the Umpqua River and north and then west to the ocean. We recommend mapping this EA to include only those habitats adjacent to the ocean shore and no further inland than the top of the foredune.		FA-2-25
<u>Sutton/Baker Beach EA</u>		<u>Tennile</u>		FA-2-26
This is an area that is actively being worked on to enhance plover habitat and is a good example of an area referenced in the fourth paragraph above. There is a mining claim on the 160 acres described as the NW1/4 of Section 22 that lies in this EA. This information could be valuable for some readers and should be mentioned and/or included in the map for this EA.	FA-2-18	This EA is labeled using a single name however as mapped it shows as two separate EA's. The northern most section is unoccupied and its current management is a prohibition on motorized vehicles and protection of individual nests as they are discovered. Depending on how this EA is re-colonized by plovers, some or all of the additional management actions may or may not be needed.		
<u>Siltcoos EA</u>		The other section that includes the Tennile estuary proper is occupied. The yellow line that depicts the "Recreational Beach Restrictions 2003" should include all of the north side of the estuary and include all open sand areas.		FA-2-27
Pedestrian travel from the north parking lot to the beach needs to be recognized. We recommend ending the northern edge of the EA at the current dry sand restricted zone and dropping portions of the EA northward of that point.	FA-2-19	We recommend that the south end of the EA boundary be moved north approximately 1/8 mile to match the location of the "I" beam that defines the boundary of the vehicle closure area to the north and coincides with the exit to the beach of a sand road.		FA-2-28
The DHCP prohibits dogs on the wet and dry sand during the nesting season in this EA. Currently dogs are prohibited during the breeding season on the wet and dry sand in all parts of this EA except the southern most 0.6 miles. A complete prohibition of dogs on this 0.6 miles of the EA may be more than is necessary and we recommend against it.	FA-2-20	The Coos County land boundary on the map immediately east of the estuary is not accurate and should be corrected.		FA-2-29
<u>Dunes Overlook/Tahkenitch EA</u>		Draft Ocean Shore Management Plan (DOSMP)		
The northern boundary of this occupied EA should abut the southern boundary of the Siltcoos EA. The small gap between them of less than 1,000 feet does not serve a clear purpose and our current management is continuous from one EA to the next. If the gap was intended to recognize the fact that the Carter lake trail comes out to the beach in this vicinity, see discussion in fifth paragraph above.	FA-2-21	This document deals a great deal with the permitting processes of OPRD and presents the Department's position and will to integrate both the public's need for use of the ocean shore with the needs and requirements of a species like the western snowy plover. All this is presented in a very professional manner and is easily understood.		
The yellow line that depicts the "Recreational Beach Restrictions 2003" on the map should show a break between the north and south Dunes Overlook habitat improvement areas. In addition the areas of habitat improvement extend eastward from the beach approximately 600-700 feet and the yellow line should encircle those areas. The EA boundary should extend south to 0.5 miles south of the yellow line that depicts the "Recreational Beach Restrictions 2003".	FA-2-22	Our only comment on the DOSMP is regarding Appendix E page 186 under N15-3 where it states that the US Forest Service acquire county inholding for consolidation of federal ownership of Sand Lake Recreation Area. At present there are no formal discussions related to this action and we prefer that this reference be removed at this time.		FA-2-30

FA-2

FA-2

Thank you for the opportunity to comment on these documents. If you have any questions regarding the above or require clarification of any comments, please do not hesitate to call Carl R. Frounfelker of my staff at (541) 750-7054.

Sincerely,

/s/
 JANE L. COTTRELL
 Acting Forest Supervisor

Attachment 3

Siuslaw NF editorial comments on OPRD's Western Snowy Plover Habitat Conservation Plan

Page vii Inconsistent. RMA = Restricted Snowy Plover Management Area. On page 1-3 RMA is presented as Recreation Management Area.	FA-2-31
1-2 Occupied management areas. This is not clear. Be more specific i.e. Bandon State Natural Area or Bandon State Park, New River ACEC	FA-2-32
2-1 Snowy plovers also use the Ocean Shore for wintering.	FA-2-33
2-4 Section 2.4.1 Life requisites include wintering.	FA-2-34
2-25 Table 2-2. Critical Habitat Unit OR-8A is Siltcoos Breach. OR-8B should include Siltcoos River Spit.	FA-2-35
3-3 Covered Activities should include Other Recreational Activities as described on page 3-10.	FA-2-36
4-4 It is important to explain the reader that a young plover chicks only defense strategy is to crouch on the sand and rely on camouflage and that they may not run from danger.	FA-2-37
4-5 Wintering. Even though less than 2% of the Pacific coast snowy plover population may winter on the Oregon Coast, it has been stated that approximately 80% of those birds breeding in the state also stay through the winter. Therefore the availability of good wintering habitat is vital to the recovery of plovers in Oregon.	FA-2-38
4-6 Add Siuslaw North Jetty and Siltcoos Breach to the list of wintering locations for Oregon.	FA-2-39
4-13 Table 4-3 is titled Nesting and Fledgling Success but the table displays nests and hatching .	FA-2-40
4-17 Eggs may be lost to overheating or chilling. Plover chicks can be trampled by horses, pets or people as they crouch on the sand to avoid detection.	FA-2-41
4-23 Outdated info....twine, blueberry netting and hotwire sets are no longer used with exclosures.	FA-2-42
4-26 Three full time beach rangers may not be adequate to enforce 230 miles of sandy beach. Many violations take place after dark or after normal "business" hours. A consistent law enforcement presence will be key to success.	FA-2-43

FA-2

5-33 specifies prohibition of activities within the dry sand portion of the beach as indicated by roping and signage. Needs clarification. Will activities mentioned in 3.4.1 really be restricted to wet sand only or just to the outside of roped areas? Most of the Forest Service RMA's include beach area that is not currently nesting area that would be roped and signed. How would dry sand restrictions be implemented in these areas or would the essentially remain open?

FA-2-44

Appendix F.

Update nesting and fledging data in this section. Occupied FS areas have had consistent plover nesting through 2007.

FA-2-45

Pg. 2 South Sand Lake Spit should be Unoccupied. Sutton/Baker Beach has had nesting as recently as 2007 (but has been inconsistent in recent years).

FA-2-46

Third sentence from the bottom of page...equestrians.

FA-2-47

Figure F-2 Omit North Sand Lake Spit. It is not mentioned in the rest of the document.

FA-2-48

Pg. 9 Second paragraph. Inaccurate statement. The Oregon Dunes National Recreation Area has campgrounds for ATV/OHV riders as well as for those who want a more traditional setting. The area upland to the Siltcoos/Overlook/Tahkenitch RMA is closed to ATV/OHV use year round.

FA-2-49

FA-2-50

Third paragraph. Continued maintenance of habitat will be needed.

FA-2-51

Last paragraph. Update. The biggest human disturbance problem is probably people who still cut through the nesting area to get to the beach. Watercraft users are probably secondary since better signing has been installed.

FA-2-52

Pg. 10 First paragraph. Redundant mention of 40 acres of habitat restoration.

FA-2-53

Figure F-4 Modify RMA boundary to include all of the proposed Dunes Overlook Project area.

FA-2-54

Page 13 Third paragraph. Add the word "until" after RMA.

FA-2-55

Executive Summary

Page 1-3 Include Dunes Overlook and Tahkenitch in list of beaches closed to driving.

FA-2-56

Page 1-9 Coordinate with Marine Mammal Stranding Network and upland land owner such as USFS.

FA-2-57

Response to Comment FA-2-1

The HCP and the FEIS have been updated to reflect that Federal lands are no longer considered part of the covered lands. Under the HCP, OPRD would implement the recreational use restrictions at occupied sites within the covered lands. Other snowy plover management actions on federally owned lands adjacent to but outside of the covered lands, including habitat restoration, monitoring, public outreach and education, and predator management, would be the responsibility of the Federal landowner, and would be determined through separate consultation with USFWS and the Federal landowner. For more information about how the recreational use restrictions would be implemented on adjacent lands, see MR-2.

Response to Comment FA-2-2

To the extent possible, OPRD intends to work with Federal landowners to ensure that recreational use restrictions within RMAs are consistent with recreational use restrictions implemented by Federal agencies on adjacent Federal lands. However, permitted use of State lands by Federal employees requires an Ocean Shore permit for administrative use and is outside the scope of this HCP.

For specific answers to past comments, please see the responses to Comments FA-2-8 through FA-2-30.

Response to Comment FA-2-3

FEIS section 3.13, “Cumulative Effects,” has been updated to indicate that the activities conducted by the Siuslaw National Forest, including beach closures, predator management, and habitat restoration, would result in a cumulative beneficial effect on shorebirds, including snowy plovers. These activities are not to be confused with those similar activities proposed as part of the HCP to be implemented by OPRD.

Response to Comment FA-2-4

Please refer to MR-1 for a discussion of how the potential effects of the covered activities on wintering populations of snowy plovers are considered in the HCP and EIS.

Response to Comment FA-2-5

As noted in the HCP and FEIS, it is not anticipated that effects on wintering snowy plovers would rise to the level of take. Please refer to MR-1 for a discussion of how the potential effects of the covered activities on wintering populations of snowy plovers are considered in the HCP and EIS. With respect to populations of wintering snowy plovers observed at Siltcoos, the U.S. Forest Service (USFS) closes its lands to all-terrain vehicle (ATV) and off-highway vehicle (OHV) use, and access to this area from non-Federal entry points is located a substantial distance from the wintering areas. The dry sand area used by snowy plovers, particularly at night, is entirely managed by USFS. It is likely that additional nighttime closure of non-Federal access points would provide minimal, if any, additional protections for snowy plovers, and would not meet OPRD's stated objective to provide recreational access to the Ocean Shore.

Response to Comment FA-2-6

The draft HCP has been updated to include information through the 2009 breeding season survey period.

Response to Comment FA-2-7

The Oregon Department of State Lands is not a signatory to the HCP or the Implementing Agreement (IA). Given that they are not specifically responsible for management of snowy plover nesting areas, their lands are not included in the HCP.

Response to Comment FA-2-8

The covered lands have been updated to exclude federally owned lands within the Ocean Shore. Please refer to MR-2 for a discussion of how lands adjacent to the covered lands, including federally owned lands, are considered in the HCP.

Response to Comment FA-2-9

This and subsequent comments in this letter pertain to a past version of the HCP that included reference to emphasis area (EA) boundaries. An EA is a term that is no longer used in the current HCP. For the purpose of responding to these comments, an EA and snowy plover management area (SPMA) and/or RMA are considered to be essentially the same.

The definition of the Ocean Shore in both the FEIS and HCP reflects the fact that the boundary could change as the vegetation line moves. Specifically, the Ocean Shore

is defined to include the sandy shore from extreme low tide to the actual or statutory vegetation line, whichever is most landward. By definition, the actual vegetation line would include any substantial modifications to existing vegetation, including changes occurring as a result of habitat restoration.

The HCP does not provide maps depicting suitable habitat for nesting snowy plovers in relation to the SPMA/RMA boundaries. The specific locations for targeted snowy plover management activities would be identified during the development of site management plans for each SPMA or through consultation with USFWS for each RMA.

Response to Comment FA-2-10

This comment refers to a past draft of the HCP. The areas currently proposed as SPMAs and RMAs in the HCP are not segmented around access points. The areas proposed for snowy plover protections include any trails or access points that may occur within the management boundaries.

Response to Comment FA-2-11

Please refer to MR-2 for a discussion of the geographical extent to which recreational use restrictions would be implemented within RMAs.

Response to Comment FA-2-12

The HCP does not propose to implement dry sand restrictions (which include camping) at unoccupied RMAs or SPMAs. However, dry sand restrictions, including restrictions on camping, would be implemented at SPMAs and RMAs that were considered to be occupied by nesting snowy plovers. For unoccupied RMAs being managed to attract nesting snowy plovers, the restrictions would be limited to requiring dogs to be on leash and prohibiting driving (unless already the case) during the nesting season. For information about the implementation of recreational use restrictions at SPMAs and RMAs, please see MR-2.

Response to Comment FA-2-13

Please refer to MR-3 for a discussion of why restrictions on dog exercising are necessary in SPMAs and RMAs.

Response to Comment FA-2-14

As noted in MR-2, the HCP and FEIS have been updated to clarify that although recreational use restrictions could occur anywhere within an RMA or SPMA, they may not apply to the entire RMA or SPMA. The extent of the recreational use restrictions at SPMA and RMA would be determined during the development of USFWS-approved site management plans. If a site management plan does not exist for an occupied RMA, recreational use restrictions would be implemented by OPRD within the full extent of the RMA until an agreement is reached between USFWS and the landowner, and/or a site management plan is developed. The recreational use restrictions would be implemented as described in MR-2.

The HCP is not proposing to close any portion of the wet sand to pedestrian use.

Response to Comment FA-2-15

The comment refers to an earlier version of the HCP. As described in section 5, “Conservation Plan” of the HCP, and section 3.3, “Recreation” of Volume I of the FEIS, horseback riding would be restricted on the dry sand portion of the beach at occupied sites, but would be allowed to continue unrestricted on the wet sand portion of the beach. The HCP does not propose to require permits for use of the wet sand.

Response to Comment FA-2-16

In order to obtain an ITP, OPRD must provide guarantees that the conservation measures described in the HCP will be implemented. This means that OPRD must commit to enforcing the restrictions described in section 5, “Conservation Plan” of the HCP, and table 3.3-3, in section 3.3, “Recreation” of the FEIS on lands within its jurisdiction, depending on the occupancy status of a given SPMA or RMA. However, the extent of the recreational use restrictions and the means for enforcement would be determined during development of site management plans, which would be developed by ORPD and USFWS at SPMA, and OPRD, the adjacent landowner and USFWS at RMA. This would allow for site-specific factors to be considered in developing the most appropriate management plan for that location. For information regarding how the recreational use restrictions would be implemented, please see MR-2.

Response to Comment FA-2-17

Comment noted. Our understanding is that Sand Lake North is owned by USFS, and Sand Lake South is in private ownership.

Response to Comment FA-2-18

This comment was made on an earlier draft of the HCP. We are unfamiliar with a mining claim at Sutton/Baker Beach at this time. The Sutton/Baker Beach RMA is currently considered occupied (see appendix F, “Snowy Plover Recreation Management Area Descriptions” in the HCP) and is managed by Lane County. As an occupied RMA, recreational use restrictions consistent with the HCP would be implemented until a USFWS-approved site management plan is developed. Recreational use restrictions that conflict with existing activities, such as a mining claim, would be resolved through consultation with USFWS. Furthermore, mining activities within the covered lands are considered to be a use that would require an Ocean Shore permit. The terms of a permit for mining would require that the activities be conducted in a manner to avoid take of snowy plovers.

Response to Comment FA-2-19

This comment was made on an earlier draft of the HCP. In the current HCP, the northern boundary of the Siltcoos Estuary/Dunes Overlook/Tahkenitch RMA begins just south of the existing access point. This RMA is shown in appendix F of the HCP as figure F-4 and appendix A of Volume I of the FEIS as figure A-4.

Response to Comment FA-2-20

Please refer to MR-3 for a discussion of why restrictions on dog exercising, including prohibitions at occupied RMAs, are necessary.

Response to Comment FA-2-21

In the proposed HCP, the Siltcoos EA and the Dunes Overlook/Tahkenitch EA have been combined into one RMA called the Siltcoos Estuary/Dunes Overlook/Tahkenitch RMA. This RMA is shown in appendix F of the HCP as figure F-4, and in appendix A of Volume I of the FEIS as figure A-4.

Response to Comment FA-2-22

This comment refers to a past version of the HCP and to maps that were not included in the current version / proposed HCP. As discussed in the response to comment FA-2-21, the RMA called the Siltcoos Estuary/Dunes Overlook/Tahkenitch RMA is a larger combined management area and is shown in appendix F of the HCP as figure F-4 and appendix A of Volume I of the FEIS as figure A-4.

Response to Comment FA-2-23

This comment refers to a past draft of the HCP. Under the proposed HCP, recreational restrictions at RMAs would only be implemented when the site is considered to be occupied by nesting snowy plovers, unless otherwise requested by the landowner. Recreational use restrictions at RMAs would be implemented as described in MR-2.

Response to Comment FA-2-24

Similar to Comment FA-2-23, this comment refers to a past draft of the HCP. Under the proposed HCP, recreational restrictions at RMAs would only be implemented when the site is occupied by nesting snowy plovers, unless otherwise requested by the landowner. Recreational use restrictions at RMAs would be implemented as described in MR-2. Please refer to section 5, “Conservation Plan” of the HCP, and section 3.3, “Recreation” of Volume I of the FEIS for a discussion of the specific types of recreational use restrictions that would be implemented at RMAs.

Response to Comment FA-2-25

This comment refers to a past draft of the HCP. The Umpqua River North RMA is shown in appendix F of the HCP as figure F-6, and in appendix A of Volume I of the FEIS as figure A-6. The landward extent of this RMA is the statutory or actual vegetation line, whichever is most landward, except where the RMA is located adjacent to federally owned land, where the landward extent would be the mean high tide line.

Response to Comment FA-2-26

Similar to Comment FA-2-23, this comment refers to a past draft of the HCP. Under the proposed HCP, the Tenmile RMA is mapped as one RMA and depicted in appendix F of the HCP as figure F-7 and in appendix A of Volume I of the FEIS in figure A-7. Please refer to section 5, “Conservation Plan” of the HCP, and section 3.3, “Recreation” of Volume I of the FEIS for a discussion of the specific type of recreational use restrictions that would be implemented at RMAs.

Response to Comment FA-2-27

Please see the Response to Comment FA-2-26 for a discussion of the current boundary of the Tenmile RMA.

Response to Comment FA-2-28

Please see the Response to Comment FA-2-26 for a discussion of the current boundary of the Tenmile RMA.

Response to Comment FA-2-29

This comment refers to a map presented in a past version of the HCP and is no longer relevant.

Response to Comment FA-2-30

This comment is specific to the Ocean Shore Management Plan and is beyond the scope of the HCP and the EIS.

Response to Comment FA-2-31

The definition of an RMA as presented in the list of acronyms and abbreviations in the HCP has been changed to recreation management area.

Response to Comment FA-2-32

The HCP has been updated to clarify that Bandon, as an occupied SPMA, includes the habitat restoration area (HRA) at Bandon State Natural Area (SNA) up to the southern edge of the China Creek access parking lot (referred to in the HCP as the Bandon SPMA; please see MR-4 for more information about the extension of the Bandon SPMA boundary). The New River RMA is considered an occupied area managed by the U.S. Bureau of Land Management (BLM), and is listed as New River.

Response to Comment FA-2-33

The HCP text has been updated to reflect that snowy plovers use the Ocean Shore for overwintering.

Response to Comment FA-2-34

The HCP text has been updated to reflect that snowy plovers use the Ocean Shore for overwintering.

Response to Comment FA-2-35

The HCP text has been updated.

Response to Comment FA-2-36

The category of “other recreational activities” was added to the list.

Response to Comment FA-2-37

The HCP text has been updated to clarify this point.

Response to Comment FA-2-38

Please refer to MR-1 for a discussion of how effects on wintering populations of snowy plovers are considered in the HCP and FEIS.

Response to Comment FA-2-39

The HCP has been updated.

Response to Comment FA-2-40

The title of table 4-3 in the HCP has been updated.

Response to Comment FA-2-41

These additional mechanisms of impact have been acknowledged in section 4, “Natural History of and Factors Affecting the Snowy Plover” of the HCP.

Response to Comment FA-2-42

The description of exclosures has been updated to reflect that they are small circular, square, or triangular metal fences that can be quickly assembled to keep predators out and/or prevent people from trampling nests (U.S. Fish and Wildlife Service 2007).

Response to Comment FA-2-43

In addition to three full time beach rangers, coastal State troopers and local law enforcement officials (city and county) occasionally patrol beach access points and

ocean beaches, especially beaches that are open to driving. They also respond to OPRD calls for assistance. As mentioned in section 5, “Conservation Plan” of the HCP, OPRD would continue its commitment to contracting with the Oregon State Police and/or local law enforcement agencies to provide additional supervision and citation authority. Other OPRD staff will be available for enforcement at OPRD-owned areas and to assist with monitoring, as needed.

Response to Comment FA-2-44

Please refer to MR-2 for a discussion of the geographical extent in which recreational use restrictions would be implemented at SPMAs and RMAs.

Response to Comment FA-2-45

The HCP has been updated to include information through the 2009 breeding season.

Response to Comment FA-2-46

Appendix F of the HCP has been updated to state that South Sand Lake Spit is not currently a site occupied by nesting snowy plovers.

Response to Comment FA-2-47

The sentence has been corrected in the HCP.

Response to Comment FA-2-48

North Sand Lake Spit has been removed from figure F-2 in appendix F of the HCP.

Response to Comment FA-2-49

The statement that the campgrounds are primarily for ATV/OHV use has been deleted from the HCP.

Response to Comment FA-2-50

The statement that the upland area is open to ATV/OHV use has been deleted from the HCP.

Response to Comment FA-2-51

Management and habitat maintenance of the federally owned lands adjacent to the Siltcoos Estuary/Dunes Overlook/Tahkenitch Estuary RMA would continue to be the responsibility of the landowner, USFS. Appendix F of the HCP has been updated to reflect the likelihood that continued habitat maintenance may be necessary at that site.

Response to Comment FA-2-52

Appendix F of the HCP has been updated to indicate that the primary disturbances may be from people cutting through the beach and watercraft users.

Response to Comment FA-2-53

The repetitive sentence regarding habitat restoration has been deleted.

Response to Comment FA-2-54

By definition, an RMA refers to a specific area within the covered lands not owned or leased by OPRD where OPRD would potentially implement recreational use restrictions. OPRD's responsibility to manage recreational use is granted by the Beach Bill and limited to the Ocean Shore. Therefore, as defined in the HCP and FEIS, RMAs occur within the Ocean Shore and do not extend landward of the actual or statutory vegetation line, or the mean high tide when adjacent to federally owned lands. For this reason, although the underlying landowner may conduct other activities for snowy plover management upland of the Ocean Shore, the boundary of the RMA or area where OPRD would implement the recreational use restrictions would not change. For information about how the recreational use restrictions would be implemented on Federal lands and all other lands within the Ocean Shore, please see MR-2.

Response to Comment FA-2-55

The HCP has been updated.

Response to Comment FA-2-56

Table 1.1 of the HCP summarizes the proposed management actions, including restrictions on driving, at occupied and unoccupied SPMAs. Table 1.2 of the HCP summarizes the same for RMAs, including the Siltcoos Estuary/Dunes

Overlook/Tahkenitch Estuary RMA. As indicated in that table, driving would be prohibited at that RMA during the breeding season. A new sentence clarifying that driving is already restricted at many of the RMAs and at federally owned lands adjacent to RMAs has been added to the HCP. Specific details regarding existing conditions at the RMAs are discussed in appendix F of the HCP. Appendix F has been updated to reflect that driving is prohibited at the Siltcoos Estuary/Dunes Overlook/Tahkenitch Estuary RMA.

Response to Comment FA-2-57

Coordination with the Marine Mammal Stranding Network falls under the category of general coordination regarding beach animals and is considered to be part of OPRD's beach management responsibilities, not part of the conservation measures that are summarized in table 1.1 of the HCP.

Comment Letter FA-3

FA-3
FA-3

From: Mark_E_Johnson@or.blm.gov
To: FWIORDHCP@FWS.GOV
cc: Tim.Wood@state.or.us
Subject: OPRD HCP EIS
Date: 03/11/2008 01:50 PM
Attachments: [HCP BLM comment ltr 31108.doc](#)



United States Department of the Interior
 BUREAU OF LAND MANAGEMENT
 COOS BAY DISTRICT OFFICE
 1300 AIRPORT LANE, NORTH BEND, OR 97459
 Web Address: <http://www.blm.gov/or/districts/coosbay> E-mail: OR_CoosBay_Mail@blm.gov
 Telephone: (541) 756-0100 Toll Free: (888) 809-0839 Fax: (541) 751-4303



6500 (OR-120)
 March 11, 2008

Attn Laura Todd
 U.S. Fish and Wildlife Service
 Newport Field Office
 2127 SE OSU Drive
 Newport, OR 97365-5258

Dear Ms. Todd

Thank you for the opportunity to comment on the draft Western Snowy Plover Habitat Conservation Plan (HCP). Through the years the BLM has appreciated the close working relationship between the US Fish & Wildlife Service, Oregon Parks and Recreation Department (OPRD) and all the other partners involved in plover management. This relationship has been instrumental in the successful management of the species since plover habitat extends across ownership boundaries. Working together we have made great progress towards snowy plover recovery and our partnership has been recognized as a model.

Our one comment on the draft HCP concerns jurisdiction of federal lands along the area defined as the "Ocean Shore" by OPRD. In several locations throughout the HCP there are references to the need for federal agencies to obtain a permit to implement beach restrictions (most notably pages 5-14 to 15 and 7-1). BLM believes that we have authority to limit access on these federal lands and we are not required to obtain recreational use restriction permits from OPRD. We are concerned that obligations OPRD is planning to undertake in the HCP in regards to federal permit requirements will not be possible.

BLM will continue to work cooperatively to manage snowy plover habitats in accordance with the Endangered Species Act. We have been engaged in the development of the HCP and intend to manage our lands in concert with the state-wide strategy. We plan to follow our current process for seasonal beach restrictions. This process includes:
 1) following federal closure policies, 2) asking the state to seasonally close their lands adjacent to our closures, 3) allowing BLM access to state-owned lands below the mean high tide, 4) coordination with Oregon Department of Fish and Wildlife in development of their closure requests and 5) annual letters to OPRD to inform them of our seasonal restriction plans.

Please remove from the HCP statements concerning the need for federal agencies to obtain OPRD recreational use restriction permits on federal lands along the Ocean Shore. If you have any questions or require further information please contact me at (541) 756-0100.

Sincerely,

Mark E. Johnson
 Mark E. Johnson
 District Manager

FA-3-1

FA-3-2

FA-3-3

Response to Comment FA-3-1

The HCP and EIS have been updated to reflect how recreational use restrictions would be implemented at RMAs adjacent to federally owned lands (above the mean high tide line). Please refer to MR-2 for additional information.

Response to Comment FA-3-2

Recreational use restrictions on Federal lands would be implemented by the Federal landowner. Please refer to MR-2 for additional information about how recreational use restrictions would be implemented at RMAs adjacent to federally owned lands.

Response to Comment FA-3-3

All references to Federal agencies requiring OPRD approval for issuing recreational use restrictions have been removed from the HCP and FEIS. Furthermore, Federal lands have been removed from the covered lands.

Comment Letter FA-4.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ECOSYSTEMS, TRIBAL AND
PUBLIC AFFAIRS

June 9, 2009

Laura Todd
U.S. Fish and Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport, OR 97365

RE: Draft Environmental Impact Statement for the Western Snowy Plover Habitat Conservation Plan (EPA Project Number 03-029-FWS)

Dear Ms. Todd:

The U. S. Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement (EIS) for the Western Snowy Plover Habitat Conservation Plan (CEQ No. 20090115) in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Section 309, independent of NEPA, specifically directs EPA to review and comment in writing on the environmental impacts associated with all major federal actions and the document's adequacy in meeting NEPA requirements.

This DEIS analyzes the FWS action of issuing an Incidental Take Permit to Oregon Parks and Recreation Department for incidental take coverage of the snowy plover over a 25-year period (2008-2033). The DEIS considers a no action alternative and two action alternatives.

State lands administered by the Oregon Parks and Recreation Department play an important role in conservation of western snowy plovers and their habitats. The proposed HCP is an important step toward providing the protection needed to promote recovery. Importantly, the proposed HCP recognizes that the western snowy plover cannot be preserved simply through general habitat protection. Western snowy plovers must be actively monitored and managed to achieve recovery goals on State lands or their population size will decline.

We commend OPRD for the careful development of this HCP and EIS, recognizing the many social and ecological values associated with Oregon's sandy beaches. Based on our analysis, we are rating the DEIS LO (Lack of Objections). An explanation of this rating is enclosed. We also offer the following comments and recommendations that we feel could further strengthen the Final EIS.

Recommendation: Expand the public education and enforcement strategy. Many of the identified conservation actions are related directly to long-standing human uses along the beach (dog walking, kite flying, etc.) As such, monitoring and enforcement will be key. Without compliance, predicted species benefits will not be realized. We support the proposed additional

FA-4

2

enforcement, as well as the recruitment of volunteers to serve as docents for public outreach and education. Given the importance of these activities to ensuring compliance, we recommend that the FEIS include an expanded discussion about how these kinds of non-traditional public education and enforcement strategies would be implemented. We also recommend expanding the docent program to include all of the proposed management areas.

Recommendation: Update the FEIS to reflect the issuance of the final recovery plan for the snowy plover. The DEIS references a 2001 Draft Recovery Plan (p. 2-16). A final recovery plan for the Pacific Coast Population of the Western Snowy Plover was signed in 2008. We recognize that it may be cost prohibitive to fully implement the recovery plan (p. 2-37). However, it is important that the FEIS consider the most recent recovery plan in developing and analyzing alternatives. The recovery plan is available at <http://www.fws.gov/arca/es/birds/WSP/plover.html>.

Thank you for this opportunity to comment on the DEIS. If you have any questions please contact Teresa Kubo of my staff at (503) 326-2859.

Sincerely,

Christine B. Reichgott, Manager
Environmental Review and
Sediment Management Unit

Enclosures:
EPA Rating System for Draft EISs

Printed on Recycled Paper

Printed on Recycled Paper

Response to Comment FA-4-1

The monitoring and enforcement commitments for SPMA's are outlined in section 5 of the HCP. As described in that section, OPRD will recruit and train volunteers to serve as docents for public outreach and education at each SPMA, and will station them at appropriate beach access points for at least 20 hours per week from May through August. OPRD will also provide signage at access points to inform the public of the presence of nesting snowy plovers and the importance of snowy plover protection measures. Although additional docent hours at all of the SPMA's would likely be beneficial, such a commitment may be difficult for OPRD to reasonably accommodate. USFWS will evaluate the adequacy of the monitoring and enforcement commitments in the HCP when deciding on permit issuance and, if the permit is issued, during the review of the annual and five year monitoring reports.

More specific information on how the public outreach and education program will be implemented at any given SPMA, as well as what types of targeted enforcement actions may be appropriate, would be determined during development of the site management plans for each site.

Response to Comment FA-4-2

The Final Recovery Plan for the Pacific Coast Population of the Western Snowy Plover was published by USFWS in August 2007 (U.S. Fish and Wildlife Service 2007a). Both the DEIS and the FEIS consider the 2007 publication of that plan. We were unable to find reference to the 2001 plan in the DEIS.

Chapter 4 State Agency Comments and Responses

Introduction

This chapter includes comment letters submitted by state agencies and responses to the substantive comments. One comment letter was received during the public comment period from a state agency. A copy of the comment letter is presented with the substantive comments marked and individually identified. The responses to these comments follow the comment letter. Changes made as a result of the comments were incorporated into Volume I of this Final Environmental Impact Statement (FEIS) and the habitat conservation plan (HCP) as indicated in the responses.

Comment Letter SA-1

From: [Vagt, William](#)
To: fwlordhcp@fws.gov
Subject: OPRD HCP DEIS (UNCLASSIFIED)
Date: 01/22/2008 10:41 AM
Attachments: [Snowy Plover Comment Jan 08.doc](#)

SA-1

Classification: UNCLASSIFIED
Caveats: NONE

I realize we are a little late, but the Oregon Military Department would like to submit the attached comment with regard to Snowy plover management on the Oregon Coast. Thank you in advance for your consideration in this matter. If you have questions, please contact Mr. Bill Vagt, Natural Resources Specialist, at 503-584-3193, William.Vagt@us.army.mil.

GERALD E. ELLIOTT
Sergeant Major (Retired)
Environmental Program Manager
503-584-3868; DSN 355; Fax 3584
Gerald.Elliott@us.army.mil

Classification: UNCLASSIFIED
Caveats: NONE
Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE



OREGON MILITARY DEPARTMENT
 JOINT FORCE HEADQUARTERS, OREGON NATIONAL GUARD
 INSTALLATIONS DIVISION
 1776 MILITIA WAY
 P.O. BOX 14350
 SALEM, OREGON 97309-5047

January 4, 2008

Subject: Proposed Habitat Conservation Plan for Western Snowy Plovers (HCP) and Environmental Impact Statement

Laura Todd
 U.S. Fish and Wildlife Service
 Newport Field Office
 2127 SE OSU Drive
 Newport, OR, 97365-5258

Dear Ms. Todd:

The Oregon Military Department is a significant land owner along the north Oregon coast between Warrenton and Seaside, which puts it between managed areas at Columbia River South Jetty (6 miles north) and Necanicum Spit (6 miles south). The mission of Camp Rilea is to train soldiers for their federal military and state emergency service missions. Beach areas along Camp Rilea's 3 miles of beach frontage are used for military training activities. OMD is continually concerned about outside influences that affect its ability to provide realistic training opportunities at the camp. OMD appreciates the fact that the draft HCP only proposes to manage recreational uses of the beach. However, the possibility of designating and managing the beach and foredune for Snowy plover habitat, as well as the potential for active control of recreational activities by construction of exclosures, represent a potential future threat to conducting military training activities at the camp.

OMD addresses the potential for Snowy plover habitat along its beach frontage in the current Camp Rilea Integrated Natural Resources Management Plan (INRMP), which was coordinated with the US Fish and Wildlife Service and Oregon Department of Fish and Wildlife. No management has been implemented because no plovers or habitat were identified. However, in order to meet Sikes Act Improvement Act requirements, the plan is reviewed annually and updated every five years. Review and update require coordination with USFWS and ODFW, so any change to the plan will be coordinated in advance with both agencies.

Management of habitat in accordance with the draft HCP, such as the provisions of Section 5.2.3, creates some concern for OMD. For example, exclosures, as described, would represent a limitation to military activities and a safety concern during night operations. Therefore, OMD requests that OPRD coordinate any proposed conservation actions along the Camp Rilea beach in advance with OMD. If regulatory requirements dictate a particular management action, that action will be accommodated. If best management practices are required, they should be negotiated with OMD as part of the INRMP review or update process.

In order to address concerns noted above, please make the following specific changes to Section 5.2.3:

(1) Insert the following, last paragraph on page 5-28, between "the nest area will be exclosed" and "(unless the USFWS": "after full coordination with the land owner";
 AGI-ENV

SA-1

SA-1

Subject: Proposed Habitat Conservation Plan for Western Snowy Plovers (HCP) and Environmental Impact Statement

(2) Insert on page 5-29, first full paragraph, between "consult with USFWS" and "to consider": "and negotiate with the land owner". This will ensure the landowner (OMD) is aware of what is being considered.

Thank you in advance for your consideration in this matter. If you have questions, please contact Mr. Bill Vagt, Natural Resources Specialist, at 503-584-3198, William.Vagt@us.army.mil.

/s/ 11 Jan 08

GERALD E. ELLIOTT
 Sergeant Major (Retired)
 Environmental Program Manager

SA-1-4

SA-1-1

SA-1-2

SA-1-3

Response to Comment SA-1-1

Under the HCP, the land described in the comment is located outside of any areas specifically targeted for snowy plover management. If any snowy plovers are found nesting on lands outside of designated management areas (i.e., snowy plover management areas [SPMAs] or recreation management areas [RMAs] within the covered lands, such as the area noted in the comment, the Oregon Parks and Recreation Department (OPRD) would install fencing around the individual nest, and would consider installing a nest enclosure after consultation with the U.S. Fish and Wildlife Service (USFWS). These protections are an integral part of OPRD's proposed HCP, and would be necessary to protect known nests along the Oregon Shore. Please refer to MR-9 for a discussion of how and when enclosures would be used around snowy plover nests.

Response to Comment SA-1-2

Please refer to the Response to Comment SA-1-1. To the extent possible, OPRD will coordinate with USFWS to notify the Oregon Military Department if a snowy plover nest is found outside of a designated RMA or SPMA in the general vicinity of Camp Rilea.

Response to Comment SA-1-3

Please refer to Response to Comment SA-1-1. The suggested edit has not been made.

Response to Comment SA-1-4

The HCP proposal referred to in the comment pertains to lands owned by OPRD and not other landowners. Therefore, this change is not necessary.

Chapter 5 Local Agency Comments and Responses

Introduction

This chapter includes comment letters submitted by local agencies and responses to the substantive comments. Eleven individual comment letters were received during the public comment period from local agencies. A copy of each comment letter is presented with the substantive comments marked and individually identified. The responses to these comments follow each comment letter. In some cases, responses were not considered necessary. Changes made as a result of the comments were incorporated into Volume I of this Final Environmental Impact Statement (FEIS) and the habitat conservation plan (HCP) as indicated in the responses.

Comment Letter LA-1

LA-1



Curry County
Board of Commissioners

Marlyn Schafer, Chair
Georgia Nowlin, Vice Chair
Lucie La Bonté, Commissioner

94235 Moore Street
P.O. Box 746
Gold Beach, OR 97444
541-247-3296, 541-247-2718 Fax

Laura Todd
U.S. Fish and Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport Oregon, 97365-5258

Dear Ms. Todd;

November 21, 2007

The Curry County Board of Commissioners would like to register our objections to the proposed Snowy Plover Recovery Plan for the State of Oregon as proposed by your agency. Oregon State Parks and Recreation went through a lengthy process inviting public comment on a plan. During that time there was overwhelming comment opposing recovery for the Snowy Plover on the beach at Pistol River. This was based on the popularity of that beach by the public and growing bird populations of seagulls and water fowl. Pistol River is a high use area. Tourism is important to Curry County and restrictions on this beach would impact the Curry County economy. Over the years with the increase of other bird populations it would be a waste of taxpayer dollars to initiate recovery on that beach.

LA-1-1

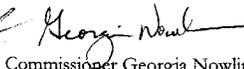
LA-1-2

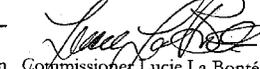
We recommend that you remove Pistol River from the recovery list and concentrate on beaches that stand a greater chance of recovery and less impact to our economy. Curry County has participated voluntarily by assisting recovery on county land in the New River Area. These are the types of efforts that should be utilized not efforts that impact local economies.

LA-1-3

Sincerely;


Commissioner Marlyn Schafer
Chair


Commissioner Georgia Nowlin
Vice Chair


Commissioner Lucie La Bonté



Response to Comment LA-1-1

The U.S. Fish and Wildlife Service (USFWS) and Oregon Parks and Recreation Department (OPRD) have removed the option for management of the Pistol River snowy plover management area (SPMA) from the HCP based on public comment and biological constraints specific to the site. Please refer to MR-5 for more information.

Response to Comment LA-1-2

USFWS and OPRD have removed the option for management of the Pistol River SPMA from the HCP based on public comment and biological constraints specific to the site. Please refer to MR-5 for more information.

Response to Comment LA-1-3

USFWS and OPRD have removed the option for management of the Pistol River SPMA from the HCP based on public comment and biological constraints specific to the site. Please refer to MR-5 for more information.

Comment Letter LA-2



LA-2

BOARD OF COMMISSIONERS
250 No. Baxter Street, Coquille, Oregon 97423
(541) 396-3121 Ext. 225
FAX (541) 396-4861 / TDD (800) 735-2900
E-Mail: jgriffith@co.coos.or.us

JOHN GRIFFITH NIKKI WHITTY KEVIN STUFFLEBEAN

COOS COUNTY BOARD OF COMMISSIONERS COMMENT ON DRAFT ENVIRONMENTAL IMPACT STUDY THAT SUPPORTS OREGON PARKS AND RECREATION DEPARTMENT ENDANGERED SPECIES ACT SEC. 10 DRAFT HABITAT CONSERVATION PLAN FOR AN INCIDENTAL TAKE PERMIT OF PACIFIC COAST POPULATION OF WESTERN SNOWY PLOVER

Acronyms used in this comment:

BLM	Bureau of Land Management
BO	Biological Opinion, part of the Endangered Species Act process.
BOC	Coos County Board of Commissioners and its members
DEIS	The Draft EIS that is being commented on here
ESA	Endangered Species Act
HCP	The draft Habitat Conservation Plan being commented on here
ITP	An ESA Section 10 Incidental Take Permit
NEPA	The National Environmental Policy Act
OPRD	Oregon Parks and Recreation Department
USFS	United States Forest Service
USFWS	United States Fish and Wildlife Service
WSP	ESA-listed Pacific Coast population of western snowy plover

1. Regarding the "Purpose and Need for Action" statement in draft EIS, pg. 1-2

OPRD jurisdiction in the HCP- involved lands is limited to preserving and protecting scenic and recreational use of Oregon's ocean shore. Its authority is through no more than a state-declared recreation easement. ORS 390.610. OPRD does not own most of the land involved in its ESA Sec. 10 ITP request. If it did, Oregon would not need the law adopted in 1967 by the Oregon Legislature declaring a public recreation easement on the ocean shore generally between the line of ordinary vegetation and high tide line. ORS 390.605 et seq. While the BOC does not in this comment raise a question about Oregon's ownership of land lower in elevation than the high tide line, ORS 390.615, we object to OPRD's request for an ITP on the basis that OPRD lacks sufficient authority in the affected lands. In its recreation easement, OPRD lacks the authority necessary to comply with ESA Sec. 10 (a)(2)(A) and (B) to carry out its HCP, and therefore cannot be issued an ITP.

Explanation:

As explained in the DEIS, "Private landowners, corporations, State or local governments, or other non-Federal landowners who wish to conduct activities on their land that might incidentally

harm (or "take") wildlife that is listed as endangered or threatened must first obtain an incidental take permit (ITP) from Fish and Wildlife Service (FWS)." DEIS pg. 1-1. Although it is a state government, Oregon does not own ("on their land," above) most of the land involved in this DEIS.

LA-2-1
continued

The declared recreation easement in ORS 390.610 is a recreation easement only. At ORS 390.610 (4), "The Legislative Assembly further declares that it is in the public interest to do whatever is necessary to preserve and protect scenic and recreational use of Oregon's ocean shore." OPRD was given authority by the Oregon legislature to manage recreation in the declared easement area, to keep conflicts from arising among incompatible recreational activities. But in its DEIS and HCP, OPRD plans to evict recreation altogether in certain beach segments during certain times of year.

LA-2-2

OPRD's managing commission, the Oregon Parks and Recreation Commission, adopted an Oregon Administrative Rule in 1994 to begin restricting recreation at beaches used by WSP. OAR 736-021-0040(3). However, administrative rules cannot offend state law. The Oregon Legislature does not review OAR.

LA-2-3

By requesting an ITP, OPRD risks its current authority to manage recreation on Oregon beaches by asking to create a "federal nexus" where one does not now exist. This also appears to violate the policy statement in ORS 390.610.

LA-2-4

OPRD presented no facts in its DEIS to show how "recovery" is a recreational use. In fact, OPRD agrees with us that it cannot close off beaches for non-recreational uses in its proposed HCP, pg. 1-2 "Thus, the beach bill precludes government and private landowners from fencing off the dry sand portion of their property that would prevent the public from using it for recreational purposes."

LA-2-5

OPRD states that it lacks authority for non-recreation purposes on land it does not own, at pg. 2-37, second paragraph of the DEIS, "Upon further consideration, this alternative was eliminated from detailed consideration in this DEIS because OPRD does not have the authority to implement or enforce site management plans for nesting populations of snowy plover on lands that they do not own or manage."

LA-2-6

For example, Coos County has roads, established in 1853 and in 1890, in WSP areas. The DEIS and HCP do not mention that fact. Coos County also owns beach-land at New River, another WSP area listed in the DEIS. In the Oregon Beach Law, OPRD can prevent landowners from erecting structures that could limit the public's ability to recreational use of the ocean shore, as noted two paragraphs above. But the law does not grant to OPRD the authority to compel landowners to participate in OPRD enterprises that are not recreational. The DEIS does not provide facts that show OPRD has the authority to compel Coos County or another landowner to allow OPRD or anyone else to erect signs and fences on their beach property for WSP management.

WSP-occupied areas are at the southern end of the 1853 road and the western end of the 1890 road. County ordinance forbids the placing of obstructions to the traveling public in county roads without BOC approval. WSP signs, fencing, etc. could be considered obstructions to public travel. The Beach Law is a recreation easement only. Since these county roads are not paved,

LA-2-1

<p>most of the traffic is recreational. The Beach Law did not supersede or eliminate county roads. The county roads precede creation of the BLM and USFS.</p>	<p>LA-2-6 continued</p>	<p>The first sentence reads: "The need for this action is to provide broader protection and conservation for the snowy plover, while allowing for long-term management of the portions of Oregon's coast under OPRD jurisdiction."</p>	<p>LA-2-11 continued</p>
<p>OPRD's HCP request is open-ended (all give and no get by Oregon). Besides adopting all past demands of snowy plover biologists at the outset, Alternative 2 restrictions and their duration and applicable areas will expand over the 25-year life of the requested ITP. On DEIS pg. ES-4, OPRD states that besides areas already highly restricted to recreation, up to six additional Snowy Plover Management Areas would be managed for WSP, and at up to 11 Recreation Management Areas recreation restrictions would "automatically" occur if WSP occupation starts. OPRD would also implement recreation restrictions in these 11 other areas at the request of the landowner, even if unoccupied by WSP. These measures are the opposite of fulfilling OPRD's obligation in ORS 390.610(4). There is no functional difference in this and in OPRD's eliminating recreational access and use for any other non-recreational use request by a landowner, for example, evicting the public for the private enjoyment of a beach for the landowner or his guests.</p>	<p>LA-2-7</p>	<p>This Need statement fails on at least two key points. As noted in 1 above, OPRD does not Need to provide "broader protection and conservation for the snowy plover." Although it might <i>want</i> to do that, OPRD <i>needs</i> only to fulfill its obligations in Oregon law. Second, OPRD does not Need an ITP to continue management of Oregon's ocean coastline.</p>	
<p>The DEIS and HCP also present potential NEPA problems. OPRD declined to discuss with local governments whether to pursue an ITP. Instead, OPRD went off on its own and requested an ITP. Coos, Tillamook and Lane counties removed themselves from the OPRD HCP steering committee process because OPRD refused to discuss any other alternatives to an ITP. DEIS pg. ES-4. OPRD also would not correct errors between drafts of its HCP when errors were pointed out by the counties. OPRD has an obligation in NEPA to work with local governments. OPRD did not do that. OPRD apparently convened its steering committee to tell committee members what it planned to do, rather than to have a conversation with committee members.</p>	<p>LA-2-8</p>	<p>Explanation: We believe we addressed the first failure of OPRD's Need statement in our comment at 1 above.</p> <p>In the second failure of its Need statement, OPRD listed no facts in the DEIS to support its argument that it is obliged (Need) to request an ITP. Moreover, WSP numbers and nesting/fledging success are rising under current - No Action Alternative - management, particularly now that managing agencies are using scientific application of lethal predator control.</p>	<p>LA-2-12</p>
<p>As noted above, Tillamook, Lane and Coos counties withdrew from OPRD's HCP steering committee because OPRD was not using a steering committee per the USFWS HCP handbook guidelines.</p>		<p>ESA Sec. 10 makes clear that requesting Sec. 10 Permit(s) is a discretionary choice for non-federal entities. OPRD references Oregon's endangered species law, but that is not relevant to the ESA. The ESA process is contained in the ESA. OPRD staff has told its management commission and the public that if OPRD does not get an ITP the federal government will take over management of Oregon's ocean beaches. OPRD makes that claim in the DEIS at pg. ES-1, second paragraph. Again, OPRD cites no facts, laws or rules to base that opinion. OPRD tries to imply a Need for an ITP at pg. 1-5 of this DEIS: "Since populations of snowy plover nest, roost, forage, and raise chicks on the sandy beaches of Oregon's coast, OPRD must ensure that their management activities do not result in take of snowy plover." We could agree hypothetically that this statement could be correct if OPRD were referring to ground-disturbing management activities by OPRD. But OPRD cited no USC or CFR that it believes authorize the federal government to take over management of Oregon's ocean shoreline, or that could be used to base an allegation that OPRD's obeying ORS 390.605 et seq. is unlawful.</p>	<p>LA-2-13</p>
<p>The DEIS references a BO that will be written as part of an award of an ITP. Using experience as a guide, the USFWS over-stated estimated "take" in a 2000 BO for the north spit of Coos Bay, for BLM. The level of "take" estimated had not happened before, when recreation in the area was pretty much wide open. There were no data to support the estimate, but it became part of the BO nonetheless. We hope OPRD does not allow the same data-free process to occur with its HCP, but given OPRD's disregard for NEPA and local governments, we anticipate that it will.</p>	<p>LA-2-9</p>	<p>A member of the public might violate Sec. 9 whether or not OPRD has an ITP (depending on the severity of the alleged violation), but that is not OPRD's business. Allowing citizens to use their declared rights to access and recreational use of Oregon's ocean shore does not relieve citizens of any obligation they have not to violate ESA Sec. 9. OPRD is not obliged to enforce the ESA, or to adopt rules to disincline someone else from violating the ESA. Enforcement of the ESA is a federal obligation, ESA Sec. 11 (e). OPRD has not shown in this EIS or HCP how or why it wants to assume that role.</p>	<p>LA-2-14</p>
<p>OPRD has cited other Oregon laws that it believes grant it authority to manage its beach-lands for non-recreational uses. However, those laws reference land owned by OPRD. As stated above, Pacific Ocean shore lands OPRD does not own are not state lands. Those other laws are not relevant to this discussion and DEIS.</p>	<p>LA-2-10</p>		
<p>OPRD believes it has within its declared easement the authority to restrict recreational access and use of the ocean shore for the public's health and safety. However, OPRD's request for an ITP is not related to public health or safety.</p>		<p>3. Although we support none of the alternative in this DEIS, if forced to choose from only that list, our choice would be Alternative 1, No Action.</p>	<p>LA-2-15</p>
<p>2. Only the first sentence of the "Need for Action" statement addresses what OPRD purports to be its need. The rest deals with process.</p>	<p>LA-2-11</p>	<p>Even in Alternative 1, OPRD has not worked with local governments and citizens. Nor has it considered its affirmative obligations in Oregon's beach law in its WSP management so far. It has instead granted WSP managers' requested recreation restrictions. OPRD describes Alternative 1 "current management" as "Management activities on covered lands would be implemented to avoid potential effects on snowy plover, to the extent possible." DEIS pg. 2-3.</p>	

Again, this is not “doing whatever is necessary to preserve and protect scenic and recreational use of Oregon’s ocean shore.” ORS 390.610(4). In our opinion, OPRD should obey the beach law by making requesters of restrictions provide supporting data to prove that lesser restrictions would not be sufficient.

This DEIS continues that reliance on data-free opinion by failing to state a basis for restrictions, WSP management area size(s), or recreational activities to be restricted. Its beginning point assumes there were data to support its premises, without listing any.

We are aware of only two observational, objective studies of WSP responses to recreation: Gary Page et al. “Status of the Snowy Plover on the Northern California Coast,” October 1977, Calif. Dept of Fish and Game; and K. Fahy, C.D. Woodhouse “1995 Snowy Plover Linear Restriction Monitoring Project, Vandenberg Air Force Base” Vandenberg Air Force Base project No. OSO05097. These studies were done using WSP nest observers hidden in blinds.

The DEIS fails to cite either of these, but lists other citations to a body of literature that appears to be irrelevant, for example, several references to marbled murrelet studies.

We note that the DEIS bibliography does list Oregon field data reports by Lauten and Castelein. But these are not WSP/recreation tolerance or response studies. They are production and mortality data, with reference to public compliance with managing agency restrictions.

4. OPRD references its “Oregon Shore Recreational Use Study,” Shelby and Tokarczyk, 2002, which missed recreational use patterns of the Coos Bay north spit and other areas in Coos County. DEIS pg. 3.3-1. We recommend that this reference be dropped from the DEIS.

The study authors missed the beaches that are targets of the first wave of WSP restrictions, but that are nevertheless very important to our citizens and our economy. For example, in the 29 September 2005 designation of critical habitat for the WSP, the Federal Register noted that only 71 people visited the WSP critical habitat area at the north spit in 1999. Fed. Reg. Vol. 70, No. 188, pg. 56986. Part of the reason could be that the beach was entirely closed to the public that year. In the same paragraph, the Federal Register noted that 18,400 visitors were denied use of the area due to a ship, the M/V New Carissa, being stuck on the beach. OPRD worked on both analyses. OPRD, BLM and USFS apparently inflated the visitor number to extract more money from the New Carissa insurer in a settlement agreement. In a typical year prior to WSP recreation restrictions, possibly 71 people visited the area on a single day.

Driving on that beach was allowed year around prior to 1994, and still allowed on the wet sand portion of the north spit beach until 1999. No data exist that vehicle use ever resulted in a WSP or its nest being run over there. Nevertheless, OPRD closed that beach to vehicles in 1999 and every year since. As a result, the Shelby study does not reflect what Coos County citizens and visitors had already lost in beach access and recreation. The Shelby study also lists recreational uses that do not exist on area beaches, and missed uses that are practiced by locals and visitors. Ours is a more self-reliant and mobile recreating public than what the Shelby reporters saw at northern Oregon sites. Most of our citizens use vehicles for access and for their actual recreational experience. Ergo, the Shelby report conclusion that walking or sitting on a beach are the predominant recreational incentives for going to the beach does not apply to Southern Oregon beaches.

These data shortcomings, particularly in southern Oregon coastal sites, are prevalent in the Shelby report. Most of the study efforts were at the more accessible sites on our coastline. The DEIS notes, pg. 3.3-4 that the “South Coast region (Umpqua River to California Border), including Coos and Curry counties, is relatively remote.” As such, we are more dependent on

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LA-2-18

visitors and locals being able to use and access what we have because our economy does not have as many “legs under the stool” as urban areas or the north coast have.

5. OPRD and other WSP managers have an apparent double standard.

Although the DEIS and HCP list disturbance as a main stressor to WSP, they have no problem with WSP field biologists manipulating WSP nests, floating WSP eggs to predict when they will hatch, or other disturbances while at the same time restricting recreation that is far less invasive. Another example is in the size of areas restricted to recreational users, compared with agencies’ own management posture when activities the state and federal government condone are involved. A recent example is the removal of a large piece of the New Carissa still stuck on the beach at the northern end of the large (more than 2 miles long) WSP area on the beach at the north spit of Coos Bay. BLM notified us that WSP managers have no problem with a heavily industrial enterprise scheduled to begin in March 2008 to remove that piece of the ship. Heavy cutting and extracting machinery will be used on the wreck, but our citizens’ driving on the wet sand part of the beach, denied in 1999 and every year since by WSP managers, was purported to be harmful to WSP even though no data exist to base that opinion.

The DEIS has a section on noise, beginning at 3.6-1. OPRD gives itself a pass for noise associated with habitat restoration, because it would do the heavy work outside of the time WSP are nesting. But as a WSP managing agency, it did not object to the industrial noise that will be emitted by New Carissa wreck removal contractors.

LA-2-18
 continued

LA-2-19

LA-2-20

LA-2-21

John Griffith
 Chairman

Nikki Whitty
 Vice Chair

Kevin Stufflebean
 Commissioner

Response to Comment LA-2-1

Please refer to MR-6 for a discussion of OPRD's authority and responsibilities under the Beach Bill.

Response to Comment LA-2-2

Please refer to MR-6 for a discussion of OPRD's authority and responsibilities under the Beach Bill.

Response to Comment LA-2-3

Please refer to MR-6 for a discussion of OPRD's authority and responsibilities under the Beach Bill.

Response to Comment LA-2-4

Please refer to MR-6 for a discussion of OPRD's authority and responsibilities under the Beach Bill.

Response to Comment LA-2-5

Please refer to MR-6 for a discussion of OPRD's authority and responsibilities under the Beach Bill. Please refer to MR-7 for a discussion of how the HCP is considered in the context of the larger Recovery Plan for snowy plovers.

Response to Comment LA-2-6

Please refer to MR-6 for a discussion of OPRD's authority and responsibilities under the Beach Bill, including lands they do not own or lease.

OPRD will provide signage and will implement recreational use restrictions at all Recreation Management Areas (RMAs) that are occupied or actively managed for snowy plovers as outlined in the HCP. Please refer to Section 5, "Conservation Plan" of the HCP for additional information on the conservation measures proposed at RMAs.

The specific County road in question traverses the Ocean Shore from the east in the Four Mile Creek area and terminates at New River. There is no vehicular access across New River to the spit where the RMA is located. In addition, driving has not been allowed on this beach for many years. Given that recreational use restrictions

may not apply to the full extent of the RMA delineated in the HCP, but rather to a smaller area where focused snowy plover management would occur (please refer to MR-2), it is unlikely that snowy plover management at the New River RMA would affect use of or access to the noted County road.

Response to Comment LA-2-7

Please refer to MR-6 for a discussion of OPRD's authority and responsibilities under the Beach Bill.

Response to Comment LA-2-8

OPRD needs to obtain an incidental take permit (ITP) from USFWS to avoid being in violation of Section 9 of the Endangered Species Act (ESA). Section 9 prohibits the "take" of an endangered species, where take is defined to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." Many of the management actions that OPRD is responsible for on the Ocean Shore (i.e., covered activities), including managing the public's use of the beach for recreation, have the potential to result in "take" of snowy plovers. As a result, OPRD has prepared the HCP to avoid, minimize, and mitigate the potential effects of their management actions on snowy plovers within the covered lands.

It is unclear which errors in the original draft HCP (submitted for public comment in 2004) were not corrected in the public HCP (submitted for public comment in 2007). The following includes a summary of key changes that were made between the 2004 and 2007 drafts. The most substantive differences between the 2004 and 2007 drafts of the HCP reflect important clarifications on which areas OPRD would actively manage for snowy plovers over the next 25 years (SPMAs) and which areas other agencies and landowners could manage voluntarily, with assistance from OPRD (RMAs). In addition, three SPMAs (Nestucca Spit, Sixes River, and Bullards Beach) and one RMA (North Sand Lake Spit) that had been deferred from management in the 2004 draft HCP are no longer considered for management in the proposed HCP, due in large part to public comments received on the 2004 draft HCP. The proposed HCP also describes a more workable year-by-year schedule for managing sites targeted for nesting populations of plovers (currently unoccupied) and includes additional adaptive management measures to allow OPRD and USFWS the flexibility to refine conservation strategies as needed. Finally, the proposed HCP prohibits non-motorized vehicle use on the beach in occupied and unoccupied SPMAs during the breeding season, a use that was not prohibited in the 2004 draft HCP.

Additional changes have also been made to the HCP since the July 2007 public draft of the HCP. These changes are summarized in Section 1.8 of the HCP (Oregon Parks and Recreation Department 2010). One notable change is that the management of an

SPMA at Pistol River was removed after review of public comments and in consideration of biological constraints at the site. In its place, the boundary of the Bandon SPMA has been extended to the southern edge of the China Creek access parking lot (please refer to MR-4).

Proposed issuance of an ITP is a Federal action that requires USFWS to ensure compliance with the National Environmental Policy Act (NEPA). As the Federal lead agency, USFWS, not OPRD, is required to comply with NEPA. To this end, USFWS has prepared this FEIS to analyze and disclose to the public the potential effects of the HCP and its alternatives. As required by NEPA, the Draft Environmental Impact Statement (DEIS) and the associated draft HCP were circulated for public review and comment. USFWS reviewed and responded to the comments in writing and/or by incorporating changes to the draft HCP and DEIS in this FEIS. The FEIS will be circulated for a 30-day public comment period, after which time, USFWS will issue a Record of Decision (ROD) documenting its permit decision.

In addition to the public input opportunities provided under NEPA, OPRD provided several opportunities for public comment during the development of the HCP. During the course of developing the HCP, OPRD held public meetings along the northern, central, and southern Oregon Coast. These meetings were open to the public and were not limited to residents of any geographic region. For more information about public involvement opportunities during the development of the HCP, see Appendix C of the HCP.

Response to Comment LA-2-9

USFWS will use the best available science to estimate the level of take associated with the HCP. The take estimate provided in Appendix G of the HCP was prepared by ORPD based on the most recent monitoring and recreational use data available.

Response to Comment LA-2-10

Please refer to MR-6 for a discussion of OPRD's authority and responsibilities under the Beach Bill.

Response to Comment LA-2-11

The USFWS statement of need provided in Chapter 1, Volume I of the FEIS frames the range of alternatives that USFWS must consider in the EIS. To that end, USFWS is obligated to consider alternatives that not only meet OPRD's objectives (allow for long-term management of the portions of the Oregon coast under OPRD jurisdiction;

see Section 1.2.3, “Context”), but that also provide adequate protection for threatened and endangered species.

Please refer to the Response to Comment LA-2-8 for a discussion of why OPRD needs to obtain an ITP from USFWS to avoid being in violation of Section 9 of the ESA.

Response to Comment LA-2-12

Please refer to the Response to Comment LA-2-8 for a discussion of why OPRD needs to obtain an ITP from USFWS to avoid being in violation of Section 9 of the ESA.

Response to Comment LA-2-13

Please refer to the Response to Comment LA-2-8 for a discussion of why OPRD needs to obtain an ITP from USFWS to avoid being in violation of Section 9 of the ESA. Given that many of the management actions that OPRD is responsible for on the Ocean Shore have the potential to result in incidental take of snowy plovers, OPRD has requested an ITP from USFWS. In addition, the definition of “take” includes actions that harass listed species, such as non-ground-disturbing activities (e.g., dog walking) that cause birds to flush from a nest.

USFWS has no intention of “taking over management of Oregon’s ocean beaches.” The HCP process and resulting ITP, as authorized under Section 10 of the ESA, would allow for OPRD to engage in its management activities in a lawful manner, while minimizing take and allowing for adequate protection of a federally listed species.

Response to Comment LA-2-14

As noted by the commenter, Section 9 of the Federal ESA applies to all persons and entities, including members of the general public. Otherwise legal activities on the Ocean Shore that have the potential to result in take of snowy plovers require individuals to request an ITP from USFWS to avoid being in violation of the ESA. Given that definition of take in the ESA includes harassment, it is likely that many persons recreating on the Ocean Shore could inadvertently take snowy plovers. As the State agency responsible for legal recreational use of and access to the Ocean Shore, OPRD’s proposed HCP would ensure that recreational activities on the Ocean Shore would avoid, minimize, and mitigate for potential effects on snowy plovers, thereby providing the public with a mechanism for ESA compliance. It is also important to note that the HCP prepared by OPRD, and an ITP issued by USFWS,

can only permit take that is incidental to an otherwise lawful activity (i.e., deliberate harassment or harm to snowy plovers is not considered incidental).

Response to Comment LA-2-15

During the course of developing the HCP, OPRD held a number of public meetings along the Oregon coast. At these meetings, and as part of a citizens' committee, OPRD solicited input from the public, stakeholder groups, Federal agencies, and local governments about the HCP proposal. For more specific information regarding public outreach efforts, see Appendix C of the HCP. For information about OPRD's authority and responsibility to manage recreational use and access to the Ocean Shore under the Beach Bill, please see MR-6.

The HCP has been prepared to avoid, minimize, and mitigate the potential effects of OPRD's management activities and the public's recreational use of the Ocean Shore on snowy plovers. Without the HCP and under existing conditions, OPRD must conduct its management activities to avoid take of snowy plovers to comply with the Federal ESA.

Response to Comment LA-2-16

For information about OPRD's authority to manage the Ocean Shore, please see MR-6.

Response to Comment LA-2-17

While there are specific studies on the effects that beach restrictions have on snowy plover success, the overall body of information is best summarized in Lafferty 2001 and the recently released recovery plan (U.S. Fish and Wildlife Service 2007a). These references are used in the EIS as the definitive sources for information on snowy plover-human interaction, be it anecdotal or measured. Additionally, it was necessary for the EIS to include an analysis of how implementation of the HCP would affect all threatened and endangered species that could occur on or near the Oregon coast. For that reason an analysis of the marbled murrelet was included.

Response to Comment LA-2-18

Data from the Ocean Shore Recreational Use Study was collected via on-site observations, on-site surveys, and mail-in surveys. On-site observations and surveys were conducted at each of the six beach segments listed in Section 3.3, "Recreation" of Volume I of the FEIS. The data were collected from July 29 through September 3,

2001. Segment 5 covered the area from Tenmile Creek to Coos Bay, which includes Coos Bay North Spit.

Although many citizens may drive to their recreational destinations along the south coast, the amount of driving relative to other recreational activities is small in this region. For example, many of the beaches in Coos County are currently closed to driving year round or during the nesting season. Any driving on those beaches is illegal. Beaches that are open to driving during the summer either have no viable access for vehicles (such as Bandon), or the access is via lengthy sand roads. For these reasons, driving was considered to be a minor activity in this area and was classified under the category “other” in the survey. Beaches with high levels of driving, such as Horsefall and the north end of Coos Bay North Spit, were noted in the survey as having high levels of “other” recreational activity. No RMAs are proposed for those areas.

The purpose of the Oregon Shore Recreational Use Study was to provide information to inform OPRD planning efforts on the Ocean Shore related to recreational use. Therefore, data collection survey methods relied on on-site observations and survey information collected from individuals who used the beach during the survey period (July to September 2001). The intent of the study was to provide the best available information given the limitations of collecting data for such a large area and for a widespread group of beach users. OPRD recognizes that the data are not perfectly representative and have taken potential variations into consideration in its planning efforts.

Furthermore, as noted in MR-5, the Pistol River SPMA has been removed from the HCP.

Response to Comment LA-2-19

It is understood that biologists surveying for nesting birds have some effect on the behavior or success of those individuals. However, along the Oregon coast, biologists that are surveying for and documenting snowy plovers during the nesting season are professionals, led by specialists, who have been working with this species for many years. In addition, each has met professional standards and received a permit from USFWS to conduct annual monitoring activities.

Response to Comment LA-2-20

Please refer to MR-2 for an explanation of the geographical extent that recreational restrictions would be implemented within the RMA and SPMA.

The commenter is correct in noting that cleanup activities associated with removal of the New Carissa wreckage have the potential to affect snowy plovers. A Biological

Opinion to address these effects was issued in April 2008 (U.S. Fish and Wildlife Service 2008).

Response to Comment LA-2-21

The commenter is correct in stating that the EIS evaluates the effects of noise as a result of habitat restoration on snowy plovers. As noted in the Response to Comment LA-2-20, a Biological Opinion to address the effects of the New Carissa clean up on snowy plovers was issued in April 2008 (U.S. Fish and Wildlife Service 2008).

Comment Letter LA-3

 <p>Tillamook County <i>Land of Cheese, Trees and Ocean Breeze</i></p>	<p>Oregon Fish & Wildlife Office JAN 03 2008</p> <p>201 Laurel Avenue Tillamook, Oregon 97141</p> <p>Tillamook County Commissioners Charles J. Hurliman, Tim Josi, Mark Labhart 503-842-3403 FAX 842-1384 TTY Oregon Relay Service</p>	LA-3	
<p>January 2, 2008</p>			
<p>Kemper McMaster State Supervisor US Fish & Wildlife Service Oregon Fish & Wildlife Office 2600 SE 98th Ave. Suite 100 Portland OR 97266</p>			
<p>Dear Mr. McMaster:</p>			
<p>The Tillamook County Commissioners provide the following comments regarding the Oregon Parks & Recreation Department's (OPRD) draft Habitat Conservation Plan (HCP) and the Draft Environmental Impact Statement (EIS).</p>			
<p>Background The United States Fish & Wildlife Service (USF&W) is in a 60-day comment period on the draft Habitat Conservation Plan (HCP) and draft Environmental Impact Statement (EIS) which began November 5, 2007.</p>			
<p>The HCP is a federal planning process that provides OPRD with protection from federal actions for approved activities for Oregon's Ocean Shores. Because approval of the HCP is a federal action, an EIS is being prepared to assess the HCP. OPRD hired the firm of Jones & Stokes to complete the EIS and HCP. Both plans are seeking public review and comment.</p>			
<p>OPRD is seeking to protect itself from the consequences of accidentally harming plovers in unprotected areas; the state is requesting an Incidental Take Permit from the federal USF&W.</p>			
<p>AN EQUAL OPPORTUNITY EMPLOYER</p>			
			<p>Kemper McMaster January 2, 2008 Page 2</p> <p>The goal of the USF&W for the west coast snowy plover is to have an average of 3,000 breeding adults per year for 10 years in Washington, Oregon and California. Oregon and Washington together would need to support 250 breeding plovers. State and federal agencies have been working for the past 15 years to help plovers recover on the south Oregon coast where there are nests by improving habitat, controlling predators—like crows, ravens and foxes—and shifting recreation away from nests to nearby areas. (NOTE: We do not have concerns about protecting occupied nest sites.) This includes putting up ropes and signs to direct people around the protected dry sand nesting areas during the nesting season. Dogs should stay on leashes in these areas; although, many people don't follow the OPRD rules of dogs on leashes at all times.</p> <p>Plover numbers in Oregon have climbed from fewer than 50 in 1993 to more than 120 in 2007; so there is some success to what is being done to protect the birds and increase their numbers.</p> <p>Contravention to the Acknowledged County Comprehensive Plan Tillamook County does not object to an Incidental Take Permit, if it is needed. The presence of plovers, as a natural occurrence, is a key element in this consideration. The Board is concerned that rules and restrictions will be applied to the recreating public over time by the agencies involved, in contravention to the acknowledged county comprehensive plan. In the event birds return to the four Tillamook County areas (noted in the draft EIS) and establish nests, protection measures can be instituted and implemented. At that time, plans may be expanded and articulated to optimize protections based upon a 'demonstrated need' rather than a bureaucratic exercise.</p> <p>Continuing to Ignore Concerns Expressed The Board of Commissioners is concerned that USF&W and OPRD has continued to pursue these rules and regulations in direct contravention to the County's stated position on this issue over the past several years. Neither agency seems to acknowledge the Coastal Zone Management Act and its provisions for consistency between federal, state, and local governments. In particular, the OPRD proposal ignores the Tillamook County Comprehensive Plan because its potential adoption would expand and modify our Comprehensive Plan without required public hearings and due process.</p> <p>Proposing Protections in Areas with No Nesting Birds A major concern of this Board is that the draft still proposes four areas in Tillamook County for protections where no snowy plover nest sites exist.</p>

LA-3-1

LA-3-2

LA-3-3

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Page 3

1. Nehalem Spit
A Snowy Plover Management Area has been proposed for 2.11 miles of Nehalem Spit.
2. Bayocean Spit
A Snowy Plover Recreation Management Area has been proposed for 1.73 miles of the Bay Ocean Spit.
3. Netarts Spit
A Snowy Plover Management Area has been proposed for 2.01 miles of Netarts Spit.
4. South Sand Lake Spit
A Snowy Plover Recreation Management Area has been proposed for 1.44 miles of the South Sand Lake Spit.

LA-3-3
continued

Enforcement Difficulties

Another area of concern is the challenge for OPRD to take on additional enforcement challenges when it is ill equipped to enforce leash laws, no fireworks on the beach laws, and other regulations and enforcement provisions.

LA-3-4

Legal Troubles Ahead

We are also concerned that implementation of a proposed plan in the four areas located within Tillamook County contravenes the policies of the Oregon Beach Bill. To declare these areas virtually off limits to the public is in direct conflict with the legislative policy set out at ORS 390.610(2). Therein, the legislature recognizes, "That over the years the public has made frequent and uninterrupted use of the ocean shore." This public policy and the Bill itself are constitutionally permissible. The constitutional right of the public to the ocean shores and easements along the ocean shores should not be overturned by setting aside beach areas which historically have not provided nesting or foraging areas for the snowy plover. Do not restrict the public's right to use the beaches where no nesting birds exist.

LA-3-5

What We Propose

- Compliance with Tillamook County's State-acknowledged Comprehensive Plan.

LA-3-6

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Page 3

- Do not issue Incidental Take Permits in areas that now don't have nesting snowy plovers.
- Go Slow Approach not appropriate. In our opinion, the "go-slow" approach being proposed is only delaying the inevitable of closing these "no plover" areas to all uses. OPRD & USF&W will gradually ratchet down the restrictions over time by using the "you won't notice what is being done to you approach". In the event birds begin nesting, OPRD can institute protection measures as it is doing now in areas where birds currently are nesting. Setting up protection measures, developing management plans for areas, and waiting for the manager to ask for protection with no nesting populations seems excessive.

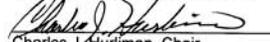
LA-3-7

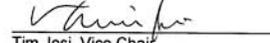
LA-3-8

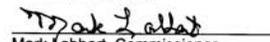
Thank you for the opportunity to provide input on the draft plan. We look forward to USF&W taking our comments, this time, into full consideration.

Sincerely,

BOARD OF COMMISSIONERS FOR
TILLAMOOK COUNTY, OREGON


Charles J. Hurliman, Chair


Tim Josi, Vice Chair


Mark Labhart, Commissioner

cc: William K. Sargent, County Counsel
Tim Wood
Senator Betsy Johnson
Rep. Debbie Boone

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Response to Comment LA-3-1

Under the HCP, OPRD would manage only two SPMA's in Tillamook County: Nehalem Bay and Netarts Spit. Although these SPMA's are larger than the protected areas designated in the Tillamook County Comprehensive Plan, it is likely that habitat restoration would occur within the boundary of the protected area outlined in the Comprehensive Plan, which will be described in more detail in the site management plans for each SPMA. Lands outside of the habitat restoration areas, but within the SPMA boundary, have been so designated to prevent development of additional park facilities in the future. As a result, site management plans developed for the Nehalem Bay and Netarts Spit SPMA's would be consistent with the Tillamook County Comprehensive Plan and zoning ordinances. Both the HCP and the EIS have been updated to clarify this.

Recreational use restrictions at RMAs would only be implemented at actively managed, unoccupied sites at the request of the landowner and/or after nesting populations of snowy plovers have been found in the area. Under either circumstance, OPRD would provide ropes, signs, and law enforcement assistance to these RMA landowners.

Response to Comment LA-3-2

OPRD and USFWS submitted the HCP to the Oregon Department of Land Conservation and Development (DLCD) and requested that that agency determine if it is consistent with the Coastal Zone Management Act (CZMA) and Oregon Coastal Management Plan (CMP), including the Statewide Land Use Planning Goals and County Comprehensive Plans. On May 4 2009, DLCD issued USFWS a consistency determination letter that found the HCP consistent with both the CZMA and the CMP (Blanton pers. comm. 2009).

Please refer to the Response to Comment LA-3-1 for a discussion of how proposed SPMA management in Tillamook County would be consistent with the Tillamook County Comprehensive Plan.

Response to Comment LA-3-3

The commenter is correct in stating that the HCP proposes future management at two unoccupied SPMA's at Nehalem Spit and Netarts Spit, and considers management by other landowners at two additional unoccupied RMAs at Bayocean Spit and South Sand Lake Spit. The intent of actively managing any or all of these sites would be to attract nesting snowy plovers to areas where they historically have been found.

Please refer to MR-5 for a discussion of why active management at unoccupied areas is considered in the HCP.

RMAs at Bayocean Spit and South Sand Lake Spit could be managed in the future by their respective landowners for snowy plovers. Management of these areas is not required under the HCP, but, should it occur, would be consistent with the management prescriptions for unoccupied sites in the HCP, and would be governed by a USFWS-approved site management plan developed by the respective landowner.

Response to Comment LA-3-4

Please refer to Section 7, “Implementation, Organization, and Structure” of the HCP and MR-8 for a discussion of the funding commitments in the HCP, including those specific to law enforcement. The effectiveness of the conservation measures, including the adequacy of the funding commitments in the HCP, will be assessed each year in an annual compliance report, and every 5 years by OPRD, USFWS, and Oregon Department of Fish and Wildlife (ODFW).

Response to Comment LA-3-5

Please refer to MR-6 for a discussion of OPRD’s authority and responsibilities under the Beach Bill.

Response to Comment LA-3-6

Please refer to response LA-3-1 for a discussion of how proposed SPMA management in Tillamook County would be consistent with the Tillamook County Comprehensive Plan.

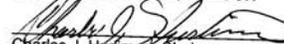
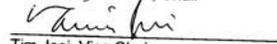
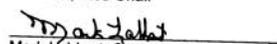
Response to Comment LA-3-7

Please refer to MR-5 for a discussion of why active management at unoccupied areas is considered in the HCP.

Response to Comment LA-3-8

The current proposal in the HCP to manage up to five SPMAs will not change or increase over time. In fact, one of the objectives of the HCP is to afford the public some certainty of where they can expect recreational use restrictions to occur in the future. Please refer to MR-5 for a discussion of the necessity for managing currently unoccupied SPMAs.

Comment Letter LA-4

Tillamook County	Oregon Fish & Wildlife Office	LA-4
	JAN 03 2008	
<i>Land of Cheese, Trees and Ocean Breeze</i>	201 Laurel Avenue Tillamook, Oregon 97141	
	Tillamook County Commissioners Charles J. Hurliman, Tim Josi, Mark Labhart 503-842-3403 FAX 842-1384 TTY Oregon Relay Service	
January 2, 2008		
Kemper McMaster State Supervisor US Fish & Wildlife Service Oregon Fish & Wildlife Office 2600 SE 98th Ave Suite 100 Portland OR 97266		
Dear Mr. McMaster:		
As Tillamook County has consistently stated in past letters of testimony, "Our objection is based upon the absence of a determination of consistency with the locally acknowledged comprehensive plan as set forth in the Oregon Coastal Zone Management Act, an expansion of designated critical habitat without public due process as established under the local acknowledged comprehensive plan, and the absence of an economic impact analysis upon local rural coastal economies, communities and government."	LA-4-1	
The U. S. Fish and Wildlife Service may argue that it is not subject to state and local land use goals and/or guidelines. However USFWS Recovery Plan references ORS (Oregon Revised Statutes) 496.171 to 496.192. This ORS states the need for "A determination that a species is a threatened species or an endangered species shall be based on documented and verifiable scientific information about the species' biological status." Below is the Master of Science thesis of Leah R. Gorman that should question the Western Snowy Plovers status.	LA-4-2	
	LA-4-3	
Population Differentiation among Snowy Plovers (<i>Charadrius alexandrinus</i>) in North America		
AN EQUAL OPPORTUNITY EMPLOYER		
	Kemper McMaster January 2, 2008 Page 2	
	In Partial Fulfillment of the requirements for the degree of Master of Science Presented June 6, 2000-Commencement June 2001 Master of Science thesis of Leah R. Gorman presented on June 6, 2000. APPROVED: Susan M. Haig, representing Wildlife Science Chair of Department of Fisheries and Wildlife Dean of the Graduate School	LA-4-3 continued
	"Coastal and inland populations of Snowy Plovers in the western United States are currently being managed separately; coastal populations are protected as a Distinct Population Segment under the U.S. Endangered Species Act, while inland populations are not listed. Our study provides no evidence of genetic differentiation between coastal and inland populations."	
	This study also brings in the recent Supreme Court case; Nation Association of Home Builders v. Defenders of Wildlife. No. 06-340. Decided June 25, 2007.	
	Sincerely,	
	BOARD OF COMMISSIONERS FOR TILLAMOOK COUNTY, OREGON	
	 Charles J. Hurliman, Chair	
	 Tim Josi, Vice Chair	
	 Mark Labhart, Commissioner	
	cc: William K. Sargent, County Counsel Tim Wood Senator Betsy Johnson Rep. Debbie Boone	
	G:\LETTERS\Snowy Plover Letter from BOC 01-02-08.doc	

Response to Comment LA-4-1

As described in the response to comment LA-3-2, on May 4 2009, DLCD issued USFWS a consistency determination letter that found the HCP consistent with both the CZMA and the CMP (Blanton pers. comm. 2009).

The HCP would not in and of itself result in any changes to the critical habitat designations for snowy plover. Any proposed changes to the critical habitat designation, if necessary, would be pursued independently by USFWS based on the best scientific information available, in an open public process, within specific timeframes. An economic analysis of the potential effects of the HCP, as well as the other alternatives considered in the EIS, is presented in Section 3.4, “Socioeconomics and Environmental Justice” of Volume I of the FEIS.

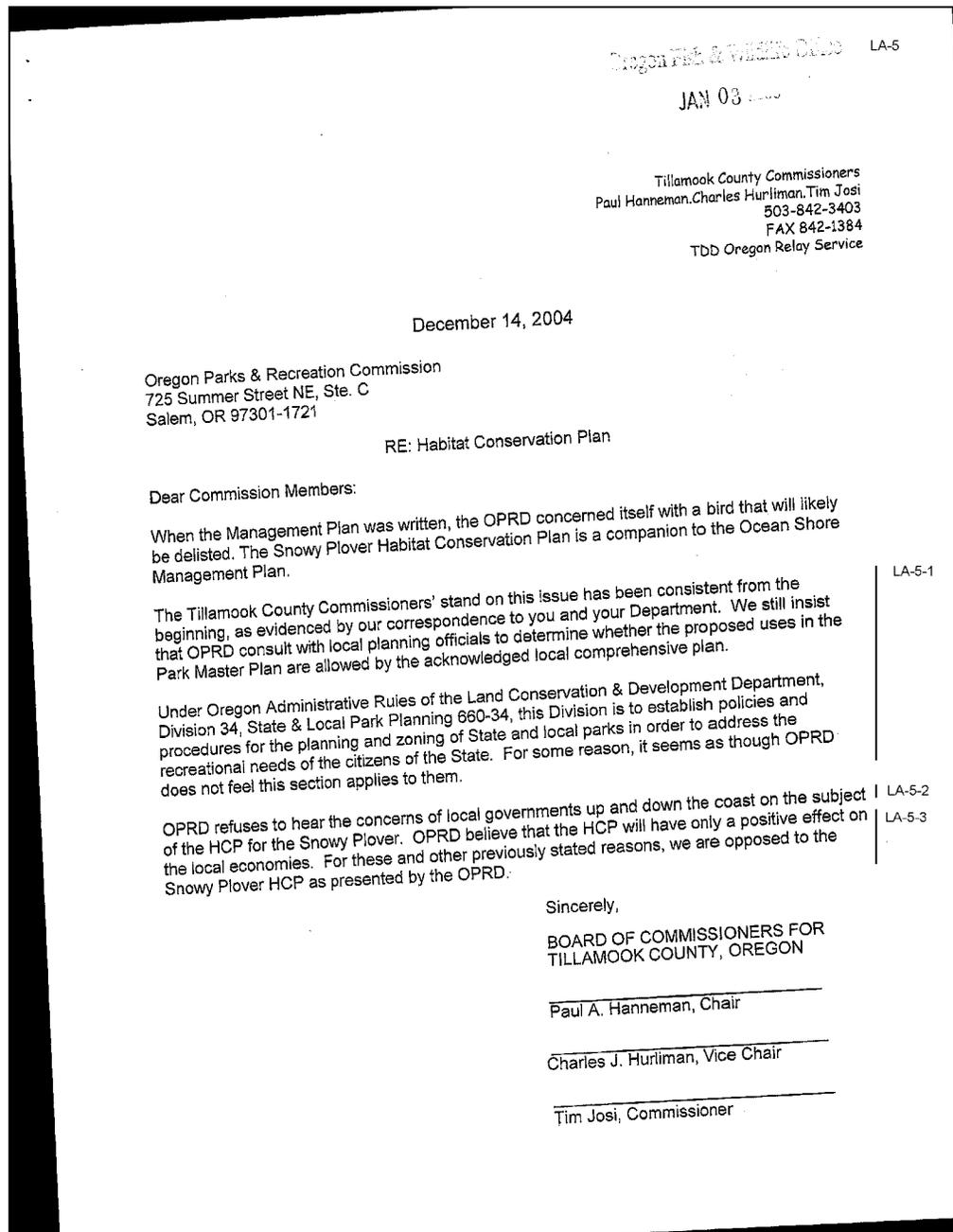
Response to Comment LA-4-2

OPRD management actions on the Ocean Shore, including snowy plover management activities, must be consistent with Statewide Land use Planning Goals, County Comprehensive Plans, and the CZMA. As described in the response to comment LA-3-2, on May 4, 2009, DLCD issued USFWS a consistency determination letter that found the HCP consistent with both the CZMA and the CMP (Blanton pers. comm.. 2009). .

Response to Comment LA-4-3

The snowy plover is listed as a threatened species under both the Federal and State ESAs. Its status under either State or Federal law is beyond the scope of this EIS.

Comment Letter LA-5



Response to Comment LA-5-1

The cited Oregon Administrative Rule (OAR) refers to park development, and outlines the approach for use of an OAR-defined Master Plan. The only development actions proposed in the HCP are those associated with habitat restoration: sand grading and/or vegetation removal on a portion of the dry sand areas within SPMAs.

OPRD may follow local, State, and Federal review and approvals for this kind of action without completing a Master Plan.

Please refer to the Response to Comment LA-3-1 for a discussion of how management of a SPMA proposed in Tillamook County would be consistent with the Tillamook County Comprehensive Plan.

Response to Comment LA-5-2

During the course of developing the HCP, OPRD held a number of public meetings along the Oregon coast, including several meetings in Tillamook. At these meetings, OPRD solicited input from the public about the HCP proposal. For more specific information regarding public outreach efforts, see Appendix C of the HCP.

Response to Comment LA-5-3

The analysis of economic effects is presented in Section 3.4, “Socioeconomics and Environmental Justice” of Volume I of the FEIS. The analysis does not conclude that the HCP would result in beneficial effects on local economies, but rather that it would likely have a minimal effect on local economies.

Under the HCP, recreational use restrictions would be implemented at SPMA and RMA depending on the occupancy status of a site, as summarized in Table 3.3-3 of Volume I of the FEIS. As noted in MR-2, although restrictions could apply anywhere within an SPMA or RMA, restrictions may not be applied to the entire management area. The specific location of the restricted areas within an SPMA or RMA would be focused on nesting activity. The extent and location of the restrictions would be determined in the development of the site management plans for SPMA and through formal consultation with USFWS for RMA. It is likely that there will be areas within SPMA or RMA where the recreational use restrictions would not apply due to lack of nesting habitat or activity.

The EIS analysis considered a scenario in which restrictions were applied within the entire extent of the SPMA or RMA. Even with this conservative approach, the potential effects on recreational use opportunities were deemed to be minimal. This is because there are alternate beach locations at each SPMA and RMA where affected recreational uses would be unrestricted on the beach. These areas are most often located immediately adjacent to the restricted area and are reached via the same access points. Tables 3.3-6 and 3.3-7 in Volume I of the FEIS list the alternate locations for each proposed SPMA and RMA under Alternatives 2 and 3, respectively.

The economic effects of the HCP were analyzed in Section 3.4, “Socioeconomics and Environmental Justice” of Volume I of the FEIS. The FEIS concluded that in the

majority of cases, unrestricted recreational use could occur on the same beach using the same existing access point. In the majority of cases, the alternative beach would be located within the immediate vicinity of the potentially restricted beach area and would be served by the same community (see Table 3.4-5 of Volume I of the FEIS). Because these alternative beach areas are geographically located in the same proximity to the communities closest to each management area, it is anticipated that nearly all the beach visitors would still frequent the same beaches and local businesses under each of the alternatives. For this reason, the local and regional socioeconomic effects directly attributable to any of the alternatives would be minimal.

Comment Letter LA-6

<p style="text-align: right;">LA-6</p> <p style="text-align: center;">Tillamook County Commissioners Paul Hanneman, Charles Hurliman, Tim Josi 503-842-3403 FAX 842-1384 TDD Oregon Relay Service</p> <p style="text-align: center;">April 7, 2004</p> <p>Eleanor Gaines, Project Manager Oregon Natural Heritage Information Center 1322 S.W. Morrison Portland, Oregon 97214</p> <p>Michelle Michaud, Project Manager Oregon Parks and Recreation Department 725 Summer St., NE Suite C Salem, Oregon 97301</p> <p>Re: DRAFT - Habitat Conservation Plan for the Western Snowy Plover</p> <p>The Oregon Statewide Planning Goals & Guidelines, Goal 17: Coastal Shorelands and Goal 18: Beaches and Dunes established the goal and process elements for local jurisdictions, city and counties, to use as a guide in developing, approving and submitting their comprehensive plans to the State of Oregon for acknowledgement by the state. The acknowledged local plans, in their aggregate, then constituted the state comprehensive plan deemed to be consistent and compliant with the Statewide Planning Goals.</p> <ul style="list-style-type: none"> ➤ <i>Goal 17: To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and to reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.</i> ➤ <i>Goal 18: Beaches and Dunes "To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and to reduce the hazard to human life and property from natural or man-induced actions associated with these areas." The Tillamook County Comprehensive Plan, Acknowledged in 1984, as amended; inventoried, mapped and provided protection of Significant Shoreland Habitat under the Goal 17 provisions of the plan.</i> 	<p>April 7, 2004 Page 2</p> <p>The Tillamook County Comprehensive Plan provides protected habitat for Snowy Plover nesting at the southerly end of the Nehalem Spit; the northerly and southerly ends of the Bay-Ocean Spit; the north end of the Netarts Spit; the southerly end of the Sandlake Spit with a small portion of the northwesterly end of the Tierra del Mar - Sandlake Spit; and the south end of the Nestucca Spit. The Snowy Plover Emphasis Areas and Recovery Beaches proposed by OPRD and USFW are far more expansive than those areas under protection of the county comprehensive plan. Statewide Planning Goal 17 calls for a balanced evaluation of coastal shorelands for a determination of significance to be made to provide for habitat protections. The Habitat Conservation Plan for the Western Snowy Plover, prepared by OPRD with assistance from USFW, BLM, ODFW, and the ONHIC does not provide the balance required in accordance with state land use planning goals. Public comments, provided at meetings convened for that purpose by OPRD, have demonstrated that a broader inventory and dialogue with the people of Oregon and Tillamook County is needed before a habitat protection proposal of this magnitude, absent recent sightings of the Snowy Plover, is seriously considered for final action and implementation.</p> <p>The U.S. Fish and Wildlife Service may argue that it is not subject to state and local land use goals and/or guidelines. However, it is very clear that the Oregon Parks and Recreation Department is not exempt from the statewide goals, guidelines, local plans or the coordination and cooperation with local governments mandated by the State of Oregon to develop and implement comprehensive plans. Federal and state inventory and management plans that are not connected or coordinated with local planning efforts and initiatives simply represent a serious disconnect between coastal communities, the general public and those employed to serve the public interest.</p> <p>Tillamook County is willing to work with this proposal in a coordinated and collaborative manner, but we are unwilling to allow a top down approach by a select group of federal and state agencies to dictate policy and use of our public lands and beaches. Tillamook County is withdrawing from its participation on the Advisory Committee for this undertaking until such time as the approach and interaction with local communities, local plans and the general public is more responsive to the needs and issues represented by public comments made at the meetings convened for that purpose by the Oregon Parks and Recreation Department.</p> <p style="text-align: right;">Sincerely, BOARD OF COUNTY COMMISSIONERS FOR TILLAMOOK COUNTY, OREGON</p> <p style="text-align: right;">_____ Paul A. Hanneman, Chair</p> <p style="text-align: right;">_____ Charles J. Hurliman, Vice-Chair</p>	<p>LA-6-1</p> <p>LA-6-2</p> <p>LA-6-3</p> <p>LA-6-4</p>
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Response to Comment LA-6-1

Please refer to the Response to Comment LA-3-1 for a discussion of how proposed SPMA management in Tillamook County would be consistent with the Tillamook County Comprehensive Plan.

Response to Comment LA-6-2

Goal 17 supports habitat protection and restoration actions that do not compromise foredune and other dune stability, impact wetlands, or cause infill of estuaries with sediment. Habitat restoration proposed under the HCP would be consistent with Goal 17.

Response to Comment LA-6-3

For a list of past public comment opportunities on the HCP, please see Appendix C of the HCP. As mentioned in the Response to Comment LA-5-2, OPRD revised the HCP based on public input gathered at meetings that occurred along the coast.

In addition, several opportunities were provided for the public to participate in the development of the EIS during the NEPA process. Section 1.3, “Environmental Review Process” in Chapter 1, “Purpose and Need” of Volume I of the FEIS describes the public outreach process that had been completed to date. Public input was solicited during a 40-day public scoping period consisting of four public meetings in February and March 2003. A summary of comments received from the public during the NEPA public scoping period is available in the 2005 Scoping Report for the Oregon Parks and Recreation Department Habitat Conservation Plan for the Western Snowy Plover (U.S. Fish and Wildlife Service 2005). Public input on the DEIS and HCP were solicited during a 60-day public comment period from November 4, 2007 to January 4, 2008, with an extension from February 26, 2008 to March 12, 2008. A second extended comment period was provided between April 17, 2009 and June 19, 2009. This document provides a response to all substantive comments received during the initial and extended public comment periods. There will also be another opportunity to comment on the FEIS. For these reasons, public participation in the development of the HCP and EIS is considered sufficient.

Response to Comment LA-6-4

Please refer to the Response to Comment LA-3-1 for a discussion of how proposed SPMA management in Tillamook County would be consistent with the Tillamook County Comprehensive Plan.

As described in the response to comment LA-3-2, on May 4 2009, DLCD issued USFWS a consistency determination letter that found the HCP consistent with both the CZMA and the CMP (Blanton pers. comm. 2009).

Comment Letter LA 7

<p style="text-align: right;">LA-7</p> <p style="text-align: center;">Tillamook County Commissioners Paul Hanneman, Charles Hurliman, Tim Josi 503-842-3403 FAX 842-1384 TDD Oregon Relay Service</p> <p style="text-align: center;">October 23, 2004</p> <p>Oregon Parks and Recreation Commission 725 Summer St NE, Suite C Salem, OR 97301</p> <p>Dear Commissioners:</p> <p>As the Commissioners of coastal Tillamook County, we request that you begin a public process regarding a Habitat Conservation Plan (HCP) for the Pacific coastal population of western snowy plover. LA-7-1</p> <p>Your former Department Director made an administrative decision to move forward with HCP planning. We note that you have not had this as an action item on a meeting agenda before or since he made his decision to proceed. For example, on your agenda today you have this as an update only. An action as serious as an HCP for our beaches should have been at least a Commission-level decision, with adequate opportunity for public participation prior to the decision to proceed being made.</p> <p>Oregonians have the most coveted beach access law in America (ORS 390.605 et seq.), guaranteeing their recreational access to all Oregon ocean beaches. This law must be protected for the benefit of all Oregonians and visitors, and especially for coastal counties and communities. In our opinion, actions regarding this law should allow public participation as part of your decision-making process. LA-7-2</p> <p>Tillamook County and some other coastal counties have objected to the lack of process OPRD followed in moving forward with HCP planning, and we have withdrawn from the planning process until what we believe is a shortcoming in the process has been addressed. In our last formal communication from OPRD, we were invited to return to HCP Steering Committee meetings if we agree to "understand that the department needs to go forward with the planning process," wrote Kathy Schutt to Coos and other coastal counties on May 10, 2004. LA-7-3</p>	<p style="text-align: right;">LA-7</p> <p>Therein, Commissioners, lies the problem: We have not agreed that OPRD should have begun the process without before-the-fact direction from you. We are unwilling to participate in discussions over the degree to which OPRD plans to restrict our citizens' rights to recreate in a designated state recreation zone, when the basis for the discussion is a mere administrative decision. LA-7-3 continued</p> <p>The Tillamook County Comprehensive Plan already provides protected habitat for Snowy Plover nesting at the southerly end of the Nehalem Spit; the northerly and southerly ends of the Bay-Ocean Spit; the north end of the Netarts Spit; the southerly end of the Sandlake Spit with a small portion of the northwesterly end of the Tierra del Mar - Sandlake Spit; and the south end of the Nestucca Spit. The Snowy Plover Emphasis Areas and Recovery Beaches proposed by OPRD and USFW are far more expansive than those areas under protection of the county comprehensive plan. LA-7-4</p> <p>Statewide Planning Goal 17 calls for a balanced evaluation of coastal shorelands for a determination of significance to be made to provide for habitat protections. The Habitat Conservation Plan for the Western Snowy Plover, prepared by OPRD with assistance from USFW, BLM, ODFW, and the ONHIC does not provide the balance required in accordance with state land use planning goals. Public comments, provided at meetings convened for that purpose by OPRD, have demonstrated that a broader inventory and dialogue with the people of Oregon and Tillamook County is needed before a habitat protection proposal of this magnitude, absent recent sightings of the Snowy Plover, is seriously considered for final action and implementation. LA-7-5</p> <p>By comparison, we work closely with the Board of Forestry for HCPs on northern spotted owls, marbled murrelets and coho salmon on western Oregon state. Fifteen Oregon counties are members of the Council of Forest Trust Land Counties (CFTLC) and Forest Trust Land Advisory Committee (FTLAC). The FTLAC and Department of Forestry frequently discuss progress of these HCP processes. The Board of Forestry has agreed not to consummate these HCPs with the U.S. Fish and Wildlife Service if they do not have an agreement with FTLAC to do so. LA-7-6</p> <p>We would prefer that this was the model, since the people of our counties have the most at stake regarding an HCP for the coastal population of the western snowy plover.</p> <p>Sincerely,</p> <p>BOARD OF COUNTY COMMISSIONERS FOR TILLAMOOK COUNTY, OREGON</p> <p>_____ Paul A. Hanneman, Chair</p> <p>_____ Charles J. Hurliman, Vice-Chair</p> <p>_____ Tim Josi, Commissioner</p>
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Response to Comment LA-7-1

Please see the Response to Comment LA-6-3 for information about the public comment opportunities provided as part of both the HCP and EIS processes.

Response to Comment LA-7-2

Please refer to MR-6 for a discussion of OPRD's authority and responsibilities under the Beach Bill.

Response to Comment LA-7-3

Please see the Response to Comment LA-6-3 for information about the public comment opportunities provided as part of both the HCP and EIS processes. For an explanation of why OPRD is pursuing an ITP from USFWS, please refer to the Response to Comment LA-2-8.

Response to Comment LA-7-4

Please refer to the Response to Comment LA-3-1 for a discussion of how proposed SPMA management in Tillamook County would be consistent with the Tillamook County Comprehensive Plan.

Response to Comment LA-7-5

Please refer to the Response to Comment LA-6-2 for a discussion of how the HCP is consistent with Statewide Planning Goal 17.

Response to Comment LA-7-6

Please see the Response to Comment LA-6-3 for information about the public comment opportunities provided as part of both the HCP and EIS processes.

Comment Letter LA-8

LA-8

Tillamook County Commissioners
Charles Hurliman, Tim Jost, Mark Labhart
503-842-3403
FAX 842-1384
TDD Oregon Relay Service

February 14, 2005

United States Fish & Wildlife Service
Attn: Wayne White, Field Supervisor
Sacramento Fish & Wildlife Office
2800 Cottage Way, W-2605
Sacramento, California 95825

Re: Comments on Proposed Critical Habitat Designations
for the Pacific Coast Western Snowy Plover

Mr. White:

Tillamook County objects to the proposed expanded designation of critical habitat for the Western Snowy Plover (WSP) on the following sites in Tillamook County, Oregon.

- Nehalem River Spit, OR-2 - Map 11 (145 acres/59ha)
- Bay Ocean Spit, OR-3, Map 12 (207 acres/84ha)
- Netarts Spit, OR-4, Map 13 (143 acres/58ha)
- Sand Lake North, OR-5A and Sand Lake South, OR-5B, Map 14, (142 acres/57.5ha)
- Nestucca River Spit, OR-6, Map 15, (147 acres/59.5ha)

Our objection is based upon the absence of a determination of consistency with the locally acknowledged comprehensive plan as set-forth in the Oregon Coastal Zone Management Act, an expansion of designated critical habitat without public due process as established under the local acknowledged comprehensive plan, and the absence of an economic impact analysis upon local rural coastal economies, communities and government. The Oregon Parks & Recreation Department has approved, with support of the USFWS, the proposed modifications to the Ocean Shore Management Plan and the Habitat Conservation Plan for the Western Snowy Plover (WSP) without a determination of Coastal Consistency with local acknowledged comprehensive plans.

The Tillamook County Comprehensive Plan was Acknowledged by the State of Oregon in 1984. In 1987 the plan was amended to include designated "Significant Habitat" for the protection of the WSP(OA-87-7) habitat on all of the above referenced expansion sites under consideration. The sites are planned and zoned for a variety of uses, but predominantly for Recreation Management and are protected under the plan for such public use and activity. The proposed expansion of critical habitat for the WSP constitutes a contravention of the Oregon Land Use Process, which mandates the public's right of due process and public hearings on matters and

LA-8

issues that modify or amend local comprehensive plan map, policy and implementation measures. The independent determinations made by the Oregon State Parks Commission and those under consideration by the USFWS are inconsistent and in contravention with state and local land use requirements for comprehensive plan map and text amendments.

The Act, under which the USFWS is proceeding, provides for public hearings upon receipt of a written request. Local public hearings conducted under the provisions of the Tillamook County Comprehensive Plan (TCCP) would provide for the consideration of expanding protected habitats under a coordinated local, state and federal process. We respectfully request that this comprehensive map and text amendment process be followed consistent with the accords of the Coastal Zone Management Act. Prior to a final determination by the USFWS, we respectfully request that such public hearings be held.

The Act also provides for the Exclusion of specific sites from Final Critical Habitat Designation. We request that sites OR-2, OR-3, OR-4, OR5A, OR-5B, and OR-6 be Excluded in that they comprise a very small portion of the overall range of the population, there is no evidence of the presence or sightings of the WSP at the proposed expansion sites. The Exclusion of these sites is not likely to result in the extinction of the population. Further, the sites under consideration have not been evaluated under the auspices of an economic impact analysis to ascertain what impacts there would be upon the recreational and tourist economies of coastal regions, economies or communities.

The TCCP provides for the protection of the Western Snowy Plover under the provisions of a Significant Habitat Designation with implementing policies and provisions. The consideration of expanding critical habitat boundaries without a coordinated review and amendment process through the TCCP constitutes an inconsistency with the TCCP and the Coastal Zone Management Act.

The recreational and tourist economy of the Oregon Coast, inclusive of Tillamook County, is comprised of small rural businesses, communities and organizations of local government. This economy is dependent upon public access and use of the ocean shore and lands designated and provided for public access and recreation. The reduction of recreation and tourism opportunities through the limitation of access and use provisions will be economically damaging to that sector of the Tillamook County economy. There has been no economic impact analysis to quantify or measure the extent of that impact.

The USFWS proposed rule and habitat designation contained in FR Doc 04-26877 states that "all areas proposed as critical habitat for the Pacific Coast Western Snowy Plover were occupied by the species at the time of listing and contain sufficient primary elements to support essential biological function". Tillamook County, in accord, with the listing of the WSP under the Act, amended the TCCP in 1987 to designate Significant Habitat for the WSP together with the establishment of policy guidelines for implementing protection measures at such time as they are warranted by the presence or sightings of the WSP.

We respectfully request the Exclusion of all proposed sites in Tillamook County, Oregon (OR-2 through OR-6) on the basis that:

LA-8

1. The TCCP provides the designation of Significant Habitat for the WSP at all sites under consideration. We assert that such designation is sufficient given the status of the WSP in the region and expanding such designated areas by federal and state agencies would be inconsistent with the local acknowledged comprehensive plan in contravention of the Oregon Coastal Zone Management Act.
2. There have been no recent sightings of nesting or breeding pairs within Tillamook County during the planning period to warrant an expansion of protected critical habitat as proposed. The absence of the WSP or the sporadic sightings claimed over the fifteen (15) year period (1984-1999) is indicative that the proposed expansion is based upon a speculative rather than a factual basis.
3. The adverse economic impact of the proposed expanded designations of critical habitat without an analysis of economic impact is in contravention of the determination made by the United States District Court for the District of Oregon (Coos County BOCC et. Al. v. Dept. of the Interior, et. Al. cv-02-6128, m. Hogan) made on July 2, 2003; and that
4. The USFWS has found that "the designation of statutory critical habitat provides little additional protection to most listed species". Accordingly, the USFWS may Exclude relatively small areas of the overall range of the population where such Exclusion would not be likely to result in the populations extinction.

In the alternative Tillamook County requests that prior to any Final Decision being rendered on the proposed expansion of Critical Habitat Designations that the USFWS submit it's proposed expansion and the public need for such expansions to Tillamook County for the processing of both comprehensive plan map and text amendments.

Respectfully Submitted,

BOARD OF COUNTY COMMISSIONERS
FOR TILLAMOOK COUNTY, OREGON

Charles J. Hurliman, Chair

Attachments

cc: The Honorable Ron Wyden
The Honorable Gordon Smith
The Honorable Darlene Hooley
Mike Carrier, Governor's Office
Fred Seavey, USFWS (fax #541-867-4551)
Michelle Michaud, OPRD
Dale Blanton, DLCD

Comment Letter LA-9

<p style="text-align: right;">LA-9</p> <p style="text-align: center;">Tillamook County Commissioners Paul Hanneman, Charles Hurliman, Tim Josi 503-842-3403 FAX 842-1384 TDD Oregon Relay Service</p> <p style="text-align: center;">October 8, 2001</p> <p>U.S. Fish & Wildlife Service Attn: Carmen Thomas, Recovery Coordinator 2800 Cottage Way, Room W-2605 Sacramento, CA 95825</p> <p style="text-align: center;">RE: Comments Regarding Western Snowy Plover Draft Recovery Plan</p> <p>Dear Ms. Thomas:</p> <p>We believe that human activity on Oregon beaches, such as walking, jogging, walking pets, operating off-road vehicles and horseback riding during the plover breeding season, is not a significant contributor to the decline of the Western snowy plover population. Restricting human activity on our beaches would, however, have a significant impact on most of our coastal communities that depend on tourists for their economic viability. Restricting access to the beach during certain times of the year would most certainly have an adverse influence on them. In addition, Oregon's public beach ownership law of 1967 gives the public access and use of Oregon beaches.</p> <p>If the objective of the draft recovery plan is to ensure the long-term viability of the Pacific coast population of the western snowy plover, then what is the plan going to do regarding predation by the crow and raven populations? Foxes and domestic cats and dogs have no effect here on the</p>	<p style="text-align: right;">LA-9</p> <p>Oregon beaches, such as Nehalem Spit, Bayocean Spit, Netarts Spit, Sandlake Spit and Nestucca Spit. In addition, the loss of nesting habitat due to impacts by development is not a factor in the above areas because of land use restrictions and public ownership.</p> <p>We are concerned that if other parts of the Draft Recovery Plan contain as many errors as the portions pertaining to Tillamook County, then it is truly a sad document in need of revision.</p> <p style="text-align: right;">Sincerely,</p> <p style="text-align: right;">THE BOARD OF COMMISSIONERS FOR TILLAMOOK COUNTY, OREGON</p> <p style="text-align: right;">_____ Paul Hanneman, Chair</p> <p style="text-align: right;">_____ Charles Hurliman, Vice-Chair</p> <p style="text-align: right;">_____ Tim Josi, Commissioner</p>
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Response to Comment Letters LA-8 and LA-9

Comment Letters LA-8 and LA-9 are related to the Proposed Critical Habitat Designations and the draft Recovery Plan for snowy plover, respectively. Both of these topics are outside of the scope of the FEIS and the HCP.

Comment Letter LA-10

Oregon Fish & Wildlife Office
JAN 07 2008
LA-10



City of Manzanita
Jerald P. Taylor, City Manager
543 Laneda Avenue, P.O. Box 129, Manzanita, OR 97130-0129
Phone (503) 368-5343 Fax (503) 368-4145 TTY Dial 711

January 4, 2008

U.S. Fish and Wildlife Service
Attn: Kemper McMaster, State Supervisor
Oregon Fish and Wildlife Office
2600 SE 98th Ave., Suite 100
Portland, OR 97266

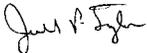
Re: Oregon Parks and Recreation Department (OPRD)
Draft Habitat Conservation Plan (HCP) and
Draft Environmental Impact Statement (EIS)

Dear Mr. McMaster:

The City of Manzanita wishes to go on record with its comments on the abovementioned draft HCP and draft EIS submitted by the Oregon Parks and Recreation Department in connection with its request for an Incidental Take Permit regarding the west coast snowy plover. The City has reviewed the written comments submitted to you by the Board of Tillamook County Commissioners and concurs with them. LA-10-1

The Manzanita City Council informed me that it is concerned with the permit application and wishes to be involved in the process. Would you please notify the City of any actions taken regarding this permit request and advise the City of any further opportunities to submit comments or otherwise participate in the process. LA-10-2

Thank you for the opportunity to provide input.

Sincerely,

Jerald P. Taylor
City Manager

The City of Manzanita is an Equal Opportunity Provider and Employer.

Response to Comment LA-10-1

By reference, the City of Manzanita incorporates the comments submitted by Tillamook County. For responses to the comments made by Tillamook County, please see the responses to Comment Letters LA-3 through LA-9.

Response to Comment LA-10-2

Comment noted. The FEIS will be circulated for a 30-day public comment period after which time USFWS will issue a ROD documenting its permit decision. Substantive issues raised during the FEIS public comment period will be considered in the USFWS permit decision and responded to in the ROD.

Comment Letter LA-11

LA-11



"Carol Parker"
 <cparker@ci.warrenton.or.us>
 .or.us>

To: <FWI ORDHCP@fws.gov>
 cc: "Carol Parker" <planningdirector@ci.warrenton.or.us>
 Subject: OPRD HCP EIS Laura Todd

12/18/2007 04:52 PM

Dear Ms. Todd: After reviewing the News Release and the "Draft Habitat Conservation Plan", the City of Warrenton has the following comments:

You state under number 11 of the News Release that if the Snowy Plover do not nest in the Columbia River South Jetty by July 15, the fences "could come down and recreation returns to normal"; under number 18 it states that the plan and Incidental Take Permit cover 25 years; and under number 19 it states, "... will evaluate the recovery every year and work together to decide if the plan should be tweaked to achieve success."

Our questions are:

1. Is the Columbia River South Jetty covered under the "25 year plan" and if so, the fences would remain in place during that time? LA-11-1
2. Number 11 and 19 differ in response to "nesting not taking place"; so if you could clarify for me which response is correct. LA-11-2

Thank you for the opportunity to comment on this draft plan.

Carol Parker
 Warrenton Planning Director
 Phone: 503-861-0920

Response to Comment LA-11-1

The Columbia River South Jetty SPMA would be covered by the ITP for the 25-year period. As described in Section 5, "Conservation Plan" of the HCP, symbolic fencing would only be installed at the beginning of each nesting season at sites occupied by snowy plovers, and would be removed by September 15. Fencing could be removed sooner (July 15) if no successful nests or broods were observed in the

nesting area. The extent of the fencing would be determined during development of the site management plan for the Columbia River South Jetty SPMA.

Specific to a determination of “occupancy”, as defined in Section 5 of the HCP, an “occupied site” is an area where there has been at least one nest or nesting attempt in the previous 2 years. In addition, at RMAs adjacent to Federal lands, an RMA would be considered “occupied” if a nest, meeting the above criteria, is found on the adjacent federally owned lands.

Response to Comment LA-11-2

As mentioned in the Response to Comment LA-11-2 and described in Section 5, “Conservation Plan” of the HCP, symbolic fencing would be installed at occupied sites at the beginning of each nesting season and removed by September 15. Fencing could be removed sooner (July 15th) if no successful nests or broods were observed in the nesting area. The extent of the fencing would be determined during development of the site management plan for each SPMA. Both the HCP and the ITP, if issued, would cover a 25-year period from the date the ITP is issued.

Please refer to MR-7 for a discussion of how the HCP and Recovery Plan are related. The success of nesting would be evaluated each year to determine if the specific site management activities should be revised to ensure that the HCP conservation measures are effective.

Chapter 6 Non-Government Organization Comments and Responses

Introduction

This chapter includes comment letters submitted by non-government organizations and responses to the substantive comments. Ten individual comment letters were received during the public comment period from non-government organizations. A copy of each comment letter is presented with the substantive comments marked and individually identified. The responses to these comments follow each comment letter. In some cases, responses were not considered necessary. Changes made as a result of the comments were incorporated into Volume I of this Final Environmental Impact Statement (FEIS) and the habitat conservation plan (HCP) as indicated in the responses.

Comment Letter NGO-1

NGO-1



Audubon Society of Corvallis

A Chapter of the National Audubon Society

P.O. Box 148
Corvallis, OR 97339

Nov. 15, 2007

Laura Todd
Newport Field Office, U.S. Fish & Wildlife Service
2127 SE OSU Dr.
Newport, OR 97365-5258

We are writing in support of the Habitat Conservation Plan for the Western Snowy Plover that was recently posted for public comment. We agree that effective management is needed to help this threatened population of plovers recover. The proposed restrictions on some beach activities, notably dog-walking and kite-flying, in some fairly restricted areas of beach do not strike us as an undue burden to place on people to help the plovers recover. We too enjoy the beach, including these activities, but to help the plovers, we are willing to do these things in the adjacent beach areas in which they would be allowed.

So we urge you to approve the Habitat Conservation Plan as written and put it into effect.

Sincerely,

Christopher Mathews
Christopher Mathews, President

John W. Gayford
Chloe Jull
Harriet F. Adler
Willi M. ...
Jim Jansfield
Ruth Miller
J. Coy Butte
Marquet Denison
Caryn J. Powers
Deanna McKinney
Judith L. Paul
Ann L. Paul

Rebecca Schreiber
Matt T. Lee
Briette McBride
Molly A. Monroe
Jenise A. Hadfield
Eric A. ...
Susan J. Brown
Freda J. Ramsey
Reid M. ...
Dawn A. Jones
Rebecca Garnett
James E. Faulkner
Paul Hartill
Laurel G. ...

Shirley T. Campbell
Chipp A. Hamm
Karen F. ...
Patricia Amy ...
Paula ...
Diana ...
Elaborah Z. Bella
Dip K. ...
RECEIVED
NOV 27 2007
By _____

Comment Letter NGO-2

NGO-2	
 <p>"Gaines, Eleanor" <eleanor.gaines@oreg.onstate.edu> 01/03/2008 02:15 PM</p> <p>To: <fw.fordhcp@fws.gov> cc: Subject: Comments on OPRD's Snowy Plover HCP and DEIS</p>	<p>I would like to make the following comments/suggested changes to the Snowy Plover HCP and Draft EIS:</p> <p>1) Snowy Plovers have nested at China Creek, north of Bandon State Natural Area for the past 3 years. It is reasonable to assume they will continue to nest there despite ongoing human disturbance. Plovers have not been documented nesting at Pistol River since monitoring began in 1991. It would make sense to switch Pistol River (a non-breeding location) for China Creek (a known breeding site) in the HCP. China Creek has the added benefit of being adjacent to Bandon SNA. Since plovers nest all along this stretch of beach (see Fig. 8 in the 2007 Snowy Plover monitoring report - Lauton et al. 2007), the Bandon SPMA should be expanded north to include China Creek. I believe erecting ropes and signs after nesting has occurred, in an area that has supported nesting plovers for several years, is an inadequate response.</p> <p>It seems a far better use of limited resources to protect the birds at existing sites than to begin conservation measures at sites that do not yet have plovers, and perhaps never will. To the list of Conservation Criteria in section 5.1.3 of the HCP, I would add: Conservation action should be taken at sites that currently support nesting plovers before beginning management at new, unoccupied sites.</p> <p>2) I do not think that recreational compliance monitoring is adequately addressed in the HCP. OPRD states in the plan that they will conduct compliance monitoring (section 5, pg 22), but they are not clear what will happen if compliance with their regulations is found to be low. What level of compliance is expected? How will OPRD (and USFWS) know that the public is following the rules laid out in the HCP? And if it is determined that the public is not complying with the regulations laid out in the HCP, does that mean that OPRD is operating outside its ITP? Is OPRD required to meet some level of compliance for the ITP to remain in effect?</p> <p>There needs to be some assurance from OPRD that the public is actually following the management restrictions or they are meaningless. To date there has been a problem with the public's compliance with beach restrictions. Dogs on the beach is just one example of this - OPRD has had a terrible time enforcing leash laws. OPRD should be required to enforce their regulations at some basic level, and this needs to be documented. I think this needs to be a bigger part of the plan. Specific covered activities that have been compliance issues in the past include: camping (rarely, but can have big impact), dog exercising, pedestrian traffic, and beach fires (again, can have a big impact when it occurs).</p> <p>3) Habitat restoration and maintenance is part of the HCP (and is listed in the DEIS). OPRD has restored 50 acres of habitat at Bandon SNA and states in the HCP that this habitat is being maintained. However, in the last two years, less than 10 acres of habitat has been dozed each winter, an area insufficient to maintain the 50 acre HRA. As a result, beachgrass is returning to most of this area. If habitat restoration is to be part of the HCP, OPRD needs to make a bigger commitment to maintenance each winter. I am concerned that if they are unwilling to do this now, they will be less likely to do so after the ITP has been issued. Planned future restoration at other OPRD sites makes no sense unless this occupied site is adequately maintained.</p> <p>4) Symbolic fencing - symbolic fencing needs to be installed by March 15 (or as early as weather/tides will allow). This reduces disturbance to nesting birds and makes restricted areas more predictable for the public.</p>
<p>NGO-2-1</p> <p>NGO-2-2</p> <p>NGO-2-3</p> <p>NGO-2-4</p> <p>NGO-2-5</p> <p>NGO-2-6</p>	<p>5) Take Assessment - The data in the life table appears to be incorrect. This is not what was reported in Lauton 2006. This would make the models based on the life table suspect. Beyond that, although I am not well versed in the models used, the results reached in the Take Assessment seem counter intuitive in places, and overall seem to underestimate the take that would occur. I do not think it can be claimed that there is no relationship between recreation activities and the number of nests/eggs produced. This would be very difficult to model because recreational activities would likely cause some nest failures and result in re-nesting attempts (possibly increasing rather than decreasing the number of nests/eggs, but not increasing productivity).</p> <p>6) I do not think the economic analysis of the DEIS is adequate.</p> <p>7) OPRD identifies Alternative 2 as the preferred alternative in the DEIS. However, there seems to be little difference between Alternatives 2 and 3, other than Alternative 3 would potentially allow for more SMPAs/RMAs. OPRD states that Alternative 3 was eliminated as a viable option due to potential conflicts between recreational use and other OPRD management activities. But these conflicts are not discussed further. If OPRD does not wish to consider this option I think they need to demonstrate that there will be conflicts between Alternative 3 and their management activities.</p> <p>Thank you for the opportunity to comment on these important documents.</p> <p>Eleanor P. Gaines Zoology Projects Manager Oregon Natural Heritage Information Center Institute for Natural Resources Oregon State University 1322 SE Morrison St. Portland OR 97214 (503) 731-3070 ext. 107</p>
	<p>NGO-2-7</p> <p>NGO-2-8</p> <p>NGO-2-9</p>

Response to Comment NGO-2-1

As discussed in MR-4 and MR-5, the Oregon Parks and Recreation Department (OPRD) has removed the option for management of the Pistol River snowy plover management area (SPMA) from the HCP. In its place, OPRD will expand the boundary of the Bandon SPMA to the southern edge of the China Creek parking lot to include nesting locations at China Creek, as illustrated in Figure 1-9 of Volume I of the FEIS.

Response to Comment NGO-2-2

Under the HCP, ORPD would install ropes and signs during the snowy plover nesting season (March 15th through September 15th) at occupied sites. As defined in Section 5 of the HCP, an “occupied site” is an area where there has been at least one nest or nesting attempt in the previous 2 years. In addition, at recreation management areas (RMAs) adjacent to Federal lands, an RMA would be considered “occupied” if a nest, meeting the above criteria, is found on the adjacent federally owned land.

In order to balance snowy plover protections with recreational use opportunities, OPRD would not install fencing sooner than March 15th and would remove it no later than September 15th. Detect/non-detect monitoring would be conducted frequently during the nesting season to determine when a site becomes occupied and nest protections would be put in place as quickly as possible. The specifics of determining when and where the restricted areas would be roped off would be developed as part of the site management plan for each SPMA. Management at RMAs would occur through consultation with the U.S. Fish and Wildlife Service (USFWS).

Response to Comment NGO-2-3

As discussed in MR-4 and MR-5, OPRD has removed the option for management of the Pistol River SPMA from the HCP. In its place, OPRD will expand the boundary of the Bandon SPMA to the southern edge of the China Creek parking lot to include nesting locations at China Creek. All areas that currently support nesting populations of snowy plovers and that are found on land owned or leased by OPRD will continue to be protected and managed by OPRD according to the provisions of the HCP.

Response to Comment NGO-2-4

The HCP has been updated to clarify what the monitoring and reporting commitments are. OPRD will continue to fund and/or conduct detect/non-detect

monitoring, breeding population monitoring, and wintering and breeding window surveys. In addition, OPRD will submit an annual report to USFWS that will document OPRD's management actions for the year, the anticipated efforts for the following year, and information on the success and effectiveness of recreational use restrictions implemented under the HCP. This information will be used to evaluate the effectiveness of the HCP on an annual basis. In addition, OPRD has committed to meet with USFWS and Oregon Department of Fish and Wildlife (ODFW) every 5 years to evaluate the program and consider adaptive management changes. Please refer to Section 5, "Conservation Plan" in the HCP for additional information on monitoring and compliance reporting.

Please refer to Section 7, "Implementation, Organization, and Structure" in the HCP, and MR-8 for a discussion of the funding commitments in the HCP, including those specific to enforcement.

Response to Comment NGO-2-5

Approximately 50 acres of habitat were restored at the Bandon SPMA between 2001 and 2003 at an approximate cost of \$60,000 (please refer to Table 7-3 in the HCP). Beach grass was removed from about 30 acres in 2006 and 2007 to maintain this habitat, at an approximate annual cost of \$30,000 (or \$2,000 per acre per year). Please refer to MR-8 for a discussion of the updated funding commitments in the HCP.

Response to Comment NGO-2-6

ORPD would install symbolic fencing (ropes and signs) during the snowy plover nesting season (March 15th through September 15th) under the HCP.

Response to Comment NGO-2-7

The data presented in Table 4 of the Take Assessment Memorandum (Appendix G of the draft HCP) included population data that were modified from the survey data for inclusion in the take assessment model, although this was not originally clear in the public draft of the HCP. The data were modified to exclude Necanicum Spit and Floras Lake and to include surrogate or proxy data for Sutton Beach for the reasons discussed below. This explains the discrepancies between the data in Table 4 and the data presented in Lauten et al. 2006 for number of nests and fledglings.

Data for Necanicum Spit and Floras Lake were excluded because the recorded occurrences of snowy plovers at both of these sites were sporadic from 2000 to 2006. With such sporadic data, it was not possible to model the population response to

other variables and so these data were excluded. Data collected at Sutton Beach did not include the number of eggs or the number of young that hatched during each year. However, because other data collected at Sutton Beach provided meaningful information that could be used to better understand a “poorly performing” site, surrogate or proxy data for the number of eggs and number of young hatched each year at that site were created based on similar relationships among life stages at other sites.

The HCP has been updated to include two tables, one with the actual population monitoring data (Table 4a, which includes data through the 2009 breeding season) and one with the modified data used in the take assessment analysis (Table 4b). Table 4a has been corrected to show the actual data, including data from Necanicum Spit and Floras Lake. Table 4b presents the modified data used in the model, which excludes Necanicum Spit and Floras Lake and includes the proxy / surrogate data for Sutton Beach. This information does not change the results of the model, but has been presented for clarification.

Response to Comment NGO-2-8

Please refer to the Response to Comment LA-5-3 for a discussion of the methodology used to complete the socioeconomic analysis in the FEIS.

Response to Comment NGO-2-9

Section 8 of the HCP characterizes OPRD’s stated reasons for not proposing management of several OPRD-owned areas under the HCP, including SPMA’s at Nestucca Spit and Pistol River, both of which would be managed under Alternative 3. However, OPRD’s considerations have not precluded USFWS from evaluating Alternative 3 in the EIS. A detailed discussion of the potential effects of all of the alternatives, including specific recreational use conflicts associated with Alternative 3, are provided in Chapter 3 of Volume I of the FEIS.

Comment Letter NGO-3

NGO-3
NGO-3



<deveysage@verizon.net>
01/03/2008 04:37 PM

To: FW1ORDHCP@fws.gov
cc:
Subject: OPRD HCP DEIS

Dear USFWS

Attached is a Word Document with our comments on the Draft HCP and EIS for the Western Snowy Plover in Oregon.

Thank you
David Lauten and Kathleen A. Castelein
Oregon Natural Heritage Information Center


deveysage@verizon.net HCP Comments.doc

30 Dec 2007

To: US Fish and Wildlife Service and Oregon Parks and Recreation Department

RE: Comments on the Draft Habitat Conservation Plan and Environmental Impact Statement for the Western Snowy Plover

From: Kathleen A. Castelein and David J. Lauten, Oregon Natural Heritage Information Center, 58134 Seven Devils Road, Bandon OR 97411, deveysage@verizon.net, 541-290-8952

Overview: Below we provide comments on the Draft HCP and EIS for the Western Snowy Plover along the Oregon coast. Our comments are personal and do not necessarily reflect the opinion of the Oregon Natural Heritage Information Center.

Background: We both currently are employed by the Oregon Natural Heritage Information Center, Institute of Natural Resources, Oregon State University. We are Faculty Research Assistants, and we have been conducting field monitoring of Oregon coastal Snowy Plovers since 1997. We have completed 11 years of fieldwork with the plovers, and have been monitoring plovers in 11 of the 18 years of plover monitoring. We also coordinate, edit, manage, and analyze all data pertaining to Snowy Plovers on the Oregon coast. We have authored and co-authored 11 annual Snowy Plover monitoring reports, plus several other papers related to plovers including an analysis of the impacts of the New Carissa spill on plovers, a winter monitoring paper, an enclosure analysis paper, a five year review of the predator management program and its effect on plover productivity, and we are currently working on publishing a paper on plover productivity.

Overview: After thoroughly reading the draft HCP and EIS, we believe there are a number of issues that are not adequately addressed and fail to ensure sufficient and adequate protection for the coastal Snowy Plovers. We also believe that there are a number of discrepancies within the document that need to be sufficiently addressed and corrected before further consideration of the alternatives. We are also very concerned about the ability of OPRD to carry out certain actions and fund certain management activities when past and current OPRD actions have not been adequate in terms of funding and protecting plovers at the only state park that currently has nesting plovers. We conclude that the HCP and EIS needs to be significantly revised and strengthened. Below we comment more directly on the documents, and further explain our position.

HCP Comments

General Comments
There are four main issues that we believe OPRD needs to clarify and/or further address in a revised document:

1. Bandon SPMA and New River

<ol style="list-style-type: none"> 2. Off leash dogs 3. Appendix G- Chapter 3 Population performance 4. Funding 	NGO-3	<p>document contains little information on the number of staff (both OPRD and OSP) and how many hours they are intending on monitoring the beach. Current levels are not adequate, and adding sites will only add work to the current level of employees. OPRD has not adequately funded OSP to patrol the beach currently and there is little information in the HCP to indicate that actual law enforcement levels and funding will increase. There are serious concerns with law enforcement about enforcing current and future dog rules. OPRD has not in the past strictly enforced the current dog regulations. If the rules are not going to be enforced by OPRD and OSP, or inadequate funding and staff are available to enforce the law, there is little reason to create it. The public is aware that early in the morning, late in the evening, and off hours, there is little chance that they will be seen or cited for any dog violations. Currently the public does not take the leash laws seriously, and unless OPRD decides to become much more strict with enforcing the law (currently the beach rangers they have hired have no enforcement capability), the public will continue to abuse the rules. OPRD will have to make a serious commitment to enforce the law and then follow through with court appearances. There is no track record that OPRD will do so.</p>	NGO-3
<p>General comment about the overall document: there is inconsistency regarding the data used throughout the document. Certain sections of the document use the data through 2006, while other sections of the document use data only through 2004. The reasoning is not clear as to why this is the case. The most current data should be used throughout the document.</p>	NGO-3-1	<p>Appendix G Chapter 3 Population Performance- Much of this chapter is based on Table 4, Life Table for All Snowy Plover Monitoring Sites within the Covered Lands. More than half of the numbers in the table are incorrect. It is not clear what sources these numbers were derived from, but since the numbers are incorrect, the remainder of the chapter is incorrect. It would be best if the calculations were redone with correct numbers.</p>	NGO-3-5
<p>Bandon SPMA- In reviewing the document it appears OPRD is considering the Bandon SPMA to be 1.5 miles long. We requested OPRD staff to provide distances to and from certain locations at Bandon SNA. We were informed by OPRD staff that the distance from the China Creek parking lot to the mouth of Twomile Creek/New River is 2.2 miles. Plovers have nested and continue to nest along the entire distance of the beach from China Creek to the mouth of Twomile Creek, including the HRA. The document does not include the area from China Creek to the north end of the document defined Bandon SPMA. There is no acknowledgement of the fact that this area has been and continues to be a productive nesting area for plovers. The China Creek area has been and continues to be an important plover nesting area. The China Creek overwash area has been a more productive plover nesting area than the entire stretch of Sutton/Baker Beach, which is considered a RMA and an occupied nesting area. The China Creek area has produced 14% of the total number of nests found at Bandon SNA since 1991, and has produced 10% of the total number of fledglings for Bandon SNA, excluding the state owned land south of Twomile/New River (that is still part of the Bandon SNA). The HCP states that New River is owned by Coos and Curry counties, private landowners and the BLM, but fails to mention that OPRD owns a significant and important stretch of the beach south of the Twomile/New River mouth. The distance from the mouth of Twomile Creek/New River to the south boundary of OPRD land on the "New River spit" is approximately 1.0 mile. There is no acknowledgment by OPRD that they own that land anywhere in the written document, nor of the significance of this area for nesting plovers. Since OPRD owns this land, it is part of the Bandon SNA, and it has had nesting plovers on it since monitoring began in 1990, the area should be considered part of the Bandon SPMA and not a RMA that is owned by other landowners.</p>	NGO-3-2	<p>Funding: The funding levels at Bandon SNA currently have been inadequate. Throughout the document OPRD states that 50 acres of the Bandon HRA will be maintained. This has not been the case. Within the past two winters (2006 and 2007), OPRD spent nearly \$30,000/year to work on the Bandon HRA, yet in both years only about 10 acres were maintained (Larsten et al 2006 and 2007). At least 25 acres has degraded to a point of thick grass and plovers can no longer nest on it. Another 20 acres have been lost to the mouth of Twomile Creek/New River. There is no track record that OPRD can and will maintain 50 acres of HRA at Bandon SNA. Furthermore, in Table 7-3 on page 7-7, the amount of funding for HRA work is estimated at \$15,000. This is insufficient, and based on the amount of funds spent at Bandon SNA over the past two winters, it is clear that this level of funding is grossly inadequate. If the amount of funds in Table 7-3 are insufficient, it calls into question the estimated amount of funding that it will take to create new habitat on the north coast and monitor that habitat. In general, the amount of funding has not been sufficiently addressed, and we believe the total amount of funding for the entire HCP has not realistically been stated or considered.</p>	NGO-3-6
<p>Concerning the Off Leash Dog Rule: This rule will be very difficult to enforce unless OPRD intends to have staff on the beaches that have enforcement authority and are present a considerable amount of the daylight hours. The present rule is 'dogs on leash' at occupied Snowy Plover nesting beaches. This rule has not been strongly enforced during the breeding season and the public has reacted accordingly. Very few people have their dogs on leash until they are asked to comply. There have been numerous occasions ORNHIC staff has had interactions with uncooperative dog owners and no citations, or at best very few, have been given out at Bandon SNA regarding this issue. This sends a message to the public that unless OPRD staff is on the beach they can let their dogs off the leash. OPRD has not enforced their current rule, and we believe the situation will not significantly improve at the funding and personnel levels stated in the HCP. The</p>	NGO-3-4	<p>Specific comments on HCP</p> <p>Below are all comments taken from the document that we believe either are not correct, need clarification and/or revision. The first statement is from the HCP, and below the statement is our response. It is completed by section and page.</p>	NGO-3-7

	NGO-3		NGO-3
p. 3-5 Camping- "When camping does occur, it generally occurs on the Central coast beaches where remote sites can be reached by driving." This statement is a broad generalization and does not apply to the southern coast. Most of the camping on the south coast is done by back packing.	NGO-3-8	evolved into smaller mini-exlosures that are now used due to ease of transport and speed of installation." The design of the exclosure has changed in response to predators learning how to get into exclosures, and not due to transportation or installation. Ease of transportation and installation were considered and included in the thought process of design of the mini-exlosures (MEs), but were mostly a result of the ME and not causes to create MEs.	NGO-3-13 continued
p. 3-6 Dog exercising- "At Sutton/Baker Beach, Dunes Overlook/Tahkenitch Estuary, Coos Bay North Spit, and Tenmile Estuary nesting areas, dogs must be leashed during the nesting season." Currently the level of enforcement of dogs on leash on these beaches is very limited to nearly none. Most of these beaches have very few to no signs informing the public about leash laws.	NGO-3-9	p. 4-4 Brood rearing- "Along the Oregon coast, hatching occurs from mid-April through mid August, and the chicks fledge approximately one month (mean=27 days) after hatching (Lauten pers.comm. 2007)." It is unclear to us how the "mean=27" was determined. To our knowledge, we have never calculated a mean fledge date, and if we did, it would not be 27 days. We are unsure where this statement came from, despite being a personnel communication from Lauten. We believe we have been misquoted. A chick is fledged at 28 plus days.	NGO-3-14
p. 3-7 Near shore activities/Surf sports- "Windsurfing is markedly higher on the far South coast, where prime destination sites such as Pistol River and Floras Lake are nationally well known and heavily used. These activities occur year-round and typically entail people moving to and from the surf from the dry sand portion of beaches. These activities are not likely to occur within or near a SPMA or RMA. However, human movement to and from the water, as well as gear washing up on the shore, could disturb snowy plovers". People are currently wind/kite surfing at Bandon SNA during the plover nesting season near the access point from the parking lot at China Creek, where plovers are actively nesting. People use the dry sand to move to and from the parking lots and set up their equipment before getting into the water. Off leash dogs are sometimes associated with these people while they are in the water even though signs have been posted to inform people of the restriction.	NGO-3-10	p. 4-6 "Distribution and Abundance- Wintering locations in Oregon consist of the following sites: Bayocean Spit Sutton/Baker Beach Siltcoos Estuary/Dunes Overlook/Tahkenitch Tenmile Coos Bay North Spit Whiskey Creek to Coquille River Bandon, and New River"	NGO-3-15
p. 3-8 Driving- "Driving occurs primarily in the wet sand portion of the beach, except at access points to the beach." It would be best to qualify this statement, as our experience does not match this statement. What data supports this statement? We have found that many people in fact drive on the dry sand, through the wrackline where birds may be roosting or foraging. At Tenmile and Coos Bay North Spit, during the nesting season when broods are on the beach, we have repeatedly documented illegal driving on both the wet and dry sand.	NGO-3-11	Bayocean spit is not a regular wintering site anymore and has not been since about 1994 (although 2 plovers were found here in during Christmas Bird Count 2007). Plovers are noted there occasionally, but rarely in winter in past recent years. Plovers have been wintering at the north side of the Siuslaw River, which is not included in this list. Whiskey Run to the Coquille River is not a wintering site and to our knowledge has never been a wintering site.	
p. 4-2 Breeding- The second paragraph on the page lists the current breeding locations. New River is listed as "the New River spit area". This needs to be well defined. What is the "New River spit"? Is it the area from the mouth of the river to Coos County land? Or to private land? Or does it include the entire length from the mouth of the river to Floras Lake? The plovers nest from the mouth of Twomile Creek/New River south to Coos County land, on private land, on BLM land, and formerly in the Floras Lake area. OPRD owns about 1 mile of the "spit" at New River, then Coos County owns a section of the beach, private landowners own a section and the BLM manages a 160acre HRA.	NGO-3-12	p. 4-7 Site Fidelity- "Although there are no published data on winter site fidelity of birds from coastal Oregon, it is likely that they exhibit fidelity similar to that of birds from interior Oregon. After 166 adults and 204 chicks were banded at Lake Abert in interior Oregon, 15% of the banded birds were relocated on their wintering grounds in California." Comparing the interior and coastal wintering populations may not be appropriate. "The Distribution and Abundance of the Western Snowy Plover along the Oregon Coast in winter 1999-2000, with an assessment of potential impacts to plovers from the New Carissa Incident" by Lauten et al., 2001 is an unpublished document submitted to the Coos Bay District BLM. In this document, in the discussion section, there is a paragraph pertaining to winter site fidelity. "Of the 21 adult males and 23 adult females that wintered at sites along the Oregon coast in both '98-'99 and '99-'00, all wintered at the	NGO-3-16
p. 4-4 Egg laying, Clutch size and Incubation- "Exclosures initially included large boxes made of fencing material designed to prevent access to the nest by predators. These	NGO-3-13		

	NGO-3		NGO-3
<p>same location both years indicating that the adult plovers have very strong inter-annual fidelity to individual wintering sites." That same paragraph continues with the concept of winter site fidelity, "Strong site fidelity to wintering sites is further demonstrated by the eight adult plovers that wintered at the same sites in both '98-'99 and '99-'00, even though they bred elsewhere, presumably in Washington or California."</p>	NGO-3-16 continued	<p>p. 4-24 Table 4-8 - The title states 1990-2004 yet the data in the table goes through 2006. The bottom paragraph of that same page references a "2002 study... indicates the fencing around the HRAs at CBNS are an insufficient barrier for foxes, raccoons and skunks, as they were able to climb over or dig under fences (Little 2002)." Little may have made a statement pertaining to the adequacy of the fence but there was no rigorous study completed. The statement in Little's report would have been a personal observation.</p>	NGO-3-23
<p>p. 4-13 Current Breeding Trends- Oregon Coast- the second paragraph needs Sutton Beach inserted as a nesting site for 2006, making it eight nesting locations, not seven.</p>	NGO-3-17		
<p>p. 4-16 Non-Native Vegetation- A paragraph lists non-native species that have invaded the coastal dunes. In that list are South African iceplant (<i>Carpobrotus edulis</i>), sea rocket (<i>Cakile maritima</i>), and iceplant (<i>Mesembryanthemum sp.</i>). On the eight active nesting areas there are no known populations of either iceplant. Both non-native species of searocket (<i>Cakile edentula</i> and <i>maritima</i>) occur at all the sites, and there is no "r" in <i>Cakile</i>.</p>	NGO-3-18	<p>p. 4-25 Table 4-9 This table refers to the miles habitat restricted/beach. The data is listed annually/beach. Is the data for Tahkenitch and Bandon correct? At Tahkenitch there is a north and south side and the habitat has changed over time but it shows a consistent 1.30 miles of restrictions since 1997. At Bandon the table shows consistent restrictions of 2.20 miles since 1997. As noted at the top of our comments, the distances at Bandon SNA are still in some dispute. OPRD staff suggests the distance from China Creek to Twomile Creek is 2.2 miles, and there is another mile of state owned land on the south side of Twomile Creek. To our knowledge, current plover management restrictions at Bandon SNA have been in flux, but for most years restrictions have been in place from China Creek to the south end of the Bandon SNA, including the New River section. That is more than 2.2 miles, according to OPRD staff and our own mileage calculations. In more recent years OPRD has relaxed some of the restrictions around China Creek and Christian Camp trail, effectively reducing some of the distance. It is not clear what the true amount of miles are that are restricted at Bandon SNA, which indicates that this table is not accurate.</p>	NGO-3-24
<p>p. 4-16 Resource Extraction- "Alternatively, dredge materials generated from dredging activities can be placed on the beach to enhance snowy plover habitat. Dredge material at Coos Bay North Spit had provided an important breeding and wintering site for many years." Dredge materials have never been placed on any of the known plover nesting beaches in Oregon. At Coos Bay North Spit, dredge material was placed east of the foredune, after which the plovers began nesting on the habitat and continue currently during the nesting season. It continues to be an important breeding area but is not known as an important wintering area.</p>	NGO-3-19		
<p>p. 4-18 Predation- The document states California gulls and black rats are known predators of plover nests. California Gulls are not a known regular predator of plover nests in Oregon, and there are no documented nest depredations by any rat in Oregon.</p>	NGO-3-20		
<p>p. 4-21 Predator Management- "Field researchers believed that introduced red fox populations suppressed fledgling success from Bandon SNA to Floras Lake. Both naturally occurring and introduced red fox were removed from this area". There is no documentation that there are "naturally occurring red fox" in this area; if there is documentation, it should be cited to substantiate this statement. The next paragraph states that APHIS was contracted to conduct predator management at Bandon, New River and Coos Bay North Spit. It says corvids were the primary focus of this effort. This statement is only partly correct. Red fox were and are as much as focus as the corvids, however there are fewer on the landscape therefore fewer are removed.</p>	NGO-3-21	<p>p. 5-10 Nests Outside of Snowy Plover Management Areas- "If a snowy plover should nest outside occupied or unoccupied SPMA/RMA. OPRD will work with the USFWS and the landowner to monitor the nest, install exclosures around the nest, and provide a buffer of 50 meters radius around the nest to reduce the potential for human disturbance." The document again on p. 5-11 discusses using an exclosure and 50-meter buffer around a nest to protect the nest from predators and human disturbance. Setting up a roped buffer around a nest to deter recreationists is a good idea but exclosures are set up to reduce depredation by predators not necessarily to deter disturbance by people. It is our experience that erecting exclosures does not deter people but in fact attracts people. We also believe that it is best to leave nests unexclosed so that humans do not know the location of a nest. Furthermore, and very importantly, if plovers show up outside a SPMA, there is little reason nor logic to exclose the nest. Plovers will return to a nesting area and location based on the success of previous nesting attempts (pers. observations and unpublished data). Regardless of the outcome of the chicks/fledglings, it is the outcome of the nest that determines whether plovers will return to an area to attempt to nest again. If plovers show up outside a SPMA, and attempt to nest, any found nest should NOT be exclosed, as this would encourage a successful hatching which would encourage those plovers to attempt to nest there in the future. If OPRD does not want plovers nesting outside SPMA, or establishing new nesting areas outside current or planned SPMA, then OPRD should not exclose any nest found outside a SPMA. Furthermore, if OPRD does exclose a nest outside a SPMA, this is likely to lead to recreational conflicts, because once the nest is hatched, the brood will begin to</p>	NGO-3-25
<p>p. 4-23 Predator Exclosures- "Currently, exclosures are approximately 50-66 feet square, made of 2x2 or 2x4 inch mesh, with twine, blueberry netting, or a "hot wire" around the top perimeter." This statement is incorrect. Large exclosures have not been used in several years, only mini-exclosures, reference Lauten et al., 2006.</p>	NGO-3-22		NGO-3-26
			NGO-3-27

<p>move around the beach. OPRD may then be in a position of having to restrict recreation at a potentially new nesting site in the future, which is exactly what the HCP is attempting to avoid having to implement restrictions in places that are not being managed for plovers. In addition, automatically placing an exclosure around a nest found outside a SPMA is not biologically sound. Nests should have a chance to hatch without human interference. Exclosure use is an emergency tool. Exclosure use is used to help prevent excess nest depredation. It should never be automatic that an exclosure be erected. Exclosures should be erected when it has been identified that predation is an issue that is leading to depressed nesting success. If exclosures are automatically installed, then one immediately identifies the location of the nest to all humans and some predators. Exclosures may in fact attract more humans and predators then preventing them from depreddating the nest. Adult plovers with exclosed nests are subject to potential depredation by attacking predators. Exclosures can be very dangerous for incubating adult plovers. Therefore there is little to no logical argument why a plover nest outside a SPMA would automatically have an exclosure installed around it. It would be more biologically sound to monitor the nest, rope the area to prevent humans from approaching the nest (humans can read, and therefore exclosures should not be considered a human deterrent the ropes and signs should be a significant enough human deterrent if humans enter a roped and closed area, it does not matter whether the nest is exclosed or not, a human can destroy the nest if they choose), and let the nest have a natural outcome. If the nest is unsuccessful, then it is outside SPMA's and there is no issue and likely the plovers may not try there again. If the nest is successful, and plovers return to the area to nest again in the future, and are successful again, then this indicates the area would be a potentially good nesting area, and should be considered for future management. Furthermore, ORNHIC staff has been working extremely hard to eliminate exclosure use (see Lauten et al 2006b, 2007), so to suggest that exclosures would be used automatically is going against the overall direction of the current monitoring program.</p>	<p>NGO-3</p>	<p>NGO-3</p>	
<p>p. 5-13 Public Use/Recreation Management Adequacy of Recreational Use Restrictions at Unoccupied SPMA's "Discussions between OPRD and the snowy plover working group revealed that lack of adequate habitat is considered to be the limiting factor at the Columbia River South Jetty and Nehalem SPMA's, and that predator management and enforcement of current recreational use restrictions are the limiting factors at the Necanicum SPMA. It was also noted if vehicle use and keeping dogs on-leash were controlled adequately, then snowy plovers would likely occupy the new sites." We are part of the snowy plover working group and neither of us remembers this discussion. It may have taken place with some part of the group. Regardless, this is a very debatable matter. What "limits" plovers has not, to our knowledge, been determined, and in our discussions with other plover biologists and researchers, there is some debate as to what limits plovers. The suggestion that adequate habitat is the limiting factor at Columbia River and Nehalem is at best a guess. This would suggest that we could create habitat and plovers would show up and successfully breed and nothing else would "limit" them. This is not established with any data nor is there any area we can point to that this is the case. The suggestion that off leash dogs and vehicle use are the limiting factors at Necanicum is also just a guess, at best. Again, this suggests that simply removing dogs and vehicles from Necanicum would result in plovers</p>	<p>NGO-3-27 continued</p>	<p>returning and successfully nesting. This is very unlikely. If this were the case, one might expect that plovers would have been seen here more frequently, prospecting the site but being forced out of the site by vehicles and dogs. In fact, there have been two nesting attempts here since 2000, one of which was successful, indicating that maybe vehicles and dogs have nothing to do with limiting plovers at this site. Finally, in this document, it is clear that sites west of Portland and on the north coast have the highest recreational use, yet there is nothing in this statement to suggest that recreational use at Columbia or Nehalem has any limiting effect on the plovers. Without adequate studies and data into what limits plovers, this statement is dubious, not based in fact, and generally fraught with problems.</p>	<p>NGO-3-31 continued</p>
	<p>NGO-3-28</p>	<p>NGO-3-32</p>	
	<p>NGO-3-29</p>	<p>p. 5-16 Natural Resource Management-Public Outreach and Education- OPRD recruits and train volunteers to serve as docents to educate the public. The document states OPRD will station these individuals at appropriate access points for at least 20 hours. OPRD and other agencies provide people that educate and outreach during the nesting season annually. At the Bandon SPMA the docents are asked to complete 20 hours of outreach each week. We recommend additional hours per week during the nesting season. Long daylight hours allow the public to recreate anytime of day from early in the morning to late in the day, and 20 hours of volunteering per week, or about 10% of the weekly hours or about 20% of the daylight hours, is insufficient.</p>	<p>NGO-3-33</p>
	<p>NGO-3-30</p>	<p>p. 5-19 Habitat Restoration- "It is anticipated that recreational use along with the other covered activities would occur during a short period of time, usually outside of wintering areas. In addition, the normal behavior of wintering plovers is to flock and avoid disturbance. It is anticipated that the effects on wintering populations would be within the normal range of disturbance. Given these factors, disturbance is likely to be minimal and unlikely to result in take of wintering snowy plovers. This paragraph is confusing. It is under the section of "Goals and Actions of Snowy Plover Management Measures. It is questionable if there is sufficient, or any, data to support the statement relating to "normal range of disturbance". What is the "normal" range? There has been little to no studies of wintering plovers, especially in Oregon. There is little to no data about how often they are disturbed, to what degree, and what affect it has on the plovers. To suggest that any activity would or would not contribute to the "normal" disturbance of plovers is questionable since there is no baseline data.</p>	<p>NGO-3-34</p>
	<p>NGO-3-31</p>	<p>p. 5-19 Habitat Restoration- "The acreage and location of habitat restoration efforts will be specified in a site management plan to be developed by OPRD for each SPMA with a maximum of 40 acres at each SPMA." There are several concerns about this statement. One, there is no minimum acreage. OPRD can "create" one acre of restoration, and would be within the confines of this document. Two, there are no studies to indicate what amount of acreage would lead to adequate plover nesting area. If OPRD restores only 20 acres, and no plovers arrive and nest, is it because they did not create enough habitat? What size is sufficient and how is that determined? Furthermore, the smaller the area, the more plovers are concentrated, potentially making it easier for predators to hunt the area. Any habitat restoration that is attempting to restore a successful nesting area for plovers should be as large as feasible,</p>	<p>NGO-3-35</p>
			<p>NGO-3-36</p>
			<p>NGO-3-37</p>

	NGO-3		NGO-3
and putting a cap on the maximum numbers of acres does not make biological sense. Have the predator impacts on small restoration areas been studied or addressed for this HCP? What the maximum potential is for a plover population at any one site should be determined by the specifics of a site and the available habitat, not an arbitrary number.	NGO-3-37 continued		NGO-3-41 continued
p. 5-26 Public Outreach- OPRD states they will provide programs and/or information about the snowy plover to community groups, chambers of commerce, and schools groups, and recreational enterprises where the opportunity arises. We are concerned about the amount of work this entails and whether OPRD has the current staff to support such a large effort. The document notes that OPRD intends on spending in house staff and time on this aspect of the program and does not add significant new funding to the effort (see Tables 7-3, 7-5). At the present time OPRD is providing evening slide show programs seasonally at several of the coastal state parks. OPRD has been involved in plover management for 18 years and in our opinion they have never dedicated adequate funding or resources to outreach. OPRD has an educational branch, but in nearly 20 years they have yet to provide a large scale education program as suggested in the document, nor do they have a local program with the Bandon schools where plovers have been nesting for decades. We believe to create school programs and provide materials for multiple types of users would be a nearly full time job (total in kind spending listed on the tables is about one staff members full time salary). There is no indication in the document or in past OPRD history that they have shown they will adequately fund, staff, and create such a program. We do not consider the proposed funding level for additional outreach (\$500) as sufficient.	NGO-3-38	NGO-3-42	
p. 5-26 Law Enforcement/Beach Patrol- OPRD states where violations occur, warnings and/or citations will be issued. Additionally, OPRD will take proactive action to contract with the OSP to provide additional enforcement support. The document states that OPRD will enforce the rules, however, there is little history to support this. Currently, violations at the one state park with nesting plovers have been well documented by ORNHIC staff. Little has ever come of the documentation. Warnings have rarely been given out, and citations on OPRD land have almost never been issued. OSP has rarely and occasionally patrolled the beach at Bandon. The number of personnel on the beach remains inadequate. Volunteer, law enforcement, and park staff hours spent at the park are a fraction of the amount of hours in a week and in our opinion inadequate. If OPRD wants to be proactive it could dedicate more agency time/money to put staff and/or docents on the beaches for more hours than they are at this time. The public ignores most of the signs and they know there is little, if any, enforcement on the beach. Furthermore, the original draft HCP stated that three law enforcement officers would be hired to patrol the beaches. OPRD then reneged and hired three beach rangers, none with enforcement capability. OPRD states the beach rangers will get enforcement capabilities, but that has yet to happen. OPRD staff has stated in working team meetings that they are generally against enforcement and would prefer education. There are few guarantees that OPRD will enforce the law. OPRD states they will work with OSP, however there are no additional funds for law enforcement above what is already being spent, according to Tables 7-3 and 7-5. We believe the amount of funding for law enforcement listed in Table 7-3 is severely inadequate. The amount	NGO-3-39	NGO-3-43	
	NGO-3-40		NGO-3-44
	NGO-3-41		NGO-3-45
		listed in the table is enough for one or two law enforcement officers for several months. We have had inadequate law enforcement for years and it has been an ongoing problem. With additional sites being created, we do not believe that neither the funding nor the number of law enforcement officers is sufficient. The tables do not indicate OPRD will hire law enforcement officers to patrol unoccupied SPMA's. How will the rules be enforced? Will OSP be willing to enforce laws and rules that they are uncomfortable with or that will take them to court? Will OSP want to go to court to fight off leash or dog violations? According to law enforcement that we have spoken to, they are generally not positive about handing out dog violation tickets, partly because they know most judges will throw them out. Law enforcement has stated that they are reluctant to bring a dog case to court because if they lose this might set precedent. We believe there is insufficient funding and staff levels in this document to adequately enforce dog rules. New regulations will be meaningless if there are not sufficient law enforcement officers to patrol and enforce the law. The public will quickly realize that law enforcement is lacking and violations will continue to occur, as they do now at almost all current active nesting sites, unless there is sufficient funding and coverage.	NGO-3-46
		p. 5-27 Non-Breeding Season Management- "Goal: Enhance survival of the wintering population of snowy plover. OPRD will coordinate with ODFW and USFWS to identify minimization measures to protect wintering snowy plover and will implement such measures, as necessary, as long as the measures do not significantly disrupt otherwise legal recreation activities on the beach." This would be a difficult task without having more winter data collected, therefore agencies would have to finance winter work in order to complete this goal. If OPRD finds that potential winter plover management will interfere with other legal recreation activities, does that mean human activities supersede plover management? This statement suggests that even if the ATV riding at the breach at Siltcoos is found to be detrimental to plovers, but it is legal, it will continue.	
		p. 5-29 Snowy Plovers Nesting Outside Snowy Plover Management Areas- If snowy plovers begin to nest on OPRD land outside a SPMA consistently and predictably (three years in a row), and there is nesting success at least two of the three years, OPRD will consult with USFWS to consider adding the site to the list of SPMA's with a list of conditions. This is what has occurred at Bandon SNA in the China Creek overwash area, but this has not been addressed in this document and the area is not part of the Bandon SPMA. Plovers have been documented nesting at China Creek since 1991. The first successful nest attempt was in 1997. The first fledgling occurred in 1998. Plovers have nested at China Creek the past three years in a row successfully. Each year they have successfully produced fledglings (2005-2007). Since 1991 there has been 26 nest attempts, of which seven have hatched. Bandon Beach north of Twomile Creek has had a total of 175 nest attempts, and China Creek has had 26 of those nests, or 14% of the total nests at Bandon Beach. Seventy-one fledglings have been produced from Bandon north of Twomile creek and China Creek has produced seven of those, or 10% of the total fledglings for that beach. These numbers are more than Sutton Beach has produced for the entire stretch of beach since 1990. Yet Sutton Beach is considered an active nesting area and	

<p>China Creek is not. The number of nests and fledglings at China Creek is significant. If OPRD is unwilling to protect China Creek south to the north end of the HCP defined Bandon SPMA, will they do so in other locations? Furthermore, there has been inadequate protection of this area by the state throughout the years. Five of the 26 nests (19%) at China Creek have had blatant human disturbance related issues, including a "take" situation of nest 432 in 1997. The nest was found on 19 June; an enclosure was set up on 20 June. The nest was checked on 4 July, and a family was in the dunes just to the north of the nest. On 5 July we returned and found someone dug under the enclosure. Human footprints of an adult and child were inside and outside the enclosure, one egg was broken open inside the enclosure, and the contents were just east of the nest bowl. The two adult plovers were still visiting the nest. We returned on 6 July to find the two remaining eggs had been removed by a human and the nest failed. To our knowledge OPRD has never followed up on any of the vandalism issues at Bandon. Bandon is the only site on the Oregon coast with repeated human vandalism issues around enclosures and nests, yet China Creek has not been included in the Bandon SPMA. There is no logic to this and there is a pattern of lax enforcement.</p>	<p>NGO-3 NGO-3-46 continued NGO-3-47</p>	<p>thoroughly studied. The wintering areas in Oregon range from almost completely undisturbed by humans (New River spit), to disturbed quite regularly (Siltcoos area). In fact, the largest flock (at Siltcoos) appears to possibly be the most disturbed. If there is additional recreational activity in this area in the future, how do we know it is not detrimental and "within the normal range of disturbance" for these birds? When does human related activity in winter become a burden for the plovers?</p>	<p>NGO-3 NGO-3-51 continued</p>
<p>p. 5-29 Success of Nest Enclosures- "Through monitoring efforts, OPRD will evaluate the relative success of nest enclosures in preventing predators from destroying nests and eggs. OPRD will meet annually with USFWS to review nest enclosure monitoring results to determine the relative benefits on a site-by-site basis." "If design adjustments are needed to adequately exclude all predators or are needed to exclude specific predators in the area, OPRD will work with USFWS to make the design adjustments..." Enclosures are just one tool used as part of the predator control program. Throughout this document OPRD appears to put more emphasis on the success of enclosures than other forms of predator control. There is also an appearance of it as a tool to reduce human disturbance. While the USFWS Recovery Plan for snowy plovers does not clearly state that a sustainable population without the use of enclosures will be required, certainly the goals of recovery are to have plovers nesting with much less direct management and hopefully be sustainable on their own. Enclosure use is very time consuming, and has many inherent dangers for plovers. It is not realistic to think that a naturally sustainable population of plovers would have very unnatural nest enclosure program, forever. It is unclear why so much emphasis is being put on enclosure use. In the above sentence that reads, "If design adjustments are needed to adequately excludes all predators..." - excluding all predators is not possible, as small mammals can get through even 2x2 fence material and at some point we would be excluding plovers too!</p>	<p>NGO-3-48 NGO-3-49</p>	<p>p. 6-5 Horseback Riding- "Monitors have documented at least four clutches on Morro Spit, California that were destroyed by horses trampling the nests, during the 2000 and 2001 breeding season...Unleashed dogs are also frequently associated with equestrians." ONHIC field staff in 2000 observed a male snowy plover feigning injury in front of a horse a Sutton Beach, also a popular horse riding beach. We do not believe Nehalem and Pistol River are very good potential sites for snowy plover management. OPRD has stated in the document that Nehalem is a very popular horse-use beach with inland horse trails on the spit. Pistol River has a commercial horseback riding operation conducted by Hawk's Rest Ranch, taking riders out to the park. Without intensive monitoring effort by park staff it may be difficult to have compliance at these sites. Furthermore, in an above section it was stated that adequate habitat at Nehalem was a limiting factor. How do we know that horseback riding there is not a limiting factor?</p>	<p>NGO-3-52 NGO-3-53</p>
<p>p. 6-4 Pedestrian Traffic- "With respect to wintering snowy plover populations, it is anticipated that recreational use along with the other covered activities would occur during a short period of time, usually outside of wintering areas. In addition, the normal behavior of wintering plover is to flock and avoid disturbance. It is anticipated that the effects on wintering populations would be within the normal range of disturbance." What is the "anticipated recreational use" and what is "the normal range of disturbance"? Without a winter recreational use study being completed we have no idea what is "normal range of disturbance". Furthermore, there is little data to show that plovers flock to "avoid disturbance". Plovers flock, but where and why they do so has not been</p>	<p>NGO-3-50 NGO-3-51</p>	<p>p. 9-3 References- Both the 1997 and 1998 reports Castelein et al., OPRD added L.N.Renan on the list of authors, she was not, her name should be removed.</p> <p>Appendix F- This section details the Snowy Plover Recreation Management Area descriptions. There appears to be an inconsistency in the use of the most recent data and reports prepared by ORNHIC. For each RMA, in most cases, this document uses data from 2004. Except for Sutton, all the Forest Service sites have data through 2004 only, but Sutton has data through 2003 only. The BLM sites also only have data through 2004. This document has listed more up to date references and in some cases cites Lauten et al. 2006- The distribution and reproductive success of the Western Snowy Plover along the Oregon Coast-2006. This report has complete tables and files with more current data. There should be consistency with the data used.</p> <p>p. 9- Siltcoos Estuary- "No habitat restoration is needed at this site at this time." This statement is debatable. Define "needed". It is our belief that some of the reproductive issues for plovers at Siltcoos are related to the size of the site, i.e., it is too small. While Forest Service or OPRD may say that no more habitat restoration is needed, this is an agency decision and not a biological one. Furthermore, FS has and continues to maintain habitat at Siltcoos via bulldoze work, which clearly indicates habitat restoration at Siltcoos is still needed. Without habitat restoration, Siltcoos would lose available nesting habitat. In addition, according to maps F-4 and F-5, the area south of south Siltcoos to Overlook, is considered part of the RMA. This area could and should be restored for plover nesting. Part of the nest failure issues on Forest Service sites may be related to the fact that the nesting areas are fairly small, and the plovers have little choice where to nest, especially once they fail. The small nesting areas allow predators to quickly and efficiently hunt these areas. It is our opinion that the area from Siltcoos to</p>	<p>NGO-3-54 NGO-3-55 NGO-3-56 NGO-3-57</p>

	NGO-3		NGO-3
Tahkenitch should be improved and restored along the entire length, thus providing a variety of locations for the plovers to move around and nest. This is analogous to Bandon/New River, which has upwards of 6-8 miles of contiguous habitat, much more like a natural setting. This allows plover nests to be more dispersed and therefore makes it more difficult for predators to key in on the prey source, and thus reducing predation pressure on the plovers and their nests. The reasons that habitat restoration has not occurred from Siltcoos to Tahkenitch are agency driven, and possibly funding related, but not biological. The lack of will to restore more habitat does not translate into "no habitat restoration is needed at this site at this time".	NGO-3-57 continued	p. 1-7 Snowy Plover Monitoring and Enforcement- "OPRD will provide funding to ORNHIC to monitor snowy plover numbers, evaluate habitat, and conduct compliance monitoring." ORNHIC staff completes public outreach and education on the beach when necessary but it is not the field staff's job to conduct compliance monitoring. In previous years OPRD staff had told ORNHIC not to engage the public, and that job was for OPRD staff. ORNHIC has no enforcement capabilities; field staff does report blatant violations in bi-weekly reports, but it is not our job to do compliance monitoring. We are biologists, not recreational specialists.	NGO-3-63
p. 13- Tahkenitch South has no data supplied in this document. No documentation on nesting or number of fledgling is provided. The last year plovers were known to have nested at South Tahkenitch was 2003. It has produced 44 fledglings.	NGO-3-58	p. 2-8 Table 2 Under the site column, should it be Tahkenitch North not South?	NGO-3-64
p. 23 New River- This document states this RMA encompasses 10.3 miles. Does this include the "spit" of New River? The spit is mostly OPRD land and that is part of the Bandon State Natural Area, therefore, OPRD needs to be listed in ownership of the RMA. If it were part of Bandon SNA than it would not be an RMA but a SPMA. Again, this is a central issue to the entire HCP. OPRD needs to adequately address their boundaries at Bandon SNA, and clearly state that they intend on maintaining the habitat on the entire Bandon SNA area, and adequately protect the plovers at the ONLY state park that currently harbors nesting plovers. If OPRD cannot adequately protect the plovers on the only state park that currently has nesting plovers, what indication is there that they will be capable of doing so at other locations?	NGO-3-59	p. 2-9 Table 3 It appears some of the numbers in the "Year Restored" column are incorrect. Sutton is not included in this table at all. Was Dunes Overlook South started in 1998? For Coos Bay North Spit multiple years are listed. Bandon and New River are similar, the work at each of these sites was not completed in 1998, and restoration took several years. p. 2-9 "In other words, it was assumed that the adult birds that were observed on a site were part of the population of birds that were contributing to nest, egg, and chick reproduction. This statement is an assumption that is not true. Not all birds at a site breed at that site. There is ample evidence that not all plovers seen at a site are contributing to the breeding at that site.	NGO-3-65 NGO-3-66
p. 23 Elk River Spit- Restoration work has been completed during the past two winter seasons. This information can be provided for OPRD by private landowners or USFWS.	NGO-3-60	p. 3-1 Table 4- "Life Table for All Snowy Plover Monitoring Sites within the Covered Lands (Lauten 2006)" Chapter 3 (Population Performance) The table heading says Lauten 2006, he did not contribute to this table, his name should be removed. Much of the analysis of Chapter 3 is based on Table 4. Much of the data in that table is not correct. It is unclear where these numbers were derived from. The number of nests, the number of fledglings, and maximum number of adults observed are in ORNHIC's annual report. The number of eggs laid and the number of hatchlings are all incorrect for 2000-2003 and 2006, making the totals incorrect also. Based on this information all the other tables and figures in the chapter are also not correct. This entire section should be redone with correct numbers.	NGO-3-67 NGO-3-68
Appendix G- Technical Memorandum: Take Estimate of the Western Snowy Plover P 1-7 Protections for Nests Outside of Targeted Areas- "OPRD would install a nest enclosure and a 50-meter buffer around the individual nest to restrict recreational activities in the vicinity of the nest." p. 1-8 Success of Nest Exlosures- "Through ORNHIC monitoring efforts, OPRD would evaluate the relative success of nest exlosures in preventing predators from destroying nests and eggs on their property." As previously thoroughly stated above, exlosures are a tool used for predator control and should not be considered a recreational control tool signs and ropes should do the latter, and it is a questionable management strategy to automatically exclose a nest outside of a target area. Some type of outreach specialist may be a more appropriate way to deal with recreational compliance. Considering "the success of nest exlosures", it would appear since it is part of the APHIS predator control program it should be reviewed as an entire program, not just one aspect of it. We do not believe that exclosure use should occur without adequate predator management, therefore "evaluating nest exlosures" without evaluating the predator management program is inadequate.	NGO-3-61 NGO-3-62	p. 3-3 Siltcoos Estuary Recreation Management Area- The document states plovers have nested at this site since 1994; that is incorrect, it was 1993. p. 3-7 Bandon State Natural Area SPMA- The document states plovers have nested at this site since 1992; that is incorrect, it was 1991. p. 3-8 New River Recreation Management Area- The document states plovers have nested at this site since 1992; that is incorrect, it was 1990. It also states predator control was started in 2002. Predator control was first implemented at New River in 1999; it was stopped for the 2000 and 2001 season.	NGO-3-69 NGO-3-70 NGO-3-71 NGO-3-72

	NGO-3		NGO-3
p. 5-4 Wintering Snowy Plover Populations- It states Floras Lake is a wintering site. That statement is not true.	NGO-3-73		NGO-3-80 continued
p. 5-5 "In addition, the normal behavior of wintering plover is to flock and avoid disturbance. It is anticipated that the effects on wintering populations would be within the normal range of disturbance." Again, this statement "effects on winter populations would be within the normal range of disturbance" is in this document repeatedly. What is the "normal" range of disturbance? Without any studies, we have no baseline, and therefore there is no "normal". Without winter studies with much behavioral observation work completed this information is not known, and this statement cannot be made.	NGO-3-74		
p. 7-2 Lauten et al., The date is incorrect, the document reads 20065, it should be 2006.	NGO-3-75		
EIS Comments			
Chapter 1, Purpose and Need p. 1-5 and 1-6, last paragraph on p. 1-5, last two sentences. While it may be true that recreational restrictions varied between 1994 and 1998, the amount and type of recreational restrictions on current plover nesting beaches have not "varied unpredictably in scale and location". About the same amounts of beach have had the same restrictions since 1998/1999. There is currently little reason nor will to extend any of the current restrictions by most if not all agencies. Any future nesting by plovers at new locations could result in new restrictions at these locations, but these would not effect the current restrictions on current nesting areas.	NGO-3-76		NGO-3-81
Figure 1-9. The outline on this aerial photo of Bandon State Natural Area, showing the SPMA, clearly shows that the SPMA extends from Coos Cty land at Lower Fournmile north to a point south of the China Creek area. We have pointed out that in the text the amount of beach within the SPMA at Bandon has not been consistent. There is unclear language as to the where the north and south owned beach and lands exist, and what constitutes the Bandon SPMA, and plover nesting area. In the HCP, it states the HRA at Bandon will be maintained (about 50 acres). This aerial photo shows a much broader boundary to the Bandon SPMA. Which is correct? Will OPRD maintain all of the Bandon SPMA, including the south side of Twomile Creek/New River mouth? Furthermore, as noted under the comments for the HCP, the China Creek overwash area has been and continues to be an important plover nesting area. This area should be included in the Bandon SPMA.	NGO-3-77		
	NGO-3-78		NGO-3-82
Figure 1-10. Sixes River. We had been informed the Sixes River was not going to be included as an SPMA. If this is true, this map should be removed from the document.	NGO-3-79		
Figure 1-8 and 1-11. Bullard's Beach and Pistol River. These two locations are not necessarily good locations to attempt to attract nesting plovers. At Bullard's Beach, south of the area outlined is a very popular walking beach and dog beach. To the north,	NGO-3-80	Whisky Run beach is a very popular motor vehicle use area. To expect plovers to nest between two very busy areas creates monitoring, recreational, and enforcement issues. There would need to be significant amounts of habitat work to attract plovers, and there would undoubtedly be much monitoring needed to ensure that the nesting area is sufficiently protected to be productive. If the area does not become productive, it makes little sense attracting plovers to a sink, i.e., an area where they may be able to hatch chicks, but they raise few young. There is no guarantee that broods would stay within the confines of the boundaries of this area, thus creating recreational issues when they travel north and south of the plover nesting area. There is little logic trying to attract plovers to an area with adjacent motor vehicle use. Our suggestion would be to drop this area from consideration, and instead spend more funds maintaining the long and more remote Bandon State Natural Area for nesting plovers. This area has no adjacent vehicle usage, has fewer access points, is further away from campgrounds and people, and has an environment where predator management is easier to accomplish both in terms of technical and recreational matters. It is already an excellent and important nesting area and could likely be more productive with better overall management.	NGO-3-83
		Alternatives Under Alternative 1, p. 2-4, under Driving, there should be a comma after Tennile Estuary	
		p. 2-13 under Recreational Use Restrictions, paragraph 2, discusses the use of exclosures to limit recreation use. As noted in under HCP notes, exclosures should not be considered a tool "to limit recreational use in areas". Roping and signs should be used to limit recreational activity. Exclosures do not necessarily limit humans from vandalizing a nest or a take. Furthermore, to expose adult plovers to increased rates of depredation (due to exclosure use) in an area where plover nesting is not wanted nor encouraged, makes little biological sense.	

	NGO-3		NGO-3
3.7-11, paragraph 2 under Current OPRD Management Procedures. It states that if a plover nest is currently found on OPRD land outside the Bandon HRA, OPRD works with FWS to determine what protections need to occur. To our knowledge, aside from nests at Bandon SNA, there are very few examples of nesting plovers on OPRD owned lands or lease lands. Necanicum has had two nesting attempts, one that was entirely unprotected because it was discovered after hatching, and one nest that failed and was never exclosed. Other than that, plovers have nested at Bandon for years outside of the HRA. In fact, the HRA was not even created until several years ago. All nests at Bandon have been protected with either ropes, signs, and exclosures, and ORNHIC staff has never waited for OPRD to consult with FWS as to what to do about plover nests. The Snowy Plover Working Team, including OPRD, has been very consistent with their management approach. This paragraph is misleading and appears to suggest that the current management approach is insufficient. It may be true that the current approach could be strengthened, but there are few examples of OPRD needing to consult with FWS on what to do about plovers suddenly showing up on any OPRD land.	NGO-3-96	third paragraph, first sentence reads "Nest exclosures are also used to at snowy plover nesting sites to prevent predators from destroying nests and eggs." Nest exclosures are predator exclosures, and are not "also used" but ARE USED to protect nests from predators! If recreational activity was the main reason why plovers were having such poor nesting success, we would not be automatically exclosing nests. That makes little sense. People can be effectively restricted with ropes, signs, education, and enforcement. Exclosures are NOT needed to prevent people from destroying nests. Exclosure use was implemented in 1990 to increase hatch rates because they were so poor from predators depreddating nests, not to protect plover nests from people. This sentence is extremely misleading, and continues to show that this entire document is putting too much weight on exclosures as a people management tool. People can read, they do not need to be kept out of a plover nest, they need to be kept out of plover nesting AREAS.	NGO-3-103
3.7-19, under Current Management (No Action), Potential Affects, paragraph 2. This paragraph understates the current and past management at Bandon SNA, and is therefore misleading. This paragraph suggests that recreational activity at Bandon will increase over the next 25 years and OPRD will have to implement more restrictions at this beach. However, Dogs are already restricted to leash only, which is partly a state parks rule. There is complete restriction of all activity on the HRA already. Driving is already prohibited on this beach. Exclosures have been used, but their use is declining with improved predator management. Ropes and signs have been used on this beach outside the HRA for over ten years, and for that matter, the HRA is only several years old. The impression this paragraph gives is that none of these restrictions are currently in place, when all of them have been in place for years.	NGO-3-97	3.7-22 Potential Effects of Habitat Maintenance... States that under Alternative 2 OPRD would continue to manage 50 acres of HRA at Bandon SPMA. What about the land OPRD owns south of the HRA? Does OPRD intend to let it continue to degrade? Will they not have to manage this vitally important area that has had nesting plovers for nearly two decades (and more)? Both the HCP and the EIS need to clearly state that OPRD will manage the entire Bandon SPMA for plovers, and will maintain all the available high quality habitat from the south end to the north end of the HRA and possible further north towards China Creek.	NGO-3-104
3.7-19, last paragraph, Mitigation Measures... This paragraph is confusing because the first sentence suggests that the dry sand portion of the beach next to nesting areas will be signed and roped. This has been the case for years at Bandon SNA. Yet the document repeatedly states that OPRD under Alternative 1 will protect the 50-acre HRA/nesting area. This is confusing. Are they intending on protecting the entire Bandon SPMA, or just the HRA? Furthermore, there is parenthetical reference to "what has been used historically". The number and frequency and size of the signs at Bandon have changed over the years, with recent years sometimes having less signs than in the past. There have also been discussions with the Working Team as to just how big we want signs and posts to be, and this suggests that signs will be larger, something that might not be the best biological thing to do. Large signs are perches for predators.	NGO-3-98	3.13-14. under Recreational Use, paragraph one, last sentence states that Alternative 1 "is anticipated to have greater effects on recreation." The second paragraph states the same. We disagree with these statements. Under the current management, any plovers that attempt to nest outside known nesting areas would have to be found and reported. At the current moment, there is little to no monitoring at any of these sites, and there is little funding or will to do so. If plovers show up at some random OPRD owned site, they would have to be discovered, then someone would have to monitor them for nesting activity, and then the nest would need to be monitored, and if a take occurs, it would have to be extremely well documented before any take violation is pursued and prosecuted. The chances of this all occurring are extremely small. First, there are very few places with adequate habitat and low levels of recreational activity that would encourage any pair of plovers to attempt nesting. And even if they do attempt nesting, someone would have to find them. And if the nest is destroyed under current legal activity, then there is no take. Thus there is no responsible party. Under Alternative 1, the economic impacts will likely remain the same because plovers will continue to nest at the known nesting areas and all restrictions are already in place. There is no evidence at all that there will be greater economic impacts under Alternative 1, and this document has no accumulated evidence to suggest such. There are little current requirements if plovers show up that the beach will be shut down or restricted. Under Alternative 2 and 3, there will be known areas that will lead to some restrictions, something that Alternative 1 does not have. To suggest that Alternative 1 therefore is more economically impacting is not clearly proven. Furthermore, to suggest that Alternative 2 and 3 have opposing beaches where recreation can occur suggests this is not the current case nor would be the case under Alternative 1.	NGO-3-105
3.7-21, paragraph 3, the word "nest" is spelled "next" Again, if references that exclosures will be automatically placed around nests outside SPMA's or RMAs. See comments above, this should not be the automatic management decision.	NGO-3-100		
	NGO-3-101		
3.7-22, first sentence, "OPRD" is spelled "ORPD"	NGO-3-102		NGO-3-107

	NGO-3	NGO-3
<p>There are no current nesting areas that do not have an alternative adjacent beach for recreationists. This is misleading. We believe the economic impact section of the EIS is inadequate and does not clearly show nor prove that Alternative 1 will have greater impacts. There are no guarantees that the plover population will continue to grow and expand their nesting range. In fact, only about 20 more pairs of plovers are needed to reach recovery goals in Oregon, and there is more than sufficient space to harbor these pairs of plovers at the current nesting areas if they are adequately funded and maintained. If 200 plovers can successfully nest within the current range of the plover, why would it be necessary to create additional habitat for them in areas that may have many more recreational issues, may be more difficult to manage predators, and may in the long run just be sinks. Why would one conclude that the economic impacts of Alternative 2 and 3 be less when there may be no need to create additional nesting areas and make further restrictions than what is already in place?</p> <p>Conclusion</p> <p>To conclude, we believe that regardless of which alternative is chosen, OPRD must revise and improve management and protection of nesting plovers at the one state park that currently has nesting plovers, Bandon SNA. Bandon SNA from China Creek south to the boundary with Coos Co. lands near Fourmile Access needs to be one SPMA, with full protection of nesting plovers along the entire length of beach and not just within the 50 acre HRA. We believe that funding must be significantly increased first and most importantly at Bandon SNA. Additional funding should be spent on maintaining all 50 acres of habitat restoration each year at Bandon SNA, and more funding should be spent on improving and preventing further degradation of habitat on the New River spit portion of Bandon SNA. Additional funding should be dedicated to improve ropes and signs at Bandon SNA including the New River spit portion. Additional staff time, in terms of volunteers, beach ranger patrols, and importantly law enforcement, needs to be dedicated for Bandon SNA. We also believe that in general funding for this HCP needs to be increased. The amounts of funding listed in tables in section 7 of the HCP are underestimated and need to be revised. We strongly encourage increases in law enforcement and funding for law enforcement.</p> <p>We have raised a number of issues within these documents and we strongly encourage OPRD to address these issues. We believe that first and foremost active nesting areas must be fully protected and significantly improved before any new sites with no nesting plovers are created or limited funding is spent on areas with no plovers. We believe that there can be significant improvements on the current nesting areas with increased funding and personnel on the beach enforcing the law. While it is encouraging that an effort is being made to plan for the future, there is still much that can be done to improve current nesting areas and we strongly believe that should be the priority.</p> <p>Literature Cited</p> <p>Lauten, D. J., K. A. Castelein, S. Weston, K. Eucken, and E. P. Gaines. 2006. The Distribution and Reproductive Success of the Western Snowy Plover along the</p>	<p>NGO-3-108</p> <p>NGO-3-109</p> <p>NGO-3-110</p> <p>NGO-3-111</p> <p>NGO-3-112</p> <p>NGO-3-113</p>	<p>Oregon Coast 2006. Unpublished report for the Oregon Department of Fish and Wildlife Nongame Program, Portland, the Coos Bay District Bureau of Land Management, Coos Bay, and the Dunes Recreational Area, Reedsport.</p> <p>Lauten, D. J., K. A. Castelein, R. Pruner, M. Friel, and E. P. Gaines. 2007. The Distribution and Reproductive Success of the Western Snowy Plover along the Oregon Coast 2007. Unpublished report for the Oregon Department of Fish and Wildlife Nongame Program, Portland, the Coos Bay District Bureau of Land Management, Coos Bay, and the Dunes Recreational Area, Reedsport.</p>

Response to Comment NGO-3-1

The HCP and Volume I of the FEIS have been updated to include information through the 2009 breeding season.

Response to Comment NGO-3-2

As noted in MR-4, OPRD updated the HCP proposal to expand the northern boundary of the Bandon SPMA to include the nesting locations at China Creek in exchange for removal of the Pistol River SPMA from the HCP. The revised boundary of the Bandon SPMA is depicted in Figure 1-9 in Volume 1 of the FEIS.

Response to Comment NGO-3-3

The proposed Bandon SPMA includes the extent of the land owned by OPRD along the Ocean Shore. OPRD does own land south of the Bandon SPMA southern boundary, but this land is located farther inland and would not provide suitable habitat for snowy plovers. Also, as noted in MR-4, the northern boundary of the Bandon SPMA has been extended to include the nesting locations at China Creek.

Response to Comment NGO-3-4

Please refer to Section 7, “Implementation, Organization, and Structure” in the HCP and MR-8 for a discussion of the funding commitments in the HCP, including those specific to law enforcement. The effectiveness of the conservation measures, including the adequacy of the funding commitments in the HCP, will be assessed each year in an annual compliance report and evaluated every 5 years by OPRD, USFWS, and ODFW.

Response to Comment NGO-3-5

Staff responsibilities and funding commitments for law enforcement support are provided in Section 7 of the HCP and summarized in MR-8. The adequacy of law enforcement actions to implement the conservation measures in the HCP will be assessed each year in an annual compliance report and evaluated every 5 years by OPRD, USFWS, and ODFW.

Response to Comment NGO-3-6

Please see the Response to Comment NGO-2-7 for a discussion of how the data in Table 4 were developed and subsequently revised in response to public comment.

Response to Comment NGO-3-7

Please refer to the Response to Comment NGO-2-5 for a description of the habitat maintenance actions that occurred at the Bandon SPMA in 2006 and 2007. Please refer to MR-8 for a discussion of the funding commitments to habitat maintenance at the Bandon SPMA, and all other actively managed SPMA's under the proposed HCP.

Response to Comment NGO-3-8

The HCP has been revised to acknowledge that camping on the South Coast is often done by backpacking.

Response to Comment NGO-3-9

Please refer to Section 7, "Implementation, Organization, and Structure" in the HCP and MR-8 for a discussion of the funding commitments in the HCP, including those specific to law enforcement. The effectiveness of the conservation measures, including the adequacy of the funding commitments in the HCP, will be assessed each year in an annual compliance report and evaluated every 5 years by OPRD, USFWS, and ODFW.

Response to Comment NGO-3-10

The HCP has been updated to clarify that nearshore activities do not take place within or near most SPMA's or RMA's, but that wind and kite surfing currently do take place near the Bandon SPMA. Under the HCP, the boundary of the Bandon SPMA will be extended north to the south end of the current China Creek access point. In addition, access at China Creek will be moved farther north to avoid potential effects of recreational use on existing nesting sites. For more information about the extension of the Bandon SPMA boundary, see MR-4.

Response to Comment NGO-3-11

The HCP has been updated to indicate that driving has also been observed on the dry sand.

Response to Comment NGO-3-12

The New River area is discussed in detail in Appendix F of the HCP and shown in Figure F-9. The New River spit encompasses land owned by Coos and Curry Counties, the Bureau of Land Management (BLM), and other private landowners. For more information about OPRD-owned lands near New River, please see the Response to Comment NGO-3-3.

Response to Comment NGO-3-13

The description of the evolution of mini-exlosures has been updated in Section 4 of the HCP.

Response to Comment NGO-3-14

The document has been updated to reflect that fledging occurs approximately 31 days after hatching per the recognized published source Wariner *et al.* 1986.

Response to Comment NGO-3-15

The text was updated to include this information.

Response to Comment NGO-3-16

The text was updated to include the information provided about site fidelity. Additional changes were made to existing text qualifying comparisons between snowy plover populations from interior Oregon with the coastal population.

Response to Comment NGO-3-17

The text has been updated.

Response to Comment NGO-3-18

South African iceplant and iceplant do occur in other locations along the shore, as indicated in the referenced text. Searocket (*Cakile edentula*) has been added to the list, and the spelling has been corrected.

Response to Comment NGO-3-19

Section 4 of the HCP has been updated to indicate that dredged material has been placed east of the foredune.

Response to Comment NGO-3-20

California gulls are included as listed in the document that is cited (Oregon Department of Fish and Wildlife 1994). Because the reference is part of a list from a published document, it has been left in the text.

Response to Comment NGO-3-21

The reference to naturally occurring red fox has been deleted. The HCP was also modified to include red fox as a focus of predator management.

Response to Comment NGO-3-22

The description of exclosures has been updated to reflect that they are small circular, square, or triangular metal fences that can be quickly assembled to keep predators out and/or prevent people from trampling nests (U.S. Fish and Wildlife Service 2007).

Response to Comment NGO-3-23

The title of Table 4-8 in the HCP has been corrected to reflect that it includes data up to 2006. The comment on the citation from Little 2002 has been noted.

Response to Comment NGO-3-24

The information presented in the table is included for context and, to some extent, includes approximations. Where a distinction between Tahkenitch North and South is not made, the reference includes both sites. For information regarding the boundary of the Bandon SPMA and additional lands owned by OPRD, please see the Response to Comment NGO-3-3. The area where beach restrictions were implemented at the Bandon SPMA, as presented in Table 4-9 of the HCP, does not include New River. The Bandon SPMA is approximately 3.4 miles long, and includes the area from the southern end of the China Creek parking lot to the mouth of Twomile Creek. The extent of future restrictions will be determined through the development of the site management plans for each SPMA and RMA.

Response to Comment NGO-3-25

Although it is acknowledged that the use of exclosures can attract people to an otherwise unknown nest site, exclosures also protect those nests from being crushed inadvertently in high use areas. As noted in MR-9, OPRD has revised the HCP language to reflect that the determination to place an exclosure around a nest outside of a designated RMA or SPMA would be based on site-specific conditions (predator populations, recreational use level). This would be done to balance the costs and benefits of potentially increased vandalism and predation risk to fledglings and adults against a reduction of nest predation. That decision would be made after informal discussions with USFWS. Public outreach and education programs focusing on beach uses should assist in minimizing the effects of human visitation to nest exclosures, as would signage posted near exclosure areas.

For additional information about nest exclosures and how they would be used under the HCP, please refer to MR-9.

Response to Comment NGO-3-26

Please refer to MR-9 for information on when exclosures would be used around snowy plover nests found outside of designated RMAs and SPMA. In addition, as described in Section 5 of the HCP, if snowy plovers begin to nest on OPRD lands outside a SPMA consistently and predictably (3 years in a row), and there is nesting success at least 2 of the 3 years, OPRD would consult with USFWS to consider adding the site to the list of SPMA provided that 1) the SPMA is considered to have the potential to be able to contribute to long-term recovery of the species through its size, location and suitability; 2) an SPMA not currently being used by snowy plovers may be dropped in exchange for the new site that is occupied; 3) the maximum number of occupied SPMA managed by OPRD will be limited to five; 4) SPMA additions or 'trades' will require agreement between OPRD, USFWS, and ODFW; and 5) adding the site to the list of SPMA will not affect OPRD's ability to manage recreation along the Ocean Shore, i.e., management activities will be conducted as described above for occupied SPMA.

Response to Comment NGO-3-27

Please refer to MR-9 for information on when exclosures would be used around snowy plover nests found outside of designated RMAs and SPMA. Please refer to the Response to Comment NGO-3-26 for a discussion of the conditions under which a nesting location not previously identified within an SPMA could be managed as an SPMA in accordance with the HCP adaptive management measures.

Response to Comment NGO-3-28

Please refer to MR-9 for information on when exclosures would be used around snowy plover nests found outside of designated RMAs and SPMAs. Please refer to the Response to Comment NGO-3-26 for a discussion of the conditions under which a nesting location not previously identified within an SPMA could be managed as an SPMA in accordance with the HCP adaptive management measures.

Response to Comment NGO-3-29

Please refer to MR-9 for information on when exclosures would be used around snowy plover nests found outside of designated RMAs and SPMAs.

Response to Comment NGO-3-30

The commenter is correct in asserting that we do not definitively know what the limiting factors are for snowy plover nesting opportunities at each site. However, we can speculate, based on what we do understand about snowy plover habitat, predation threats, and other land use conflicts, what could occur in an area to make it more attractive to snowy plovers. The referenced statements in Section 5 of the HCP represent our current understanding of the conditions at each site, based on annual monitoring, winter surveys, recreational use surveys, and the resulting habitat and management changes that can be made to improve nesting opportunities for snowy plovers. The specific management opportunities at each SPMA will be determined during development of site management plans and based on the best available data.

Response to Comment NGO-3-31

Please refer to the Response to Comment NGO-3-30 for a discussion of why assertions specific to limiting factors at each SPMA were made. As described in Section 5 of the HCP, while recreational use is primarily limited to local residents at Necanicum Spit, this beach is popular for dog walking. In addition, although OPRD owns the SPMA, it has not “developed” the property, and therefore does not have full time staff stationed there. As such, additional docent outreach and supervision at this area should help minimize future recreational use conflicts and facilitate nesting attempts in the future. Necessary management strategies at this SPMA, including recreational use restrictions, will be determined during development of the site management plan and based on the best available data specific to that site.

Response to Comment NGO-3-32

Please refer to the Response to Comment NGO-3-30 for a discussion of why assertions specific to limiting factors at each SPMA were made.

Response to Comment NGO-3-33

While we agree that additional docent hours at all of the SPMAs would be beneficial, we believe that the commitments in the HCP are aligned with what OPRD can reasonably accommodate at this time.

Response to Comment NGO-3-34

Please refer to MR-1 for a discussion of how the HCP considers the potential effects of the covered activities on wintering populations of snowy plovers.

Response to Comment NGO-3-35

The HCP commits to restoring up to 40 acres of habitat at both the Columbia River South Jetty SPMA and the Nehalem Spit SPMA. Restoration would be conducted at Necanicum Spit, if necessary. Additional specifics on the acreage and nature of on-site restoration activities would be determined during the development of the site management plans for each SPMA. Prior to implementation, each site management plan would be reviewed by USFWS. USFWS would have 6 months after the completion of the draft site management plan to make a decision about whether to approve it.

Response to Comment NGO-3-36

We are not aware of any studies that have examined the amount of acreage necessary to support nesting snowy plovers on the Pacific Coast. Of the six areas on Oregon's Coast that are currently occupied by snowy plovers, anywhere from 20 to 170 acres of habitat have been restored, depending on the conditions at the site. The acreage of habitat that would be restored at each SPMA would depend on the conditions at the site and would be determined during development of site management plans for each SPMA.

Response to Comment NGO-3-37

Predators are known to have more of an affect at smaller habitat areas compared to larger habitat areas due to the availability of additional cover at large habitat areas.

However, the optimum size for snowy plover habitat restoration areas is unknown. The commitments in the HCP to the acreage of habitat that would be restored at unoccupied SPMAs (up to 40 acres at each SPMA, if necessary) are generally based on site-specific conditions and the proximity of suitable habitat to high recreational use areas. The actual extent of restoration would be determined during development of site management plans for each SPMA. In addition, management activities at SPMAs will be monitored over the course of the HCP to determine if habitat restoration activities are meeting success criteria outlined in the site management plan.

Response to Comment NGO-3-38

As described in Section 5 of the HCP, the public outreach and education efforts associated with implementation of the HCP would include 1) recruiting and training volunteers to serve as docents at SPMAs between May and August; 2) providing signage at access points to inform the public of the presence of snowy plovers and the importance of snowy plover protection measures; and 3) installing signage at SPMA boundaries to indicate the presence of nesting sites and the boundaries of the restricted areas.

In addition to staff time provided to support this effort, OPRD has committed to providing \$2,000 per biennium for each actively managed, unoccupied SPMA, and \$5,000 per biennium at each occupied SPMA, to provide materials to start interpretive programs and to pay for docent travel (Tables 7-4 and 7-5 in the HCP). An additional \$1,000 per biennium would be provided at each occupied SPMA to cover the costs of constructing symbolic fencing (ropes, signs, and fence posts). The adequacy of the conservation efforts and associated funding commitments in the HCP will be assessed in annual reports and evaluated every 5 years by OPRD, USFWS, and ODFW. Please refer to MR-8 for additional information on funding commitments in the HCP.

Response to Comment NGO-3-39

Please refer to Section 7, “Implementation, Organization, and Structure” in the HCP and MR-8 for a discussion of the funding commitments in the HCP, including those specific to law enforcement. The effectiveness of the conservation measures, including the adequacy of the funding commitments in the HCP, will be assessed each year in annual compliance reports and evaluated every 5 years by OPRD, USFWS, and ODFW.

Response to Comment NGO-3-40

The HCP provided to USFWS is the draft HCP required as part of OPRD's application for an incidental take permit (ITP). Regardless of previous versions of the HCP, USFWS must evaluate the current ITP application and the public review draft of the HCP.

Beach rangers would continue to have enforcement capabilities under the HCP. Past experience has demonstrated that voluntary compliance provides more lasting and repeated compliance with the beach restrictions. Whenever possible, OPRD staff would encourage voluntary compliance with the restrictions through continued education and outreach efforts to foster good will with local area residents and tourists. For these reasons, OPRD would initially focus on education and outreach, but would issue citations for beach violations, if necessary. As a result of increased outreach efforts, which would be further increased under the HCP, compliance with existing restrictions has already substantially improved.

Response to Comment NGO-3-41

Please refer to Section 7, "Implementation, Organization, and Structure" in the HCP and MR-8 for a discussion of the funding commitments in the HCP, including those specific to law enforcement. The effectiveness of the conservation measures, including the adequacy of the funding commitments in the HCP, will be assessed each year in annual compliance reports and evaluated every 5 years by OPRD, USFWS, and ODFW.

Response to Comment NGO-3-42

As described in MR-8, OPRD would continue to fund positions for three full-time beach rangers under the HCP. The beach rangers would be responsible for enforcing regulations along the entire Oregon coast, including recreational use restrictions at unoccupied SPMAs. The tables in Section 7 of the HCP have been clarified to reflect the same. Please refer to the response to NGO-3-40 for a discussion of how OPRD intends to balance voluntary compliance with citation issuance.

Response to Comment NGO-3-43

Please refer to Section 7, "Implementation, Organization, and Structure" in the HCP and MR-8 for a discussion of the funding commitments in the HCP, including those specific to law enforcement. The effectiveness of the conservation measures, including the adequacy of the funding commitments in the HCP, will be assessed

each year in annual compliance reports and evaluated every 5 years by OPRD, USFWS, and ODFW.

Response to Comment NGO-3-44

The HCP does not include any commitments to collect additional data on wintering populations of snowy plovers. Please refer to MR-1 for a discussion of how the potential effects of the covered activities on snowy plovers are considered in the HCP and EIS.

Response to Comment NGO-3-45

As discussed in MR-4 and MR-5, OPRD has removed the option for management of the Pistol River SPMA from the HCP. In its place, OPRD will expand the boundary of the Bandon SPMA to the southern edge of the China Creek parking lot to include nesting locations at China Creek, as illustrated in Figure 1-9 of Volume I of the FEIS.

Response to Comment NGO-3-46

Please refer to MR-4 for information about how the Bandon SPMA has been expanded to include the China Creek nesting area.

Response to Comment NGO-3-47

Please refer to MR-4 for more information about how the Bandon SPMA has been expanded to include the China Creek nesting area.

Response to Comment NGO-3-48

Please refer to MR-9 for more information about when nest enclosures would be used outside of SMPAs and RMAs.

Response to Comment NGO-3-49

The sentence has been reworded to state: “If design adjustments are needed to exclude specific predators in the area...”

Response to Comment NGO-3-50

The sentence has been reworded to state, “It is anticipated that the effects on wintering populations would be minimal and unlikely to result in take.” Please refer to MR-1 for additional information on how potential effects on wintering populations of snowy plovers are considered in the HCP and EIS.

Response to Comment NGO-3-51

Flocking behavior is likely driven by an increased ability to find food and increased ability to detect predators. The text has been modified to include the origins of flocking behavior and explain why that behavior allows shorebirds to avoid disturbance.

Response to Comment NGO-3-52

The commenter is correct in noting that equestrian use at Nehalem Spit and Pistol River are common. Although the boundary of the SPMA at Nehalem Spit includes a very popular horse-use beach and inland horse trails, it is OPRD’s intention to focus habitat restoration efforts for snowy plovers at the far south end of the spit. Accordingly, equestrian access to the wet sand would be allowed on the wet sand portion of the spit, but directed away from the spit end, where snowy plovers are likely to be nesting. OPRD would continue to staff Nehalem Bay State Park full time to disseminate this information and enforce equestrian restrictions.

As described in MR-5, management of an SPMA at Pistol River is no longer proposed under the HCP.

Response to Comment NGO-3-53

Please refer to the Responses to Comments NGO-3-31 and NGO-3-52. Although we do not definitively know what the limiting factors are for each SPMA, including the Nehalem SPMA, USFWS-approved site management plans will identify which conservation measures are necessary for each area, which could include habitat restoration and/or equestrian management.

Response to Comment NGO-3-54

L.N. Renan has been removed from the list as indicated in the comment.

Response to Comment NGO-3-55

The data in the HCP has been updated to include information through the 2009 breeding season.

Response to Comment NGO-3-56

Management actions, including habitat restoration activities, at areas not owned or leased by OPRD are not the subject of the HCP or EIS evaluation. The U.S. Forest Service (USFS) manages this area and assesses and manipulates the habitat as necessary, with approval from USFWS. The sentence referred to in the comment has been updated to reflect the same.

Response to Comment NGO-3-57

Commitments to restore habitat at the Siltcoos/Overlook/Tahkenitch RMA are not considered in the HCP because the property is owned by other landowners (Lane and Douglas Counties). Additional management at that RMA would be completed by those landowners in consultation with USFWS.

Response to Comment NGO-3-58

Data for Tahkenitch South were not included because Tahkenitch South is not currently an occupied nesting area. All tables that show snowy plover data by sites were updated to indicate that the specific area where data were collected was Tahkenitch North, where applicable. In instances where the area from which the data were collected is not specified, the tables refer to Tahkenitch Estuary.

Response to Comment NGO-3-59

The HCP has been updated to reflect that the New River RMA encompasses 8.75 miles (Figure F-9 in the HCP). The New River RMA is owned by Coos County, Curry County, BLM, and private individuals; no land is owned or leased by OPRD.

Please refer to the Response to Comment NGO-2-5 for a discussion of OPRD's commitment to maintaining habitat at the Bandon SPMA.

Response to Comment NGO-3-60

Appendix F of the HCP has been updated with information describing the current and planned restoration activities at Elk River.

Response to Comment NGO-3-61

Please refer to MR-9 for information on when OPRD would use nest exclosures outside of SPMA's and RMA's.

Response to Comment NGO-3-62

As summarized in Section 5 of the HCP, an interagency Predator Damage Management Plan for snowy plovers in Oregon was prepared in 2002. That plan includes a variety of non-lethal and lethal predator management options, including the use of nest exclosures. All predator management activities implemented would be conducted by U.S. Animal and Plant Health Inspection Service (APHIS) in accordance with the Predator Damage Management Plan. For more information about the use of nest exclosures, please refer to MR-9.

Response to Comment NGO-3-63

As indicated in the comment, the HCP refers to recording data for reporting purposes, not confronting violators or enforcing restrictions. Section 5 of the HCP has been updated to clarify the commitments to monitoring and reporting. As indicated in that section, monitoring would include detect/non-detect monitoring, population breeding monitoring, and wintering and breeding window surveys. Population breeding monitoring would include observing and recording noncompliance incidents, not enforcing restrictions. For more information about monitoring and reporting, see Section 5 of the HCP.

Response to Comment NGO-3-64

The HCP has been updated to correct the reference in Appendix G, Table 2, of the HCP. The correct site should be Tahkenitch North.

Response to Comment NGO-3-65

The Sutton/Baker Beach RMA was mistakenly left out of Table 3 in HCP Appendix G. The table has been updated to reflect that 20 acres of habitat were restored at this site, beginning in 1996. Restoration information reflected in this and other tables in the HCP was obtained from the agencies implementing the restoration activities. Though most projects likely took several years to complete, 1 year is listed for simplicity in the table. For the Coos Bay North Spit site, it is our understanding that multiple restoration efforts took place during the period from 1994 to 1998. For simplicity purposes and to make the information presented for this site consistent

with other sites, the table has been revised to reflect the latest year (1998) that restoration activities were initiated.

Response to Comment NGO-3-66

The assumption that adult birds observed at a nesting site were contributing to nest, egg, and chick reproduction at that site was used in the construction of the take assessment model and was stated as an assumption for that reason. Although this may not be accurate in all instances, the assumption allowed for construction of a model that reflected the complete “lifecycle” of the species and serves to provide an index of the number of adults present relative to the overall productivity of a site.

Response to Comment NGO-3-67

The reference to Lauten 2006 has been removed from Table 4 of Appendix G of the HCP.

Response to Comment NGO-3-68

Please see the Response to Comment NGO-2-7 for information about the data presented in Table 4 of Appendix G of the HCP.

Response to Comment NGO-3-69

Appendix G of the HCP has been corrected to state that snowy plovers have nested at Siltcoos Estuary since 1993.

Response to Comment NGO-3-70

Appendix G of the HCP has been corrected to state that snowy plovers have nested at the Bandon State Natural Area (SNA) since 1991.

Response to Comment NGO-3-71

Appendix G of the HCP has been corrected to state that snowy plovers have nested at New River since 1990.

Response to Comment NGO-3-72

Appendix G of the HCP has been updated to state that predator management was first implemented at New River in 1999 and was stopped for the 2000 and 2001 breeding seasons.

Response to Comment NGO-3-73

Appendix G of the HCP has been updated and reference to Floras Lake as a wintering site has been deleted.

Response to Comment NGO-3-74

Please see MR-1 for information about how the potential effects on wintering populations of snowy plovers are considered in the HCP and EIS.

Response to Comment NGO-3-75

The text has been updated to refer to the Lauten et al. reference as 2006.

Response to Comment NGO-3-76

Currently, recreational use restrictions are only implemented by ORPD in areas where snowy plovers are found nesting. Given that these restrictions are associated with the nesting populations of snowy plovers each year, the scale (miles of beach) and location of these restrictions are somewhat unpredictable. This is particularly true when considering nests that may show up outside of what has historically been considered an occupied area (Bandon, New River, Sutton/Baker Beach, Siltcoos/Dunes/Tahkenitch, Tenmile, or Coos Bay North Spit) because the scale, location, and type of recreational restrictions would need to be negotiated with USFWS based on site-specific constraints.

Response to Comment NGO-3-77

As noted in MR-4, OPRD is modifying the HCP proposal to include expanding the northern boundary of the Bandon SPMA to include the nesting locations at China Creek in exchange for removal of the Pistol River SPMA from the HCP. The revised boundary of the Bandon SPMA is depicted in Figure 1-9 in Volume 1 of the FEIS.

Response to Comment NGO-3-78

As discussed in MR-4 and MR-5, OPRD has removed the option for management of the Pistol River SPMA from the HCP. In its place, OPRD will expand the boundary of the Bandon SPMA to the southern edge of the China Creek parking lot to include nesting locations at China Creek, as illustrated in Figure 1-9 of Volume I of the FEIS.

Response to Comment NGO-3-79

As mentioned in Chapter 1, “Purpose and Need”, although OPRD considered the conservation measures associated with Alternative 3 during development of the draft HCP, it subsequently eliminated Alternative 3 due to recreational use and other management conflicts. Nevertheless, as the Federal lead agency conducting the National Environmental Policy Act (NEPA) review, USFWS has determined that Alternative 3 is a reasonable alternative and should be evaluated in the EIS. Specifically, Alternative 3 is included in the EIS to provide additional information for comparing the environmental risks of an alternative course of action.

Response to Comment NGO-3-80

As noted in MR-5, management of an SPMA at Pistol River is no longer proposed under the HCP. Bullards Beach is only proposed as an SPMA under Alternative 3 and would be phased in for management much later in the future, contingent on management activities at other SPMAs and RMAs (Section 2.3.3, “Alternative 3 - Management of Additional OPRD Sites”). The deferred management at Bullards Beach under Alternative 3 is due in part to the recreational use conflicts noted by the commenter.

Response to Comment NGO-3-81

As discussed in MR-4 and MR-5, OPRD has removed the option for management of the Pistol River SPMA from the HCP. In its place, OPRD will expand the boundary of the Bandon SPMA to the southern edge of the China Creek parking lot to include nesting locations at China Creek, as illustrated in Figure 1-9 of Volume I of the FEIS.

Response to Comment NGO-3-82

A comma has been added as indicated in the comment.

Response to Comment NGO-3-83

Please refer to MR-9 for a discussion of how and when nest enclosures would be used under the HCP.

Response to Comment NGO-3-84

Please refer to MR-8 for a discussion of OPRD's commitments to fund habitat restoration and maintenance at the Bandon SPMA, and other SPMAs managed under the HCP. As noted in Table 7-5 in the HCP, OPRD has committed to fund up to \$60,000 every 2 years at each occupied SPMA to maintain restored habitat. This estimated funding level is based on an anticipated cost per acre per year of \$2,000 to maintain habitat.

Response to Comment NGO-3-85

OPRD has proposed to manage currently unoccupied areas for nesting populations of snowy plovers to minimize and mitigate the effects of the covered activities on snowy plovers to the maximum extent practical. OPRD will continue to manage the Bandon SPMA in the future to ensure that nesting populations at that site are maintained. Specific management actions will focus on continuing to enhance habitat conditions for snowy plovers, as outlined in an USFWS-approved site management plan.

Response to Comment NGO-3-86

The editorial comment has been addressed and the FEIS has been updated.

Response to Comment NGO-3-87

Comment noted. The reference to "enclosure" has been removed. Please refer to MR-9 for a discussion of how enclosures would be employed outside of SPMAs and RMAs under the HCP.

Response to Comment NGO-3-88

Please refer to Section 7, "Implementation, Organization, and Structure" in the HCP and MR-8 for a discussion of the funding commitments in the HCP, including those specific to law enforcement. The effectiveness of the conservation measures, including the adequacy of the funding commitments in the HCP, will be assessed

each year in annual compliance reports and evaluated every 5 years by OPRD, USFWS, and ODFW.

Response to Comment NGO-3-89

Please refer to Section 7, “Implementation, Organization, and Structure” in the HCP and MR-9 for a discussion of the funding commitments in the HCP, including those specific to law enforcement and public outreach and education. The effectiveness of the conservation measures, including the adequacy of the funding commitments in the HCP, will be assessed each year in annual compliance reports and evaluated every 5 years by OPRD, USFWS, and ODFW.

Response to Comment NGO-3-90

Please refer to the Response to Comment NGO-3-85 for a discussion of why the HCP includes management of unoccupied SPMAAs.

Response to Comment NGO-3-91

Management prescriptions specific to required habitat restoration and maintenance would be outlined in site management plans for each actively managed, unoccupied SPMA. Metrics for determining the success and/or failure of that site would also be outlined in the site management plan, and could include lack of nesting attempts, or consistent, failed nest attempts.

Response to Comment NGO-3-92

Please refer to MR-5 for a discussion of how SPMAAs were selected for management under the HCP, including the determination of what order they would be proposed for management. OPRD has included an adaptive management measure in the HCP to deal with the inherent uncertainty associated with the locations snowy plovers will choose to nest in the future. Measures specific to the failure (i.e., nonoccupancy) of a managed, unoccupied SPMA are summarized in Chapter 2 of Volume I of the FEIS and in Section 5 of the HCP.

Response to Comment NGO-3-93

Site-specific prescriptions for habitat restoration and habitat maintenance will be determined by USFWS and OPRD during development of site management plans. Site management plans for each SPMA will outline a schedule for habitat

maintenance, if necessary, and a requirement for the acreage of habitat expected to be maintained during the term of the ITP, if it is issued.

Response to Comment NGO-3-94

Alternative 1 is the No-Action Alternative in the EIS and is intended to represent continued management of the covered lands as they are currently managed (i.e., to avoid take of snowy plovers). It is included in the EIS as the baseline against which the effects of the other alternatives are compared, and is not intended to include management actions (habitat restoration, additional recreational use restrictions) that would do more than avoid adverse effects, or take, of snowy plovers.

The habitat restoration area (HRA) at the Bandon SNA is currently the only area officially designated for OPRD management of nesting snowy plovers. Although snowy plovers are currently nesting adjacent to the HRA on OPRD owned property, there is no obligation for OPRD to maintain habitat in areas outside of the HRA. Management prescriptions outside of the HRA on OPRD-owned property are currently determined through discussions between USFWS and OPRD, and would continue in the future under Alternative 1.

Response to Comment NGO-3-95

As noted in MR-4, the northern boundary of the Bandon SPMA has been extended to include the nesting sites at China Creek.

Response to Comment NGO-3-96

Currently, OPRD must avoid adverse effects on snowy plovers because they have not obtained an ITP from USFWS. The description of the current management procedures provided in the EIS is intended to explain what should happen if a nest is found on OPRD owned or managed lands outside of a currently occupied area (i.e., Bandon HRA). Although there may have been little to no need to coordinate nest protections on OPRD lands in the past, in order to evaluate the effects of current management practices, it was assumed that OPRD would avoid the potential for take by contacting USFWS prior to implementing any nest protections on the Ocean Shore. These prescriptions are not intended to offer improvements to current management prescriptions, but to clarify what would currently be expected of OPRD under those circumstances. In addition, OPRD is requesting an ITP that would cover a 25-year period. As such, it is important to consider the potential responses to all nesting attempts, on both managed and unmanaged lands within the covered lands, as snowy plover populations continue to increase, which would likely include additional, deliberate coordination with USFWS.

Response to Comment NGO-3-97

The commenter is correct in asserting that, currently, dogs are required to be on leash in the HRA at Bandon SNA, and are confined to the wet sand area; that driving and non-motorized vehicle use are prohibited; and that fencing and/or exclosures are used, as necessary, around nests. To minimize confusion, the paragraph has been revised to reflect that these provisions would continue over the next 25 years under Alternative 1.

Response to Comment NGO-3-98

Under Alternative 1, OPRD would continue to enforce restrictions at the Bandon HRA. The term SPMA is only associated with Alternatives 2 and 3 and connotes additional management actions that would only be implemented under those alternatives.

Response to Comment NGO-3-99

The mitigation measure (WLD-1) has been included as mitigation for the potential effects of recreational activities on nesting snowy plovers under all of the alternatives considered in detail in the EIS. Ultimately, the size, location, and spacing of signage at SPMA's would be determined by OPRD and USFWS during development of site management plans, and would be based on site-specific conditions (including presence of predator populations). However, as indicated in the EIS, signs would be outfitted with anti-perch features to deter avian predators.

Response to Comment NGO-3-100

The editorial comment has been addressed and the FEIS has been updated.

Response to Comment NGO-3-101

Please refer to MR-9 for a discussion of how nest exclosures would be used outside of SPMA's and RMA's under the HCP.

Response to Comment NGO-3-102

The editorial comment has been addressed and the FEIS has been updated.

Response to Comment NGO-3-103

The noted sentence has been updated to state “Nest enclosures could also be used, if necessary, to prevent predators from destroying nests and eggs.” Please refer to MR-9 for additional information on when nest enclosures would be used outside of SPMAAs and RMAAs.

Response to Comment NGO-3-104

Please see the Response to Comment NGO-3-3 for a discussion of landownership and management of lands on and near the Bandon SPMA.

Response to Comment NGO-3-105

The page referenced in the comment does not exist in the DEIS; however, it is assumed that the commenter is referring to the statement on page 3.3-29 of the DEIS that concludes that the potential recreational effects of Alternative 2 would be less than those under Alternative 1 at sites outside proposed SPMAAs and RMAAs.

As explained in Volume I of this FEIS, snowy plover that nest outside of the proposed SPMAAs and RMAAs would receive less protection when compared with Alternative 1. The intent is to provide greater assurances to the public about where more extensive recreational use restrictions could potentially be applied under the HCP.

Although the commenter may be correct in asserting that it is unlikely that snowy plovers would nest outside known nesting locations, it is necessary for USFWS to consider what would happen if they did, and what the effects on both snowy plovers and recreational use would be. This comparison is necessary to ensure that the effects of all the alternatives are considered equally in the FEIS. In consideration of the above, and the likelihood that both the snowy plover population and recreational use will increase over the 25-year term of the proposed ITP, the uncertainty associated with the potential for recreational use restrictions to be implemented anywhere along the coast would be greater than would occur under Alternatives 2 and 3.

Response to Comment NGO-3-106

The FEIS does not conclude that Alternative 1 would result in greater economic effects compared to Alternatives 2 and 3. As noted in Section 3.4, “Socioeconomics and Environmental Justice” of Volume I of the FEIS, the potential socioeconomic effects of all alternatives are expected to be the same and to be minimal.

Response to Comment NGO-3-107

It is possible that there would be alternate locations for recreation to occur under Alternative 1; however, that cannot be definitively determined because it is not possible to predict where and to what extent the restrictions would occur. Please refer to the response to NGO-3-105 for more information about the analysis of the potential effects of implementing Alternative 1.

Response to Comment NGO-3-108

Please refer to the responses to Comments NGO-3-105 and NGO-3-106 for information regarding the analysis of the potential effects of implementing Alternative 1. For information regarding the adequacy of the economic analysis, please refer to the Response to Comment LA-5-3.

Response to Comment NGO-3-109

Please refer to MR-7 for a discussion of the relationship of the HCP to snowy plover population goals in the Recovery Plan. The proposal in the HCP to actively manage currently unoccupied areas for nesting populations of snowy plovers was proposed by OPRD to minimize and mitigate the effects of the covered activities on snowy plovers to the maximum extent practical.

Response to Comment NGO-3-110

Please refer to the Response to Comment NGO-3-106 for a description of the potential socioeconomic effects realized under Alternatives 2 and 3.

Response to Comment NGO-3-111

As noted in MR-4, the northern boundary of the Bandon SPMA has been extended to include the nesting sites at China Creek.

Response to Comment NGO-3-112

Please refer to Section 7, “Implementation, Organization, and Structure,” in the HCP and MR-8 for a discussion of the funding commitments in the HCP, including those specific to law enforcement, public outreach and education, and habitat restoration and maintenance. The effectiveness of the conservation measures, including the adequacy of the funding commitments in the HCP, will be assessed each year in

annual compliance reports and evaluated every 5 years by OPRD, USFWS, and ODFW.

Response to Comment NGO-3-113

Please refer to MR-5 for a discussion of why the HCP includes active management at unoccupied SPMAs.

Comment Letter NGO-4

 <p>Doug Heiken <dh@oregonwild.org> 01/04/2008 11:03 AM Please respond to Doug Heiken</p> <p>OREGON WILD <i>formerly Oregon Natural Resources Council (ONRC)</i> PO Box 11648 Eugene OR 97440 541-344-0675 fax 541-343-0996 dh@oregonwild.org http://www.oregonwild.org/</p>	<p style="text-align: center;">NGO-4</p> <p>To: fwlordhcp@fws.gov cc: carrie.lovellette@state.or.us Subject: Oregon Wild comments on Oregon's Ocean Shores Management Plan Habitat Conservation Plan for Western Snowy Plovers (HCP) & Draft Environmental Impact Statement (EIS)</p>	<p style="text-align: right;">NGO-4</p> <p>4 Jan 2008</p> <p>TO: FWLORDHCP@fws.gov CC: OPRD, carrie.lovellette@state.or.us</p> <p>Subject: Oregon Ocean Shores Plan HCP and DEIS</p> <p>Dear FWS:</p> <p>Please accept the following comments from Oregon Wild (formerly Oregon Natural Resources Council) concerning the Oregon Ocean Shores Management Plan Habitat Conservation Plan for Western Snowy Plovers (HCP) & Draft Environmental Impact Statement (EIS). Oregon Wild represents about 5,000 members who support our mission to protect and restore Oregon's wildlands, wildlife, and water as an enduring legacy. Our goal is to protect areas that remain intact while striving to restore areas that have been degraded.</p> <p>We support actions to recover the Threatened western snowy plover. Reasonable restrictions on beach use and activities in very limited areas of the Oregon coast that provide habitat for plover are a small price to pay for saving an endangered species.</p> <p>We urge FWS and OPRD to consider greater restrictions on off highway vehicles because they have the capacity to disturb more habitat per recreation hour than any other beach activity. These machines keep getting more and more powerful and capable of doing more and more resource damage. Regulations must catch-up and keep up with changes in technology.</p> <p>The EIS should include a thorough discussion of the likely impacts of climate change and rising sea levels on the snowy plover. Most of the plover's habitat is within a few feet of the current sea level and global warming is expected to raise sea level by a few to several feet within the next century. FWS and OPRD must make loud and clear the importance of controlling emissions of greenhouse gases and protecting the biosphere which help sequester carbon.</p> <p>The Ocean Shore Plan should take steps to help mitigate climate change and protect the plover by for instance prohibiting wasteful uses of fossil fuels such as off-road vehicles. The plan could ban the use of OHVs altogether or require that all OHVs run on non-fossil energy sources such as biodiesel or ethanol. These proposals should be fully considered as NEPA alternatives.</p> <p>Some will probably say that such efforts are too small to make a difference in the global scale of this problem, but everyone must recognize the global warming will not be solved by one miraculous technological fix or by changing one behavior or one economic activity. As recognized by the U.S. Supreme Court in the <i>Massachusetts v. EPA</i>, 127 S.Ct. 1438, 1455 (2007) http://www.supremecourt.us/opinions/06pdf/05-1120.pdf decision, minimizing the scale of one's contribution to the problem cannot be used as an excuse to avoid responsibility to reduce and mitigate the problem. ("While it may be true that regulating motor-vehicle emissions will not by itself reverse global warming, it by no means follows that we lack jurisdiction to decide whether EPA has a duty to take steps to slow or reduce it. ... In sum, ... [t]he risk of</p>
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NGO-4

catastrophic harm, though remote, is nevertheless real. That risk would be reduced to some extent if petitioners received the relief they seek.") Effectively mitigating global warming will require literally millions of small changes in everyday things like land use, transportation, energy, agriculture, forestry, AND RECREATION. If the scale of the problem is global, it means that every one must chip in to help. If everyone just points the finger at the rest of the world, nothing ever changes.

NGO-4-3
continued

With it's primary habitat so close to sea level, the plover is, like the polar bear, uniquely sensitive to the effects of climate change. If Oregon's Ocean Shores Plan and HCP do not takes steps to reduce and mitigate climate change, then this HCP very likely jeopardizes the continued existence of the snowy plover.

More information about the likely impacts of climate change and the myriad things that need to change to reduce and mitigate it can be found at in the most recent IPCC reports, available here: <http://www.pewclimate.org/global-warming-basics/ipccar4.cfm>

We encourage adequate and informative signage near trailheads and parking lots to make clear the content and purpose of these rules.

NGO-4-4

We encourage a commitment to enforcement.

NGO-4-5

We wish you would have put a complete copy of the Shore Plan, HCP, and DEIS on the internet. Viewing the documents in many small sections is inconvenient.

NGO-4-6

Thanks you for considering these comments.

Sincerely,
/s/
Doug Heiken
for Oregon Wild

Response to Comment NGO-4-1

The areas proposed for snowy plover management (SPMAs and RMAs) are located in areas where all-terrain vehicle (ATV) and off-highway vehicle (OHV) use is currently prohibited. ATV/OHV use is currently allowed on the beach at three locations: the Sand Lake Recreation Area and on two sections of the Dunes National Recreation Area. All other beach segments proposed for snowy plover management are and would continue to be off limits to ATV/OHV use without a drive-on-the-beach permit issued by OPRD, except in the event of an emergency or for administrative purposes. We do not believe that additional restrictions on OHV use, outside of those described above and those that would be implemented around SPMAs and RMAs, are necessary to offset the potential effects of OPRD management activities on snowy plovers.

Response to Comment NGO-4-2

Global climate change is addressed in Volume I of the FEIS in Sections 3.5, “Air Quality” and 3.7, “Wildlife and Their Habitat.” NEPA requires an analysis of the potential effects of implementing the alternatives on the human and natural environment. As discussed in Section 3.5, “Air Quality” of Volume I of the FEIS, implementation of the alternatives would not result in air quality impacts that would contribute to global climate change. However, the FEIS acknowledges that global climate change in general could affect snowy plover habitat in the future, although the specific nature and extent of those changes cannot be accurately predicted (Section 3.7, “Wildlife and Their Habitat”).

Although it is difficult to predict the potential effects of global climate change, some level of effect may occur over the term of the ITP. In consideration of this possibility, “global climate change” has been added to the HCP as a Changed Circumstance (Section 7.6 of the HCP). The procedures for dealing with changed circumstances that could have a significant negative effect on snowy plovers are described in Section 7.6 of the HCP.

Response to Comment NGO-4-3

NEPA requires Federal agencies to consider the consequences of their actions on the human and natural environment. In this case, the action triggering compliance with NEPA is the potential issuance of the ITP by USFWS. In order to support issuance of the ITP, OPRD developed an HCP to demonstrate how take of snowy plovers would be mitigated by implementation of conservation measures. The purpose of the EIS is to analyze the effects of implementing the HCP, not the Ocean Shore

Management Plan. Therefore, comments on the Ocean Shore Management Plan are beyond the scope of this document.

For information about the treatment of global climate change in the HCP, see the Response to Comment NGO-4-2.

Response to Comment NGO-4-4

Section 5 of the HCP describes the signage that would be used at access points and nesting sites to inform the public about snowy plover protections and the location of SPMAs. The location of required signage would be determined by OPRD and USFWS during development of site management plans.

Response to Comment NGO-4-5

Please refer to Section 7, “Implementation, Organization, and Structure” in the HCP and MR-8 for a discussion of the funding commitments in the HCP, including those specific to law enforcement. The effectiveness of the conservation measures, including the adequacy of the funding commitments in the HCP, will be assessed each year in annual compliance reports and evaluated every 5 years by OPRD, USFWS, and ODFW.

Beach rangers are responsible for enforcement of a host of regulations, including recreational use restrictions associated with snowy plover management actions and enforcing all Ocean Shore regulations.

As mentioned in the HCP, in addition to the three full-time beach rangers, coastal State troopers and local law enforcement officials (city and county) occasionally patrol beach access points and ocean beaches, especially beaches that are open to driving. They also respond to OPRD calls for assistance. OPRD would continue its commitment to contracting with the Oregon State Police and/or local law enforcement agencies to provide additional supervision and citation authority as needed. OPRD would also provide additional funds to increase public outreach and education regarding snowy plover restrictions and nesting sites.

Response to Comment NGO-4-6

The documents were broken into sections for placement on the Internet to maximize the speed at which they could be downloaded and to make it easier to find specific sections of the reports.

Comment Letter NGO-5

NGO-5

NGO-5



Andrew Orasoske
<orasoske@biologicaldiversity.org>
01/04/2008 05:28 PM

To: fwfordhcp@fws.gov, Laura_Todd@fws.gov
CC:
Subject: Plover HCP Comments

Please find attached to this email the Center for Biological Diversity's comments on the OPRD HCP for Snowy Plover.

Andrew Orasoske
Conservation Advocate

Center for Biological Diversity
P.O. Box 9174
Missoula, Montana 59807
Phone: (406) 529-7591
Fax: (406) 549-8024
orasoske@biologicaldiversity.org

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Andrew Orasoske wrote:

- > 4 Jan 2008
- >
- > Dear Ms. Todd,
- >
- > The Center for Biological Diversity (Center) respectfully requests
- > that the U.S. Fish and Wildlife Service (Service) extend the public
- > comment period for 30 days on the draft HCP, DEIS and IA submitted by
- > the Oregon Department of Parks and Recreation for the western Snowy
- > Plover (72 Fed. Reg. 62485).
- >
- > The Center for Biological Diversity is a non-profit organization
- > dedicated to protecting imperiled species and their habitats. The
- > Center has over 40,000 members nationwide with many in the State of
- > Oregon whose interests will be directly affected by this proposed
- > HCP. Our members enjoy watching, photographing and studying native
- > species, including the western snowy plover.
- >
- > The Service should grant this request for extension for several
- > reasons. The annual Snowy Plover meeting takes place Jan. 16-18, 2008
- > in San Diego, CA and will bring together many experts on plover
- > biology. The most up-to-date information on plovers will be exchanged
- > at this meeting. Experts and land managers will have a critical
- > opportunity to discuss the latest in research and management
- > developments. As such, the public should be given the opportunity to
- > incorporate this critical information into comments on the proposed
- > OPRD HCP. Also, the current comment period (Nov. 5th - Jan. 4th)
- > extended over several federal and religious holidays. This
- > unfortunate timing has resulted in limited public attention.
- > Extending the comment period for 30 days would not unreasonably delay
- > the analysis of public comment by the Service. The Service is free to
- > begin analyzing comments received as they arrive.
- >
- > In conclusion, the Center respectfully requests an extension of the
- > comment period for the draft OPRD HCP, DEIS, and IA for 30 days.
- > Please contact me by email or phone with your response. Thank you.
- >
- >

NGO-5-1

NGO-5

NGO-5

 CBD Comments OPRD HCP Snowy Plover.pdf



January 4, 2008

SENT VIA ELECTRONIC MAIL

Ms. Laura Todd, Field Supervisor
U.S. Fish and Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport, OR 97365-5258
Fax: (541) 867-4551
Email: FW1ORDHCP@fws.gov

**Re: Comments on Oregon Parks and Recreation Department HCP, DEIS,
Section 10 Permit and Implementing Agreement (72 Fed. Reg. 62485)**

Dear Ms. Todd

The Center for Biological Diversity ("Center") submits the following comments on the proposed Habitat Conservation Plan ("HCP"), Section 10 permit application, DEIS and Implementing Agreement submitted by the Oregon Parks and Recreation Department ("OPRD") for the Pacific Coast population of the western snowy plover (*Charadrius alexandrinus nivosus*). Thank you for the opportunity to provide comments on the proposed HCP.

The Center for Biological Diversity is a non-profit conservation organization with more than 40,000 members dedicated to the protection of imperiled species and their habitats. The Center is very concerned that the Snowy Plover continues to face numerous threats, including off-road vehicle activity, coastal development, human disturbance, invasive species and unnatural predation. Recent decisions by the U.S Fish and Wildlife Service ("FWS" or "Service") concerning critical habitat have further undermined the chances for recovery of this species. It is our hope that the Service will see the errors in recent decisions make a stand to save the plover before it is too late.

We will only be able to support the HCP if it meets the legal standards set forth in the Endangered Species Act, 16 U.S.C. §§ 1531 et seq. ("ESA") and actually provides for the conservation (i.e. recovery) of the Snowy Plover. As described in more detail below, we believe that the proposed HCP fails to meet the various statutory requirements of the ESA and other applicable statutes. We remain hopeful that this HCP will not resemble other failed HCPs that jeopardize species, that the HCP will be appropriately modified, and thereby set the standard for effective long term stewardship of the Snowy Plover. We request that FWS and OPRD make the appropriate changes to the final HCP so as to

Andrew Orasoske, J.D., Conservation Advocate
Center for Biological Diversity • P.O. Box 9174 • Missoula, MT 59807
Phone: (406) 529-7591 • Fax: (406) 549-8024 • Email: orasoske@biologicaldiversity.org

NGO-5

NGO-5

bring it into conformance with these statutory requirements and turn it into an enforceable plan.

not require survey data prior to designing the reserve and utilized only what was currently available, leaving out entire areas of private lands that have never been surveyed.

NGO-5-3
 continued

I. VIOLATIONS OF THE ENDANGERED SPECIES ACT

a. Section 10 Exception to the ESA's Take Prohibition

Section 9 of the ESA and its implementing regulations prohibit any person from "taking" a threatened or endangered species. 16 U.S.C. § 1538(a)(1); 50 C.F.R. § 17.31. A "person" includes private parties as well as local, state, and federal agencies. 16 U.S.C. § 1532(13). "Take" is defined broadly under the ESA to include harming, harassing, trapping, capturing, wounding, or killing a protected species either directly or by degrading its habitat sufficiently to impair essential behavior patterns. 16 U.S.C. § 1532(19). The ESA not only bans the acts of parties directly causing a take, but also bans the acts of third parties whose acts bring about the taking. The section 9 "take" prohibition does not apply to listed plants species.

ii. Section 10(a)(2)(B) Findings

Upon reviewing an HCP and before permit issuance, the FWS must find that (i) the taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will ensure that adequate funding for the plan will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (v) any other measures FWS requires will be met. 16 U.S.C. § 1539(a)(2)(B); 50 C.F.R. §§ 17.22, 17.32. Should FWS make positive findings under section 10, FWS must issue the applicant an incidental take permit. 16 U.S.C. § 1539(a)(2)(B). Failure to comply with the mandatory terms and conditions of an incidental take permit constitutes a violation of the section 9 "take" prohibition. 16 U.S.C. § 1539(a)(2)(C).

1. Failure to Minimize and Mitigate to the Maximum Extent Practicable

a. SPMAs, RMAs

Congress created two "incidental take" exceptions to section 9's take prohibition. One of these exceptions is found in section 10 of the ESA. Section 10(a)(1)(B) authorizes the FWS to issue private parties and state and local governmental entities incidental take permits for "any taking otherwise prohibited by section 1538(a)(1)(B) [section 9] of this title if such taking is incidental to and not the purpose of the carrying out of any otherwise lawful activity." 16 U.S.C. § 1539(a)(1)(B).

The Snowy Plover Management Areas (SPMA) are the primary component of the HCP's plan to mitigate negative impacts to the plover. The Recreation Management Areas (RMA) are also cited as mitigation, but to a lesser degree.

i. Section 10(a)(2)(A) Requirements

A permit applicant must prepare and submit to FWS a habitat conservation plan ("HCP"). 16 U.S.C. § 1539(a)(1)(B). An HCP must contain specific measures to "conserve," or provide for the recovery of, the species. At a minimum, the ESA and implementing regulations require all HCPs to include the following: (1) a complete description of the activity sought to be authorized; (2) names of the species sought to be covered by the permit, including the number, age and sex of the species, if known; (3) the impact which will likely result from such taking; (4) what steps the applicant will take to monitor, minimize, and mitigate those impacts; (5) the funding that will be available to implement such monitoring, minimization, and mitigation activities; (6) the procedures to be used to deal with unforeseen circumstances; and (7) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized. 16 U.S.C. § 1539(a)(2)(A)(i)-(iv); 50 C.F.R. §§ 17.22, 17.32. FWS cannot issue an incidental take permit if the HCP does not contain this information. 16 U.S.C. § 1539(a)(2)(A).

The HCP's heavy reliance on SPMA's is problematic. First, OPRD is already managing these areas for plovers and using them as mitigation for the species undercuts its conclusion that it has minimized and mitigated to the maximum extent practicable. OPRD is already under a distinct, preexisting duty to manage their lands under the applicable statutes and regulations, which provide for the protection of plovers. The designation of these lands for the preservation of natural resources, such as the plover, pre-dates the development of the HCP and as a result they should not be considered mitigation.

NGO-5-4

Not only does the HCP's inclusion of these lands do nothing additional for the plover species, but also the management of these lands for the protection of the HCP's purposes cannot be ensured. For example, the Forest Service and BLM are not signatories to nor bound by the HCP. Any pledges they may have made to manage their lands consistent with the HCP do not rise to the level of legal assurances required by the ESA.

NGO-5-5

b. Adaptive Management

The HCP does not meet these requirements. Most problematically, the MSHCP does not adequately analyze and disclose the impact that is likely to result from the taking of covered species, primarily because the HCP contains inadequate and incomplete baseline, survey, and reserve data. Take estimates are likely underestimated because the HCP did

NGO-5-2

NGO-5-3

The HCP describes the Adaptive Management Program as a way to address the permit's coverage of species with biological data or information gaps. However, despite the title and lengthy section devoted to the Adaptive Management and Monitoring Programs, they have severe limitations. The funding allocated for such measures is woefully inadequate

NGO-5-6

<p>by any reasonable standard. Significantly, pursuant to the “No Surprises” rule most components of the HCP are set in stone. As described below, we believe that the No Surprises rule is invalid. Regardless, the HCP’s Monitoring and Adaptive Management Programs have no real conservation consequences because they do not seem to require that anything actually be done in the face of new information.</p>	NGO-5	NGO-5
<p>c. Alternatives</p>	NGO-5-6 continued	NGO-5-8 continued
<p>One of the Section 10 prerequisites to an ITP is that the proposed HCP minimize the harm to the species “to the maximum extent practicable.” 16 U.S.C. § 1539(a)(2)(B)(ii). The ESA requires the applicant to disclose the range of actions considered as alternatives to the plan finally proposed and to explain why it rejected those alternatives. 16 U.S.C. § 1539(a)(2)(A)(iii). FWS must make an independent determination of practicability and make a finding that the impacts of the taking will be minimized and mitigated “to the maximum extent practicable.” § 1539(a)(2)(B)(ii). The HCP does not minimize harm to the species to maximum extent practicable. The HCP states that more protective alternatives were rejected because it would result in substantially increased costs while not resulting in additional conservation. The HCP never explains why a higher conservation alternative was “impracticable,” and FWS has an independent duty to do so. The ESA requires that FWS scrutinize, not just identify, alternative HCPs and HCP measures that involve greater conservation benefit. 16 U.S.C. § 1539(a)(2)(B)(ii). In sum, the HCP does not analyze an adequate variety of alternatives to satisfy the ESA’s mandate to minimize and mitigate impacts to the maximum extent practicable.</p>	NGO-5-7	<p>Based upon this admission, the FWS cannot rationally conclude that OPRD will ensure adequate funding as the ESA requires. The plan is similar to that in <i>National Wildlife v. Babbitt</i>, 128 F. Supp. 2d 1274, 1294-95 (E.D. Cal. 2000), where the district court disapproved the § 10 findings because “of the City’s explicit refusal to ‘ensure’ funding” for the mitigation, “the adequacy of funding depends on whether third parties decide to participate,” and “no entity will be responsible for making up the funding shortfall.” See also <i>Southwest Center for Biological Diversity v. Bartel</i>, 470 F. Supp. 2d 1118 (S.D. Cal., 2006).</p> <p>In sum, the HCP has not demonstrated that “the applicant will <u>ensure</u> that adequate funding for the plan will be provided.” 16 U.S.C. 1539(a)(2)(B)(iii) (emphasis added). Assured funding is critical to the success of the conservation strategy and is a mandatory requirement of any HCP.</p>
<p>2. Failure to Ensure Adequate Funding</p>	<p>3. Failure to Ensure Taking Will Not Appreciably Reduce the Likelihood of the Survival and Recovery of the Species in the Wild</p>	<p>The standard for the HCP set by the ESA is to minimize and mitigate impacts to the maximum extent practicable. The additional requirement that the HCP ensure that the taking authorized will not appreciably reduce the likelihood of survival and recovery of covered species is the absolute floor. The HCP simply does not demonstrate that it has met either standard.</p>
<p>The OPRD admits that it cannot ensure funding for implementing the HCP:</p>	NGO-5-8	NGO-5-9
<p>OPRD cannot guarantee State funds for future activities to administer the requirements set forth in the ITP, IA, and the HCP, which are not yet appropriated by the State legislature. The State of Oregon operates on a biennium basis, with fiscal years beginning on July 1st. Additionally, OPRD cannot guarantee acceptance of grant monies unless it has received authorization from the Oregon legislature to apply for and accept these monies. However, OPRD can guarantee that it will request sufficient funding from the legislature on a biennial basis to properly implement the HCP and fulfill the terms and commitments of the ITP. Whenever funding for implementation of the HCP minimization and mitigation measures are considered insufficient to meet the commitments outlined in the HCP and the IA, or to properly implement the HCP, OPRD will consult with the USFWS to determine what actions may be necessary with respect to meeting the commitments of the permit and/or avoiding the risk of take of snowy plovers.</p>	<p>iii. Section 10(a)(2)(C) Permit Revocation</p>	NGO-5-10
<p>Draft HCP at 7/6. This is an admission by OPRD that it cannot meet the Section 10 requirement for funding the HCP. The FWS must determine that “the applicant will <u>ensure</u> that adequate funding for the plan will be provided.” 16 U.S.C. 1539(a)(2)(B)(iii)</p>	<p>iv. The HCP’s Reliance on the “No Surprises” Policy Violates Section 7 and Section 10 of the ESA</p>	NGO-5-11
	<p>The HCP purports to provide assurances for plover without providing for increased protections and alterations of the HCP in the face of changed circumstances. In other words, no additional mitigation lands or actions, financial compensation, or land restrictions could apparently ever be required regardless of circumstance or the plover’s needs. This provision of the HCP contradicts the ESA’s requirements that HCPs minimize and mitigate impacts to species and provide for the survival and recovery of species. The HCP’s “Adaptive Management” program, despite the title’s indication to the contrary, does nothing to protect species from harm in the future if the HCP does not prove sufficient to protect the plover and ensure survival and recovery. Instead, it leaves the plover highly vulnerable because the HCP virtually forecloses management changes</p>	NGO-5-12

<p>that are necessary in any long-term plan to incorporate new scientific data or address changed circumstances.</p>	<p>NGO-5</p>	<p>NGO-5</p>
<p>FWS and NMFS issued the “No Surprises” rule in 1998, 63 Fed. Reg. 8,859 (Feb. 23, 1998). That rule revised Part 17 of the Code of Federal Regulations and provides that as long as the HCP is being properly implemented, the federal government will not require any additional mitigation from the Permittees in the event of unforeseen circumstances. Additional measures deemed necessary to respond to changed circumstances, including the listing of new species, will be limited to those measures specifically identified in the HCP and only to the extent of the mitigation specified. The No Surprises rule has been in almost continuous litigation from its inception has been revised several times. The HCP must not include this illegal provision.</p>	<p>NGO-5-12 continued</p>	<p>Pursuant to Section 7(a)(2) of the ESA, before granting the application for an ITP, FWS must “insure” that the HCP ITP “is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species . . . determined . . . to be critical . . .” 16 U.S.C. § 1536(a)(2). To fulfill this mandate, FWS must engage in self-consultation on its action, which “may affect” listed species. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a).</p>
<p>In California (<i>Southwest Center for Biological Diversity v. Bartel</i>, 470 F. Supp. 2d 1118 (S.D. Cal., 2006)) and Alabama (<i>Sierra Club v. Babbitt</i>, 1998), District Courts held that HCPs and Incidental Take Permits have to provide for species recovery as defined by the word “conservation” in the ESA.</p>	<p>NGO-5-13</p>	<p>Consultation under Section 7(a)(2) on the HCP’s covered activities will result in the preparation of a Biological Opinion (“BO”) by FWS that determines if the proposed action is likely to jeopardize the continued existence of a listed species or adversely modify a species’ critical habitat. While FWS has not yet issued the BO on the HCP, the BO must include a summary of the information on which it is based and must adequately detail and assess how the action affects listed species and their critical habitats. 16 U.S.C. § 1536(b)(3). Additionally, if the BO concludes that the agency action is not likely to jeopardize a listed species or adversely modify its critical habitat, it must include an Incidental Take Statement which specifies the impact of any incidental taking, provides reasonable and prudent measures necessary to minimize such impacts, and sets forth terms and conditions that must be followed. 16 U.S.C. § 1536(b)(4). If FWS’s action may affect a listed species, the absence of a valid BO means that the action agency has not fulfilled its duty to insure its actions will neither jeopardize a listed species nor adversely modify the species’ critical habitat.</p>
<p>b. ESA Section 2 and Section 7 Duties</p>	<p>NGO-5-14</p>	<p>The BO must include an evaluation of the direct, indirect, and cumulative effects of the action on listed species. 16 U.S.C. § 1536(a)(2); 50 CFR §§ 402.02, 402.12, 402.14(d), 402.14(g)(3). In addition to effects of other federal actions, “cumulative effects” include “effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.” 50 C.F.R. § 402.02.</p>
<p>i. Section 2(c) and 7(a)(1) Duty to Conserve</p>	<p>Federal agencies have an affirmative duty to promote the conservation (<i>i.e.</i>, recovery) of threatened and endangered species. Section 2(c) of the ESA provides that it is “...the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.” 16 U.S.C. §1531(c)(1). Section 7(a)(1) also establishes an affirmative duty to conserve. 16 U.S.C. § 1536(a)(1). If FWS grants a permit on the basis of this HCP without requiring additional minimization and mitigation of impacts to the plover, it will be in violation of its duties under Sections 2 and 7 of the ESA.</p>	<p>Throughout its analysis, the BO must utilize the “best scientific and commercial data available.” 16 U.S.C. § 1536(a)(2); 50 C.F.R. §402.14(d). FWS must consider all the relevant factors and articulate a rational connection between the facts and its ultimate conclusion.</p>
<p>ii. Section 7(a)(2) Duty to Avoid Jeopardy and Adverse Modification</p>	<p>In addition to section 10 “take permits,” Congress also created incidental take statements to exempt federal agencies from section 9’s take prohibition. 16 U.S.C. § 1536(a)(2). Upon concluding the section 7 consultation process on the HCP, the FWS may issue a “take statement” after rendering a “no jeopardy” biological opinion. <i>Id.</i> at § 1536(b)(4)(A). An incidental take statement must (1) specify the impacts on the species, (2) specify the reasonable and prudent measures that the FWS considers necessary to minimize such impact, and (3) set forth terms and conditions that must be complied with by the federal agency to implement these reasonable and prudent measures. 16 U.S.C. § 1536(b)(4). Failure to comply with the mandatory terms and conditions of a take statement renders the agency’s action in violation of the take prohibition.</p>	<p>If an action’s impact on a species’ habitat threatens either the recovery or the survival of a species, the BO must conclude that the action adversely modifies critical habitat. The ESA defines critical habitat as areas which are “essential to the conservation” of listed species. 16 U.S.C. § 1532(5)(A). The ESA’s definition of “conservation” includes the recovery of species. <i>See</i> 16 U.S.C. § 1532(3).</p>
<p>FWS has not yet issued a BO for the HCP. However, we hope it will comply with all of the above-listed requirements. As it stands, the HCP does not demonstrate that it prevents jeopardy (survival and recovery) and adverse modification. In fact, the evidence in the record indicates the contrary for the HCP is not even consistent with the Recovery Plan.</p>	<p>NGO-5-15</p>	
<p>II. VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT</p>		

NGO-5

NGO-5

The DEIS for the HCP fails to fulfill the statutory and regulatory mandates of the National Environmental Policy Act ("NEPA"). The purpose of NEPA is to "promote efforts which will prevent or eliminate damage to the environment." 42 U.S.C. § 4331. NEPA's fundamental purposes are to guarantee that: (1) agencies take a "hard look" at the environmental consequences of their actions before these actions occur by ensuring that the agency has and carefully considers "detailed information concerning significant environmental impacts," *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); and (2) agencies make the relevant information available to the public so that it "may also play a role in both the decisionmaking process and the implementation of that decision." *Id.*

NEPA emphasizes "coherent and comprehensive up-front environmental analysis" to ensure an agency "will not act on incomplete information, only to regret its decision after it is too late to correct." *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998), *cert. denied*, 527 U.S. 1003 (1999) quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989); see also *Foundation on Economic Trends v. Heckler*, 756 F.2d 143, 157 (D.C. Cir. 1985) ("The NEPA duty is more than a technicality; it is an extremely important statutory requirement to serve the public and the agency *before* major federal actions occur.") (emphasis in original).

NEPA also requires federal agencies to analyze the direct, indirect, and cumulative impacts of the proposed action. 42 U.S.C. § 4332(C); 40 C.F.R. §§ 1508.7, 1508.8. Cumulative impacts include the "impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future significant actions." 40 C.F.R. § 1508.7. Direct effects are caused by the action and occur at the same time and place. See *id.* § 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. See *id.* § 1508.8(b). Both include "effects on natural resources and on the components, structures, and functioning of affected ecosystems," as well as "aesthetic, historic, cultural, economic, social, or health [effects]." *Id.* NEPA also requires an EIS to "inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1.

In addition to alternatives and impacts, NEPA requires agencies to consider mitigation measures to minimize the environmental impacts of the proposed action. 40 C.F.R. § 1502.14 (alternatives and mitigation measures); 40 C.F.R. § 1502.16 (environmental consequences and mitigation measures). Furthermore, throughout the EIS, the agency is required to "insure the professional integrity, including scientific integrity," of its discussions and analyses. *Id.* § 1502.24.

a. The DEIS Does Not Adequately Describe the Environmental Baseline

FWS is required to "describe the environment of the areas to be affected or created by the alternatives under consideration." 40 CFR § 1502.15. The establishment of the baseline

conditions of the affected environment is a practical requirement of the NEPA process. In *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988), the Ninth Circuit states that "without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA."

As discussed above, because of the deficiencies of the baseline data for SPMA, RMA and other areas under OPRD jurisdiction (i.e. Ocean Shore), the DEIS fails to adequately describe the environmental baseline.

b. The DEIS's Analysis of Impacts is Inadequate

The DEIS fails to adequately analyze the direct, indirect, and cumulative impacts of the HCP on the environment. The Ninth Circuit has made clear that NEPA requires agencies to take a "hard look" at the effects of proposed actions; a cursory review of environmental impacts will not stand. *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1150-52, 1154 (9th Cir. 1998). Instead, the HCP DEIS provides little to no detailed analysis of the impacts of the HCP covered activities on hydrology and water quality, cultural resources, geology and soils, hazards and hazardous materials, air quality, noise, aesthetics, Environmental Justice, and other resources. This is particularly so in that the document describes the SPMA and RMA but has virtually no analysis of the resources and activities that impact those resources in areas outside of the reserves.

In addition to analyzing the direct and indirect impacts of the HCP, FWS is required to complete an analysis of the cumulative impacts of the HCP with other past, present and reasonably foreseeable projects. This requirement ensures that the combined effects of separate activities do not escape consideration. A cumulative impact is "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. § 1508.7.

The Ninth Circuit requires federal agencies to "catalogue" and provide useful analysis of past, present, and future projects. *City of Carmel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1160 (9th Cir. 1997); *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 809-810 (9th Cir. 1999). Furthermore, NEPA requires that the Forest Service's cumulative impacts analysis provide "some *quantified* or *detailed* information," because "[w]ithout such information, neither courts nor the public . . . can be assured that the Forest Service provided the hard look that it is required to provide." *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1988); see also *id.* ("very general" cumulative impacts information was not hard look required by NEPA). As the Ninth Circuit stated in *Neighbors*, it is not appropriate to "defer consideration of cumulative impacts to a future date. 'NEPA requires consideration of the potential impacts of an action *before* the action takes place.'" *Neighbors*, 137 F.3d at

NGO-5-16

NGO-5-17

NGO-5-18

<p>1380 quoting <i>City of Tenakee Springs v. Clough</i>, 915 F.2d 1308, 1313 (9th Cir. 1990) (emphasis in original).</p>	<p>NGO-5</p>	<p>NGO-5</p>	
<p>Furthermore, NEPA requires FWS to ensure the scientific integrity and accuracy of the information used in its decision-making. 40 CFR § 1502.24. The regulations specify that the agency “must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential.” 40 C.F.R. § 1500.1(b). Where complete data is unavailable, the EIS also must contain an analysis of the worst-case scenario resulting from the HCP. <i>Friends of Endangered Species v. Jantzen</i>, 760 F.3d 976, 988 (9th Cir. 1985) (NEPA requires a worst case analysis when information relevant to impacts is essential and not known and the costs of obtaining the information are exorbitant or the means of obtaining it are not known) citing <i>Save our Ecosystems v. Clark</i>, 747 F.2d 1240, 1243 (9th Cir. 1984); 40 C.F.R. § 1502.22. The HCP EIS fails to include such an analysis. For example, there is no analysis of the impacts of the increased development and human presence in plover habitats throughout the coast and near some of the most important plover habitats.</p>	<p>NGO-5-18 continued</p>	<p>Upon further consideration, this alternative was eliminated from detailed consideration in this DEIS because OPRD does not have the authority to implement or enforce site management plans for nesting populations of snowy plover on lands that they do not own or manage. Under an ITP from the FWS, OPRD would be responsible for all management strategies outlined in the HCP on covered lands, including those that would take place on lands owned or managed by a landowner other than OPRD. Since they would not have the ability to ensure that site plans were effectively implemented or adequately enforced, this alternative was not considered a reasonable alternative for consideration in this DEIS.</p>	<p>NGO-5-20 continued</p>
<p>c. The DEIS’s Alternatives Analysis is Inadequate</p>	<p>NGO-5-19</p>	<p>DEIS at 2/37. As OPRD has jurisdiction over the entire Ocean Shore below the vegetation line to low tide line, clearly OPRD can manage these areas for plovers without managing the adjacent uplands. The elimination of this alternative was done without the required NEPA analysis.</p>	<p>NGO-5-21</p>
<p>NEPA requires that an EIS contain a discussion of the “alternatives to the proposed action.” 42 U.S.C. §§ 4332(C)(iii),(E). The discussion of alternatives is at “the heart” of the NEPA process, and is intended to provide a “clear basis for choice among options by the decisionmaker and the public.” 40 C.F.R. §1502.14; <i>Idaho Sporting Congress</i>, 222 F.3d at 567 (compliance with NEPA’s procedures “is not an end in itself. . . [but] it is through NEPA’s action forcing procedures that the sweeping policy goals announced in § 101 of NEPA are realized.”) (internal citations omitted). NEPA’s regulations and Ninth Circuit caselaw require the agency to “rigorously explore” and objectively evaluate “all reasonable alternatives.” 40 C.F.R. § 1502.14(a) (emphasis added). The courts, in the Ninth Circuit as elsewhere, have consistently held that an agency’s failure to consider a reasonable alternative is fatal to an agency’s NEPA analysis. <i>See, e.g., Idaho Conserv. League v. Mumma</i>, 956 F.2d 1508, 1519-20 (9th Cir. 1992) (“The existence of a viable, but unexamined alternative renders an environmental impact statement inadequate.”).</p>	<p>NGO-5-20</p>	<p>In addition, the DEIS dismisses the alternative entitled “Implementation of the Snowy Plover Recovery Plan:”</p>	<p>NGO-5-21</p>
<p>If FWS rejects an alternative for consideration, it must explain why a particular option is not feasible and was therefore eliminated from further consideration. 40 C.F.R. § 1502.14(a). The courts will scrutinize this explanation to ensure that the reasons given are adequately supported by the record. <i>See Muckleshoot Indian Tribe v. U.S. Forest Service</i>, 177 F.3d 800, 813-15 (9th Cir. 1999); <i>Idaho Conserv. League</i>, 956 F.2d at 1522 (while agencies can use criteria to determine which options to fully evaluate, those criteria are subject to judicial review); <i>Citizens for a Better Henderson</i>, 768 F.2d at 1057.</p>	<p>NGO-5-20</p>	<p>This alternative would include management of the covered lands in accordance with the <i>Western Snowy Plover (Charadrius alexandrinus nivosus) Pacific Coast Population Draft Recovery Plan</i> [Recovery Plan] (Fish and Wildlife Service 2001b). The Recovery Plan identified 19 recovery areas, covering approximately 126.5 miles of the Oregon coast. The cost of managing all 19 of recovery areas identified in the Recovery Plan would be prohibitive given the extensive area that would have to be managed to limit public use and access. In addition, OPRD does not own or manage all of the recovery areas identified in the Recovery Plan, and would not have the authority to enforce all of the management activities at non-OPRD owned or leased sites. This alternative would also not allow OPRD to meet their stated objectives of managing for snowy plover habitat while balancing impacts to recreational use and public access on the Oregon coast (chapter 1, section 1.2.3, “Context”). For these reasons, this alternative was eliminated from detailed consideration in the DEIS.</p>	<p>NGO-5-22</p>
<p>The HCP DEIS casually rejects more protective alternatives with little to no analysis. This violates NEPA. The DEIS eliminated the alternative entitled “Management of Recreation Management Areas:”</p>	<p>NGO-5-20</p>	<p>DEIS at 2/37-38. Again the OPRD eliminated this alternative without any significant discussion. All actions taken by the FWS and other agencies must be consistent with the Recovery Plan. An statewide HCP covering hundreds of miles of coast must certainly be consistent with the Recovery Plan. At the very least, FWS must consider the Recovery Plan recommendations as mitigations and alternatives for this HCP in order to comply with NEPA. Furthermore, the HCP and DEIS are based on the Draft Recovery Plan. Now that the Final Recovery Plan is in effect, the HCP documents must incorporate the Final Recovery Plan to the maximum extent practicable. Any recommendations in the Recovery Plan or other more protective measures must be analyzed and if excluded, the FWS must determine that such protective measures were not practicable. Failing to do this analysis is a violation of NEPA.</p>	<p>NGO-5-23</p>

<p>d. The DEIS's Analysis of Mitigation Measures is Inadequate</p> <p>The DEIS fails to provide an adequate analysis of mitigation measures for the HCP's environmental impacts. "Implicit in NEPA's demand that an agency prepare a detailed statement on 'any adverse environmental effects which cannot be avoided should the proposal be implemented,' 42 U.S.C. § 4332(C)(ii), is an understanding that an EIS will discuss the extent to which adverse effects can be avoided." <i>Robertson</i>, 490 U.S. at 351-52. Because the DEIS does not adequately assess the HCP's direct, indirect, and cumulative impacts, its analysis of mitigation measures for those impacts is necessarily flawed. The DEIS must discuss mitigation in sufficient detail to ensure that environmental consequences have been fairly evaluated." <i>Robertson</i>, 490 U.S. at 352; see also <i>Idaho Sporting Congress</i>, 137 F.3d at 1151 ("[w]ithout analytical detail to support the proposed mitigation measures, we are not persuaded that they amount to anything more than a 'mere listing' of good management practices"). The HCP DEIS does not provide a full analysis of possible mitigation measures to avoid or lessen the impacts of the HCP. As the Supreme Court clarified in <i>Robertson</i>, 490 U.S. at 352, the "requirement that an EIS contain a detailed discussion of possible mitigation measures flows both from the language of [NEPA] and, more expressly, from CEQ's implementing regulations" and the "omission of a reasonably complete discussion of possible mitigation measures would undermine the 'action-forcing' function of NEPA."</p>	NGO-5	NGO-5			
<p>e. Other Considerations</p> <p>i. Scope of the HCP</p> <p>The OPRD has management responsibility for approximately 230 miles of Oregon's beaches. All of this area is presently considered plover habitat and has the potential to be inhabited by plover. The recovery plan identifies over 126 miles of coastline as necessary for the recovery of the plover. However, the HCP identifies only 32 miles on beach as SPMAs. Without an HCP, the entire coast is protected for plovers and activities that constitute "take" under the ESA are illegal. If the HCP is implemented as written, the plover would lose protection on almost 200 miles of coastline. This does not further the conservation of the species at all. The Center opposes this broad release of liability from the ESA. If the OPRD only plans to manage 32 miles of beach for plovers, then the HCP should only relieve OPRD of "take" liability under the ESA for those 32 miles. The FWS must seriously scrutinize the actual scope of the plan in the context of recovery.</p>	NGO-5-24	<p>of beach within the Dunes National Recreation Area. These areas may have some level of suitable snowy plover habitat, depending upon the time of year and tide levels, but current ATV/OHV activity likely prevents other than occasional use by snowy plovers. None of these areas have been proposed to be a SPMA in this HCP. All other beach segments are off limits to ATV/OHV without a drive-on-beach permit issued by OPRD.</p> <p>The Ocean Shore is open to "street legal" motor vehicles, such as cars, trucks, and campers, unless otherwise posted. Beaches closed to vehicles (both motorized and non-motorized) may be accessed only after obtaining a valid permit from OPRD or in emergencies when official vehicles need to enter the beach.</p> <p>Driving occurs primarily in the wet sand portion of the beach, except at access points to the beach. Currently, beaches at occupied nesting areas are seasonally closed to driving, unless otherwise already prohibited. Driving on beaches of managed SPMAs will not be allowed during the nesting season whether occupied or not. These activities are only allowed outside of occupied SPMAs/RMAs, and outside of unoccupied SPMAs being actively managed for snowy plover occupancy.</p> <p>Draft HCP at Section 3, page 8.</p>			
<p>ii. Off-road vehicles</p> <p>Off-road vehicles and other motorize activity is a significant threat to plovers. See Recovery Plan. The HCP will continue to allow driving motor vehicles in plover habitat:</p> <p>Although, this type of recreation use is growing rapidly as shown by recent recreation surveys, ATV/OHV riding on the beach is allowed currently only at three locations on the coast: the Sand Lake Recreation Area and on two sections</p>	NGO-5-25	<p>The HCP must restrict all motor vehicle activity on lands under the jurisdiction of OPRD where plovers may nest, roost or forage. These motorized restrictions should be in place in the SPMAs/RMAs as well as the rest of the rest of the Ocean Shore under OPRD jurisdiction. The exclusion of motor vehicles from the beach is necessary to protect plovers throughout the year, especially during nesting, but also for foraging and roosting purposes. Counter to OPRD's assertion that vehicles only use the wet sand portions of the beach, the reality is that vehicles routinely drive on the dry sand and wrack line where plovers nest, feed and roost. OPRD must work with the Forest Service and Bureau of Land Management where ORVs are a major threat to plovers. The HCP and DEIS must analyze the ORV activity and associated disturbance from human presence, predator attraction, and other such impacts associated with motorized activity near or on the beach.</p> <p>iii. Oregon Beach Bill of 1967</p> <p>The HCP makes repeated reference to the Oregon Beach Bill of 1967. OPRD's position is that protecting the plover by restricting certain activities in suitable habitat is in conflict with the Beach Bill. This interpretation of the interaction between the Beach Bill and the Endangered Species Act is seriously flawed. The Draft HCP states that "the Beach Bill precludes government and private landowners from fencing off the dry sand portion of their property that would prevent the public from using it for recreational purposes.</p> <p>Draft HCP at 1/1-1/2. The Draft HCP later contradicts that statement:</p>	NGO-5-26	NGO-5-27	NGO-5-28
		NGO-5-29			

<p>In 1967, the Oregon Legislature enacted the "Beach Bill" to protect Oregonian's right to the free and uninterrupted use of the Ocean Shore from the Columbia River on the north to the Oregon-California border on the south approximately 360 miles (codified at ORS 390.610 - 390.770). This legislation established public recreational easements on beaches seaward of the vegetation line, regardless of the underlying ownership, and recognized (1) that the public has acquired recreational rights to the Ocean Shore by custom (over the years the public has made frequent and uninterrupted use of the Ocean Shore), (2) the public interest to protect and preserve the public rights and easements as a permanent part of Oregon's recreational resources, and (3), recognized the public interest to do whatever is necessary to preserve and protect scenic and recreational use of the Ocean Shore. Oregon law gives the Oregon Parks and Recreation Commission complete jurisdiction and authority over all park areas acquired by the State for recreation, scenic, historic, natural, and cultural purposes (ORS 360.111), and the authority to make regulations and provisions deemed necessary for use and administration of park areas (ORS 390.124, ORS 390.660). The right of public access is not a State constitutional right. <u>Thus, the right of public access is subject to regulation or adjustment by the State legislature through legislation, or by OPRD pursuant to statutory authority.</u></p>	NGO-5	NGO-5	
<p>Draft HCP at 2/30-31. Clearly, restricting certain activities is well within the power of OPRD. Regardless, restrictions on human activity are required to comply with the federal ESA, and have nothing to do with the Beach Bill. The Beach Bill was enacted to prevent private landowners from preventing public access to the beach.</p>	NGO-5-29 continued	<p>evaluated. For instance, the applicant failed to analyze alternatives that would have implemented the Recovery Plan because of apparent conflict with the mandates of the Beach Bill. In conclusion, OPRD needs to come clean on the Beach Bill, rather than use it as some unconditional mandate to thwart needed protections for the plover.</p>	NGO-5-32 continued
<p>First, the Supremacy Clause of Constitution of the United States makes clear that federal law trumps all state laws when there is a conflict. If, as the OPRD asserts, the Beach Bill is in conflict with the requirements of the ESA, then the conflict is resolved in favor of the ESA. The Beach Bill, although a commendable piece of legislation, cannot violate the prohibitions of the ESA.</p>	NGO-5-30	<p>iv. Oregon Endangered Species Act</p>	NGO-5-33
<p>However a conflict does not exist between the two statutes in with regard to OPRD's management of plover habitat. The Beach Bill guarantees public access but does not provide the public with a right to do whatever it wants while accessing the beach. The Beach Bill does not guarantee motorized access to the beach, nor does it guarantee off-leash dogs access to the beach.</p>	NGO-5-31	<p>The proposed HCP is not in compliance with the Oregon ESA. State law, ORS 496.182 [2]b, requires that OPRD ensure that the actions on lands owned or leased by the State are consistent with the Conservation Program adopted by the Oregon Fish and Wildlife Commission in 1994. The Conservation Program instructs OPRD to "protect all existing snowy plover sites from negative impacts" as well as other requirements. The HCP leaves out over 200 miles of the coast and many existing plover sites.</p>	NGO-5-34
<p>It must be made very clear that existing restrictions on public use of the beach in order to avoid "take" of plover do not restrict the public's access to the Ocean Shore. Even with nesting season closures, the public may still walk through the area. Motorized vehicles and off-leash dogs are prohibited because these activities are likely to take plovers.</p>	NGO-5-32	<p>v. Global Warming Induced Sea Level Rise</p>	<p>Last but certainly not least, the HCP and DEIS must address global warming impacts on the plover. Unbelievably, the draft HCP and DEIS are completely devoid of any mention of global warming. Since the plover's habitat is entirely adjacent to the ocean and within one meter of sea level, it is obvious that predicted global warming induced sea level rise will impact this species. The FWS must evaluate this impact, disclose it to the public and analyze the impact in the context of the HCP and the ESA overall.</p>
<p>Therefore, whenever the HCP and DEIS reference the Beach Bill and apparent conflicts, the Service and the applicant must make clear that the Beach Bill is not in conflict with plover protections. As such, all instances where the applicant declined or dismissed greater protections for plovers based on conflict with the Beach Bill, should be re-</p>	NGO-5-32	<p>The FWS must analyze the impacts of global warming on the snowy plover in the context of the ESA and NEPA. The Ninth Circuit Court of Appeals recently ruled that federal agencies must evaluate global warming in all federal actions. <i>Center for Biological Diversity v. National Highway Traffic Safety Administration</i>, No. 06-71891 (9th Cir. November 15, 2007).</p>	<p>III. Conclusion</p>
		<p>We hope that these comments are helpful and will result in alterations of the HCP prior to issuance of the Record of Decision, Incidental Take Permit, final Implementation Agreement, and Biological Opinion for the plan.</p>	
		<p>Thank you for your consideration of these comments. Please contact me if you have any questions.</p>	
		<p>Sincerely,</p>	
		<p>/s/</p>	
		<p>Andrew Oraboske Conservation Advocate Center for Biological Diversity</p>	

Response to Comment NGO-5-1

On February 26, 2008, USFWS extended the public comment period for 2 weeks, ending on March 12, 2008. The comment period was also opened again from April 17, 2009 to June 19, 2009 to allow for additional public comment.

Response to Comment NGO-5-2

Both the HCP and the EIS have been updated to include information through the 2009 breeding season survey for snowy plovers. These data reflect the most recent survey or “baseline” data specific to known populations of snowy plovers on the Oregon coast. These data were used to complete the effects analysis in Chapter 3 of the FEIS and to inform the take assessment presented in Appendix G of the HCP.

Response to Comment NGO-5-3

The take assessment was based on the best science currently available and analyzed the effects of the covered activities on the covered lands. The assumptions and uncertainty associated with the take assessment are described in Section 2.3 of the technical memorandum, which is included as Appendix G to the HCP.

Response to Comment NGO-5-4

As described in Section 2 of the HCP, OPRD currently manages one occupied area at the HRA in the Bandon SNA for nesting populations of snowy plovers. If snowy plover nests are discovered outside of this area, OPRD works with USFWS to determine what protections are needed to avoid the potential for take of individuals. Under the HCP, OPRD would continue to protect nesting populations of snowy plovers at the Bandon SNA, and would initiate active management at up to four currently unoccupied SPMAs. In addition, recreational use restrictions that are not currently implemented by OPRD, such as more stringent restrictions on dog use and kite flying, would be implemented at all SPMAs under the HCP. These additional management actions would further minimize and mitigate the potential effects of OPRD’s management activities on snowy plovers, and would contribute to recovery of the species.

Response to Comment NGO-5-5

All of the SPMAs that would be managed under the HCP for nesting populations of snowy plovers are owned or managed by OPRD. The commenter is correct,

however, in stating that OPRD does not have control over current or future management of RMAs for nesting populations of snowy plovers, which is why the HCP does not make any specific commitments to manage those lands. Rather, RMAs are identified in the HCP to allow for coordinated management of RMAs, by their respective landowners, with management of adjacent OPRD-owned or managed lands. The definition of the covered lands has been clarified to reflect this management distinction, as described in MR-2.

Response to Comment NGO-5-6

As the commenter has described, adaptive management is a process that allows resource managers to adjust their actions to reflect new information or changing conditions. In the HCP, specific adaptive management measures were identified by OPRD and USFWS to minimize the uncertainty associated with gaps in scientific information or biological requirements specific to snowy plovers. These adaptive management measures define processes for dealing with consistent snowy plover population declines; consistent and predictable nesting outside of SPMA; the application and use of nest exclosures; changes in the source of predator management funding; failure of a managed unoccupied SPMA; and exchanging an SPMA with an RMA. The funding necessary to implement and consider these adaptive management measures is considered in the commitments for funding the HCP monitoring and reporting program (wintering and breeding window surveys, breeding population monitoring, detect/non-detect monitoring and annual reporting); predator management program; and overall program administration (Section 7 of the HCP). We believe that the level of commitment to funding the adaptive management program is appropriate for the proposed action. In addition, although many of the adaptive management measures do not have required, specific outcomes, when triggered, they do require that OPRD and USFWS consider and implement adjustments to the conservation strategies based on defined parameters.

The legal validity of the No Surprises Rule is beyond the scope of this EIS.

Response to Comment NGO-5-7

The commenter is correct in noting that OPRD did dismiss several alternatives to the HCP that would have resulted in additional habitat management obligations along the Ocean Shore. These alternatives and the reasons they were dismissed by OPRD are described in Section 8 of the HCP. In addition, the HCP includes a discussion of why additional OPRD-owned sites were not carried forward as SPMA in the HCP proposal.

Although OPRD dismissed the alternatives listed in Section 8 of the HCP, USFWS determined that an additional alternative (Alternative 3 in the FEIS) was a reasonable

alternative and should be analyzed. Alternative 3 would require OPRD to manage an additional four SPMAs and one additional RMA. Although management of additional areas could offer greater conservation benefits to snowy plovers, implementation of that alternative would result in more recreational use impacts on the public (Section 3.7, “Wildlife and Their Habitat,” in Volume I of the FEIS), and would cost OPRD more money to implement. In addition, several of the sites associated with Alternative 3 have biological limitations (environmental conditions, size, erosion rates) that would make them less than ideal for sustaining long-term nesting populations of snowy plovers.

USFWS will determine, through completion of the required Federal Endangered Species Act (ESA) Section 10 analysis, whether the HCP minimizes and mitigates the effects of the covered activities on snowy plovers to the maximum extent practicable, and will document the results of that analysis in the ESA findings document.

For information about the relationship between the HCP and the Recovery Plan, see MR-7.

Response to Comment NGO-5-8

The commenter is correct in noting that OPRD cannot guarantee State funds for future activities to administer the requirements set forth in the ITP, Implementing Agreement (IA), or the HCP, which are not yet appropriated by the State legislature. Additionally, OPRD cannot guarantee acceptance of grant monies unless it has received authorization from the Oregon legislature to apply for and accept these monies. However, OPRD can guarantee that it will request sufficient funding from the legislature on a biennial basis to properly implement the HCP and fulfill the terms and commitments of the ITP.

Whenever funding for implementation of the HCP conservation measures are considered insufficient to meet the commitment outlined in the HCP, OPRD will consult with USFWS to determine what actions may be necessary with respect to meeting the commitments of the HCP and/or avoiding the risk of take of snowy plovers.

Of note, the use of State funding to implement HCPs, and the associated limitations on how those funds can be applied in the future, is common in other large, statewide HCPs in the country. If the State fails to appropriate funds sufficient to carry out the requirements of the HCP, the applicant would not be in compliance with the terms and conditions of their ITP, and therefore, USFWS reserves the right to suspend or revoke the ITP.

Response to Comment NGO-5-9

OPRD has provided its assessment of the level of take associated with the covered activities in Appendix G of the HCP. An assessment of how the effects of the management actions in the HCP could affect the survival or recovery of snowy plovers will be made by USFWS after the FEIS has been completed.

Response to Comment NGO-5-10

The conservation strategies in the HCP are intended to minimize and mitigate, to the maximum extent practicable, the potential effects of the covered activities, and to ensure that incidental take associated with those activities does not reduce the likelihood of survival and recovery of the species in the wild. USFWS is reviewing the HCP and seeking public input to ensure that it meets those criteria and will use that information to make the determination of the adequacy of the conservation measures proposed under the HCP. Concerns specific to the provisions for permit revocation outlined in Section 10(a)(2)(c) of the ESA are beyond the scope of this EIS.

Response to Comment NGO-5-11

Please refer to the Response to Comment NGO-5-10 for information about the adequacy of the conservation measures in the HCP. Adaptive management measures and changed circumstances are considered to be part of the conservation measures and are provided in Sections 5 and 7 of the HCP, respectively. Furthermore, the ESA requires that activities not “appreciably reduce the likelihood of the survival and recovery of the species in the wild,” not that they “promote survival and recovery of the species.” This standard will be used to evaluate if the proposed measures will minimize and mitigate the effects of the HCP on snowy plovers to the maximum extent practicable, and to determine the adequacy of the proposed conservation measures.

Response to Comment NGO-5-12

Specific adaptive management measures were identified by OPRD and USFWS to minimize the uncertainty associated with gaps in scientific information or biological requirements specific to snowy plovers. As outlined in Section 5 of the HCP, these adaptive management measures define processes for dealing with consistent snowy plover population declines; consistent and predictable nesting outside of SPMA; the application and use of nest enclosures; changes in the source of predator management funding; failure of a managed unoccupied SPMA; and exchanging an SPMA with an RMA.

Response to Comment NGO-5-13

The legality of the No Surprises Rule is beyond the scope of this FEIS and HCP.

Response to Comment NGO-5-14

Please refer to the Response to Comment NGO-5-10 and NGO-5-11 for information regarding the adequacy of the conservation measures in the HCP. Please refer to MR-7 for a discussion of how implementation of the HCP would support snowy plover recovery by helping snowy plovers reach recovery goals for numbers of breeding adults, productivity, and distribution.

Response to Comment NGO-5-15

Please refer to the Responses to Comment NGO-5-10 and NGO-5-11 for information regarding the adequacy of the conservation measures in the HCP. Please refer to MR-7 for a discussion of how implementation of the HCP would support snowy plover recovery by helping snowy plovers reach recovery goals for numbers of breeding adults, productivity, and distribution.

Response to Comment NGO-5-16

Please refer to the Response to Comment NGO-5-2 for a discussion of the baseline data used to assess effects on snowy plovers.

Response to Comment NGO-5-17

Chapter 3 of Volume I of the FEIS describes the potential direct, indirect, and cumulative effects of the covered activities on both the natural and built environment along the entire Ocean Shore. The analysis in that chapter considers effects on socioeconomics and environmental justice communities (Section 3.4), air quality (Section 3.5), noise (Section 3.6), soils and dunes (Section 3.10), cultural resources (Section 3.11), and water quality (Section 3.12). Potential effects on hazardous materials and visual resources are not considered in the EIS based on our decision during internal scoping that the proposed HCP would have no effect on those resources (U.S. Fish and Wildlife Service 2005). In consideration of this comment, it is important to note that the activities covered in the HCP and evaluated in the FEIS are only those management activities that could have an effect on snowy plovers, and are, therefore, largely associated with management actions in and around SPMA and RMAs. We disagree, however, that effects on resources outside of SPMA and RMAs were not considered. Many of these effects are described as “consequences

common to all alternatives” because they did not differ between the alternatives considered in the FEIS.

Response to Comment NGO-5-18

The analysis in Section 3.13 of Volume I of the FEIS uses a “list” approach to assess the cumulative effects of the alternatives within a larger, cumulative effects analysis area, which includes the covered lands and the full extent of each of the counties that make up the covered lands. The list approach used for the analysis involved identifying land use planning efforts or projects in the cumulative effects analysis area that could contribute to the cumulative effects of the alternatives. This approach is consistent with the Council on Environmental Quality (CEQ) Guidance regarding cumulative effects (Council on Environmental Quality 1997). Section 3.13 describes in more detail the process that was used to determine which present and reasonably foreseeable actions were considered during the cumulative effects analysis.

Response to Comment NGO-5-19

The CEQ has revoked the “worst-case” regulation in the case cited by the commenter (40 CFR 1502.22(b)). Nevertheless, all of the effects analyses in Chapter 3 of the FEIS are based on “worst-case scenarios.” For example, potential effects on recreational use opportunities around managed SPMA are considered as if restrictions would be implemented within the entire SPMA, when in reality, those restrictions would be focused in a more discrete area, after development of site management plans have been completed.

It is important to note that the analysis considered the effects of the covered activities and conservation measures on resources within the covered lands. The FEIS specifically acknowledges that recreational use on the Oregon coast will likely increase over the next 25 years, and that increased use could affect evaluated resources, including populations of snowy plovers. In fact, OPRD’s proposal to actively manage unoccupied SPMA over the term of the ITP was included in the HCP, in part, to address the potential effects of increased recreational use on snowy plovers. As such, we disagree that the effects analysis in the FEIS did not consider the potential effects of increased recreational use over time on snowy plovers.

Response to Comment NGO-5-20

Compared to the HCP, Alternative 3 in the EIS considers the effects of managing an additional four SPMA and one RMA on the Ocean Shore over the next 25 years, and affords USFWS and the public an opportunity to compare the effects of another, more protective alternative relative to the proposed HCP. In addition, Section 8 of

the HCP and Section 2.4 of Volume I of the EIS describe additional alternatives that were considered during public scoping, but that were not carried forward as part of the HCP or for detailed analysis in the EIS. Among those alternatives, “Management of Recreation Management Areas” is discussed. As described in those sections, OPRD does not have the authority to implement or enforce site management plans for nesting populations of snowy plovers on lands that they do not own or manage (i.e., RMAs). OPRD’s authority on those lands is limited to working with each landowner to implement legal recreational use restrictions to protect snowy plovers. Under an ITP from USFWS, OPRD would be responsible for all management strategies outlined in the HCP on the covered lands, including implementation of recreational use restrictions at RMAs. Since OPRD would not have the ability to ensure that site plans were effectively implemented or adequately enforced, this alternative was not considered a reasonable alternative for consideration in the EIS.

Response to Comment NGO-5-21

Management of the covered lands in accordance with the Recovery Plan for the Pacific Coast Population of the Western Snowy Plover (U.S. Fish and Wildlife Service 2007a) would require management of 19 individual sites along the Oregon coast, covering approximately 129 miles. The cost of managing all of the sites identified in the Recovery Plan would be prohibitive for OPRD, given the extensive area that would have to be managed to limit public use and access. In addition, OPRD does not own or manage all of the sites identified in the Recovery Plan and would not have the authority to enforce all of the management activities at these sites (predator control, habitat restoration, etc.) This alternative would not allow OPRD to meet its stated objective of managing for snowy plover habitat while balancing impacts on recreational use and public access on the Oregon coast. For these reasons, this alternative was eliminated from detailed consideration in the EIS. However, the Recovery Plan was considered in the development of the proposed HCP and was used, in part, to identify potential RMAs and SPMAAs for management. Please refer to MR-7 for a discussion of how implementation of the HCP would support snowy plover recovery by helping snowy plovers reach recovery goals for numbers of breeding adults, productivity, and distribution.

Response to Comment NGO-5-22

Please refer to MR-7 for a discussion of how implementation of the HCP would support snowy plover recovery by helping snowy plovers reach recovery goals for numbers of breeding adults, productivity, and distribution.

Response to Comment NGO-5-23

Please refer to MR-7 for a discussion of how implementation of the HCP would support snowy plover recovery by helping snowy plovers reach recovery goals for numbers of breeding adults, productivity, and distribution. References to the Draft Recovery Plan have been updated to reflect consideration of the Final Recovery Plan.

Response to Comment NGO-5-24

Please refer to the Response to Comment NGO-5-17 for a discussion of the resource area effects considered in Volume I of the FEIS. We believe that the direct, indirect, and cumulative effects analysis in the EIS is adequate and that mitigation for potential significant effects has been proposed, where needed.

Response to Comment NGO-5-25

For information about the relationship between the HCP and the Recovery Plan, please see MR-7.

Under the HCP, OPRD would implement management activities in addition to those currently in place to provide greater protections for snowy plovers compared to existing conditions. OPRD would manage up to four unoccupied additional SPMAs and would work with other landowners to implement recreational use restrictions at specified RMAs. In addition, snowy plovers found nesting outside of SPMAs and RMAs on the covered lands would be protected (e.g., exclosures placed around nests, if necessary) in accordance with the HCP. The conservation measures proposed in the HCP are more extensive than what are currently undertaken by OPRD within the covered lands (e.g., additional recreational use restrictions at managed sites, management of currently unoccupied areas). With these measures, it is more likely that snowy plovers would be able to occupy other locations along the beach than they would without the HCP in place.

OPRD's management authority on much of the Oregon coast is limited to managing the public's use of and access to the Ocean Shore. Specifically, OPRD is allowed through State rule to determine what kinds of access are to be allowed on its lands or those lands it regulates under the Beach Bill. The ability to actively manage an area for snowy plover recovery (e.g., habitat restoration, predator management) is limited to areas that OPRD owns or leases (e.g., State Parks). Please refer to MR-6 for a more detailed description of OPRD's management responsibilities under the Public Trust Doctrine and Beach Bill.

Response to Comment NGO-5-26

Limitations on driving are currently in place in many areas along the Oregon coast and are proposed for additional locations as part of the HCP. The locations proposed for snowy plover management were chosen to provide the greatest benefit for natural resources while also balancing OPRD's need to provide and preserve recreational opportunities on the Ocean Shore. Closing all of the Ocean Shore to motorized vehicle use would not meet OPRD's stated need. Please refer to MR-6 for a description of the State statutes that govern the public's general right to use the Ocean Shore for recreational purposes in accordance with guidelines and limitations outlined in the Public Trust Doctrine and Oregon's Beach Bill.

Response to Comment NGO-5-27

ATV/OHV use is not allowed at any of the locations proposed for snowy plover management under the HCP, nor is use allowed at other currently occupied RMAs managed by other landowners. The enforcement of OHV restrictions on lands outside of OPRD's jurisdiction (i.e., outside of the covered lands) would continue to be the responsibility of the landowner.

Response to Comment NGO-5-28

The effects of vehicle use, which includes ATVs/OHVs, on snowy plover are analyzed in Section 6, "Direct, Indirect, and Cumulative Effects on Snowy Plovers and Snowy Plover Habitat" of the HCP and Section 3.7, "Wildlife and Their Habitat" in Volume I of the FEIS.

Response to Comment NGO-5-29

Please refer to MR-6 for a detailed description of OPRD's management responsibilities under the Public Trust Doctrine and Beach Bill. OPRD has not asserted that the Beach Bill precludes a landowner's ability or obligation to protect snowy plovers. Rather, the text in the HCP states that OPRD has a statutory obligation to work with that landowner to ensure that such limitations are implemented in accordance with the Beach Bill.

Response to Comment NGO-5-30

Neither OPRD nor USFWS have asserted that the Beach Bill supersedes the requirement of the Federal ESA. The HCP provides guidance to landowners on how recreational use restrictions necessary to protect nesting populations of snowy

plovers must be implemented to meet the statutory obligations of the Beach Bill and the requirements of the Federal ESA.

Response to Comment NGO-5-31

Please refer to MR-6 for a detailed description of OPRD's management responsibilities under the Public Trust Doctrine and Beach Bill. Section 3.3 in Volume I of the FEIS specifically outlines the recreational use restrictions that would be associated with both occupied and unoccupied SPMAs and RMAs to protect snowy plovers.

Response to Comment NGO-5-32

Conflicts with the Beach Bill were not used to dismiss any of the alternatives considered for evaluation in the FEIS. Conflicts with recreational use (too high to allow for successful nesting of snowy plovers), other biological constraints (eroding shorelines, narrow beaches), and/or jurisdictional issues (ownership of land by another landowner) were the primary considerations used to determine the location of SPMAs and RMAs proposed by OPRD for management in the HCP. For more information about why certain alternatives were dismissed from consideration in the HCP and EIS, please refer to Section 8 of the HCP and Section 2.4 in Volume I of the FEIS, respectively. For more information about the dismissal of alternatives where OPRD would manage additional sites, please see the Responses to Comments NGO-5-20 and NGO-5-21.

Response to Comment NGO-5-33

All known nesting populations of snowy plovers within the covered lands would be protected under the HCP, either in SPMAs, RMAs, or as individual nests if found outside of identified management areas. In addition, the HCP includes provisions for actively managing unoccupied areas for snowy plovers in the future.

Response to Comment NGO-5-34

Please see the Response to Comment NGO-4-2 for a discussion of how global climate change is considered in the HCP and FEIS.

Comment Letter NGO-6

NGO-6

NGO-6



Sue Thomas
01/07/2008 09:38 AM

To: FW1ORDHCP@FWS
cc: bsallinger@audubonportland.org, Bonnie Bates/RO/R1/FWS/DOI@FWS
Subject: Fw: Audubon Snowy Plover Comments

FYI, I just received this in my inbox this morning. In looking at the web site, I noticed that comments were due by 1/4. Unfortunately, with the holidays, this just did not get to me in time. I hope you will still consider Bobs comments originally sent on 1/3.

Thanks,
Sue

Sue Thomas
Regional Shorebird Biologist
USFWS - Migratory Birds and Habitat Programs
911 NE 11th Avenue, Portland, OR 97232
503-231-6164
Fax 503-231-2019
Sue.Thomas@fws.gov

— Forwarded by Sue Thomas/RO/R1/FWS/DOI on 01/07/2008 09:35 AM —



Bonnie Bates/RO/R1/FWS/DOI
01/07/2008 09:28 AM

To: Sue Thomas/RO/R1/FWS/DOI@FWS
cc:
Subject: Fw: Audubon Snowy Plover Comments

Sue:

Bob could not get on the website to enter comments so I had him send them to me. I assume you are working with this???

Thanks.

We shall not cease from exploration
And the end of all our exploring
Will be to arrive where we started
And know the place for the first time.
Through the unknown, unremembered gate
When the last of earth left to discover
Is that which was the beginning;
At the source of the longest river
The voice of the hidden waterfall
And the children in the apple-tree
Not known, because not looked for
But heard, half-heard, in the stillness
Between two waves of the sea.
—T.S. Eliot

Bonnie Bates
USFWS, Region 1, MBHP
911 NE 11th Avenue

Portland, OR 97232-4181
503.231.6164(P); 503.231.2019 (F)

— Forwarded by Bonnie Bates/RO/R1/FWS/DOI on 01/07/2008 09:28 AM —



"Bob Sallinger"
bsallinger@audubonportland.org

To: <bonnie_bates@fws.gov>

cc:

01/03/2008 10:14 PM

Subject: Audubon Snowy Plover Comments

Hi Bonnie,

Attached are the Audubon Society of Portland Comments on the Oregon Parks and Recreation Department Draft Snowy Plover HCP and EIS. Thanks for seeing that these comments get to the right place. I checked the FWS website as of 10:00pm on the 3rd and it still was not functioning. The correct link for submission is as follows www.fws.gov/oregontwo/Species. I would submit them myself tomorrow but I will be in the field all day.

Thanks!

Bob Sallinger
Conservation Director



Audubon Society of Portland Audubon Snowy Plover Comments.doc

NGO-6

NGO-6



Date: January 3, 2008
From: Audubon Society of Portland
To: US Fish and Wildlife Service
Re: Oregon Parks and Recreation Department Western Snowy Plover HCP and EIS
Note: (Please note that the US Fish and Wildlife Service Website was down at the time these comments were submitted. These technical problems made it impossible to access specific identifying information to be included in the comments. Comments were submitted via FWS Staff-Bonnie Bates)

Dear Western Snowy Plover HCP Review Team,

On behalf of the Audubon Society of Portland and our 10,000 members in the Portland Metropolitan Region, I would like to submit the following comments regarding the Oregon Parks and Recreation Department Western Snowy Plover (*Chadadrius alexandrinus nivosus*) Draft Habitat Conservation Plan and Draft Environmental Impact Statement. Audubon Society of Portland commends Oregon Parks and Recreation Department (OPRD) for developing proactive strategies to help protect and recover Western Snowy Plover populations at the Oregon Coast. However, there are three areas of the HCP and EIS to which we would like to draw specific attention:

- **We would encourage ORPD and FWS to expand the number of Snowy Plover Management Areas for which site management plans will be developed and active management will be implemented:** Currently OPRD is proposing to develop management plans and implement active management strategies at only three unoccupied SPMA: Columbia River South Jetty, Necanicum Spit, Nehalem Spit. Two additional currently unoccupied SPMA, Netarts Spit and Pistol River, will only be actively managed for snowy plovers if there are less than three unoccupied SPMA/RMA being actively managed for snowy plovers by OPRD or other landowners with approved site management plans. In our opinion, OPRD should actively manage for snowy plover nesting at all of the SPMA listed under Alternative 2 on property owned by OPRD. These would include Bandon, Columbia South River Jetty, Necanicum Spit, Nehalem Spit, Netarts Spit and Pistol River. Netarts in particular, because of the absence of a jetty and limited usage of the beach by the general public presents a substantial opportunity for snowy plover nesting. In addition we would also encourage OPRD to consider adding Nestucca Spit near Bob Straub State Park to the list. While this site does present challenges in term of vehicle access, boat activity and

NGO-6-1

NGO-6-2

invasive beach grass, it also presents significant opportunities for plover nesting. While snowy plover populations have made significant progress in Oregon, we believe that is important to establish viable breeding populations at multiple sites to buffer populations from multiple threats. The current "preferred alternative does not go far enough.

- **Need for comprehensive shorebird management and protection:** While western snowy plovers are an obvious high priority for management and protection, we would note that it is critical that Oregon State Parks develop a comprehensive strategy for protecting all shorebird species, many of which are experiencing significant declines, along all 230 miles of Oregon's coast. The Snowy Plover HCP affects only one species and a limited geographic area. We would draw both FWS and Oregon State Park's attention to the Ocean Shore Management Plan adopted by Oregon State Parks in January 2005. Goal number 3 under the Natural Resource Recommendations Summary (Page 3) calls for ORPD to "Work with Oregon Department of Fish and Wildlife and the U.S. Fish and Wildlife Service in completing a shorebird management plan for the Ocean Shore. The snowy plover HCP is a important step in achieving this objective but we would encourage ORPD, FWS and ODFW to now turn their attention to a comprehensive plan for managing all shorebird populations along Oregon's coast.

- **Predator Control:** While Audubon recognizes the necessity of limited predator control in order to protect nesting snowy plovers, we are concerned about the lack of research to determine the efficacy of these actions as well as the open-ended nature of predator control described in the Draft EIS and HCP. Predator control is at best a stop-gap measure to protect plovers. Audubon encourages FWS and Oregon State Parks to adopt stringent safeguards and guidelines to ensure that lethal predator control is only done as a last resort. We further encourage FWS and Oregon State Parks to couple any predator control with research activities to ensure that control activities actually have their intended effect. We are particularly concerned about a growing body of scientific literature that links increased predator populations with control activities that remove resident territorial species thus opening the habitat to an influx of transients. Emphasis should be places on continuing to develop and refine non-lethal methods to protect nesting plover populations

NGO-6-2
continued

NGO-6-3

NGO-6-4

Thank you for your consideration of these comments.

Sincerely,

Bob Sallinger
Conservation Director
Audubon Society of Portland

Audubon Society of Portland
5151 NW Cornell Road
Portland, OR 97210

Audubon Society of Portland
5151 NW Cornell Road
Portland, OR 97210

Response to Comment NGO-6-1

Please refer to MR-5 for a discussion of how the SPMA's were selected and which unoccupied SPMA's would be managed under the HCP.

Response to Comment NGO-6-2

Nestucca Spit was not included as a potential SPMA under the HCP because of its limited value as potential habitat for nesting snowy plovers. During the winter months, this area is very windy and rough. The water level rises up to the foredune and the resulting wave action cause a high level of erosion. Consequently, there is no suitable habitat for snowy plovers. In addition, there are extremely high levels of recreational use on this beach. This information has been added to Section 8 of the HCP.

Response to Comment NGO-6-3

Comment noted.

Response to Comment NGO-6-4

Predator control varies between sites, and from year to year. At all sites, the primary predators controlled have been crows and ravens. Predator control typically involves killing targeted birds either by shooting or through ingestion of poisoned eggs. Other species, such as foxes, skunks, raccoons, and coyotes that become a local issue at some sites may also be removed. In those cases, targeted animals are either shot or trapped and euthanized. In all cases, predator control is limited to animals that are targeting snowy plovers as prey.

As described in Section 5 of the HCP, OPRD has committed to contracting with APHIS, Wildlife Services, or another comparable provider, to perform a variety of snowy plover predator management activities at both occupied and unoccupied SPMA's. The type of activities that would be performed would depend on site-specific conditions and the presence of nesting populations of snowy plovers. Both lethal and nonlethal methods could be used to control predator populations at occupied SPMA's, but only nonlethal methods would be used to control predator populations at unoccupied SPMA's. A comprehensive list of the types of nonlethal and lethal predator control measures that could be employed is provided in Section 5 of the HCP. OPRD has also updated the HCP to indicate that both forms of predator management may be used under the HCP.

Comment Letter NGO-7

NGO-7

From: [Laura Todd](#)
To: fwlordhpc@fws.gov
Subject: Fw: OPRD HCP EIS
Date: 03/11/2008 09:32 AM
Signed by: CN=Laura Todd/OU=OSO/OU=R1/OU=FWS/O=DOI
Attachments: [Snowy Plover comments.doc](#)

Laura Todd
*Field Supervisor
Newport Field Office
U.S. Fish and Wildlife Service
2127 SE Marine Science Drive
Newport, OR 97365-5258
Phone: 541-867-4558, x. 237
Fax: 541-867-4551
Email: laura_todd@fws.gov
Website: <http://oregonfwo.fws.gov>
----- Forwarded by Laura Todd/OSO/R1/FWS/DOI on 03/11/2008 09:32 AM -----*

Ann Vileisis <annvil@earthlink.net>
To: <laura_todd@fws.gov>
cc
03/11/2008 08:04 AM
Subject: OPRD HCP EIS

Dear Laura,

I am attaching comments from the Kalmiopsis Audubon Society regarding the Western Snowy Plover Habitat Conservation Plan.

I was so glad that you re-opened the comment period because I had missed the other one owing to work deadlines, holidays, etc.

Thanks for getting them into the right inbox.

I'd appreciate it if you could acknowledge receipt of this letter.

Much thanks!

Ann Vileisis
President
Kalmiopsis Audubon Society
P.O. Box 1265
Port Orford, OR 97465
541-332-0261

HERE's the letter pasted below
in case you have trouble with the attachment:

Laura Todd
U.S. Fish & Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport, OR 97365-5258

SUBJECT: OPRD HCP EIS

Dear Laura:

I am writing on behalf of the Kalmiopsis Audubon Society. Our chapter has 175 members in Curry County who are concerned about habitat for birds, fish, and wildlife and so we have some comments we'd like to submit about the Habitat Conservation Plan for the Western Snowy Plover, especially regarding areas from Bandon SNA southward (our groups' local area).

First, thank you for your efforts to figure out ways to accommodate recreation and the persistence of our coastal snowy plovers, which are an important natural asset to our state parks. As a local Audubon chapter, we

<p>have gotten inquiries from birdwatchers who want to see snowy plovers. We believe that the work of conserving this unique bird need not exclude recreation but rather creates an opportunity for increased diversity of recreation on our south coast.</p>	NGO-7	<p>European beach grass from a 50 acre Habitat Restoration Area at the Bandon SNA near Two Mile (5-p.8) , but some of this is already starting to grow back. Also it would seem that focusing more resources and efforts on restoration of more habitat in this general area would be a good investment for increasing the nesting success for the plovers, which are already nearby and already regard the area as suitable for nesting. From a common-sense perspective, the stretch of beach and spit from Bandon SNA down along New River Spit down to Floras Lake seems to have the best potential for successful nesting of snowy plover, owing both to the nature of the beach and its remoteness. More habitat restoration in this area seems like it would be a productive management strategy. (We are wondering why the New River area is not described more specifically with other management areas in the Management chapter [see ch.5-p.8].)</p>	NGO-7
<p>Having said that, we are aware that some places and some communities are more hospitable to snowy plovers than others. For example, the Bandon State Natural Area and New River sites have been places where plovers have had nesting success in recent years. Because of the remote nature of these locations in relation to access sites, there is less conflict with recreation.</p>	NGO-7-1	<p>Although much of the Bandon SNA is remote, the areas close to access points are places where there is greater need for outreach and enforcement. The China Beach Access point is one of those places, where there are occupied nests and recreation use.</p>	NGO-7-2 continued
<p>However, Pistol River is a place where there would be intense conflict because local people and businesses use the beach for horseback riding. The local people are adamantly opposed to any snowy plover restrictions on this beach, and to achieve even a modicum of success would require a legion of law enforcement officers and outreach specialists. Though the spit there might offer good habitat in an ecological sense, in a cultural sense, it does not.</p>	NGO-7-2	<p>At this access point, off-leash dog use is very common year round, and camping and partying occur especially on those long summer evenings leading up to the summer solstice and Fourth of July-just when the snowy plovers are trying to incubate their eggs nearby. It seems that this area should be recognized for more specific planning in the HCP, especially because it is a place near where plovers nest.</p>	NGO-7-3
<p>For this very practical reason, we think that it would be preferable to invest resources into doing a better job in the areas where there is already success<New River and Bandon SNA<than to develop a site plan for a place that will consume a mountain of effort and funds and will likely not be successful.</p>	NGO-7-5	<p>The HCP identifies the need to enforce dog-on-leash and kite-flying rules at the Bandon SNA, New River. We are aware that our south coast beach officer, Robin Sears, does a terrific job. She somehow seems to make people feel good about following the law instead of bad about breaking it. But she can't be</p>	NGO-7-4
<p>The Habitat Conservation Plan didn't assess this type of thing in an explicit way, but we think it has to be acknowledged to plan for success in the real world.</p>			
<p>While there has been success at New River Spit and Bandon SNA, there is opportunity for good improvement as well.</p>			
<p>The HCP identifies the success of habitat restoration efforts in removing</p>			

NGO 7

NGO 7

everywhere all the time. The requirements for enforcing the dog-off-leash rules, which are crucial for success of plover nests but which are difficult for people to follow (they love to let Fido loose!), will certainly require a great deal of enforcement attention, especially in the areas where there are occupied nests and high recreation use, such as China Beach Access. According to the HCP, three full time beach officers will be assigned to the Bandon SNA (Table 5.5), which would be very helpful, but we can't help but think this might be an overoptimistic estimate of what enforcement resources will actually be available.

NGO 7.5
continued

We thank you for considering our comments, and thank you for your efforts on behalf of the snowy plovers.

Cordially,

Ann Vileisis//AV
President



Snowy Plover comments.doc

For this reason, it would seem that in allocating limited funding for enforcement, special areas, such as China Beach Access, where there is a high potential for increasing nest success (as opposed to at unoccupied sites) should be targeted.

NGO 7.6

It seems too that more presence from volunteer docents (not only during the day, but in evenings) could accomplish a lot. According to the 2004 budget in table 7-3, it looks like OPRD was able to leverage \$20,000 of in-kind volunteer outreach time for \$500 of cash. If the cash outlay were doubled, could the volunteer time for outreach be doubled? If so, this would be a great investment in education and outreach that would very likely help to increase nesting success in known plover areas with predictable conflicts.

NGO 7.7

In addition, there needs to be better signage at lower Fourmile (I am not sure if this falls into the Bandon SNA site or the New River Spit area<I didn't see any description of access areas in the HCP). Although this area is remote and not used much, still people need to be informed about snowy plovers, especially since this access brings people into such an important nesting area. We are also concerned about off road vehicle use in this important area.

NGO 7.8

Perhaps these details will be dealt with in more specific site management plans for the Bandon SNA and New River Spit, but in general, we believe that it will be most effective to invest limited resources and funds into places where there is likely to be continued nesting success.

NGO 7.9

Response to Comment NGO-7-1

As discussed in MR-4, OPRD has removed the option for management of the Pistol River SPMA from the HCP. In its place, OPRD will expand the boundary of the Bandon SPMA to the southern edge of the China Creek parking lot to include nesting locations at China Creek, as illustrated in Figure 1-9 of Volume I of the FEIS.

Response to Comment NGO-7-2

As discussed in MR-4 and MR-5, OPRD has removed the option for management of the Pistol River SPMA from the HCP. In its place, OPRD will expand the boundary of the Bandon SPMA to the southern edge of the China Creek parking lot to include nesting locations at China Creek, as illustrated in Figure 1-9 of Volume I of the FEIS.

Response to Comment NGO-7-3

OPRD does not own or actively manage the area from New River to Floras Lake. The New River RMA is owned by Coos County, Curry County, BLM, and private individuals, and is described in Appendix F of the HCP as an RMA that would continue to be managed by the current landowners, provided nesting populations of snowy plovers persist at that site. Please refer to the response to MR-2 for a discussion of the lands covered under the HCP.

Response to Comment NGO-7-4

As described in MR-4, the northern boundary of the Bandon SPMA will be expanded to the southern edge of the China Creek parking lot to include nesting locations at China Creek. Therefore, the snowy plover management prescriptions proposed under the HCP would be applied to the China Creek area. OPRD is also planning to relocate the access at China Creek farther north to avoid the existing nesting site at the current location.

Response to Comment NGO-7-5

Please refer to Section 7, “Implementation, Organization, and Structure” in the HCP and MR-8 for a discussion of the funding commitments in the HCP, including those specific to law enforcement. The effectiveness of the conservation measures, including the adequacy of the funding commitments in the HCP, will be assessed each year in annual compliance reports and evaluated every 5 years by OPRD, USFWS, and ODFW.

Response to Comment NGO-7-6

As described in MR-4, the northern boundary of the Bandon SPMA will be expanded to the southern edge of the China Creek parking lot to include nesting locations at China Creek. Therefore, the snowy plover management prescriptions proposed under the HCP would be applied to the China Creek area.

Response to Comment NGO-7-7

Please refer to Section 7, “Implementation, Organization, and Structure” in the HCP and MR-8 for a discussion of the staff and funding commitments in the HCP, including those specific to public outreach and education.

Response to Comment NGO-7-8

The lower Fourmile access point is located at the boundary between the Bandon SPMA and the New River RMA. During development of the site management plan for the Bandon SPMA, OPRD and USFWS will consider if additional signage at this location would benefit snowy plover populations.

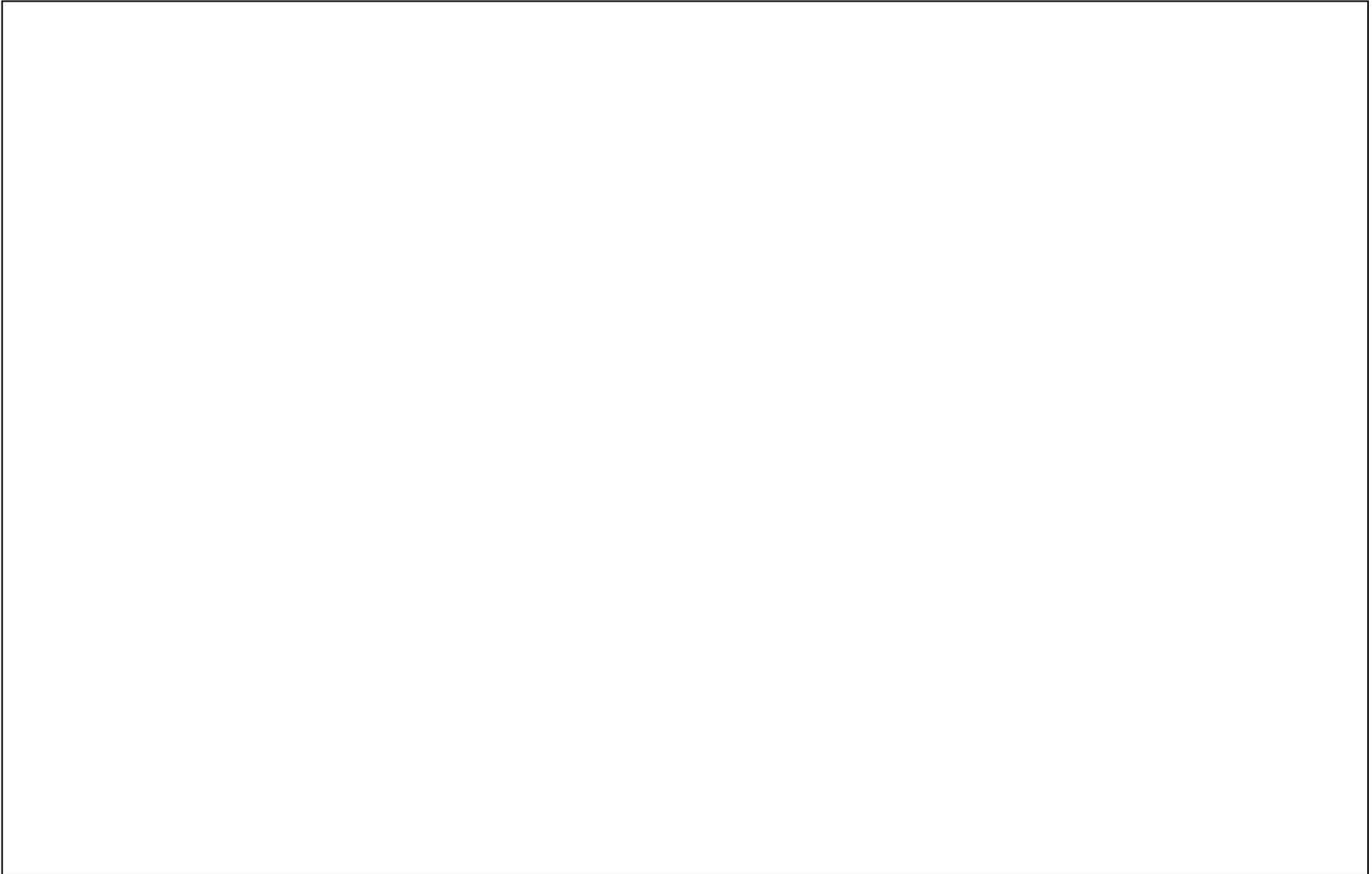
Response to Comment NGO-7-9

As discussed in MR-4 and MR-5, OPRD has removed the option for management of the Pistol River SPMA from the HCP. In its place, OPRD will expand the boundary of the Bandon SPMA to the southern edge of the China Creek parking lot to include nesting locations at China Creek, as illustrated in Figure 1-9 of Volume I of the FEIS.

Comment Letter NGO-8







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T. A. Schlacher and L. M. C. Thompson

1990; Banks & Skilleter, 2002; Jones et al., 2004). The human use of beaches is intensifying globally, mainly as a consequence of the disproportional strong growth of coastal populations, causing a wide range of physical changes to sandy shore systems (Brown & McLachlan, 2002). Ecological impacts on sandy shores may be equally diverse, and several anthropogenic pressures on sandy beach biota are directly linked to human recreational pursuits (Barros, 2001; Priskin, 2003a; Veloso et al., 2006).

Beaches are used for a variety of recreational pursuits including, walking, swimming, surfing, beach-camping, sun-bathing, fishing and four-wheel driving (Priskin, 2003a; Valdemoro & Jimenez, 2006). Driving of off-road-vehicles (ORVs) on beaches is a highly prominent, and arguably environmentally damaging, human activity on sandy shores (Moss & McPhee, 2006). This beach traffic is mostly of a recreational nature and common in several regions of Australia (Priskin, 2003b) and worldwide (Blankenscyn, 2006). It is not uncommon to report on the putative negative ecological consequences of beach traffic (Moss & McPhee, 2006), but the body of evidence to support such inferences can be lacking in weight if the actual mechanism is not quantified.

Although there are data available on the impacts of ORVs on beach habitats and their biota (Godfrey & Godfrey, 1980), the measured biological response variables include mostly dune vegetation and vertebrates (Hosier et al., 1981; Buick & Paton, 1989; Rickard et al., 1994; Williams et al., 2004). By contrast, the effects of vehicles on beach invertebrates, particularly those of the intertidal zone are more poorly documented (van der Merwe & van der Merwe, 1991). Invertebrate species may differ considerably in their sensitivity to beach traffic, and thus any ecological responses may be primarily related to the fauna's tolerance to traffic (Wolcott & Wolcott, 1984; van der Merwe & van der Merwe, 1991).

The most basic property that determines whether beach traffic has the potential to damage the intertidal fauna on beaches is the intensity of traffic and its distribution in relation to the distribution of the fauna across the beachface. Fundamentally, if beach traffic does not overlap with the distribution of the fauna, vehicle impacts are predicted to be negligible. Conversely, in situations where traffic and fauna are concentrated in the same section of the beach, ecological consequences may be more severe. Thus, it is the degree of overlap between vehicles and species that lies at the core when assessing what effect ORVs may have on beach invertebrates. Overlap between traffic and fauna distributions does not automatically imply that vehicles cause damage to beach biota in a specific situation; it rather indicates the potential for putative impacts that would warrant more detailed investigations on the ecological responses to ORV traffic. It is thus surprising that neither traffic patterns nor driver behavior have been quantified to date. Therefore the main objectives of this study were to: (a) determine traffic patterns on beaches in terms of vehicle positions and traffic volume across the beachface, and (b) quantify to which degree the distribution of macrobenthic species overlaps with beach traffic.

Material and Methods

Five beaches, located in southern Queensland on the Australian East Coast were sampled (Figure 1, Table 1). Two beaches (Teewah Beach and Noosa North Shore) were located on the Sunshine Coast north of the town of Noosa. These beaches are designated as official roads, carrying both recreational traffic and acting as a thoroughfare for vehicles travelling north to Rainbow Beach and Fraser Island. A further three beaches were sampled on North Stradbroke Island (Flinders Beach, Adder Rock, and Main Beach). North Stradbroke Island

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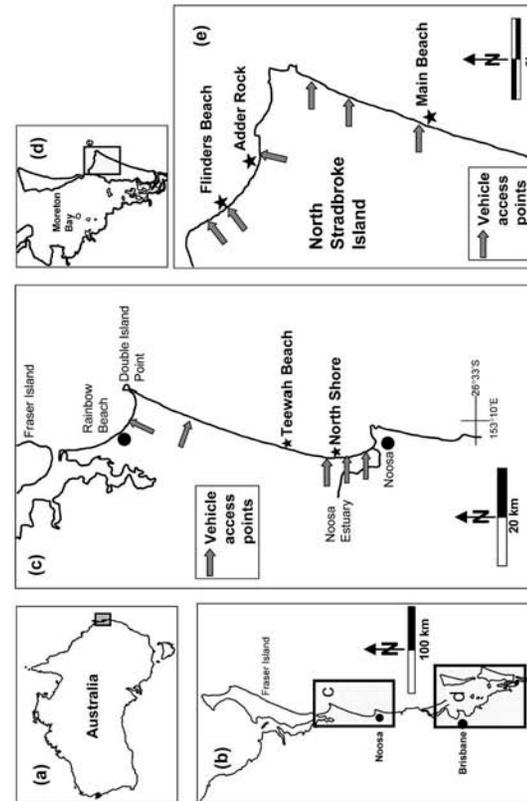


Figure 1. Location of beaches in South-East Queensland, Australia (a,b) surveyed for overlap between beach traffic and intertidal macrobenthos on the Noosa North Shore (c), and North Stradbroke Island (d,e).

Table 1
Physical characterization of the beaches sampled (values are means of three transects per beach)

	Beach			
	Flinders	Adder Rock	Main Beach	Teewah- North Shore
Month sampled	April	April	April	August
Latitude South	27° 24'	27° 25'	27° 31'	26° 20'
Longitude East	153° 28'	153° 30'	153° 30'	153° 03'
Orientation/Aspect	NE	NE	SE	SE
Beach Width (m) High Tide	20	30	6	4
Low Tide	48	74	66	70
Beach Face Slope β (°)	2.83	1.55	2.14	2.45
Mean Grain Size (mm)	0.35	0.26	0.27	0.29
Compound Indices and Morphodynamic Classification				
(R = reflective, I = intermediate, T = tide-modified, W = wave-dominated)				
Ω - Deans (Short, 2001)	1.34 (R)	2.27 (I)	3.53 (I)	3.79 (I)
BSI - Beach State Index (Hacking, 1998)	0.63 (I)	0.83 (I)	0.99 (I)	1.03 (I)
BI - Beach Index (McLachlan & Dorylo, 2005)	2.01 (I)	2.34 (I)	2.19 (I)	2.12 (I)
RTR - Relative Tide Range (Short, 2001)	4.04 (T)	5.05 (T)	1.68 (W)	1.35 (W)

is a large barrier island, located on the eastern side of Moreton Bay (Figure 1). The island is a popular tourist destination and used for a variety of recreational pursuits, including four-wheel driving on beaches, beach fishing, and beach camping (all requiring the use of ORVs). All of the island's eastern beaches have ORV access, except for three small pocket beaches (Frenchman's, Deadman's, and Cylinder) and the northern end of Main Beach, and receive moderate to heavy amounts of vehicle traffic, especially during peak holiday periods (Carter, 2005). Flinders Beach and Adder Rock on North Stradbroke Island are more sheltered from the dominant south-east swell and tend toward a reflective morphodynamic state, whereas the other beaches are slightly more exposed (Figure 1, Table 1).

Sprint tidal range on all beaches is around 2 m. The intertidal zone of the beaches surveyed is 48–72 m wide at low tide (Table 1). During high tide, only a very narrow strip of trafficable beach remains at Main Beach, Teewah, and North Shore, with the swash frequently reaching the base of the foredune. Thus, any vehicle traffic around the time of high water is forced to traverse the soft, upper beach, with occasional tyre tracks observed in the dunes. Traffic and faunal counts were made on North Stradbroke Island over the Easter weekend from the 25th to the 28th of April 2005, and on the two northern beaches on the 30th of July and the 6th of August 2005.

The location of faunal and vehicle survey sites was chosen to cover a range of traffic conditions for each of the beaches. On Flinders Beach, the first site "Adder Rock" was located 300 m north of the main vehicle access point, and would thus include most recreational beach traffic that had entered the beach from the south (Figure 1e). The second site "Flinders Beach" was located just south of the two northern access points and is taken as representative of traffic that accessed the beach from these northern points (Figure 1e). Similarly, the site on Main Beach was chosen to capture all traffic travelling southwards from three access points further north (Figure 1e). All traffic on the Noosa North Shore enters the beach from the three access points located in the southern part of the beach. Thus, most vehicles travelling north were included in the two survey sites, as well as beach traffic travelling south from Fraser Island, Double Island Point, and Rainbow Beach (Figure 1c).

At each beach we measured a range of physical descriptors for each of three transects (spaced 30 m apart along the shore) that included: (a) beach profiles (theodolite surveys from the base of the foredunes to the low-water, spring tide mark—LWST), (b) swash zone width (calculated from the maximum up-rush and down-rush position of 10 consecutive swashes), (c) wave height and period, and (d) sediment properties (triplicate cores of 30 mm diameter, 100 mm deep at each of 12 levels; Table 1). All physical measurements were made around the time of low water. Sediment parameters (mean grain size, sorting, skewness, kurtosis) were calculated with the GRADISTAT software, using the Folk and Ward method (Blott & Pye, 2001).

The chief purpose of the vehicle survey was to determine both the spatial (i.e., position across the beach-face) and temporal patterns at which ORVs drive on the beach. To this end, the beach was divided into 10 m wide bands that ran for 100 m parallel to the shoreline. The upshore boundary of the most landward band was at the base of the foredunes, and the most seaward in the swash zone below the effluent line. The boundaries of these "vehicle count bands" were marked with small pieces of flagging tape inserted into the sand. These zone markers were small enough not to be noticed by drivers (avoiding possible bias), but easily visible to observers. Observers (posing inconspicuously as tourists or sunbathers near the foredune) recorded the position and time of each passing vehicle. Traffic was generally recorded from sunrise to sunset, save for the northern beaches where rising tides necessitated an earlier cut-off to return safely.

The distribution of macrobenthic species was determined from sampling 12 levels along of each of 3 replicate transects (spaced 30 m apart) per beach. Transects extended from the base of the foredune (level 12) to the low water spring tide (LWST; level 1). Levels were spaced equidistant along each transect. At each level, 5 replicate cores (inner diameter 154 mm, 200 mm deep) were taken ca. 1 m apart, and pooled into a composite sample. The fauna was washed from the sediment through a 1 mm mesh sieve in the swash and preserved in 75% ethanol.

Zones of the beachface (i.e. lower, middle, and upper beach) were determined from similarities in environmental attributes of each beach level sampled, using group-average clustering based on normalized Euclidean distance (Clarke, 1993; Clarke & Warwick, 2001). The five environmental variables included in the cluster analysis were: (1) percent sand moisture, (2) elevation above low water, (3) slope, (4) sediment grain size (ϕ), and (5) the position of each sample relative to the effluent line (dichotomous).

We quantified the degree of overlap between vehicles and the fauna using Bray-Curtis resemblance functions on standardized data of macrobenthos abundance and vehicle passes. Essentially, this is akin to a conventional, multivariate analysis of species distributions, except that vehicles are taken as an "extra" species (Clarke, 1993; Clarke & Warwick, 2001). Overlap was calculated separately for each transect, and the range of values across all transects is reported for each site. A percentage overlap of 100% would denote a pattern of vehicle traffic across the intertidal zone that matches precisely the distributional pattern of a beach species. This situation would be comparable to two species having identical distributions (as measured by relative abundance over the full range sampled) across all sites, as can be found in parasite-host relationships. Conversely, a value of 0% overlap denotes that all vehicles drive either below or above the zone where a species is distributed on a beach. The equivalent in conventional multivariate ecological analysis is a situation where species have completely disjunct occurrences across sites, habitats, regions, or depth zones.

Results

Beach Traffic Patterns and Driver Behavior

The vehicle surveys quantified three main attributes of beach traffic: (1) the position of cars across the beach face in relation to the primary physical boundaries of the habitat such as the effluent line (water table outcrop on the lower beach), the swash zone, and the storm drift line (maximum reach of waves during rough seas marked by a line of deposited wrack on the upper shore), (2) temporal patterns in traffic intensity during daylight hours, and (3) changes in the position of vehicles over time in relation to tides.

On North Stradbroke Island, traffic counts were done during a peak holiday period (Easter weekend), recording a total of 495 vehicle passes at Flinders Beach, 335 at Adder Rock, and 471 vehicles at Main Beach during a single day. Traffic counts on the northern beaches (Noosa North Shore and Teewah Beach) were conducted during weekends outside any holiday period in the middle of winter. Still, substantial amounts of vehicle passes were recorded in 9 hours: 431 vehicles at Teewah Beach, and 372 at the Noosa North Shore.

Peak traffic occurred on all beaches from late-morning to mid-afternoon. On the beaches of North Stradbroke Island, this concentration of traffic coincided with falling tides and the time of low water (Figure 2). Thus, substantially more vehicles used the beach

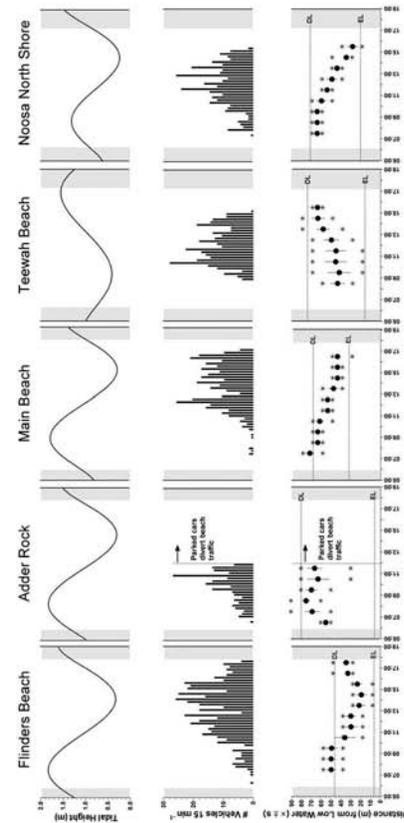


Figure 2. Temporal and spatial pattern of beach traffic in relation to tidal variation in water level on the five ORV-impacted beaches on North Stradbroke Island, Teewah Beach, and Noosa North Shore. Position of the effluent line (EL) and the drift line (DL) is indicated by dashed lines; maximum up-shore and down-shore position of cars is denoted by star symbols.

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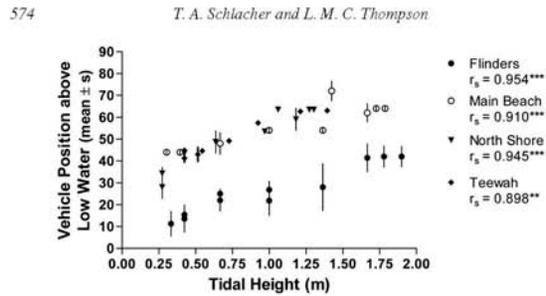


Figure 3. Position of vehicles across the beachface in relation to tidal height.

during falling tides. By contrast, on the northern beaches, a substantial amount of traffic was observed while the tide was high or rising (Figure 2).

Although few cars drove on the extreme landward limits of the beach and in the foredunes, a substantial fraction of beach traffic did occur on the dry, upper beach (Table 2, Figure 2). On average, 67% of traffic was concentrated on the upper shore at Teewah Beach, and 16–27% on the other three beaches (Table 2). Drivers of ORVs migrated with the tide: during high water, vehicles traversed the upper beach, followed by a progressive down-shore shift as the tide receded (Figure 3).

Table 2
Sediment moisture and grain size in three beach zones and the distribution of vehicle traffic across the beach-face

		Lower Shore & Swash	Middle Shore	Upper Shore
Sand moisture	Flinders Beach	19.8%	12.2%	1.6%
	Main Beach	19.7%	16.6%	3.0%
	North Shore	20.4%	18.7%	2.6%
	Teewah Beach	20.1%	15.8%	2.0%
Sediment grain Size	Flinders Beach	444 μm	395 μm	275 μm
	Main Beach	330 μm	271 μm	257 μm
	North Shore	332 μm	292 μm	237 μm
	Teewah Beach	355 μm	300 μm	221 μm
ORV traffic	Flinders Beach	0%	80%	20%
	Main Beach	0%	74%	26%
	North Shore	0%	77%	23%
	Teewah Beach	0%	33%	67%

NGO-8

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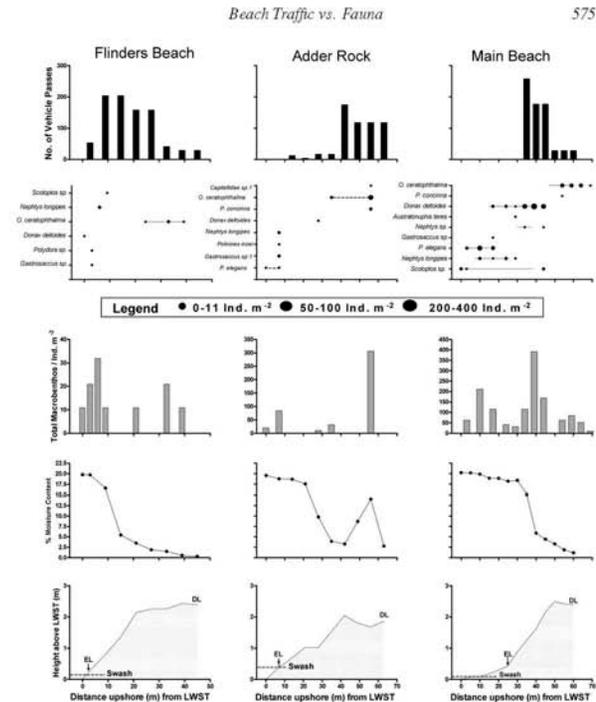


Figure 4. Cross-shore profiles of vehicle traffic (top panels), macrobenthic species distributions (second from top), density of total macrofauna (center panels), sand moisture (second from bottom), and beach profiles (bottom panel) at three beaches on North Stradbroke Island (cf. Figure 1).

Overlap between Traffic and Fauna Distributions

The majority (65% or 15 spp.) of infaunal taxa occurred in the same zone in which vehicles drove along the beach; only eight species (35%) were distributed below the main area of vehicle traffic (Table 3, Figures 4 and 5). Although there was spatial variation between beaches in the degree to which traffic and fauna overlapped, three broad clusters of “traffic exposure” could be identified: (1) species whose range overlapped considerably with that of beach traffic, (2) species that showed low to moderate degrees of overlap with traffic depending on site-specific distribution patterns of the fauna, and (3) species whose distribution was disjunct from that of the traffic (no overlap).

NGO-8

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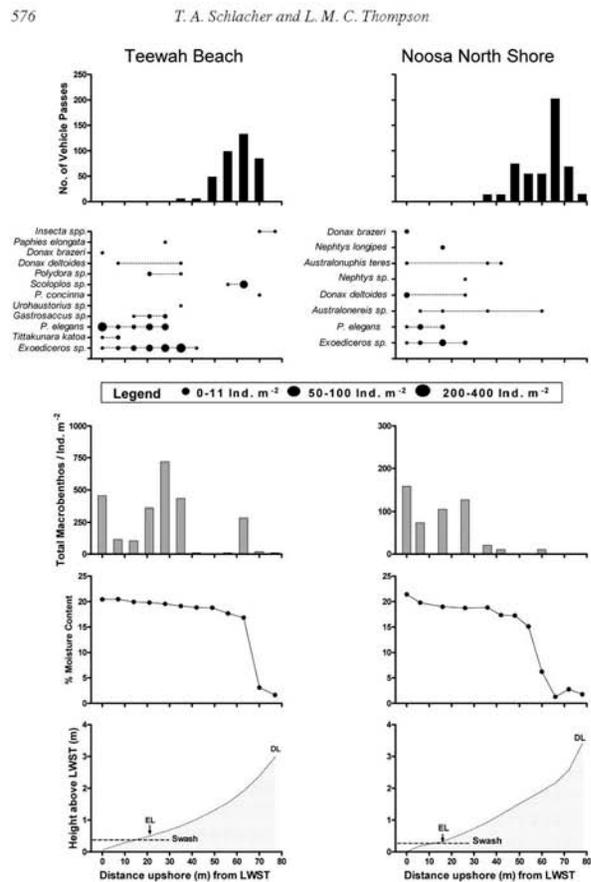


Figure 5. Cross-shore profiles of vehicle traffic (top panels), macrobenthic species distributions (second from top), density of total macrofauna (center panels), sand moisture (second from bottom), and beach profiles (bottom panel) at two beaches on the Noosa North Shore (cf. Figure 1).

NGO-8

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Table 3
Overlaps (%) in the distribution between beach traffic and macrobenthos species.

	Flinders Beach	Adder Rock	Main Beach	Teewah Beach	North Shore
<i>Austrolepidopa schmitti</i>	-	-	-	0 (0-0)	-
<i>Mutua planipes</i>	-	-	-	-	0 (0-1)
<i>Glycera</i> sp.	-	-	0 (0-0)	-	0 (0-0)
<i>Lumbrineris</i> sp.	-	-	0 (0-0)	-	0 (0-0)
<i>Tittakumara katoa</i>	-	-	0 (0-0)	-	0 (0-0)
<i>Polinices inaei</i>	-	0 (0-0)	0 (0-0)	-	-
<i>Donax brazieri</i>	-	-	-	0 (0-0)	0 (0-0)
<i>Pseudolana elegans</i>	-	-	0 (0-0)	0 (0-0)	0 (0-0)
<i>Exoediceros</i> sp.	-	-	0 (0-0)	0 (0-0)	1 (1-2)
<i>Gastrosaccus</i> sp.	0 (0-0)	1 (0-4)	0 (0-0)	0 (0-0)	0 (0×91)
<i>Papthys elongata</i>	-	2 (0-5)	-	-	0 (0-0)
<i>Australonuphis teres</i>	-	-	0 (0-0)	3 (3-3)	0 (0-0)
<i>Urohaustorius</i> sp.	-	11 (5-25)	0 (0-0)	-	0 (0-0)
<i>Australonereis</i> sp.	-	-	0 (0-0)	16 (0-47)	-
<i>Insecta</i>	-	4 (0-4)	0 (0-0)	-	15 (0-23)
<i>Nephtys</i> sp.	-	2 (0-5)	15 (0-28)	3 (0-9)	0 (0-0)
<i>Polydora</i> sp.	0 (0-0)	0 (0-0)	19 (0-50)	0 (0-0)	1 (1-2)
<i>Ophebia</i> sp.	-	16 (12-18)	6 (0-18)	-	-

(Continued on the next page)

NGO-8

Table 3
Overlap+ (%) in the distribution between beach traffic and macrobenthos species. (Continued)

	Flinders Beach	Adder Rock	Main Beach	Teewah Beach	North Shore
<i>Pseudolana concinna</i>	-	7 (5-12)	13 (11-19)	1 (0-3)	9 (3-24)
<i>Nephtys longipes</i>	28 (11-52)	3 (0-4)	6 (0-19)	1 (0-3)	0 (0-0)
<i>Donax deltoideus</i> (juveniles)	4 (0-11)	16 (3-29)	18 (0-36)	1 (0-3)	0 (0-1)
<i>Donax deltoideus</i> (adults)	0 (0-0)	0 (0-0)	36 (37-50)	0 (0-0)	0 (0-0)
<i>Donax deltoideus</i> (all)	4 (0-11)	16 (3-27)	36 (32-47)	1 (0-3)	0 (0-1)
<i>Ocyropsis ceratophthalma</i>	12 (9-28)	19 (13-30)	27 (26-29)	-	-
<i>Scoloplos</i> sp.	7 (0-21)	1 (1-1)	30 (27-69)	12 (0-23)	41 (36-50)
Total Fauna	38 (29-41)	28 (17-33)	48 (43-52)	13 (5-17)	7 (3-14)

+Measure of overlap is Bray-Curtis resemblance function on standardized data of macrobenthos abundance and vehicle passes. This is conceptually akin to a conventional analysis of species distributions (Clarke, 1993; Clarke & Warwick, 2001) only that vehicles are taken as an "extra" species.

Tabulated values are means across three transects per beach with ranges in parentheses. Zero values indicate that a species was present on the beach, but its distribution did not overlap with that of traffic, whereas hyphens (-) denote that a species was not recorded on a particular beach.

At least five species occurred close to, or directly under the zone of heaviest traffic (Table 3, Figures 4 and 5). The overlap between the distribution of these species and traffic could be as high as 69%, indicating that the majority of individuals live in heavy traffic areas (Table 3). This group, which is potentially most heavily impacted by ORVs, comprised mostly species of the upper, dry shore (the ghost crab *Ocyropsis ceratophthalma* and the isopod *Pseudolana concinna*), as well as species that straddle the upper and middle zone of the beach (the polychaetes *Scoloplos* sp. and *Nephtys longipes*, and the surf clam *Donax deltoideus*; Table 3, Figures 4 and 5).

Ten species showed varying degrees of overlap with ORVs, and this depended to a large extent on their specific distributions on a particular beach (Table 3, Figures 4 and 5). For example, the polychaete *Polydora* sp. occurred outside the traffic zone on three beaches, but on Main Beach up to 50% of the population overlapped with beach traffic. Similarly, the bivalve *Paphies elongata* was found on two beaches only, and overlap could reach 5% on one beach but was zero on another beach (Table 3).

The third group of eight species had distributions that did not overlap with that of vehicles on any of the beaches surveyed. These were mainly species that occurred below the effluent line and in the swash zone (Table 3, Figures 4 and 5), including two species of decapods (*Austrolepidopa schmitti*, *Matuta planipes*), the amphipod *Tittakunara katoa*, the isopod *Pseudolana elegans*, two species of polychaetes (*Glycera* sp. and *Lumbrineris* sp.) the gastropod *Polinices incei*, and the bivalve *Donax brazieri*. Because few if any vehicles drove below the effluent line and in the swash, this section of the beach may provide a spatial refuge for certain taxa from vehicle impacts.

Discussion

This study has demonstrated that recreational driving of off-road vehicles on sandy beaches creates traffic that overlaps considerably with the distribution of most intertidal species (Table 3, Figures 4 and 5). Thus, there exists the potential for negative ecological impacts caused by ORVs on an appreciable part of the beach invertebrate assemblages. Furthermore, beach traffic is not restricted to a single zone of the beach, but occurs throughout the intertidal areas above the swash zone (Figure 2, Table 2).

Impacts to the backshore area and dunes are generally regarded as more severe compared to the foreshore (Godfrey & Godfrey, 1980; Luckenbach & Bury, 1983; Rickard et al., 1994; Schlacher & Thompson, in press). Consequently, a frequent recommendation to ORV users on beaches is to drive on the hard, compacted sand low on the beach-face. Yet, this study has shown that a considerable fraction of beach traffic does occur on the upper beach near the foredunes (Table 2). It also demonstrates that shifting traffic to the lower shore would result in a direct overlap with the benthic invertebrates inhabiting this zone of the beach.

Advisory signs on beaches and driver education campaigns urge ORV users to drive on the mid- to lower beach during low tides, and to avoid driving on the beach when the tide is high (Carter, 2005). This does, however, only partly tally with the real-world traffic patterns observed by us. Driver behavior was strongly influenced by tides and the morphological properties of the beachface, such as the position of the swash, sand moisture in different zones, and the position of the effluent line (Figure 2). Human behavior also plays a role in determining traffic patterns: during the survey at Adder Rock, several cars parked on the mid- to lower shore and this forced all other traffic further up the beach toward the dunes (Figure 4). Also, we observed that drivers tend to follow previous drivers

and tracks. Because some drivers seem reluctant to stray from the "beaten track," traffic can concentrate on the upper shore even though the mid- to lower zones (above the effluent line and swash zone) may be more suitable for driving in terms of sediment compactness. Such "channelling" of traffic into preexisting tracks made during previous high tides on the upper shore can lead to severe and deep rutting of the beach.

Environmental impacts to the upper beach and dunes (Godfrey & Godfrey, 1980; Rickard et al., 1994) are predicted to be more severe on beaches that receive high traffic volumes throughout the year, especially if traffic is not purely recreational and also occurs during high tides. People use ORVs on beaches for either recreational reasons or beaches simply serve as roads. All beaches surveyed by us are popular fishing spots and allow at some stretches camping in the dunes. Access to these camping areas necessitates driving on the beach. In Queensland, the zoning of certain areas on the landward fringes of the stable dunes as conservation zones has meant that access roads along the back of the dunes have not been developed (Hockings & Twyford, 1997). The northern beaches studied here are a designated road and provide a faster route to popular tourist destination and coastal settlements compared with regular roads situated further inland (Figure 1). Thus, beach traffic can be predominately recreational (Stradbroke Island), or a mix between "regular road usage" and recreational pursuits (Teewah and North Shore).

Most (65%) invertebrate species recorded were exposed to varying degrees to ORV traffic (Table 3, Figures 4 and 5). The distribution of species was determined around the time of low tide and thus may be viewed to represent not the full spectrum of distribution patterns for those species that migrate across the beachface with the tides. However, for the purpose of assessing any putative impacts of ORVs on the beach fauna, species distributions around the time of low water are most informative as this is the time when most vehicles travel along the beach (Figure 2).

Traffic overlapped most strongly with species whose habitat is the upper beach (the ghost crab *Oecypode ceratophthalma* and the isopod *Pseudolana concinna*), or the upper section of the middle shore (the polychaetes *Nephtys longipes*, and *Scoloplos sp.*, the bivalve *Donax deltooides*). All species are efficient burrowers and this may potentially afford some protection from vehicles.

Ghost crabs may suffer little mortality from ORVs when buried in the sand, but are killed in large numbers by ORVs when they forage at the surface at night (Wolcott & Wolcott, 1984). On North Stradbroke Island, ghost crab numbers were reported to be significantly lower on beaches with ORV traffic, and this contrast is hypothesized to be due to nocturnal beach traffic crushing the surface-active crabs (Moss & McPhee, 2006). No quantitative data on ORV-caused mortality to crabs either inside or outside their burrows are, however, available for these beaches. Thus, a direct link to beach traffic is presently a possibility (Moss & McPhee, 2006), but unproven explanation for observed declines in ghost crab populations on ORV beaches. Beach clams can suffer appreciable mortality (crushing) from ORVs (van der Merwe & van der Merwe, 1991), but mortality rates probably depend on sediment properties, sensitivity of the organisms (e.g., shell thickness), and traffic volumes. This information is currently not available for Australian beaches and species, and thus predictions about possible mortalities are speculative. Similarly, no data of possible ORV-induced mortality to polychaetes and isopods (which can overlap considerably with traffic) are presently available. Again, these are burrowing organisms (5–10 cm into the sand) and burrowing may ameliorate direct crushing; shear stress of ORVs can, however, penetrate up to 30 cm into the sand (Atkinson & Clark, 2003).

Species whose distribution is centered below the effluent line and in the swash zone appear to occupy a "spatial refuge" from ORV traffic, and impacts could apparently be

considered negligible. Such a conclusion may, however, not be warranted if species of the swash zone are more susceptible to vehicle traffic (van der Merwe & van der Merwe, 1991), implying that even occasional vehicle passes could inflict mortality.

The use of off-road vehicles (ORVs) on sandy shores presents a formidable management challenge (James, 2000a; Celliers et al., 2004). Whether recreational beach traffic is appropriate or permissible depends to a large degree on the perceptions of different user groups, some of which view ORVs as highly environmental damaging (Priskin, 2003a). In fact, the topic can spawn intense public debate, and has the potential to create social conflict between different beach user groups (Priskin, 2003a). At the core of such arguments lie reports about negative environmental impacts of ORVs (Godfrey & Godfrey, 1980; Rickard et al., 1994; Williams et al., 2004; Moss & McPhee, 2006), juxtaposed by economic benefits derived from recreational ORV traffic and the demand for recreational (e.g., fishing, camping) opportunities (Carter, 2005; Silberman & Andereck, 2006).

This situation places considerable pressure on authorities responsible for managing beaches (e.g., regulation of vehicle access and traffic volumes) to meet the needs and aspirations of multiple users with often conflicting interests (James, 2000b; Celliers et al., 2004; Carter, 2005). On Queensland beaches open to ORVs, there are currently no rules to govern total traffic volumes, the areas of the beach-face open to driving, or the times when beach driving is permitted. There are, however, some suggestions to limit beach traffic to daylight hours (Moss & McPhee, 2006), and to prohibit driving during high tides to protect the upper shore (Carter, 2005). The basic rationale for such measures appears to be the notion that the more compact areas of the lower- and middle beach are less prone to ORV damage. Yet, we have shown that concentrating beach traffic to this zone may expose a larger proportion of the intertidal fauna to vehicles.

Presently it appears, however, unjustified to implement concrete management responses based on these findings, because sound management of beach traffic is multifaceted and requires the consideration of social and economic factors (James, 2000b; James, 2000a; Celliers et al., 2004; Silberman & Andereck, 2006), neither of these is quantified for the regional situation reported here. Similarly, a pattern—irrespective of how strong or convincing it is—of overlap between faunal habitat and beach traffic does not automatically demonstrate an ecological impact if the mechanisms are unknown or not quantified. Although it stands to reason that ORVs may affect the intertidal invertebrates of beaches (Steiner & Leathemman, 1981; Wolcott & Wolcott, 1984; van der Merwe & van der Merwe, 1991; Blankensteyn, 2006), defensible and well-informed management actions require additional data on: (a) the mechanisms that may produce any putative ecological impacts, (b) the sensitivity of the fauna to traffic (biological response strength), and (c) whether individual species responses to ORVs propagate to measurable effects for whole ecological communities.

Conclusion

Three key points emerged from this study: (1) traffic volumes on beaches can be considerable, and the position of beach traffic is principally governed by tides and driver behavior, (2) the majority of ORV traffic was concentrated on the middle to upper shore, and (3) the majority of burrowing invertebrate species of the intertidal zone are directly exposed, at varying degrees, to traffic, save for species inhabiting the swash zone. The ecological impacts of beach traffic are, however, not predictable at present because the specific responses (e.g., mortality rates) of potentially impacted species to varying intensities of

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traffic remain un-quantified. Quantification of both traffic patterns and their concordance with invertebrate distributions is, however, a fundamental first step to identify whether such impacts are likely. It can also underpin the management of beach traffic by broadening the information base in decision making through provision of quantitative data on both human pressures (e.g., traffic patterns) and their spatial relationship to biological resources on sandy beaches.

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Beach Traffic vs. Fauna

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ORIGINAL ARTICLE

Vehicles versus conservation of invertebrates on sandy beaches: mortalities inflicted by off-road vehicles on ghost crabs

Thomas A. Schlacher, Luke Thompson & Sam Price

Faculty of Science, Health & Education, University of the Sunshine Coast, Maroochydore DC, QLD, Australia

Keywords

Conservation, human disturbance, *Ocyropsis*, recreational impacts, sandy beaches

Correspondence

Thomas A. Schlacher, Faculty of Science, Health & Education, University of the Sunshine Coast, Maroochydore DC, QLD-4558, Australia
E-mail: tschlach@usc.edu.au

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Abstract

Sandy beaches face increasing anthropogenic pressures, with vehicle traffic being ecologically highly harmful. Ghost crabs (Fam. Ocypodidae) are conspicuous on many beaches, and they have been used as a bio-monitoring tool to measure the ecological responses to human disturbance. However, the mechanisms causing declines in crab numbers are unknown, yet conservation must target the actual impact mechanisms. Therefore, we quantified the magnitude and mechanisms of off-road vehicle (ORV) impacts on ghost crabs, addressing three key questions: (i) Does abundance of ghost crabs respond to traffic intensity?; (ii) Can burrows protect crabs from vehicles? and (iii) Can mortalities caused by vehicles contribute to population declines? ORV-impacts were measured on North Stradbroke Island (Australia) for *Ocyropsis cordimanus* and *Ocyropsis ceratophthalma*. Crab densities were significantly lower in areas subjected to heavy beach traffic, suggesting direct crushing by vehicles. Burrows only partially protect crabs against cars: all individuals buried shallow (5 cm) are killed by 10 vehicle passes. Mortality declines with depth of burrows, but remains considerable (10–30% killed) at 20 cm and only those crabs buried at least 30 cm are not killed by ORVs: these 'deep-living' crabs represent about half of the population. After crabs emerge at dusk they are killed in large numbers on the beach surface. A single vehicle can crush up to 0.75% of the intertidal population. While conservation measures should primarily regulate night traffic, our results also emphasise that the fossorial life habits of sandy beach animals cannot off-set the impacts caused by ORVs.

Problem

Sandy beaches are the dominant type of shore globally (Bascom 1980). Sandy beaches are the coastal habitat with which most people interact directly, mainly for recreational purposes, and the human use of beaches is becoming more intense (Priskin 2003a). This escalating use of beaches is mainly driven by the rapid growth of coastal populations, coupled with increased availability of leisure time. For example, 85% of Australians live within 50 km from the coast and coastal populations are growing significantly faster than elsewhere (Australian Bureau

of Statistics 2004). In economic terms, sandy beaches are amongst the most valuable natural assets, underpinning many coastal developments and related industries (Klein *et al.* 2004).

The intense anthropogenic pressures on the coastal strip frequently have negative environmental consequences for sandy beaches (Finkl & Krupa 2003). Impacts range from the widespread destruction of dunes for housing and infrastructure construction, changes to groundwater and sediment supply, shore armouring, to the harvesting of beach biota (Brown & McLachlan 2002; Schlacher *et al.* 2006). Ecological impacts caused by recreational activities

are also emerging as significant issues. Trampling by pedestrians has large detrimental effects on dune vegetation (Liddle 1991) and may also damage invertebrates on the foreshore (Moffett *et al.* 1998).

The recreational activity that causes most environmental harm is driving of off-road vehicles (ORVs) on sandy beaches (Godfrey & Godfrey 1980). Beach driving is common in many countries around the world, including Australia, New Zealand, South Africa and the USA. In South-East Queensland (Australia), a number of beaches are subject to high volumes of ORV traffic, including Fraser Island, Noosa North Shore and North Stradbroke Island (Moss & McPhee 2006). People drive on beaches to reach preferred camping and fishing spots, access remote areas, launch boats, or simply for a change of scenery (Priskin 2003b). Environmental impacts caused by ORVs are numerous. ORVs change the physical properties and stability of dunes and beaches (Anders & Leatherman 1987; Kutiel *et al.* 1999; Priskin 2003b; Schlacher & Thompson in press-a), and they disturb, injure, or kill the vegetation and fauna (Godfrey & Godfrey 1980; van der Merve & van der Merve 1991; Watson *et al.* 1996).

Crabs of the genus *Ocyropsis* (Fam. Ocypodidae), commonly known as Ghost Crabs, are widespread and conspicuous inhabitants of tropical and sub-tropical sandy beaches worldwide (Jones 1972; Quijon *et al.* 2001). They are the top invertebrate predator living on beaches, are highly mobile, and they construct distinctive burrows (Barras 1963). Ghost crabs are mainly active at night, spending much of the day inside their burrows (Hughes 1966).

Changes in ghost crab abundance have been employed as a bio-indicator for human disturbance on sandy beaches. Lower ghost crab numbers have been reported in areas affected by human trampling (Steiner & Leatherman 1981; Christoffers 1986; Neves & Benvenuti 2006). ORVs (Wolcott & Wolcott 1984; Blankensteyn 2006; Moss & McPhee 2006), shore armouring (Barros 2001), as well as beach nourishment and bulldozing (Peterson *et al.* 2000). A recurring pattern is significant reductions in ghost crab abundance with increasing levels of human disturbance on beaches.

Despite a growing body of evidence that ghost crabs are negatively affected by human disturbance on sandy beaches, the actual mechanisms that cause the observed reductions in population size are usually not known. Presently, the use of ghost crabs as bio-indicators rests largely on spatial contrasts in burrow counts between areas that differ in the frequency or intensity of human impact (Barros 2001). Yet, in order to develop management measures aimed at protecting or restoring the ecological health of sandy beaches, identification of the mechanisms of impact is essential. Any management

intervention will have to specifically regulate the processes that cause the impacts on the biota.

Decreases in ghost crab numbers on beaches subjected to ORV traffic can be caused by a range of impact mechanisms including: (i) direct crushing of individuals by cars (Wolcott & Wolcott 1984), (ii) changes to the habitat suitability, for example when cars loosen the sand which impedes burrow construction (Christoffers 1986), (iii) interference with reproduction and recruitment (Steiner & Leatherman 1981), (iv) reductions in food supplies through ORV-caused crushing of prey items (Wolcott 1978) and (v) light pollution (Bird *et al.* 2004). Direct crushing of ghost crabs has been assessed (Wolcott & Wolcott 1984), indicating that ghost crabs are largely protected from cars when inside their burrows during the day, but are being killed in large numbers when active on the beach surface at night.

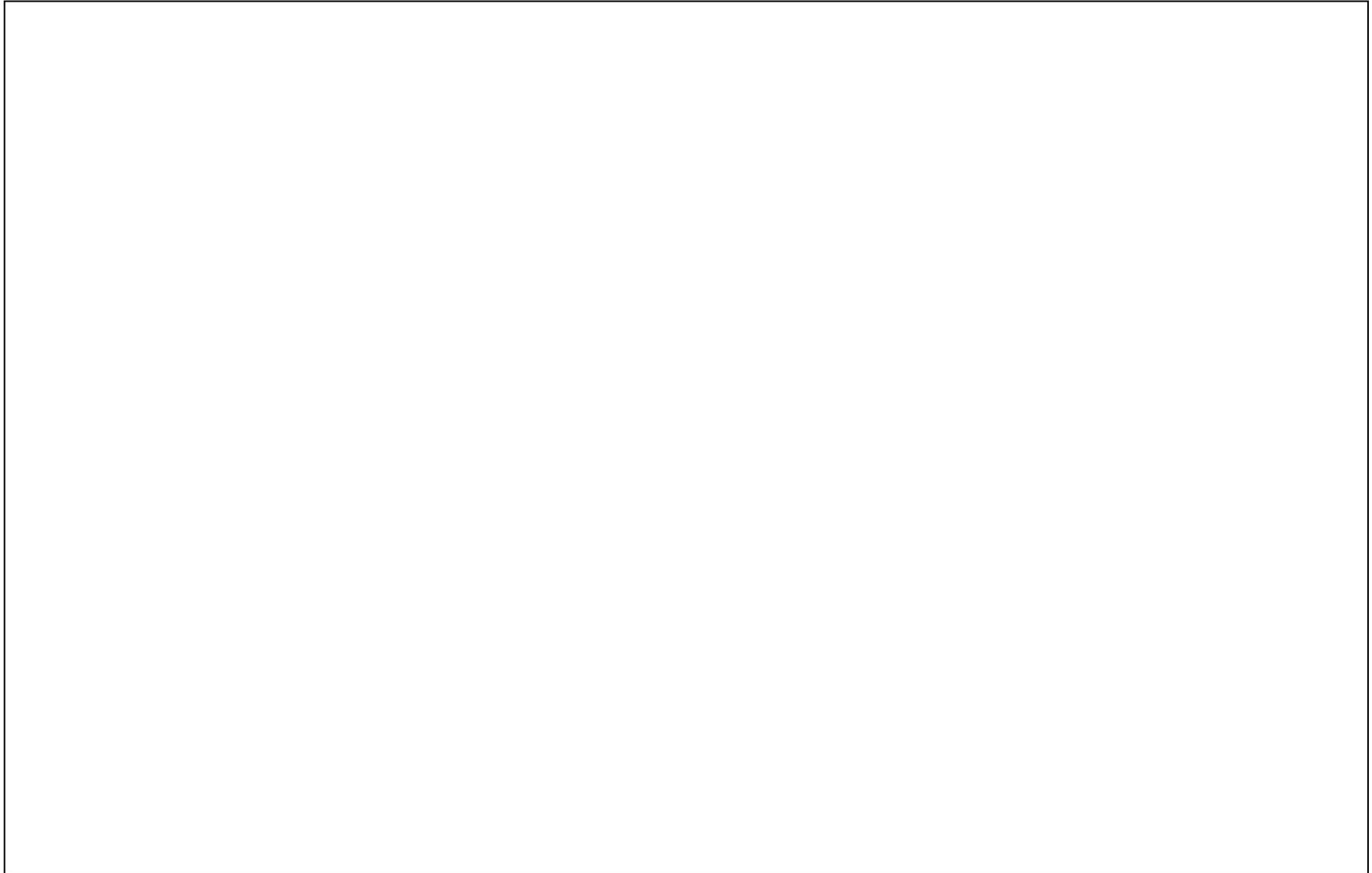
On North Stradbroke Island where the present study was conducted, ghost crab numbers were found to be significantly reduced on beaches open to ORVs (Moss & McPhee 2006). Moss & McPhee (2006) suggest that this spatial pattern was because of direct mortality of crabs caused by vehicles driving on the beach at night, but this proposed impact mechanism remains untested.

Given that impacts of ORVs on the biota of sandy beaches are an environmental issue that has significant ecological as well as socio-economic implications (James 2000), beach management and conservation need to develop strategies that address this activity based on sound scientific evidence (Schlacher *et al.* 2006). To this end, the identification of the mechanisms of change is critical in order to efficiently focus any management interventions and conservation measures. Consequently, the chief objective of the present study was to assess the magnitude and mechanisms of direct impacts of ORVs on ghost crabs. Specifically, it aimed to: (i) determine whether the size of ghost crab populations responds to changes in the volumes of beach traffic, (ii) test whether burrows protect crabs from the direct physical impacts of vehicles and (iii) quantify mortality rates inflicted on surface-active ghost crabs by night traffic.

Material and Methods

Study sites

North Stradbroke Island is a barrier island located on the eastern side of Moreton Bay (Fig. 1). Because of the island's proximity to the major urban centre of Brisbane, it is a prime holiday destination used for a variety of recreational pursuits, including four-wheel driving on beaches, beach fishing and beach camping. Sandy beaches dominate the island's eastern side, and most of these beaches are open to ORVs (Carter 2005; Schlacher &



further north. This central section is designated here as the 'moderate impact zone' (Fig. 1c). On those beach sections open to ORVs, vehicle traffic is concentrated on the middle to upper shore above the effluent line (groundwater table outcrop).

Crab densities were assessed from counts of active burrow openings. A burrow was judged active when it either showed signs of recent sediment reworking by the crabs, or fresh tracks were visible emanating from the burrow entrance, or both. Sediment reworking is usually easily discernible as small mounds of pellets deposited near the entrance. Conversely, inactive burrows have usually ill-defined perimeters of the entrance (caused by partial collapse or wind erosion) and show no sign of recent construction activities by crabs or tracks.

In each of the three traffic zones, counts were made at four to seven sites spaced 50 m apart along the beach. At each site, active burrow openings were counted in 10 m wide shore-perpendicular belt transects. Transects were divided into 3 m wide strips, starting at the base of the foredunes and progressing down-shore to the seaward limit of the crab distribution. All active burrow openings were counted in each of these 3 × 10 m plots, and the diameter of each burrow opening was measured to the nearest millimetre. All counts were made on three consecutive days in April 2006 under identical weather conditions of fine, sunny days with very light onshore winds.

Direct impacts of ORVs on ghost crabs: experiments to quantify crushing rates

We ran three types of experiments to quantify direct mortalities inflicted by ORVs on ghost crabs. All experiments were conducted from March to June 2006. In *Experiment 1* and *2* we measured the proportion of crabs crushed inside their burrows during daylight hours at various intensities of traffic and at different depths below the beach surface. In *Experiment 3* we quantified the number of crabs that were crushed on the beach surface by vehicles travelling at night.

Experiment 1: crushing of ghost crabs by ORVs inside natural burrows

We measured the mortality of crabs inside their burrows during the day which is caused by ORVs when they pass over the crabs' burrows in six experimental runs. For each experimental run we first chose a site on the middle to upper beach that showed no obvious signs of recent vehicle passes and which had a reasonable number of active crab burrow openings.

First, a 10–20 m long (depending on burrow density) and 20 cm wide (corresponding to the tyre width of vehicles) plot that ran parallel to the foredunes was marked

out. Each crab burrow opening in a plot was numbered and the opening diameter measured. The depth of each burrow was measured by inserting a soft, pliable vine. After burrow dimensions had been recorded, a soft marking ribbon (textile flagging tape) was inserted into each burrow down to the base, using the same soft vine to avoid damage to crabs. A procedural control treatment showed that crabs were not harmed by this procedure. Excess ribbon was left on the sand surface so that burrow openings could again be located after the vehicle had passed over them. After the burrows had been marked, an ORV vehicle, Nissan Patrol with a gross mass of 3080 kg, was driven repeatedly over the plot in a straight line.

Six traffic densities of 5, 10, 15, 20, 25 and 30 vehicle passes over the burrows were tested. This range of experimental impact treatments was chosen to broadly encompass the traffic volumes occurring on the beach (Fig. 2). We calculated the number of times a crab burrow is hit per day by ORVs as follows: (i) vehicles were randomly distributed over the area of the beach between the swash and the base of the foredune which is used by ORVs; this area was on average 54 m wide; (ii) The total 'footprint' of each vehicle is represented as twice its tyre width to account for two tracks made by each car and assuming a typical ORV tyre of 235 mm width. The first tyre track was randomly positioned across the beach face, while the second tyre track was constrained to be 1.3 m further seawards, corresponding to the inner axle width of a typical ORV driven on these beaches; (iii) The footprint of the two tyre tracks of each individual vehicle was then compared against 10 points positioned in a perpendicular line across the beach. These 'intersection points' started at 5 m seawards from the foredune and progressed at 5 m intervals to the swash zone. (iv) If a footprint of a randomly positioned vehicle overlapped with a point it was scored as a 'hit'. Randomisations of vehicle positions were run five times for each of the 10 intersection points, and the average of these 50 intersection 'hits' is taken as the number of vehicle passes over a crab burrow. (v) Finally, the above randomisation steps (i)–(iv) were run for a number of traffic volumes obtained from the automatic traffic counters (Fig. 2) to calculate the number of impacts on crab burrows under different traffic conditions. The maximum recorded traffic volume of 3168 vehicles day⁻¹ results in 30 hits on a crab burrow per day, and the grand average volume of 353 vehicles day⁻¹ corresponds to four hits per day; these values bracket the applied experimental treatment range of 5–30 vehicle passes.

After the vehicle treatment had been applied, each burrow was carefully excavated by hand, and retrieved crabs were inspected for damage and their carapace width recorded. In most cases mortality was obvious (e.g. completely

quashed specimens, several or all limbs missing, carapace badly dented, eyestalks broken off, etc.). Only in a few cases were the retrieved crabs immobile without showing gross physical damage. These immobile individuals were placed on the sand free to run or burrow; crabs that did not regain mobility after 1 h were judged to be dead.

In each experiment, sand compactness was measured at seven to 10 positions along the vehicle track using a pocket penetrometer before and after the application of the vehicle passes. Triplicate sand cores (10 cm deep) were collected from each plot to determine sand moisture content and granulometry. After the vehicle passes, the depth of the tyre track was recorded at seven to 10 positions along each track. We also recorded the position of each experimental plot relative to the low-water spring tide (LWST) mark and surveyed the beach profile with a theodolite.

Experiment 2: crushing of ghost crabs by ORVs in simulated burrows: effects of depth and traffic intensity

The principal aim of this experiment was to determine whether increased burrow depth can lower crushing of crabs by ORVs; the predictive hypothesis was that fewer crabs would be killed when burrowed deeper as the overlying sediment matrix would offer protection from compaction.

The general experimental procedure was similar to *Experiment 1* (e.g. selection of undisturbed plots, recording of sediment parameters, marking of burrow openings with flagging tapes, inspection of damage to crabs after vehicle passes, etc.). The differences were that (i) crabs were first captured from natural burrows and (ii) these crabs were introduced into experimental burrows of various depth (5, 10, 15, 20 and 30 cm). The crabs used in these experiments were carefully excavated from their natural burrows within 50 m of the experimental plot and used within 30 min of capture. The crabs were collected from the upper shore in a section extending from the drift line to the foredunes. Of these, 49% were *Ocyropsis ceratophthalma* and 51% *Ocyropsis cordimana*.

The experimental burrows were made by removing sediment plugs to the desired depth with a corer of 5 cm diameter. A single crab was placed at the bottom of each burrow and loosely covered with sand. Crabs were randomly allocated to treatments and all individuals used in a single experimental run were introduced to the burrows within 10 min of each other. After all crabs had been introduced to the burrows, the vehicle treatments were applied by repeatedly driving over the experimental burrows in a straight line.

Two traffic intensities of 10 and 40 vehicle passes were tested. The mean weekend traffic volume during peak

times is 745 vehicles day⁻¹, corresponding to seven vehicle hits on a single crab burrow, and the maximum daily traffic volume of 3168 vehicles results in 30 hits day⁻¹. These calculations do assume a fully random distribution of cars over the beach face, but some drivers tend to follow other cars or use existing tracks. To account for such 'overlapping and cumulative' traffic patterns, we adjusted our experimental treatment intensities by c. +33% over the calculated number of hits under the above traffic scenarios.

Ten experimental individuals were used per traffic × depth combination. To check for any possible handling errors that might have injured crabs in the absence of vehicle impacts, we conducted six procedural controls per experimental run. In these control treatments crabs were introduced to burrows of the same depth as in the actual treatments and retrieved after 10–30 min without the application of vehicle passes; these procedural controls were run at the same time as the vehicle treatments and in the same location about 1 m from the experimental vehicle tracks.

Experiment 3: ghost crabs killed by night traffic while surface-active

To quantify the number of crabs killed by night traffic, an ORV was driven along the same section of beach where population censuses were made during the day (Fig. 1c). The vehicle was driven to the start of the designated beach section where a pass was to be completed, the engine was stopped, and the headlights turned off for 10 min. Each impact experiment was carried out with the vehicle travelling for several hundred metres along the beach at c. 30–50 km h⁻¹ with the headlights switched on. Two to three persons followed behind the car with flashlights to record all crab corpses lying crushed in the tyre tracks. We recorded the longshore position of each carcass, its size, sex and species, except when specimens had been too badly mutilated by the vehicle.

These experiments were attempted on 10 nights. Surface activity of crabs was found to vary considerably, with crabs being active outside their burrows on six out of the 10 nights. We visually scored approximate crab activity by counting the number of individuals that were visible in the c. 10 m wide beam of flashlights that observers carried while walking swiftly in a straight line across the beach from the dunes towards the swash. Activity was estimated as 'low' (a few individuals sparsely distributed), 'medium' (several individuals observed in each transect) and 'high' (>10 crabs observed per transect) on two nights each. No crabs were observed on the beach surface on the other four nights.

Vehicle impacts on ghost crabs

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Table 1. Physical variables of sites where burrow counts of ghost crabs were conducted in each traffic area

zone	site*	beach	sand	grain size
		slope (1/100)	moisture (%), mean ± SD	(φ, μm), mean ± SD
Heavy traffic area	600 S	10.0	1.6 ± 0.48	298 ± 7.3
	550 S	9.4	2.0 ± 0.58	311 ± 25.5
	500 S	9.9	1.9 ± 0.67	294 ± 3.9
	450 S	12.6	5.0 ± 1.88	319 ± 20.8
	400 S	12.8	2.5 ± 0.35	295 ± 15.4
Moderate traffic area	350 S	10.3	3.8 ± 2.38	331 ± 7.6
	300 S	11.9	2.4 ± 0.54	315 ± 19.9
	200 S	12.8	2.2 ± 0.34	320 ± 12.4
	150 S	11.6	2.1 ± 0.40	312 ± 7.9
	100 S	12.4	2.5 ± 0.28	316 ± 18.9
NO/low traffic area	50 S	12.0	2.9 ± 0.53	321 ± 8.0
	0	10.2	3.0 ± 0.49	295 ± 4.6
	50 N	9.9	2.4 ± 0.20	277 ± 27.3
	100 N	12.5	2.4 ± 0.40	337 ± 1.3
	150 N	10.9	2.3 ± 0.29	319 ± 16.5
200 N	11.2	3.0 ± 0.25	308 ± 5.0	
250 N	8.7	2.5 ± 0.43	332 ± 6.3	
300 N	6.9	2.8 ± 0.26	334 ± 6.6	

*Relative to the local reference point which is the 'NO vehicle access sign' (see Fig. 1c).

Results

Ghost crab abundance in relation to traffic intensity

Habitat variables

Physical habitat variables did not differ significantly between beach sections subjected to different volumes of traffic (Table 1). Sand moisture was highly similar between traffic sections (ANOVA, $F_{(2,33)} = 0.41$, $P = 0.66$), as was sediment grain size (ANOVA, $F_{(2,33)} = 1.87$, $P = 0.16$), and slope of the intertidal zone (ANOVA, $F_{(2,33)} = 2.73$, $P = 0.10$). Thus, spatial variation in habitat characteristics is highly unlikely to be the main cause of any differences in ghost crab densities.

Crab abundance and distribution

The density of ghost crab burrows was significantly higher in the two sections that received only very low or moderate amounts of ORV traffic (Table 2; two-way ANOVA, effect traffic intensity: $F_{(2,96)} = 15.68$, $P \leq 0.001$). By contrast, ghost crab burrow numbers were reduced by 42–48% in the section south of the access point that received high volumes of beach traffic (Table 2); this effect was consistent across all levels of the beach (i.e. ANOVA interaction term – traffic × level: $F_{(3,96)} = 0.75$, $P = 0.68$).

Most beach traffic is concentrated below the drift line, and the distribution of ghost crab burrows across the beach face differed between traffic sections. A significantly

Table 2. Density of ghost crab burrow openings in areas receiving different amounts of beach vehicle traffic

distance seawards from foredune	NO/low traffic (7 Sites), mean ± SD	moderate traffic (4 Sites), mean ± SD	heavy traffic (7 Sites), mean ± SD
0–3 m	132.6 ± 45.15	134.0 ± 36.80	85.7 ± 60.88
3–6 m	55.4 ± 26.30	38.3 ± 24.54	19.1 ± 19.49
6–9 m	20.3 ± 11.86	18.5 ± 19.97	6.4 ± 7.41
9–12 m	9.3 ± 9.72	7.5 ± 5.80	3.4 ± 4.61
12–15 m	1.6 ± 1.72	1.3 ± 1.89	0.4 ± 1.13
15–18 m	0.7 ± 1.50	0.3 ± 0.50	0.0 ± 0.00
Entire beach-face	219.9 ± 84.97	199.8 ± 64.49	115.1 ± 87.03

Tabulated values are the number of active burrow openings per 30 m² counted in 10 × 3 m plots continuously distributed from the base of the foredune to the lowest down-shore position at which crabs were found.

(ANOVA, $F_{(2,33)} = 4.97$, $P = 0.02$) smaller percentage of the population was found living below the drift line in the area of heavy traffic (2.2 ± 1.07%) compared with the NO/low (7.2 ± 1.69%) and moderate traffic section (6.27 ± 2.14%). At four out of seven sites surveyed in the heavy traffic area, no active burrow openings were encountered below the drift line, which was located 9 m seawards of the dunes. By contrast, all sites in both the moderate and low traffic area had 2–13% of the intertidal population of crabs located below the drift line.

Burrow openings were significantly smaller in areas with beach traffic compared with the reference area from which recreational ORVs are banned (Table 3). Because burrow diameter is a function of crab size ($r = +0.67^{***}$), spatial differences in burrow dimensions indicate shifts in population size structure. Few large crabs were found in the area most heavily impacted by ORVs, and the population was shifted towards a larger proportion of juveniles. This reduction of burrow opening size was most pronounced on the upper shore close to the foredune (Fig. 3, Table 3).

Crushing of crabs by ORVs inside their burrows

Natural burrow conditions: effects of varying traffic intensity

A total of 97 burrows were examined in the experiments that measured mortality caused by ORVs while the crabs were inside their natural, unmanipulated burrows. Of these, 34% (33 burrows) were occupied by crabs. The mean burrow diameter per experimental site ranged from 10.4 to 26.6 mm and mean burrow depth varied from 20 to 40 cm. Compactness of the sand was not measurably affected by low intensity traffic of five vehicles passes, but most traffic intensities above 10 vehicle passes softened the sediment (Table 4). Cars completely collapsed the top

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Table 3. Diameter of ghost crab burrow openings (D, mm) in three sections of the beach receiving different amounts of vehicle traffic at varying distances downshore from the base of the foredunes

distance seawards from foredune	traffic volume	mean ± SD	n	ANOVA	SNK post hoc test
0–3 m	NO/low	17.9 ± 10.18	928	$F = 51.70$	a
	Moderate	14.5 ± 8.02	438	$df = 2$, 1943	b
	Heavy	12.7 ± 7.27	580	$P < 0.001$	b
3–6 m	NO/low	17.7 ± 9.35	388	$F = 22.84$	a
	Moderate	13.8 ± 7.65	171	$df = 2$, 690	b
	Heavy	14.3 ± 8.94	134	$P < 0.001$	b
6–9 m	NO/low	16.1 ± 6.85	142	$F = 7.56$	a
	Moderate	14.3 ± 6.59	84	$df = 2$, 268	b
	Heavy	12.8 ± 5.50	45	$P < 0.001$	b
9–12 m	NO/low	15.1 ± 4.90	65	$F = 0.85$	a
	Moderate	14.3 ± 6.39	32	$df = 2$, 119	a
	Heavy	16.2 ± 8.46	25	$P = 0.430$	a
12–15 m	NO/low	13.7 ± 5.22	11	$F = 0.13$	a
	Moderate	12.8 ± 4.07	6	$df = 2$, 17	a
	Heavy	14.0 ± 2.65	3	$P = 0.883$	a
15–18 m	NO/low	15.0 ± 4.06	5	$F = 0.47$	a
	Moderate	12.5 ± 3.54	2	$df = 1.15$	a
	Heavy	—	0	$P = 0.522$	a
entire beach face	NO/low	17.5 ± 9.52	1539	$F = 78.80$	a
	Moderate	14.3 ± 7.68	733	$df = 2$, 3056	b
	Heavy	13.8 ± 7.52	787	$P < 0.001$	b

5–15 cm of all crab burrows, and caused rutting to a depth of 44 mm after 20 overpasses in relatively compact sand, and 100 mm after 30 overpasses in softer sand.

Three crabs out of a total of 28 retrieved (11%) were crushed by vehicles in these experiments: a single crab was killed at a depth of 23 cm after 15 passes, and 20 vehicle passes killed two crabs at depths of 11 and 23 cm. No crab mortalities were recorded at higher intensities of traffic (i.e. 25 and 30 passes), but crabs were buried deeper (39 cm) in these experimental plots. In general, smaller crabs buried shallower into the sediment (correlation between crab size and burrow depth: $r = +0.47$, $P \leq 0.01$).

Crab mortality caused by ORVs at different depths in experimental burrows

Changes in sediment compactness after the application of vehicle treatments were variable depending on local conditions (e.g. sediment moisture, position on shore) of the experimental plots, but cars generally loosened the sand matrix (Table 5).

Off-road vehicles killed all ghost crabs if they were buried shallow (5 cm) into the sediment (Fig. 4a). Severe mortality of shallow-living crabs was recorded in both the 10 and 40 vehicle pass treatments (Fig. 4a). Indeed, burial depth appears to be the key factor in determining mortality

rates of ghost crabs caused by vehicles. We did not find a significant (F-test to compare non-linear regression models between treatments: $F_{(2,33)} = 1.091$, $P_{(2)} = 0.37$ and Akaike Information Criterion Ratio = 11.91) difference in mortality rates between 10 and 40 vehicles passes; rather, mortality declined exponentially with increasing depth at both traffic intensities (Fig. 4a). Crabs that were buried 30 cm in the sand were generally not killed save for a single individual (Fig. 4a). Of the 210 crabs used in the experiments, 32% of *Ocyropsis ceratophthalma* and 50% of *Ocyropsis cordimans* were killed, indicating that both species are susceptible to crushing by vehicles whilst inside their burrows during the day.

Nocturnal vehicle impacts on ghost crabs

In four experimental runs where a vehicle travelled at night along the beach, we found that a considerable number of crabs was crushed. A single vehicle pass killed 13–26 crabs over a relatively short distance of 200–300 m (Fig. 5); this mortality equates to 0.12–0.75% of the intertidal population. However, during several nights when we attempted to conduct experiments no ghost crabs were active on the beach surface. Hence, nocturnal beach traffic would not kill ghost crabs compared with nights when crab activity is high. Of the 78 crabs crushed at night in the four experimental runs, 77% were *Ocyropsis ceratophthalma* and 23% were *Ocyropsis cordimans*.

Discussion

Off-road vehicles causing reductions of ghost crab populations

Vehicles can inflict considerable mortality on ghost crabs on sandy beaches (Figs 4 and 5). It has previously been suggested – but not measured – that the main mechanism causing the observed lower population size of ghost crabs on beaches open to ORVs on North Stradbroke Island is direct kills of crabs by cars at night (Moss & McPhee 2006). Indeed, crushing of surface-active crabs by vehicles at night appears to be a plausible explanation for the lower number found in the heavy vehicle impact zone (Table 2). Our results from the night impact experiments are broadly similar to Wolcott & Wolcott (1984), who observed up to 19 kills per 100 m on the foreshore and up to 1 kill per 100 m on the backshore. Another similarity is that in both studies crabs were not active during some nights.

Burrows offer only partial protection from crushing by cars. Crab mortality inside burrows is strongly dependent on burrow depth, with individuals that construct burrows shallower than 25 cm being killed by ORVs (Fig. 4). Our data on impact rates of buried crabs contrast to some



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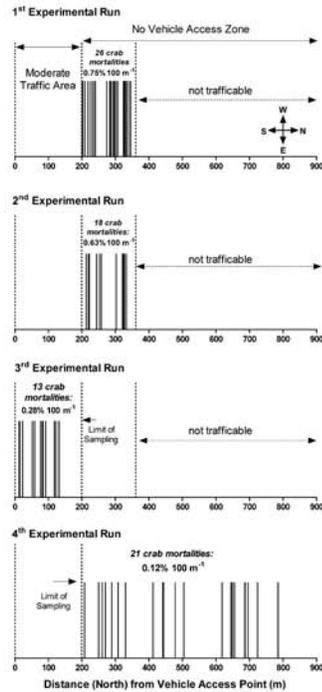


Fig. 5. Ghost crab mortalities caused by night traffic. Each bar represents a single individual found crushed in the tyre tracks after a single vehicle pass. Percentage values refer to the fraction of the intertidal population killed by a single vehicle pass.

openings. Ghost crabs can move several hundred meters alongshore at night and construct a new burrow before sunrise (Wolcott 1978); old, unoccupied, burrows that are out of the tide's reach could remain intact and positively bias population estimates. By contrast, ghost crabs

may renovate existing burrows (Barras 1963; Hill & Hunter 1973). Ghost crabs generally do not emerge during cold weather when they plug their burrows for thermal insulation (Barras 1963; Hill & Hunter 1973). Equally, during rainy weather, the crabs remain inside their burrows which may be plugged closed (Hughes 1966). Finally, Barros (2001) cautions that ghost crabs may change their behaviour (e.g. not readily maintaining burrows) in response to human activity, resulting in an apparent reduction in the population.

The location of burrow counts across the shore should spatially match the area over which a human disturbance occurs. Counts in the unvegetated, intertidal part of the beach are most practical, quickest and easiest to execute. Counts in dune areas may be useful if the population migrates in response to storms or cold weather, as was shown for *Ocyropsis quadrata* (Christoffers 1986). Burrow counts are usually restricted to the un-vegetated part of the beach and generally do not encompass the dunes (e.g. Barros 2001). We observed crab holes in the dunes above the storm drift line. In our field setting, the seaward edge of the dunes was a near vertical face up to 2 m high and this is present for most of the year. Thus, there may be little opportunity for movement of crabs from the beach into the dunes, or crabs that move from the dunes onto the beach may not be able to return.

Possible complementary causes of changes in ghost crab numbers

Off-road vehicle traffic overlaps with the distribution of many intertidal macrobenthic species (Schlacher & Thompson in press-b), and can thus reduce the diversity and standing stocks of prey items available to ghost crabs (Schlacher *et al.* in press). Thus, smaller population sizes may also reflect diminished prey availability on beaches impacted by ORVs. Vehicles also significantly modify the sand properties on beaches (Anders & Leatherman 1987), and physically disrupt large areas of the intertidal habitat (Schlacher & Thompson in press-a). Less cohesive sediment after vehicle disturbance (Table 4) may be less suitable for the construction of burrows (Christoffers 1986), or impede the recruitment of the early instars of ghost crabs. Constant disruption of burrows by cars (Schlacher & Thompson in press-a) may also force crabs to continually maintain their burrows during the day, exposing them more frequently to bird and mammal predators (Moore 2002; Carlton & Hodder 2003).

Foxes are an alien species in Australia and hence regarded as a pest on North Stradbroke Island. On one occasion we observed fox tracks and signs of foxes having excavated crab burrows at night. Predation of ghost crabs by foxes and coyotes has been reported elsewhere

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(Christoffers 1986; Rose & Polis 1998). Feral and domestic dogs may also kill ghost crabs at night, and fishermen attract birds such as seagulls and terns which in turn can prey on ghost crabs (T.A. Schlacher, personal observation). However, enhanced predation pressure on ghost crabs could only be a plausible explanation for the observed reduction in ghost crab abundance (Table 2), if it were significantly higher on beach sections open to ORVs. This is unlikely to be the case for the abutting, small areas investigated by us (Fig. 1c). Several human activities such as camping and fishing that attract predators (e.g. food scraps, discarded bait, fish guts, etc.) require ORVs for access on the island, and thus a connection between ORV use and indirect negative impacts on ghost crabs cannot be excluded.

Ghost crabs are remarkably well adapted to the harsh environmental conditions of sandy beaches, and have successfully exploited the niche of top invertebrate predator on many shores (Barras 1963; Hughes 1966; Jones 1972). Behavioural plasticity is a key trait of most sandy beach animals (Brown 1996), and ghost crabs appear to respond to the novel evolutionary pressure of human modifications to their habitat. For example, we have observed ghost crabs to scavenge actively for food scraps in camping areas in the dunes, and they can even invade coastal houses (T.A. Schlacher & L. Thompson, personal observation). Whether ORVs influence ghost crab behaviour and life histories has not been quantified to date. It is, however, not unlikely that crabs may show behavioural adaptations to human disturbance such as changed activity rhythms, modifications to their burrow architecture, or heightened escape behaviour. Similarly, shifts in burrow size structure in heavy traffic areas (Fig. 3) indicate age-selective mortality caused by vehicles, and such effects

may propagate to influence recruitment and population dynamics and ultimately life-history traits.

Conservation and management implications

Given the high traffic volumes on the beaches studied, particularly during peak periods (Fig. 2), and the substantial mortalities inflicted by ORVs on ghost crabs (Figs 3 and 4), off-road driving on beaches can be regarded as an environmentally harmful activity. In fact, simple modelling of three impact scenarios indicates that ORVs can contribute to population declines of ghost crabs. Under a 'best case scenario' that incorporates the lowest nocturnal mortality rate by a single vehicle recorded by us (0.12%), and which assumes that ghost crabs are surface-active in one out of four nights only, 2311 vehicles travelling on the beach at night would reduce the population to half (Fig. 6). Under a 'worst-case scenario' (i.e. highest recorded experimental mortality rate and surface activity of crabs every night), less than 100 cars would kill 50% of the intertidal ghost crab population.

We found that nocturnal surface activity of ghost crabs was variable, with crabs being active outside their burrows on six out of 10 nights only. Thus, the 'worst-case' scenario which assumes emergence every night is likely to represent a maximum impact probability. The 'best case' scenario assumes only a 25% probability of emergence (i.e. one out four nights) which is lower than our preliminary data of 60% activity, and consequently may be a conservative estimate.

Traffic volumes on Flinders Beach (10,220 cars annually) are significantly higher than the above figures, roughly fivefold the modelled number of cars causing a 50% reduction in ghost crab numbers under the 'best

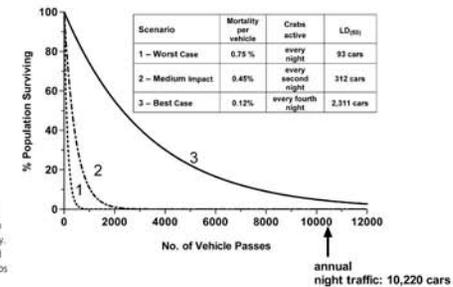


Fig. 6. Modelled declines in ghost crab populations as a result of direct mortalities caused by night-traffic. Scenarios are based on three levels of mortality recorded by us in this study, and different levels of crab activity. LD₅₀ denotes the numbers of cars predicted to reduce intertidal populations of ghost crabs by half (lethal dose 50).

case'. These figures are first-order guides only, as the model does not take into account recruitment, but equally does not incorporate additional losses through natural mortality and predation, or other human causes such as daytime kills by ORVs. Nevertheless, it does suggest that beach traffic at night can play a role in reducing populations of intertidal ghost crabs under existing levels of use.

Restrictions placed on night traffic would be an effective conservation measure. Although night driving represents only a relatively small fraction (c. 8%) of all beach traffic in the present situation, it does occur throughout the year and is a major part of the recreational fishing fraternity. Exclusion of ORV traffic from beaches, or sections of beaches, is an alternative or complementary management option. This has proven highly successful in terms of environmental outcomes in South Africa (Williams *et al.* 2004), but requires careful spatial planning and the use of multiple criteria spanning ecological, economic and social-cultural criteria (Celliers *et al.* 2004).

A number of small pocket beaches on North Stradbroke Island, such as Frenchman's Beach or Home Beach, are physically or legally inaccessible to vehicles. These beaches may act as source populations for the surrounding impacted beaches. Very high ghost crab activity (possibly a spawning event) occurred around New Year on Home Beach (T.A. Schlacher and L. Thompson, personal observation) and the presence of freshly recruited megalopa in March suggests that local *Ocyropsis* reproduction and recruitment has a seasonal component. Spawning of ghost crabs in South-East Queensland is probably restricted to the summer months since temperatures can drop below the reported *Ocyropsis* activity threshold (c. 16 °C) between May and September. If that is the case, then the summer peaks in beach traffic (Fig. 2) overlap with the spawning period of ghost crabs.

Regulating beach traffic to achieve conservation outcomes is a formidable management challenge (James 2000; Celliers *et al.* 2004). Beach driving is immensely popular amongst fishermen, campers and the general public and thus has social value (Priskin 2003a). Arguably, a sizeable proportion of the local tourism industry on the island is presently based on ORVs accessing the beaches (Carter 2005), but this activity may at the same time deter other user groups from visiting the island. The net balance of economic gains and losses of beach traffic has not been quantified, but economic arguments should be considered in developing encompassing management approaches.

Conclusions

Recreational demands on sandy beaches are escalating worldwide (Schlacher *et al.* 2006; Schlacher *et al.* in

press). Driving of recreational ORVs results in measurable declines in ghost crab density on beaches and directly crushes animals. This impact occurs mostly during the night when crabs are active on the beach surface, but burrows offer only partial protection against cars while the crabs are buried during the day. Overall, our data strongly argue that driving of ORVs on sandy beaches is a form of human recreation that has negative ecological consequences that need to be managed within the full spectrum of socio-cultural and economic demands to achieve lasting conservation outcomes for sandy beaches.

Acknowledgements

Redlands Shire Council is the local authority charged with managing traffic on sandy beaches on the island. They were highly supportive of this study, particularly Mr Dan Carter. Council provided logistical and financial support and supplied us with the automatic traffic count data. Jenny Traeman made her comfortable house available to us during field work on the island – this was highly appreciated by the team after digging and crawling on our hands and knees what seemed to many like days on end. This work was carried out under Animal Ethics Permit # AN/A/05 18.

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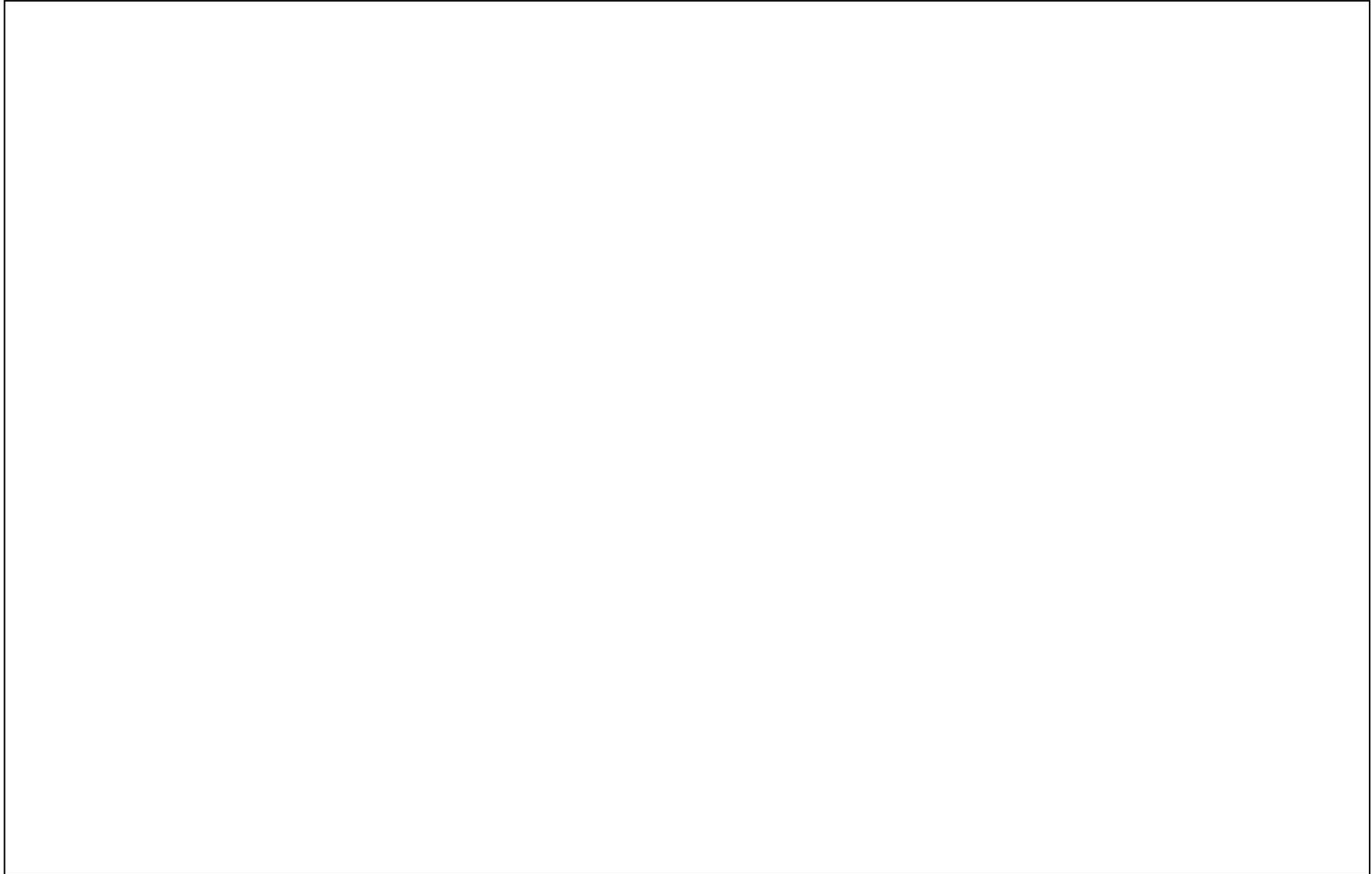
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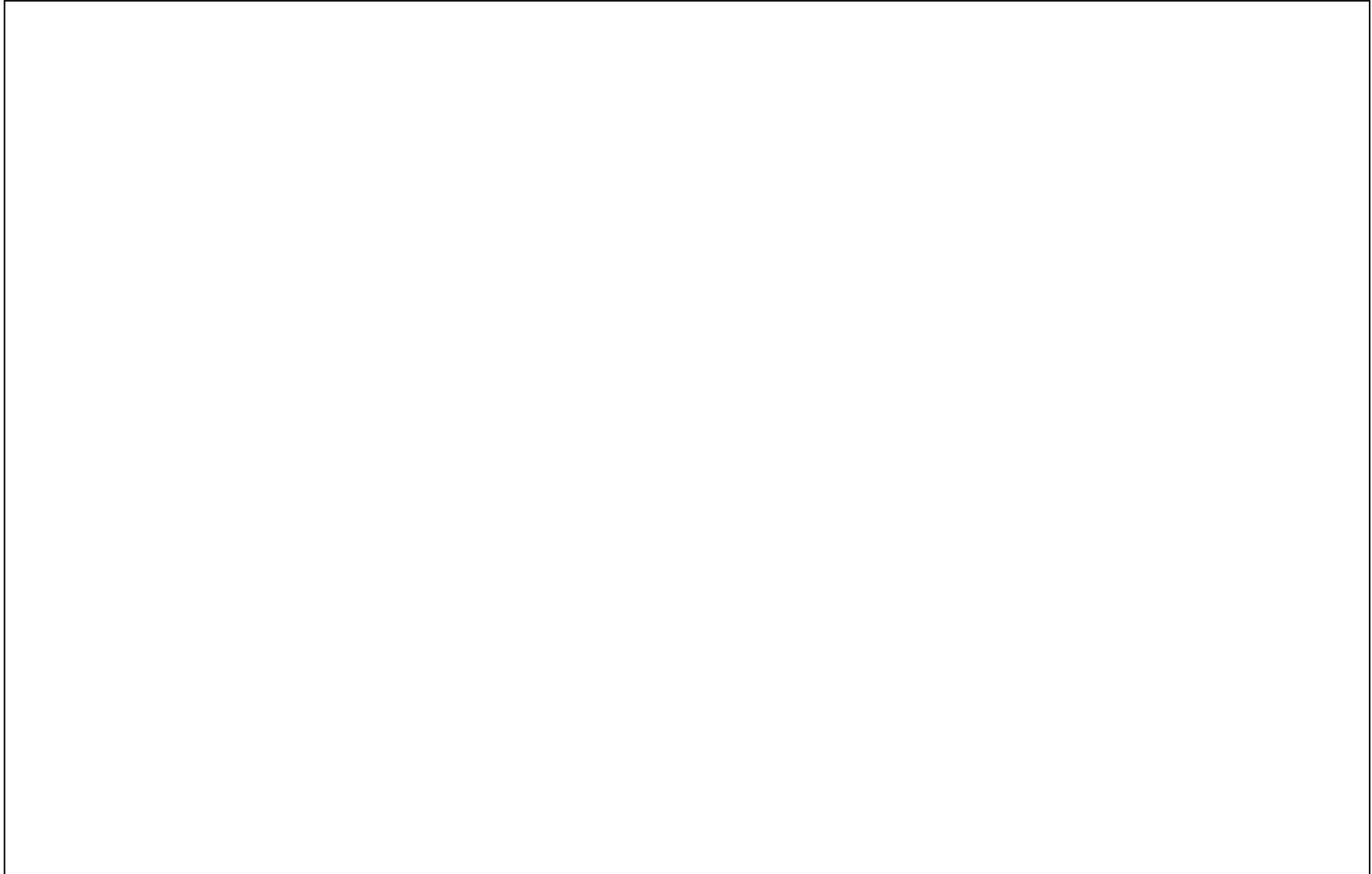
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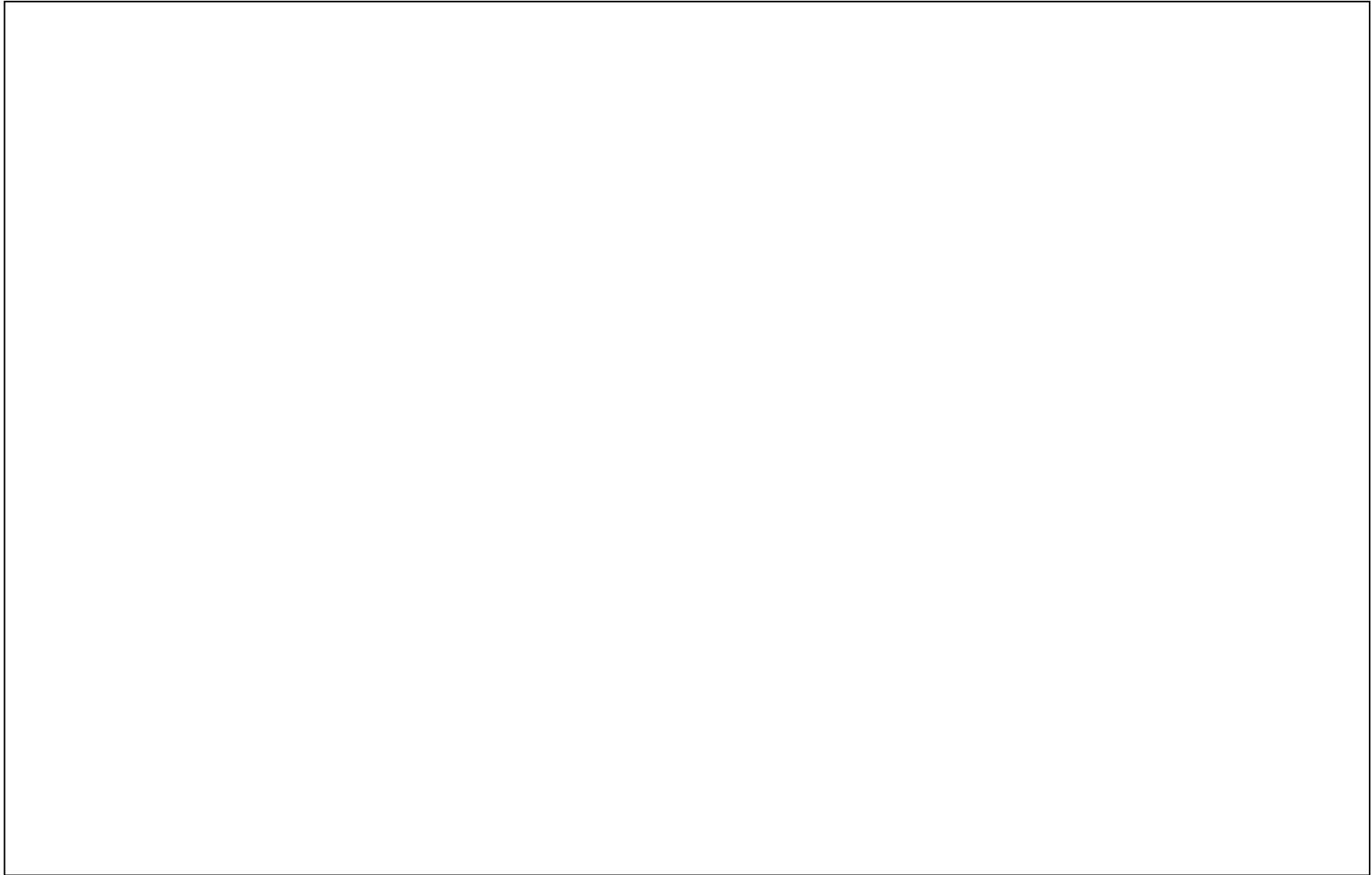
















Response to Comment NGO-8-1

Please see the Response to Comment NGO-5-26 for a discussion of vehicle restrictions that would be implemented under the HCP and the need to balance these restrictions with providing recreational use opportunities to the public.

Response to Comment NGO-8-2

The commenter is correct in asserting that it is possible that larger populations of native predators could be attracted to remote areas accessed by motor vehicles along the Oregon coast. Driving is limited in many areas of the Ocean Shore by State Rule and would be prohibited under the HCP during the nesting season at all occupied and actively managed unoccupied SPMA and RMA (in instances where driving is not already prohibited under State Rule). These restrictions would minimize the potential for increased predation due to human influence during the sensitive nesting period. OPRD would also manage the snowy plover predator base along the Oregon coast, and would remove individual animals from SPMA that are targeting snowy plovers as prey. Please refer to the Response to Comment NGO-6-2 for more information about the predator management program that OPRD would continue to implement under the HCP.

Response to Comment NGO-8-3

This issue is discussed in Section 6 of the HCP under the discussion of recreational use effects associated with driving.

Response to Comment NGO-8-4

Please refer to MR-7 for a discussion of why management of all of the areas in the Final Recovery Plan is not possible and beyond the scope of the HCP.

Response to Comment NGO-8-5

Please refer to the Responses to Comments NGO-5-7, NGO-5-8, NGO-5-9, and NGO-5-25 for more information about how the HCP meets the legal standards and requirements of the ESA.

Comment Letter NGO-9

NGO-9

NEHALEM RIVER VALLEY PROTECTION COALITION

P.O. Box 39
Nehalem, Oregon 97131
503-523-6064
nrvcp@nehalemel.net

January 23, 2008

Laura Todd
U.S. Fish and Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport, OR 97365-5258



To Whom It May Concern:

The mission of the Nehalem River Valley Protection Coalition is to restore, maintain and protect the dynamic and diverse landscapes, fish and wildlife species of the Nehalem River Valley for present and future generations.

Nehalem River Valley Protection Coalition does not support issuing a permit to OPRD for the incidental take of snowy plover along Oregon's coastal shores as stated in the draft **Habitat Conservation Plan for Western Snowy Plovers (HCP) & Environmental Impact Statement (EIS)**. "If issued, the ITP would authorize the incidental take of snowy plover that may result from OPRD's continued management of Oregon's coastal resources over the next 25 years."

Local coastal communities do not have the resources or funding to absorb the proposed increase in size and structure of coastal State Parks. For example, the mayor of Manzanita, Garry Bullard, gave a very precise speech on the issues surrounding draft Master Plans to increase campsites at Nehalem Bay State Park at the July 2007 public scoping meeting. The existing roads, tsunami evacuation plan, and utilities are currently unacceptable and create unmanaged OPRD problems during tourist season. These problems pour over into the local surrounding communities who say, "manage what you have!" None of these above mentioned items were addressed with solutions in the 2007 draft Master Plan for the area.

To meet the governor's mandate of expanding State Parks, OPRD has carelessly selected areas to increase recreational opportunities. One such area is Cougar Valley State Park. As concerned biologists, conservationists and local citizens

NGO-9-1

NGO-9-2

NGO-9

we ask United States Fish and Wildlife Service to take a closer look at potential harm increased concentrated use of State Parks will have on our native fish and wildlife populations.

NGO-9-2
continued

Habitat fragmentation, degradation and destruction caused by developing mega-State Parks does not benefit local communities economically dependant on thriving native fish and wildlife populations. Please help us maintain Oregon's natural heritage by protecting our native fish and wildlife species.

NGO-9-3

Respectfully,

Tasha Sorensen, Director

NRVPC
Loren Schwartz--President
Gary Greck--Vice President
Mary Leighton--Secretary
Jerry Veilutini--Treasurer

Response to Comment NGO-9-1

The effects of current or future proposals to expand coastal State Parks are outside of the scope of the analysis presented in Volume I of this FEIS, with the exception of expansions that could result in potential effects on snowy plover populations. It is our understanding that the recommendations in the Ocean Shore Management Plan (Oregon Parks and Recreation Department 2005) for expansion of State Parks areas reflect the need that nesting populations of snowy plovers be protected, and that such protections be implemented in accordance with the HCP.

Of note, the northern boundary of the Nehalem Bay SPMA would define the limit for further development in the Nehalem Bay State Park (i.e., no development would be allowed south of the SPMA boundary). Although this boundary could concentrate use in more northern access areas, it is unlikely that this provision in and of itself would noticeably affect recreational use at this State Park. Proposals for additional camping areas at Nehalem Bay would be far enough away from future snowy plover nesting areas to be in compliance with the HCP.

Response to Comment NGO-9-2

As mentioned in the Response to Comment NGO-9-1, the effects of current or future proposals to expand coastal State Parks are outside of the scope of the analysis presented in Volume I of this FEIS, with the exception of expansions that could result in potential effects on snowy plover populations. The conservation measures in the HCP consider the effects that increased recreational use would have on snowy plovers, and set aside protected nesting areas to minimize those potential effects to the extent possible. In addition, the conservation measures in the HCP would inherently benefit other native populations of fish and wildlife by maintaining and restoring native habitats.

The conservation measures in the HCP would not affect recreational opportunities at Cougar Valley State Park.

Response to Comment NGO-9-3

The HCP does not propose to develop new park facilities. As noted in the Response to Comment NGO-9-1, the effects of current or future proposals to expand coastal State Parks are outside of the scope of the analysis presented in Volume I of this FEIS, with the exception of expansions that could result in potential effects on snowy plover populations. The designation of SPMA's in the HCP would result in habitat protections along the Oregon coast for nesting populations of snowy plovers for the next 25 years. These measures would minimize habitat fragmentation, degradation, and destruction.

Comment Letter NGO-10

NGO-10

From: DJ Lauten and KACastelein <deweysage@verizon.net>
To: Laura Todd <Laura.Todd@fws.gov>

02/19/2008 10:42 AM
Subject: doubts about OPRD enforcing the law....

Laura

In our comments on the HCP, we were pretty critical of whether OPRD would actually enforce the HCP. They have a poor history of enforcing their law. Well, here is what we are talking about. As you probably know by now, there is an old shipwreck at Coos Bay that is attracting hordes of people. On Sunday, the Register Guard ran a big article, and when we read it we found the following statement:

"Or you could drive down on the beach at low tide, or ride there on a horse or an ATV or a motorcycle."

We wrote the paper yesterday to tell them they need to correct the statement, ATV's are not permitted on the beach. I sent an email to Calum and BLM asking that they too follow up on the article (which to my knowledge they did). After an email exchange with the reporter who wanted to argue with me at first, I sent another email to Calum and BLM, and I said in that email:

"I wrote him back informing him that he is only partly correct, but mostly wrong. I told him to contact OPRD and BLM, but I also told him that you would likely be contacting him, and I told him I was forwarding his email to you. He needs to be contacted to correct the mistake, and people need to know that ATV riding on the beach at Coos Bay will result in a ticket! I think we need to be firm about this."

Here is part of Calum's response to me:

"...and OPRD and the rangers/state police will decide on enforcement approaches!!!!
Calum"

This is, to me, precisely what the problem is. OPRD just seems reluctant to enforce the law. I cannot, and will never, understand why they are so afraid of ticketing people, and doing what should be done, and what is right. So, they are going to do what they say they are going to do in the HCP? I won't hold my breath.

Cheers
Dave

NGO-10-1

Response to Comment NGO-10-1

Please refer to Section 7, “Implementation, Organization, and Structure” in the HCP and MR-8 for a discussion of the funding commitments in the HCP, including those specific to law enforcement. Refer to Response to Comment NGO-2-4 for additional information on monitoring and reporting commitments in the HCP.

Chapter 7 General Public Comments and Responses

Introduction

This chapter includes comment letters submitted by members of the general public and responses to the substantive comments. Seventy-seven individual comment letters were received during the public comment period from the general public. A copy of each comment letter is presented with the substantive comments marked and individually identified. The responses to these comments follow each comment letter. In some cases, responses were not considered necessary. Changes made as a result of the comments were incorporated into Volume I of this Final Environmental Impact Statement (FEIS) and the habitat conservation plan (HCP) as indicated in the responses.

Comment Letter GP-2

GP-2

GP-2



Betty Jean Keele
11/26/2007 11:05 AM

To: <fw.tordhcp@fws.gov>
cc:
Subject: FW: Questions, Habitat Conservation Plan

Hello Laura,

I have been trying to get a question answered for about 2 weeks now. It is about some inconsistencies in your tables showing nesting on Baker Beach. Your new regs are going to remove dogs from nesting beaches and that seems to include Baker Beach although the tables don't clearly show nesting on Baker Beach. This is a copy of my earlier emails. I would appreciate a clarification.

Thank you,
Betty Jean Keele

Hello Carrie,

I sent my first email on questions Nov. 14th. I understand we must have our comments in by Dec. 10th. Time is slipping away and these questions are pertinent to my official comments.

I have been reading the Habitat Conservation Plan and have a couple of questions. I have been very interested in the plover population growth in the last couple of years (section 4).

Table 4.1 shows 21 plovers at Berry Creek - Sutton Creek beach in 2006 during the winter. And Sutton Creek to N. Jetty Siuslaw show 0 in 2006.

GP-2-1

Table 4.2 Plovers during the breeding season show no plovers from Berry Creek to Sutton Creek in 2006. This may now be described as Heceta Head-Sutton Creek I'm not sure but it also shows no plovers. It does show 2 birds from Sutton Creek to North Jetty Siuslaw in 2006 (not on Baker Beach).

Table 4-3 Nesting and Fledging Success show 4 birds on Sutton Beach in 2006. How can you have nesting without birds?

I am quite confused by this as I ride horses on Baker beach and have been interested in the Plover recovery. It was my understanding that Baker beach was known most for its wintering of Plovers but very few arrive for nesting. I was hoping this might change but can't really tell from your charts.

Also, I was wondering what type of predator control was used on Baker Beach as it was not mentioned in the tables and I thought some control was done there.

GP-2-2

Thanks you for now. I'm sure I will have more questions later.

Betty Jean Keele

----- Forwarded Message
From: Carrie Lovellette
Date: Mon, 26 Nov 2007 08:17:10 -0800
To: Betty Jean Keele
Subject: Re: Questions, Habitat Conservation Plan

The statement below was included in the email I sent out on behalf of the U.S. Fish and Wildlife Service:

Comments must be received on or before January 4, 2008. All written

GP-2

comments and requests for information must be address to:

Laura Todd
U.S. Fish and Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport Oregon, 97365-6258
Facsimile (541) 867-4551

Comments may be submitted by postal mail/commercial delivery or by e-mail.
Submit e-mail comments to: fwlordhncp@fws.gov. Please include in the
subject line of the e-mail the identifier: OPRD HCP EIS.

>>> Betty Jean Keele [REDACTED] 11/24/2007 11:11 AM >>>

----- End of Forwarded Message

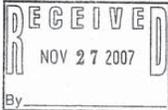
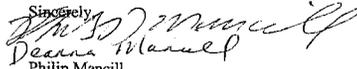
Response to Comment GP-2-1

Tables 4-1 and 4-2 of the HCP summarize data collected during winter and breeding window surveys, respectively. The surveys are conducted during the same winter and spring periods throughout the snowy plover range to get a comparable index of snowy plover occurrence across their range. The window surveys are only a snapshot in time and are necessary to provide a consistent measure of snowy plover numbers and general distribution throughout the range. Table 4-3 refers to the number of nests observed through the annual season-long monitoring efforts. These monitoring efforts have been conducted since 1990, continue at every nesting area throughout the entire breeding season, and are only conducted in Oregon. Other areas in Washington and California have similar monitoring efforts, but may not use the same methods and the results are, therefore, not necessarily comparable. Monitoring in Oregon has provided the most comprehensive data (depicted in Table 4-3) and has allowed landowners and the U.S. Fish and Wildlife Service (USFWS) to make more informed decisions in specific areas, including several of the recreation management areas (RMAs) and snowy plover management areas (SPMAs) proposed for management under the HCP. Citations have been added to each of these tables to minimize confusion, and the document has been reviewed to ensure that location names are accurately and consistently used.

Response to Comment GP-2-2

Predator management varies between sites, and from year to year. Between February and June 2007, both lethal (shooting and ingestion of poisoned eggs) and nonlethal (hazing) predator control were employed at Baker Beach. Lethal predator control primarily targeted American crows, although one common raven was removed in a shooting incident. All predator management activities were stopped in June due to the absence of snowy plovers at this site.

Comment Letter GP-3

<p style="text-align: right;">GP-3</p> <p>November 19, 2007</p> <p>Laura Todd U.S. Fish and Wildlife Service Newport Field Office 2127 SE OSU Drive Newport, Oregon 97365-5258</p> <p>Re: Draft Habitat Conservation Plan for Snowy Plover and the federal Draft Environmental Impact Statement for the plan</p> <p>Dear Ms. Todd:</p> <p>We have previously commented on the snowy plover plan as proposed by the Oregon Parks and Recreation Department in 2004. Our observations are limited to the Necanicum Spit area in Clatsop County. We do not support certain provisions of the new HCP because they are based on politics, rather than science.</p> <p>Our activities within this area include commercial harvesting of razor clams, using a landsailer, and observing birds and other wildlife. Up until 2000, this area was little used by people. Dogs are always unleashed and chase pheasants and other wildlife in the designated area. Horses are in the sand dunes and wet sand areas and have become a huge problem.</p> <p>Non-motorized vehicles, including landsailers and kite buggies would be prohibited from the recovery area. These so-called vehicles only use the wet sand during low-tide and are wind-powered. The right wind and tide series usually don't happen often during the year; perhaps there are 25 days a year when it is possible to sail in this area. The impact to the snowy plover is minimal, compared to the impact from dogs and horses.</p> <p>An earlier 2004 Draft Habitat Conservation Plan by the Oregon Parks and Recreation Department cites a study in Santa Barbara County, California. It found wintering snowy plovers were more likely to fly from dogs and horses than humans. On Gearhart beach, dogs are always unleashed. Requiring dogs to be on leashes will be a matter of enforcement by the state police and game wardens. Because of budget cutbacks, will the State of Oregon spend money to enforce the law? Public education may be proposed, there is so much resistance from the local population that leash laws will be ignored.</p> <p>Another factor to consider is that the City of Gearhart does not have a leash law for dogs. Many times we have observed unsupervised dogs running wild on the beach. In order for the plan to be a success, this kind of action must cease.</p> <p style="text-align: center;"></p>	<p style="text-align: right;">GP-3</p> <p>The 2004 HCP cited studies that indicate horses may trample nests. During the 2000 and 2001 breeding season at Morro Spit, California, (Persons & Ellison 2001) monitors had documented at least four clutches that were destroyed by horses trampling the nests. At New River, horses came close to crushing a nest before it was protected with an enclosure (Craig et al. 1992). Horses and other pack animals leave depressions in an otherwise naturally flat wave-washed shoreline that can disrupt or impede the movement of chicks and adults. (Neuman, 2001)</p> <p>A few years ago, the City of Gearhart built a fire road in the active sand dune area all the way out to the Necanicum Spit. Horse tracks are found frequently in the dry sand area where the snowy plover would nest. If previous studies have indicated horses are detrimental to the recovery of this bird, why would we change course and allow them on the beach, and particularly in the dry sand dune area?</p> <p>A couple of years ago, we took a month-long trip around Eastern Oregon to do bird-watching, etc. We visually documented the birds we observed, over 70 species. At the Alvord Desert, six snowy plovers were literally under my feet before I saw them. They quickly dispersed, hiding in tire tracks for cover. I got my spotting scope out and watched for over two hours. Landsailers zipping by a few hundred feet away did not budge them from the spot. But unless I knew where to look for them, they were impossible to see them. According to the BLM in Burns, there are 30 snowy plovers residing on the Alvord Desert Dry Lake Bed.</p> <p>We would like modifications done on the Habitat Conservation Plan. We need to recognize the negative impacts dogs and horses have on snowy plovers, based on scientific studies that have already been completed. Catering to special interest groups that would be allowed to "legally" take a protected species does not bode well for the recovery efforts. If land-sailing and kite buggies are prohibited in the critical habitat area, then horses and dogs should be banned.</p> <p>Thank you for considering these comments.</p> <p style="text-align: right;">Sincerely,  Deanna Mancill Philip Mancill 2945 Hwy 101 North Seaside, Oregon 97138 Telephone: (503) 738-3021</p>
--	--

Response to Comment GP-3-1

The effects of non-motorized vehicle use on snowy plovers are similar to the effects caused by motorized vehicle nests in terms of the potential to crush eggs, cause the birds to flush from the nest, and disrupt foraging. Non-motorized vehicle use can also involve the use of kites, which have been observed to adversely affect snowy plovers (Hoopes 1993, Hatch 1997). Although these activities may occur infrequently, they do have the potential to adversely affect the species. Therefore, the recreational use restrictions on non-motorized vehicle use proposed under the HCP would be implemented during the snowy plover breeding season. This means that non-motorized vehicle use would be allowed from September 16th to March 14th at both occupied and actively managed unoccupied sites.

The Oregon Parks and Recreation Department (OPRD) recognizes that dogs and additional traffic on the dry sand portions of the beach can adversely affect snowy plovers. Therefore, OPRD has proposed to restrict beach traffic, including horseback riding, from within roped-off areas of the beach during the nesting season. Dogs would be required to be on leash in areas that are unoccupied but actively managed for snowy plovers, and would be restricted from occupied areas. For more information about dog restrictions, please see MR-3.

Response to Comment GP-3-2

Please refer to Section 7, “Implementation, Organization, and Structure” of the HCP and MR-8 for a discussion of the funding commitments in the HCP, including those specific to law enforcement. The effectiveness of the conservation measures, including the adequacy of the funding commitments in the HCP, will be assessed each year in annual compliance reports and evaluated every 5 years by OPRD, USFWS, and Oregon Department of Fish and Wildlife (ODFW).

Response to Comment GP-3-3

The Necanicum Spit SPMA is located in the Gearheart Ocean State Recreation Area. Dogs are currently required to be on leash in the State Recreation Area and would continue to be required to be on leash under the HCP at actively managed unoccupied sites. Once a site became occupied, dogs would be prohibited from key areas of the SPMA. These restrictions would not be applied to areas outside the SPMA. As mentioned in MR-8, OPRD is committed to providing funds to educate beach users of the restrictions and to continue to provide positions for three full-time beach rangers to enforce these and other restrictions. Increased outreach and enforcement proposed under the HCP would help to enforce the recreational use restrictions.

Response to Comment GP-3-4

Comment noted. It is important to note the HCP addresses the Pacific Coast population of snowy plover (coastal population), and specifically the population along Oregon's coast. In general terms, the coastal population of the Pacific Coast population of snowy plover is defined by USFWS to include all nesting birds on the mainland coast, peninsulas, offshore islands, adjacent bays, estuaries, and coastal rivers between Damon Point, Washington and Bahia Magdalena, Baja California, Mexico (U.S. Fish and Wildlife Service 2007a). Snowy plovers that nest at inland sites, such as those in Eastern Oregon, are not considered part of the coastal population.

Response to Comment GP-3-5

The commenter is correct in asserting that equestrian use can be detrimental to nesting populations of snowy plovers. Horseback riding is most often limited to the wet sand portions of the beach; however, during high tide, horseback riders may enter the dry sand portions of the beach where they could crush eggs or disturb nesting populations (Point Reyes Bird Observatory unpublished data; Page 1988; Persons 1995; Craig et al. 1992; Woolington 1985). Therefore, under the HCP, equestrian use in occupied SPMA's and RMA's would be directed to the wet sand and prohibited from the dry sand within the SPMA or RMA. Fences, ropes, and signs would define the dry sand breeding areas to be avoided, and if necessary, an equestrian management plan could be developed in conjunction with the site management plan for an SPMA or RMA.

Response to Comment GP-3-6

Please refer to the Responses to Comments GP-3-1 and GP-3-5 for a discussion of restrictions on non-motorized vehicle and equestrian use, respectively. For additional information on dog restrictions, please see MR-3.

Comment Letter GP-4

Nov 22 07 02:11p Grover Hatcher [REDACTED] P-1
GP-4

Grover Hatcher
[REDACTED]

Laura Todd
US Fish and Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport, OR97365-3258
Fax: 541-867-4551

November 22, 2007

Dear Laura,

I would like to comment on the proposed plan to protect the snowy plover on our Oregon beaches. I am in favor and support every effort you are making to help protect habitat for the snowy plover on our public beaches. The inconveniences caused to the recreating public is highly overstated by a few. I believe many voice opposition to restrictions just on principle even though, in reality, many who claim to be affected have never used the areas proposed to be protected.

I encourage and support your efforts to provide save havens for the fragile and critical nesting areas for the snowy plover. Keep up the good work!

Happy Thanksgiving!

Sincerely,


Grover Hatcher

RECEIVED
NOV 27 2007
By _____

Comment Letter GP-5



Clifford S. & Mary Harvey

[Redacted Address]

November 23, 2007

Ms. Laura Todd
U.S. Fish and Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport, OR 97365-9258

Ref: OPRD HCP EIS

Ms. Todd,

My neighbors and I live directly above, and often frequent, Baker Beach and the other beaches nearby. We walk on them, photograph them extensively, monitor their use as members of the Coast Watch program, and exercise our dogs on them. We are, to the very last person, reasonable, responsible, law-abiding citizens, eager to preserve these places for the on-going enjoyment of all our citizens.

The primary issue that still makes us nervous concerns your proposal to completely eliminate dogs from our beaches. My wife and I routinely take our dog to the beach. Our neighbors do the same. Our black lab is very well trained and well behaved around everyone. We never let her go near the roped-off portions of Baker Beach, always opting instead to stay on the wet sand. After all, that's what you asked us to do a few years back, and we've always taken your request to heart. On only one occasion have we seen a dog inside the roped-off areas. That was when a yellow lab was running around, off any leash, inside the roped-off area last year, at the same time several Forest Service trucks were at the south end of Baker Beach. The dog belonged to one of those people.

When your first proposal was received a year ago, my neighbors and I did a great deal of research. I for one contacted every member of your citizen's committee which was responsible for making recommendations regarding the Snowy Plover issue and how best to protect their beach habitat. I sent each of them a large package of information, and contacted them via both phone and e-mail during that time. I noticed right away that the majority of those committee members didn't even live on the coast! If you were going to ask people their opinion on how best to deal with the problems you perceive, shouldn't those you ask for assistance actually live in the area proposed for new and onerous regulations?! To do otherwise strikes us as a design for failure.

GP-1

NOV 27 2007

GP-5

Wouldn't it make more sense - and certainly be viewed as more reasonable - to simply ask people to keep their dogs out of the roped-off portions of the beach, and rely on their sense of community to abide by those requests? To arbitrarily eliminate the option of exercising our animals on the beach sends the message that none of us can be trusted to abide by the law. To eliminate our access to the beach to exercise our animals is, in our view, vast overkill, unreasonable seizure of our beaches, and will only create a heretofore non-existent group of militant owners who are fed up with government intervention in our lives.

GP-5-2

And why is it that you propose to eliminate our dogs from being on leashes on the beach, yet will continue to allow dozens of horses on the beach, at all hours, with no restrictions? If your answer is that some folks operate a horse-riding business, then perhaps a dog-walking business would also be allowed, at all hours, with no restrictions? And please tell me when a kite has ever - ever! - caused harm to a bird? The whole idea boggles the imagination.

GP-5-3
GP-5-4

Ms. Todd, my wife and I, along with our neighbors, respectfully request that you and your committee take the time and make a real effort to avoid imposing restrictions that aren't necessary. My neighbors and I would be more than happy to volunteer any amount of time to a committee of folks who actually live on the coast and who frequent the beaches often, to come up with a coherent and reasonable plan for protecting both the habitat of the Snowy Plover and the rights of the citizens of Oregon.

I look forward to hearing from you on this. Meanwhile, thank you for your time.

Sincerely,



2

Response to Comment GP-5-1

During the course of developing the HCP, OPRD held a number of public meetings along the Oregon coast. At these meetings, OPRD solicited input from the public about the HCP proposal. The Steering Committee was formed from interested stakeholders, including affected landowning agencies, governments, and advocacy groups. Several opportunities were provided for individuals who were not part of this committee to participate in the development of the HCP. For more specific information regarding public outreach efforts, see Appendix C of the HCP.

Response to Comment GP-5-2

The proposed HCP has been prepared to avoid, minimize, and mitigate the potential effects of OPRD's management activities and the public's recreational use of the Ocean Shore on snowy plovers. In effect, enforcement of the HCP will also provide take coverage for individuals who might otherwise accidentally engage in activities that could result in take of the species. In order for OPRD to obtain an incidental take permit (ITP), OPRD must demonstrate that the conservation measures in the HCP would be implemented, including restrictions on dog use in managed areas. Asking the public to comply voluntarily with the restrictions would not provide sufficient assurance that the conservation measures would be implemented. Please refer to MR-3 for additional information on why dog restrictions within the covered lands are necessary to protect populations of snowy plovers.

As discussed in Section 3.3, "Recreation" of Volume I of the FEIS, there would be alternate beach locations near Baker Beach where dog exercising would continue to be allowed during the snowy plover nesting season. Table 3.3-6 notes that although dog exercising would be prohibited at the Sutton/Baker Beach RMA, it would be allowed on the beach from the Heceta Head Lighthouse access point to the north, and to the south of the RMA from the existing access points north of Florence. In addition, as noted in MR-2, the extent of the recreational use restrictions may not apply to an entire SPMA or RMA. Specifically, the extent of the recreational use restrictions would be determined during development of USFWS-approved site management plans for both SPMAs and RMAs. If an RMA is occupied but a site management plan does not exist, OPRD would automatically implement recreational use restrictions within the full extent of the RMA. OPRD would issue and enforce these recreational use restrictions until an agreement is reached between USFWS and the landowner, and/or a site management plan is developed, and OPRD is notified of any changes that may modify recreational use restrictions to a more focused area. As a result, with an approved site management plan, it is possible that dog exercising would be allowed in some portion of an otherwise restricted area.

Response to Comment GP-5-3

For information regarding the proposed restrictions on dogs, please see the Response to Comment GP-5-2 and MR-3.

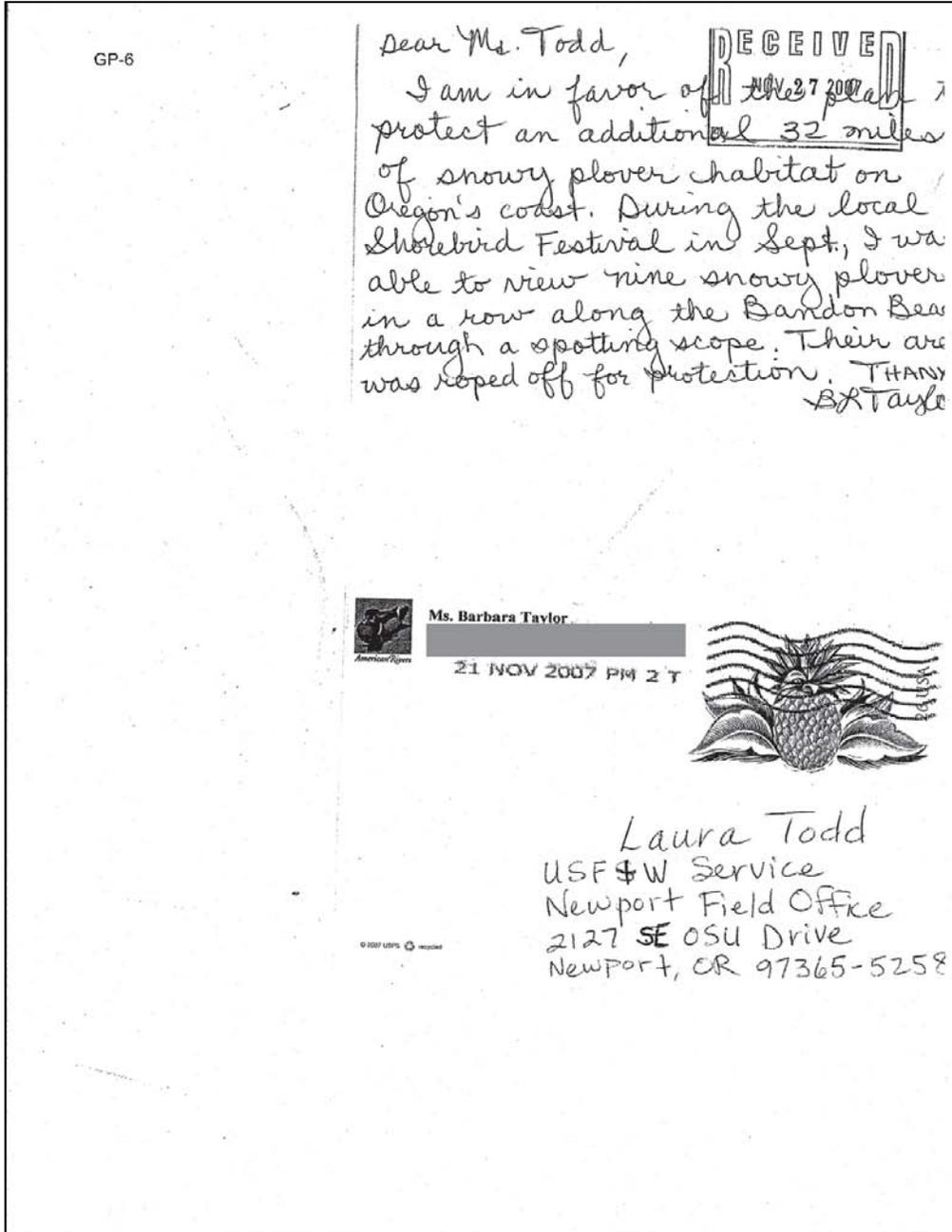
Please refer to the Response to Comment GP-3-5 for a discussion of restrictions specific to equestrian use in occupied nesting areas.

Response to Comment GP-5-4

As noted in the *Final Recovery Plan for Western Snowy Plovers* (U.S. Fish and Wildlife Service 2007), biologists believe snowy plovers perceive kites as potential avian predators (Hoopes 1993; Hatch 1997). Snowy plovers in California reacted to kites by exhibiting increased vigilance while roosting or by walking or running from the kite up to 25 meters (82 feet (Hatch 1997)).

Similar behaviors have been observed in piping plovers, a very close relative of snowy plovers. Piping plovers were observed to move a greater distance away from kites than they were observed to move away from other forms of human disturbances (e.g., pedestrians, off-road vehicles, and/or dogs). They were also observed to stay away longer from areas where they were disturbed by kites than when they were bothered by other forms of human disturbances. For more information, see Section 6 of the HCP.

Comment Letter GP-6

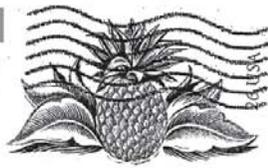


GP-6

Dear Ms. Todd,
I am in favor of ~~the plan~~ ^{the 27 plan} to protect an additional 32 miles of snowy plover habitat on Oregon's coast. During the local Shorebird Festival in Sept., I was able to view nine snowy plover in a row along the Bandon Beach through a spotting scope. Their area was roped off for protection. THANKS
BTaylor



Ms. Barbara Taylor
[Redacted]
21 NOV 2007 PM 2 T



Laura Todd
USF&W Service
Newport Field Office
2127 SE OSU Drive
Newport, OR 97365-5258

© 2007 USPS

Comment Letter GP-7

14 NOV 2007

GP-7

Laura Todd, USFWS
Newport F.O.

2127 SE OSU DR

NEWPORT, OR 97365-5258

I SUPPORT THE OREGON PARKS AND RECREATION DEPT. HABITAT CONSERVATION PLAN FOR THE WESTERN SNOWY PLOVER. ALL OF THE AREAS IN THE HCP INCLUDING THE 7 AREAS IN TILLAMOOK, DOUGLAS AND COARY COOKIES SHOULD BE PROTECTED. ALL USES INCLUDING ATV USE, DOGS, HUMAN USE INCLUDING KITE FLYING SHOULD BE PROHIBITED IN THE NESTING AREAS.

SNOWY PLOVERS ARE AN IMPORTANT PART OF OUR WILDLIFE RESOURCES AND THESE SMALL HCP AREAS ARE A SMALL AREA TO SET ASIDE TO HELP THEM RECOVER.

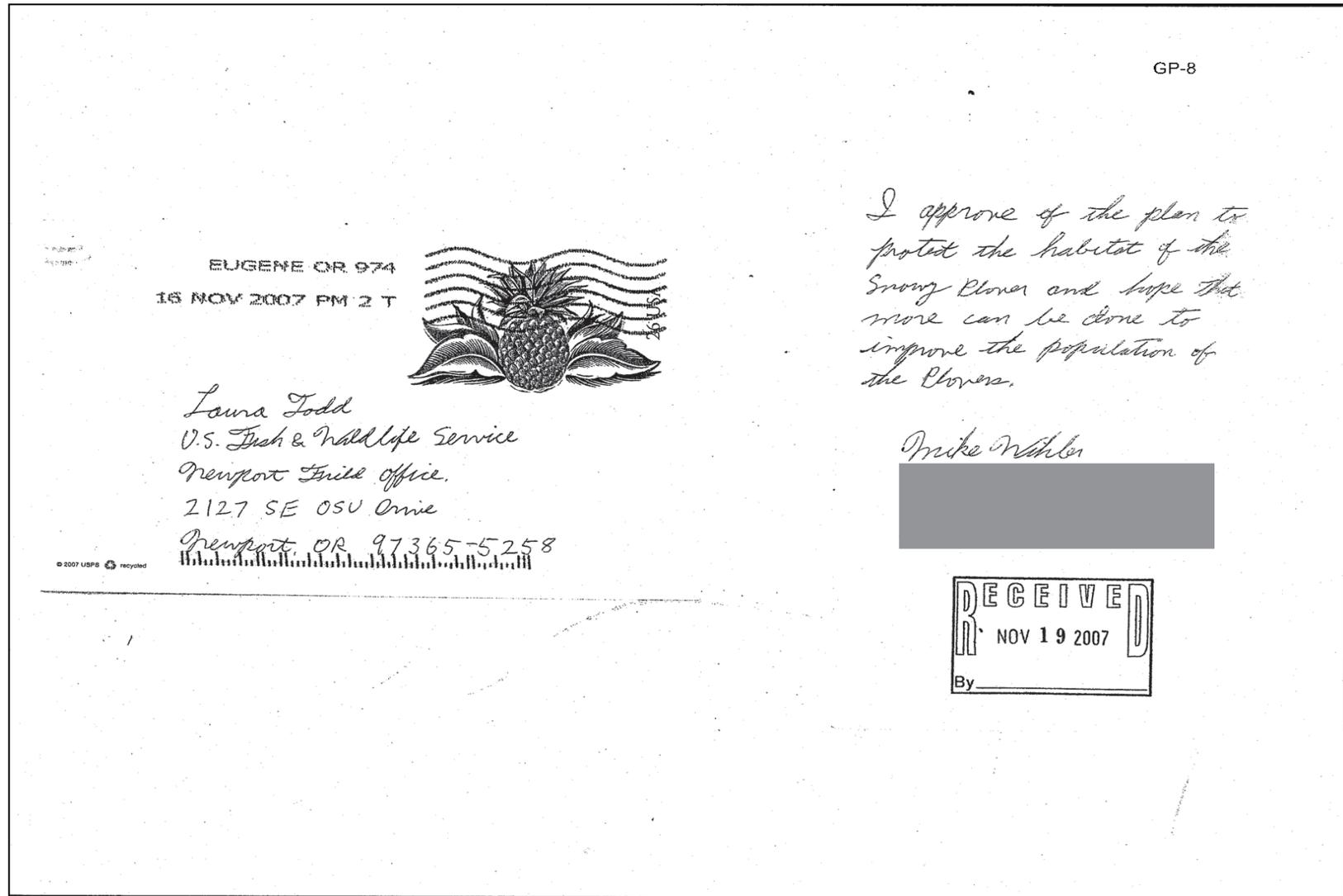
PLEASE MAKE MY COMMENTS A PART OF THE OFFICIAL RECORD IN SUPPORT OF THE OREGON PARKS DEPT HCP FOR THE SNOWY PLOVER.

Barnett D Edgar

BARNETT D. EDGAR

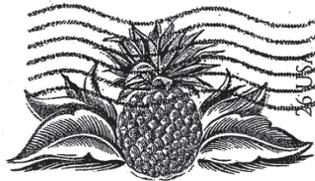


Comment Letter GP-8



GP-8

EUGENE OR 974
16 NOV 2007 PM 2 T



Laura Todd
U.S. Fish & Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport, OR 97365-5258

© 2007 USPS recycled

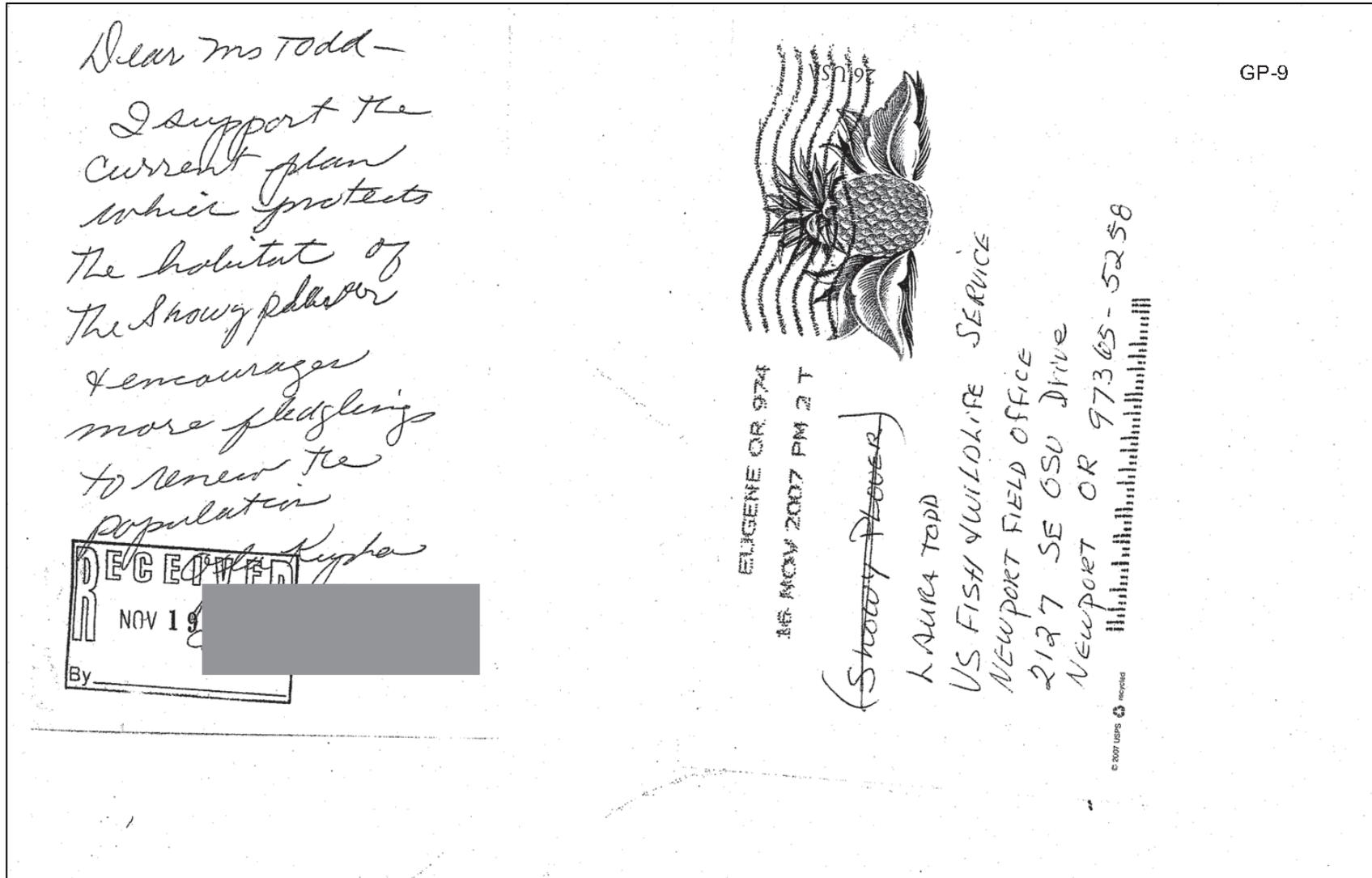
I approve of the plan to protect the habitat of the Snowy Plover and hope that more can be done to improve the population of the Plovers.

Mike Withler



RECEIVED
NOV 19 2007
By _____

Comment Letter GP-9



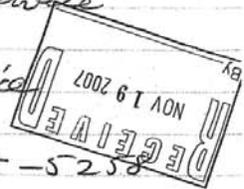
Comment Letter GP-10

GP-10



11-12-07

U.S. Fish, & Wildlife Service
C/O Laura Todd
Newport Field Office
2127 S.E. Osu. Dr.
Newport, Or. 97365-5258



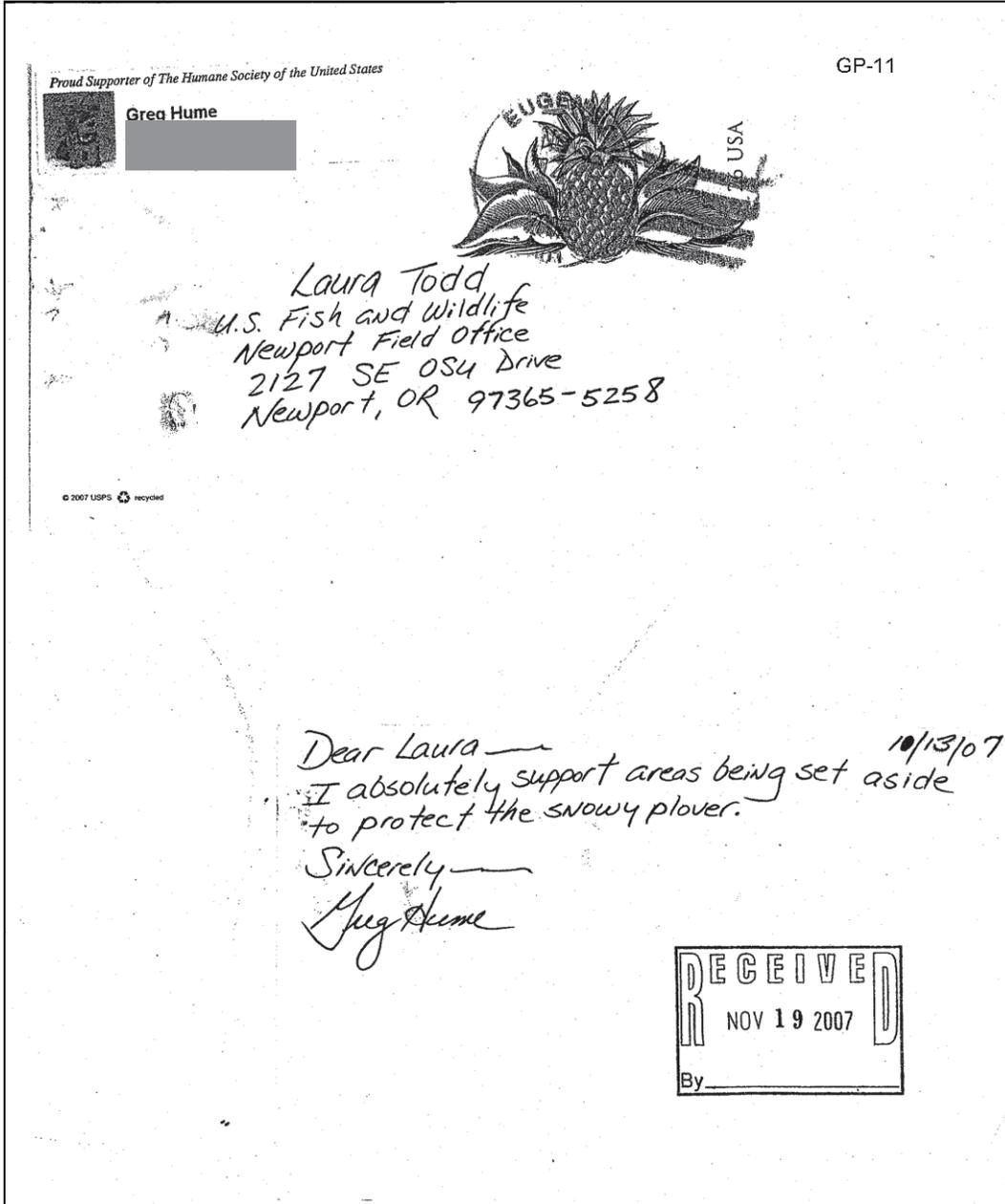
To Laura Todd,

I am writing about the snowy plover, you know how Pacific city feels about the snowy plover, we don't want the beach, & the ocean closed because of them, put them some where so, of us.

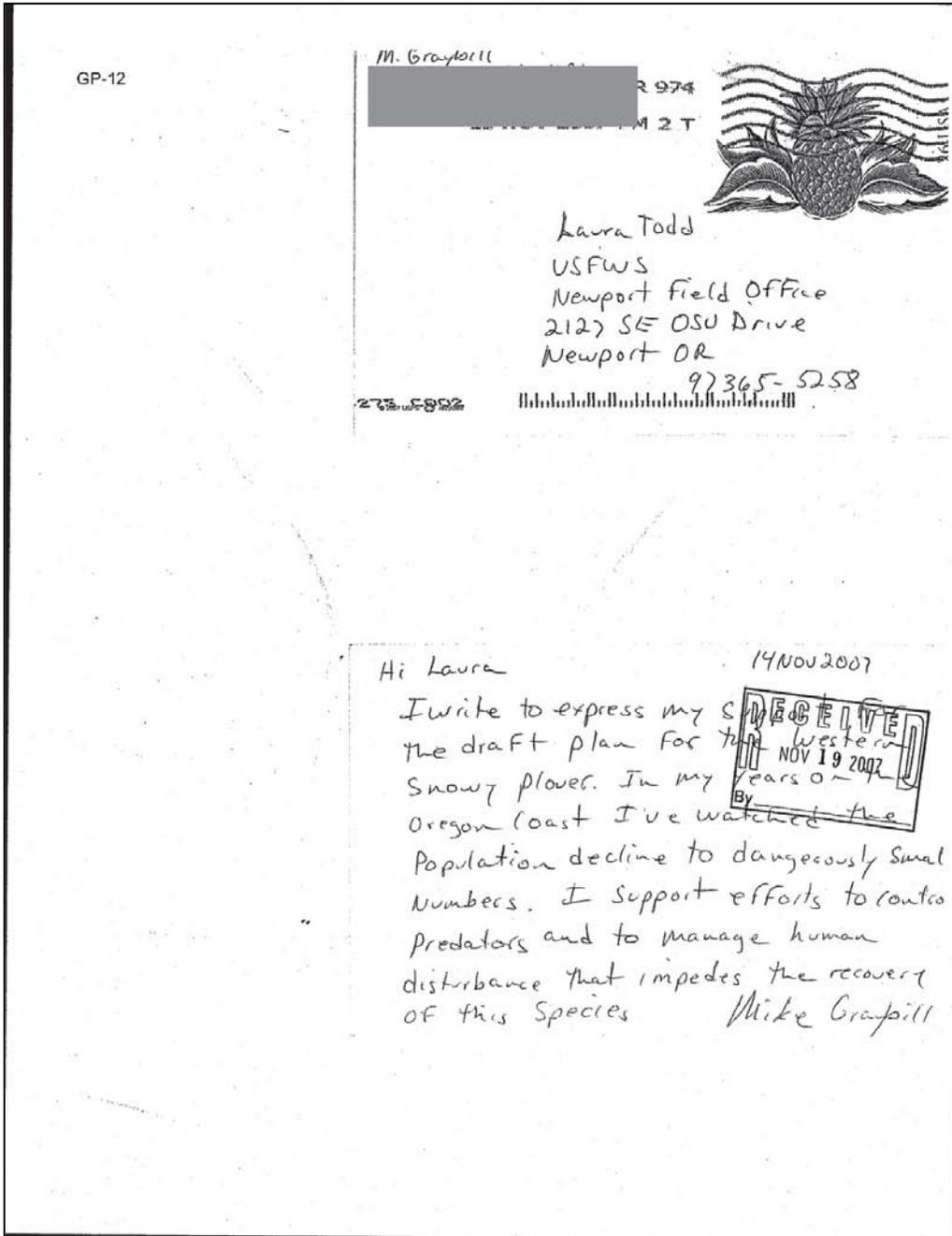
The enviro. are trying to take away our sun, on the beaches, don't listen to them.

Thanks,
M. Salobing

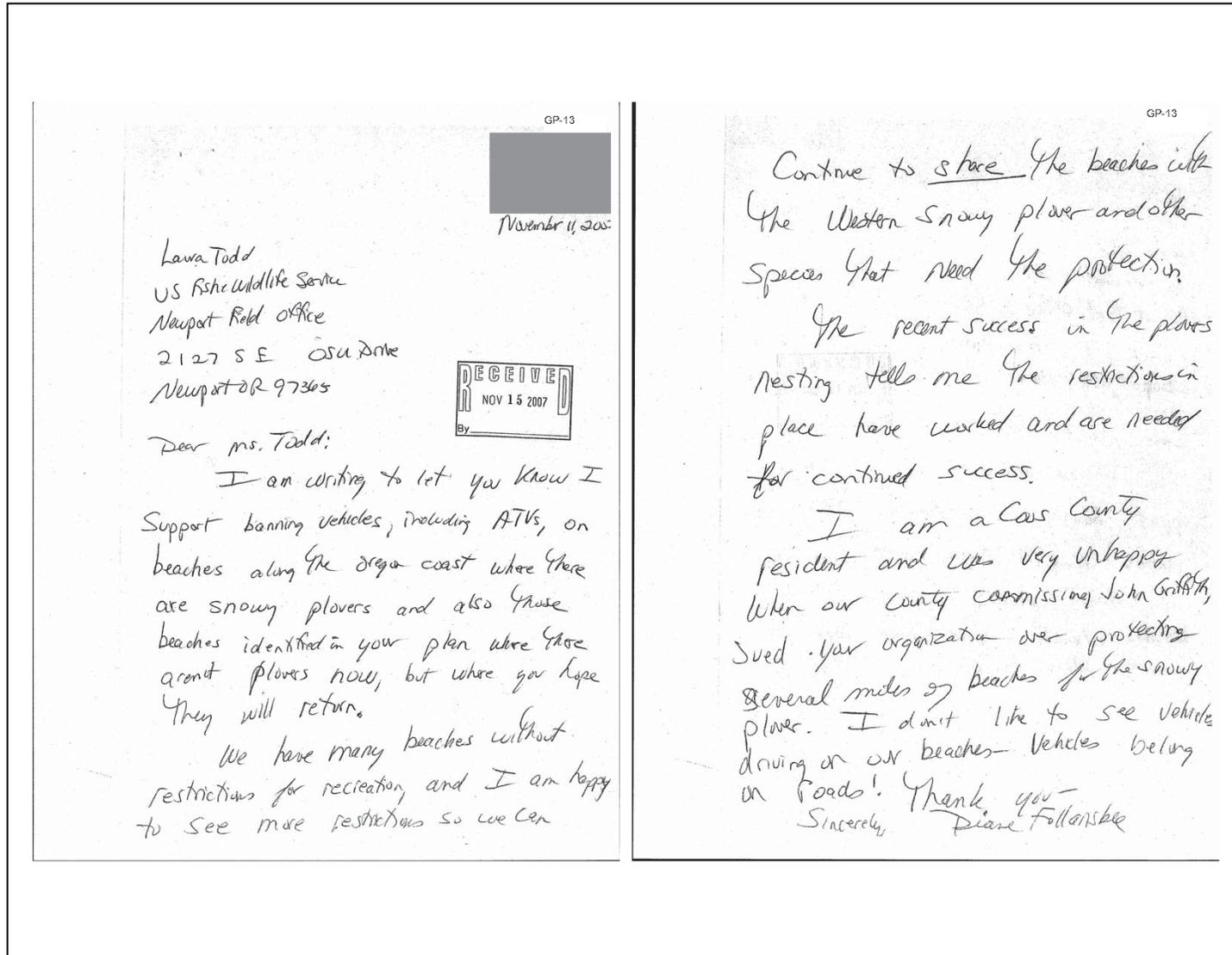
Comment Letter GP-11



Comment Letter GP-12



Comment Letter GP-13



Comment Letter GP-14

Attn: Laura Todd
U.S. Fish & Wildlife Service
Newport Field Office
2127 SE OSU Dr
Newport OR 97365

GP-14

NOV 6, '07

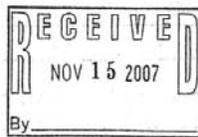
Dear Sir or madam but mostly Laura

Thank you for your efforts in saving the Plovers. I am happy to stay away from certain beach areas to help them survive. I am happy to take my dog and kite elsewhere as well.

I am writing in behalf of the "bad" animals such as foxes, crows, racoons, etc. We, as humans, have done a superb job of upsetting nature's precious balance. An example is our continual fight to exterminate the coyote. I believe with balance we could live together.... fox, crow, coyote, bear, plover, etc.

I ask that you begin your campaign to help the plover with setting aside areas with no human, dog or kite interference. Perhaps we need not poison the others with just this one step.

Nature is a beautiful thing. Not just some of it, but all of it.



Sincerely -
Tricia Raines

Response to Comment GP-14-1

Predator management varies at each site, and from year to year, and can include lethal and nonlethal methods. American crows and common raven are the species most typically removed by lethal predator control because of their impacts on local snowy plover populations. Other species such as foxes, skunks, raccoons, and coyotes that begin to target snowy plovers may also be removed. In those cases, problem predators are either shot or trapped and euthanized. In all cases, predator control is limited to animals that are targeting snowy plovers as prey.

The HCP does propose to set aside areas specifically for nesting snowy plovers where no recreational use activity would be allowed, as indicated by roped-off areas and signage on dry sand portions of the beach at occupied sites. Please refer to Section 3.3 in Volume 1 of the FEIS for a complete discussion of the recreational use restrictions that would be implemented in occupied SPMAs and RMAs and actively managed, unoccupied SPMAs and RMAs.

Comment Letter GP-15

GP-15



To: Laura Todd
US Fish and Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport OR 97365

From Paula Hyatt
Hiker, Bird enthusiast, outdoor lover in general, camper.

Re: Snowy Plover Plans

I do believe, since the plover is a threatened species that we probably should do something to help them. But we also have to consider the public, tho' we're not threatened in this way.

However, I have some caveats:

My first point: I do NOT believe we should shut off the soft sand areas where the plovers MIGHT someday nest. If and when they start using these areas, fine. I do not want to be kept off sands where there are no plovers.

GP-15-1

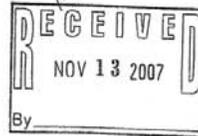
I've seen them and their nests at Tahkenitch before there were restrictions. We were very careful, but I realize some people might not be. I love that piece of beach, and I regret not being able to go there in the spring.

When we were camping at the Siuslaw, I went hiking out the Myrtle Trail, planning to go to the beach. (I've been there before.) I found that in order to get to the beach, I would have had to go way around the restricted area. This would have made my evening hike over two miles round trip. At that hour, it made no sense to go all the way. I'm also restricted on distance because of leg problems, tho' I hike 2 miles when I can. I don't remember what month that trip was. We go to beaches fairly often, and we know that the hard sand part of the beaches is not affected by the closures.

The balance between people and birds and animals must be considered carefully. I sometimes feel that people are the losers in some of the situations. Tom McCall and Bob Straub helped us learn the beaches belong to the people. Let's not let wildlife take some privileges away from them whether it's here, or whether it's some other issue in the woods or the mountains, or the lakes.

Thanks for listening to my viewpoint.

Paula Hyatt



Response to Comment GP-15-1

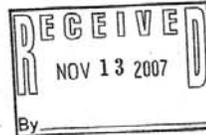
As noted in Table 3.3-3 of Section 3.3, “Recreation” in Volume I of the FEIS, recreational use restrictions in unoccupied, actively managed SPMA and RMA (at the request of the landowner) would be limited to prohibitions on non-motorized and motorized vehicle use and a requirement that dogs be on leash. Dry sand restrictions and prohibition of dogs and kite flying would only be put in place once an SPMA or RMA became occupied by nesting snowy plovers. For information about the implementation of recreational use restrictions at SPMA and RMA, see MR-2.

Comment Letter GP-16

GP-16

Nov 7, 2007

Laura Todd
US Fish & Wildlife Service
Newport Field Office
2127 SE OVS Drive
Newport, OR 97365



Dear Laura Todd,
I have a house in Yaquina and I've witnessed a dramatic urbanization of the coast in the last 2 years. I would like to see restrictions on beaches to protect shorebirds as the human population increases.

We need to ban dogs (and yes I have 2) on 32 miles of beach + van bikes. They are a threat to Western Snowy plovers & birds abandoned on the beach are a danger to marine mammals.

I feel vehicles should be banned from all beaches. They belong on roads, not sensitive bird-life habitat! GP-16-1

We have some success with Snowy plovers GP-16-2
We need to increase protections. We need to protect pits in the north beaches where plovers may choose to return.

These are beautiful little birds and they are only asking for a small place to live. We have a moral responsibility to protect these birds now & into the future.
L.H.O. 2

Response to Comment GP-16-1

See the Response to Comment NGO-5-26 for a discussion of prohibitions on driving under the HCP and the need to balance these restrictions with providing public recreational use opportunities.

Response to Comment GP-16-2

Site management plans developed for actively managed, unoccupied SPMA's would address limiting factors at each site, which could include lack of adequate habitat, large predator populations, or recreational use. (USFWS will work with other landowners to develop similar site-management plans for RMAs.) If necessary, site-specific recreational conflicts not otherwise addressed by the proposed recreational use restrictions in these areas (e.g., dogs on leash and prohibitions on motorized and non-motorized vehicle use) could be considered and addressed in the site management plan. Given these considerations, the proposed activities for snowy plover management at unoccupied SPMA's are likely to afford additional nesting opportunities on the coast, while still balancing the public's ability to recreate on the beach.

Under the HCP, OPRD would actively manage three currently unoccupied SPMA's along the northern Oregon coast over the next 25 years: Columbia River South Jetty SPMA, Necanicum Spit SPMA, and Nehalem Spit SPMA. One additional SPMA along the northern coast (Netarts Spit) could also be managed by OPRD if nesting attempts are not realized at the above unoccupied sites, and if other identified RMAs are not actively managed for nesting populations of snowy plovers. No additional sites on the north coast are being proposed for management.

Comment Letter GP-17

PaGP-17

Page 2 of:
GP-17

Jim Conley

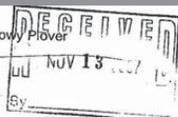
From: "Jim Conley"
To:



Very truly yours,
Jim Conley



Sent: Tuesday, March 23, 2004 7:10 PM
Subject: Fw: Letter of support for the Habitat Conservation Plan for the Snowy Plover



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

From: Jim Conley
To: OSMP HCP@state.or.us
Sent: Sunday, March 21, 2004 3:56 PM
Subject: Letter of support for the Habitat Conservation Plan for the Snowy Plover

For millions of years Oregon's beaches were, by human standards, empty. They were occupied by Snowy Plovers and other birds which preferred the beaches for nesting. Sand shrimp, worms and insects of one sort or another, also lived on it. It's true that gulls and other birds also ate bird eggs, sand shrimp and other small creatures but there was nonetheless adequate food for most beach animals most of the time. There were also indians who who lived near the sea as evidenced by their kitchen middens.

About the middle of the 20th Century, people of European origin planted beach grass and other plants which would stabilize the dunes. And even more recently, they built houses where houses would be protected, more or less, by plants which would protect them.

Next came beach buggies, cars which were designed for use on the beaches and which damaged them. At this point, the humans considered the original inhabitants to be merely pests which limited their entertainment.

Notwithstanding the volume of mail from off road and development interests, the Parks and Recreation Department must protect the remaining undisturbed habitat for the use of wildlife. This requires the prohibition of cars, dogs, cats, and humans on undisturbed beach habitat but I believe it also requires an education program. A successful education program should create sympathy for the Plovers and other small beach animals.

GP-17-1

over

10/10/2004

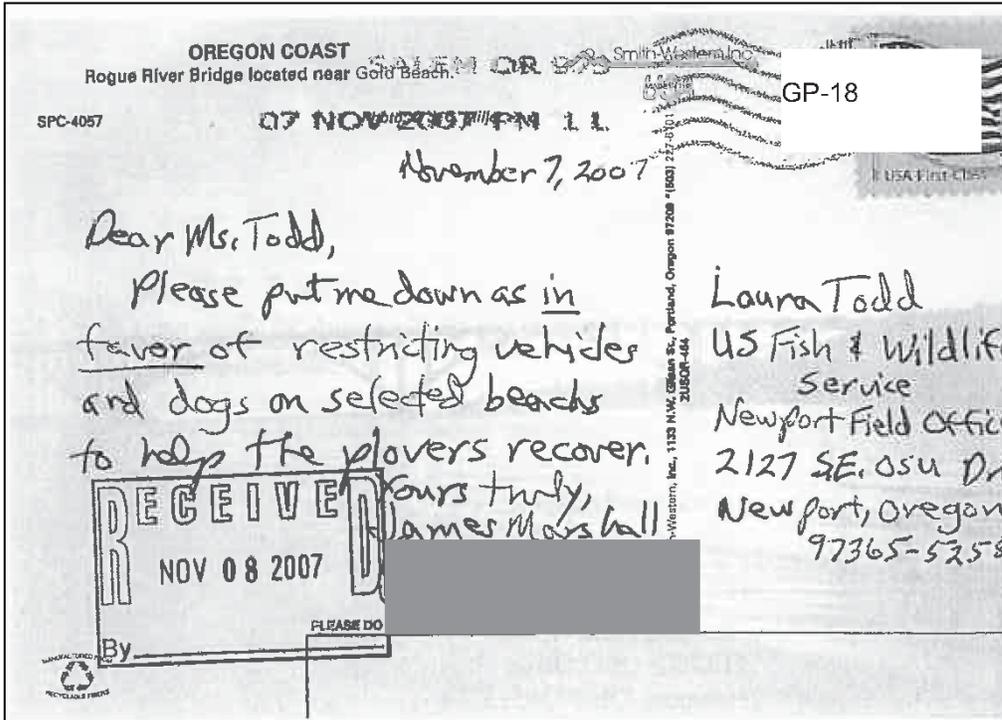
10/10/2004

Response to Comment GP-17-1

Prohibitions on dogs, cars, and pedestrian traffic are proposed as part of the HCP, as discussed in Section 5 of the HCP and Chapter 2, “Alternatives” and provided in greater detail in Table 3.3-3 of Section 3.3, “Recreation” of Volume I of the FEIS. As part of the predator management program described in Section 5 of the HCP, domestic pets preying on snowy plover nests would be trapped and removed from nesting areas.

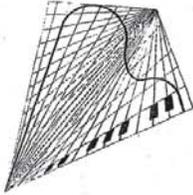
In addition to the recreational use restrictions proposed under the HCP, the OPRD proposal includes a measure that would continue its education and outreach program at Bandon habitat restoration area (HRA) and would implement educational and outreach programs at each new SPMA as it becomes actively managed. As described in Section 5 of the HCP, the education and outreach program would include recruiting and training volunteers to serve as docents for public outreach and education as specified in that site’s management plan.

Comment Letter GP-18



Comment Letter GP-19

GP-19



Anita T. Sullivan

November 7, 2007

Laura Todd
U.S. Fish & Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport, OR 97365-5258

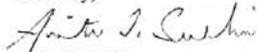
Dear Laura Todd:

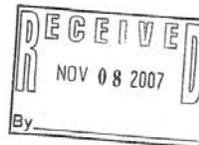
I would like to comment on the Fish & Wildlife Service plan to impose restrictions on certain beaches for the purpose of helping the Snowy plover. In short, yes!

But my main concern is the so-called "all-terrain vehicles." These monsters have no place on our beaches at all (nor in our forests or deserts either). I consider myself an endangered species: a human who values quiet. And ATV's show up *everywhere* now --- there is nowhere to go for beauty and quiet that they don't come in and wreck. If the earth's plants and animals could speak, we would have a great majority in favor of "Motorized vehicles on roads only!"

So, let the Snowy plovers have a few peaceful beaches, we will all benefit!

Sincerely,


Anita T. Sullivan



GP-19-1

Response to Comment GP-19-1

Please refer to MR-6, which describes the public's general right to use the Ocean Shore for recreational purposes in accordance with guidelines and limitations outlined in the Public Trust Doctrine and Oregon's Beach Bill. As authorized by the Beach Bill, OPRD is required to provide recreational use opportunities for the public.

All-terrain vehicle (ATV) and off-highway vehicle (OHV) use is restricted along the entire coast with the exception of three locations: the Sand Lake Recreation Area and on two sections of the Dunes National Recreation Area. All other beach segments are off limits and would continue to be off limits to ATV/OHV use under all of the project alternatives without a drive-on-the-beach permit issued by OPRD, except in the event of an emergency or for administrative purposes. The HCP is not proposing to limit ATV/OHV use further, and intends to balance recreational use opportunities with natural resource management goals, including the implementation of snowy plover protections. The targeted management areas have been selected in areas where ATV/OHV use is already prohibited. As described in the HCP, OPRD would continue to provide funding for enforcement of the HCP and for public outreach and education about the HCP restrictions, including the prohibition of ATV/OHV use near nesting sites. The HCP, however, does not address enforcement of ATV/OHV use in prohibited areas outside of OPRD's jurisdiction.

Comment Letter GP-20

GP-20

NOV 6, 2007

To: Laura Todd
US Fish & Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport OR 97365-5258



Dear Mrs Todd:

I was glad to read in the paper this morning about the FWS proposal to establish more protection for the Western snowy plover.

The ever-increasing numbers of people and dogs will be an enduring threat to their very existence - long into our shared future. The sooner people start learning to practice habitat-sharing ways, the better.

For a decade I lived near beaches on Sagami bay in Japan. I frequently observed ^{sudden} dispersal of feeding plover flocks - by dogs, children, even strolling slowly myself. (I adjusted my direction to avoid this.) These birds were also often feeding at night, when ~~they~~ ^{there} were much smaller numbers of people's dogs about.

Around that time, I also read that beach-feeding birds on the US ^{EAST} coast were being similarly threatened.

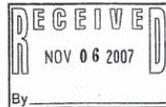
Thank you for this work, and I hope you are successful in establishing these healthy arrangements.
Sincerely, Linda Swisher

Comment Letter GP-21

GP-21

November 6, 2007

Laura Todd
U.S. Fish and Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport, Oregon 97365



Dear Ms. Todd,

I am writing to address the matter of the proposed ban of dogs on Oregon beaches as mentioned in today's Register Guard. I am asking that your agency reconsider the affect this ban will make on those of us who depend on the beaches as a means of promoting the health and well-being of ourselves AND our beloved pets.

GP-21-1

I suffer with severe Environmental Illness and seek the fresh air and health benefits of walking two to five miles a day on Florence beaches. Unless the tides are particularly dangerous, you will find me, and my dogs peacefully walking on the beach. As a 63 year old woman, I do not feel safe to be there without the dogs, and have had difficulty finding others as determined as I to seek health through strenuous climbing up and over the dunes at our South Jetty. While I do occasionally walk on the beaches at the North Jetty, I find it too over-run with tourists. The South Jetty dunes serve as a deterrent for those who merely want to "see" the ocean, and encourage those who have deep reverence for the whole experience.

(I do walk with the dogs on the campground trails in the most inclement, high tide weather, but then have to deal with the danger of bears. While bears are not known to be aggressive, there is the real chance of accidentally coming between mother and cub. I jingle bear bells, as well as have them on my dog's collars, but am very uneasy none-the-less. Not much fun. So I choose to be on the beaches whenever it is safe to do so.)

Dogs serve as protectors... and motivators. My dogs respond well to my safety whistle. I don't allow them far from me. I keep them leashed if we are remotely in sight of the Snowy Plover flags. I consider myself an environmentalist, and behave accordingly.

On a less personal level, I see the ban of dogs on beaches as a real deterrent to tourism. Many tourists would not travel if they couldn't bring their pets. And if the air temperature is above 50 or so, automobiles get too warm to safely leave a dog in, even with the windows cracked as far as they can be and still contain the pets. Thus, the draw of beach walking would be eliminated.

GP-21-2

As an aside, I feel strongly that if all-terrain vehicles are allowed on the beaches, those of us with dogs deserve to be granted the freedom of them as well. I don't walk where they are, because it is not safe for my dogs or myself, so I cannot help but wonder how ATV's can be allowed when we aren't.

GP-21-3

GP-21

I would appreciate knowing what is being considered regarding this plan for the South Jetty. I do go on other beaches occasionally, and have the same opinion about dog accessibility there, but am most directly impacted by the possible South Jetty restrictions..

Also, I would like to attend any meetings where these issues are being addressed. I don't offer this lightly, as it is a real challenge for me to be exposed to fragrances and to florescent lights. Please notify me of future meetings via my e-mail address:

(that is an underscore between)

Thank you,

Judith Craddock

Response to Comment GP-21-1

The HCP is not proposing to ban dogs from the beach, but rather, would restrict dogs in key areas during the nesting season. For more information about dog restrictions and alternative locations for dog exercising, please see MR-3.

Response to Comment GP-21-2

The HCP does not propose a complete ban of dogs from the beach. For information regarding the proposed restrictions on dogs and the potential effects on beach access, please refer to MR-3.

Response to Comment GP-21-3

As noted in the Response to Comment GP-19-1, the HCP would not further restrict use of ATV/OHVs on the Oregon coast. ATV/OHV use is currently only allowed at three locations on the Oregon coast and would continue to be allowed at those locations under the HCP.

By comparison, dogs would be allowed along the entire coast except at occupied SPMA's and RMA's during the breeding season, unless otherwise restricted by existing State Rule or county/city ordinance. As mentioned in MR-3, various alternate locations exist where dogs would be allowed to exercise unrestricted in close proximity to the potentially restricted areas.

Comment Letter GP-23

GP-23



"Coleman, Jeryl"
[Redacted]

To: <fw1ordhcp@fws.gov>
cc:
Subject: Western Snowy Plover

11/06/2007 10:33 AM

Laura,

I read about this plan in the Register-Guard this morning and then looked it up online. It really upsets me. Are you trying to get people away from the Oregon Coast? We have a vacation home in Florence and enjoy walking to the beach *with* our leashed dog and flying kites occasionally with our kids. Now are we supposed to not bring our family pet? This is crazy. And flying kites are like predators to the birds? Come on. What about our kids? They run on the beach after birds, too. Should they be banned? I can understand about the motor vehicles disturbing the Oregon Coast but NEVER of leashed dogs or kites. I had to look it up myself because I could not believe what I read in the paper was true.

GP-23-1

Please reconsider this plan and make the Oregon Coast a place where people can go and have fun without these restrictions.

Jeryl Coleman



****Coverage cannot be bound by email or phone****

Response to Comment GP-23-1

The HCP is not proposing to ban dogs from the entire Oregon coast, but rather from key areas during the snowy plover nesting season. For information regarding the proposed restrictions on dogs and their potential effects on recreational access, please refer to MR-3.

Similar to the restrictions on dogs, restrictions on kite flying would also be implemented at key areas during the nesting season. Prohibitions on kite flying would only be implemented once an SPMA or RMA became occupied by nesting snowy plovers. The restrictions would be implemented during the breeding season unless no nesting populations were observed by July 15th, in which case, the restrictions would be lifted. As noted in Tables 3.3-6 and 3.3-7 in Volume I of the FEIS, there are also alternate locations where kite flying could occur immediately adjacent or in close proximity to the potentially restricted areas. For more information on the necessity of kite flying restrictions, please see the Response to Comment GP-5-4.

The HCP and EIS have been updated to clarify that the proposed recreational use restrictions would be implemented within key areas of each SPMA and RMA, rather than the full extent of the management areas. It is likely that there would be portions of an SPMA and RMA where dogs and kite flying would still be allowed. For more information about the implementation of recreational use restrictions, please see MR-2.

Comment Letter GP-24

GP-24



"Timothy Henke"

To: FW1ORDHCP@fws.gov
cc:
Subject: OPRD HCP DEIS.

11/06/2007 12:09 PM

I'm writing concerning the proposed plan for snowy plover habitat protection. As a voting coastal resident of Coos County I am opposed to closing any more public access to the beach or putting more limits on beach and dune use. I was born in Eugene and have lived on the coast for many years. I have seen this community suffer through many self imposed economic downturns. Further limiting ORV areas and recreational use will severely effect the local and state economy. I personally am not an ATV rider but I do watch as motor home after motor home drive through town pulling ATV after ATV. People drive from all over the northwest and beyond just to ride the Oregon dunes. People buy real estate here just to be close to the dunes and beach. People spend millions of dollars locally just because of the dunes and beach. Tourism is one of the last big revenue streams for the entire Oregon coast and what happens to already stressed local economies when this cash flow dries up. We have the worst schools in the state, the worst drug problems in the state, underfunded law enforcement and fire departments and further limiting our resources to deal with these problems will severely effect all aspects of our community. How many tourist dollars will be lost when beach access is limited? This is on a scale with the spotted owl debacle except instead of effective big business and then trickling down it will hit local business directly. Thousands of jobs will be lost and our struggling coastal towns will shrivel and die. We are headed for tough times with the housing crunch and the national economy but there is a chance our town may survive and continue to grow. I think it's possible not to go back into the local recession of the past 15 years caused by changes in logging and fishing industries. But I don't think it's possible if the tourist dollars are cut by over half. Economically Coos Bay is a difficult place to live for many folks. There are few family wage jobs. We live in isolation and struggle for every bit of growth we can achieve. Positive change does not come easily for the area. Please do not put another nail in the coffin. Don't set us back another 15 years. God gave the beach to all of us. I realize that dogs and kites and ATVs may possibly disturb the snowy plover. In most cases I would lean toward protection but in this case I believe the cost is too great and the facts are not confirmed. Keep our beaches and dunes open. It's not just for the locals. It's for the state and the people who come here to enjoy it.

GP-24-1

Tim Henke



Response to Comment GP-24-1

As noted in the Response to Comment GP-19-1, the HCP is not proposing to further limit ATV/OHV use. All areas proposed for snowy plover management (SPMAs and RMAs) occur in locations where ATV/OHV use is already prohibited, and would remain prohibited under all alternatives. Therefore, implementation of the HCP would not affect ATV/OHV use.

The potential effects of the HCP on other recreational use opportunities are analyzed in Section 3.3, "Recreation" of Volume I of the FEIS. These uses include dog exercising, driving, non-motorized vehicle use, kite flying, and use of the dry sand portion of the beach. As discussed in the FEIS, implementation of the proposed recreational use restrictions would not result in a substantial loss of these recreational use opportunities. Under the HCP, recreational use restrictions would be implemented at SPMAs and RMAs depending on the occupancy status of a site. As noted in MR-2, the HCP and FEIS have been updated to clarify that although the restrictions could apply anywhere within an SPMA or RMA, the restricted areas may not be applied to the entire management area. The specific location of the restricted areas within an SPMA or RMA would be focused on nesting activity and would be determined during development of site management plans.

For the purposes of the analysis presented in Volume I of the FEIS, the most restrictive scenario was considered in which restrictions were applied to the entire extent of the SPMA or RMA to allow for an evaluation of the complete range of impacts. Even with this conservative approach, the potential effects on recreational use opportunities were deemed to be minimal. This is because there are alternate beach locations for the majority of SPMAs and RMAs where the affected recreational uses would be allowed on the beach without restrictions. These areas are most often located immediately adjacent to the restricted area and are reached via the same access points. Tables 3.3-6 and 3.3-7 in Volume I of the FEIS list the alternate locations for each proposed SPMA and RMA under Alternatives 2 and 3, respectively.

The economic effects of the HCP were analyzed in Section 3.4, "Socioeconomics and Environmental Justice" of Volume I of the FEIS. The analysis in the FEIS concluded that in the majority of cases, unrestricted recreational use could occur on the same beach and could be reached by the same existing access point. In the majority of cases, the alternative beach would be located in the immediate vicinity of the potentially restricted beach area and would be served by the same community listed in Table 3.4-5. Because these alternative beach areas are geographically located in the same proximity to the communities closest to each management area, it is anticipated that nearly all the beach visitors would still frequent the same beaches and local businesses under each of the alternatives. For this reason, the local and regional socioeconomic effects directly attributable to any of the alternatives would be minimal.

Comment Letter GP-25

GP-25

GP-25



"Ault, Robert"

To: <FW1ORDHCP@fws.gov>
cc:
Subject: FW: Dune and beach closure

11/06/2007 01:15 PM

I agree with Tim whole heartedly!!!...

I'm writing concerning the proposed plan for snowy plover habitat protection. As a voting coastal resident of Coos County I am opposed to closing any more public access to the beach or putting more limits on beach and dune use. I was born in Eugene and have lived on the coast for many years. I have seen this community suffer through many self imposed economic downturns. Further limiting ORV areas and recreational use will severely effect the local and state economy. I personally am not an ATV rider but I do watch as motor home after motor home drive through town pulling ATV after ATV. People drive from all over the northwest and beyond just to ride the Oregon dunes. People buy real estate here just to be close to the dunes and beach. People spend millions of dollars locally just because of the dunes and beach. Tourism is one of the last big revenue streams for the entire Oregon coast and what happens to already stressed local economies when this cash flow dries up. We have the worst schools in the state, the worst drug problems in the state, underfunded law enforcement and fire departments and further limiting our resources to deal with these problems will severely effect all aspects of our community. How many tourist dollars will be lost when beach access is limited? This is on a scale with the spotted owl debacle except instead of effective big business and then trickling down it will hit local business directly. Thousands of jobs will be lost and our struggling coastal towns will shrivel and die. We are headed for tough times with the housing crunch and the national economy but there is a chance our town may survive and continue to grow. I think it's possible not to go back into the local recession of the past 15 years caused by changes in logging and fishing industries. But I don't think it's possible if the tourist dollars are cut by over half. Economically Coos Bay is a difficult place to live for many folks. There are few family wage jobs. We live in isolation and struggle for every bit of growth we can achieve. Positive change does not come easily for the area. Please do not put another nail in the coffin. Don't set us back another 15 years. God gave the beach to all of us. I realize that dogs and kites and ATVs may possibly disturb the snowy plover. In most cases I would lean toward protection but in this case I believe the cost is too great and the facts are not confirmed. Keep our beaches and dunes open. It's not just for the locals. It's for the state and the people who come here to enjoy it.

Tim Henke

--Robert Ault

Marketron Broadcast Solutions



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GP-25-1

Response to Comment GP-25-1

Please see the Response to Comment GP-24-1 for a discussion of the potential socioeconomic and recreational use effects of implementing the HCP.

Comment Letter GP-26

GP-26

GP-26



"Tammy J. Rodgers"

To: <FW10RDHCP@fws.gov>

cc:

Subject:

11/06/2007 01:31 PM

I do have to agree with Tim on this one -

I'm writing concerning the proposed plan for snowy plover habitat protection. As a voting coastal resident of Coos County I am opposed to closing any more public access to the beach or putting more limits on beach and dune use. I was born in Eugene and have lived on the coast for many years. I have seen this community suffer through many self imposed economic downturns. Further limiting ORV areas and recreational use will severely effect the local and state economy. I personally am not an ATV rider but I do watch as motor home after motor home drive through town pulling ATV after ATV. People drive from all over the northwest and beyond just to ride the Oregon dunes. People buy real estate here just to be close to the dunes and beach. People spend millions of dollars locally just because of the dunes and beach. Tourism is one of the last big revenue streams for the entire Oregon coast and what happens to already stressed local economies when this cash flow dries up. We have the worst schools in the state, the worst drug problems in the state, underfunded law enforcement and fire departments and further limiting our resources to deal with these problems will severely effect all aspects of our community. How many tourist dollars will be lost when beach access is limited? This is on a scale with the spotted owl debacle except instead of effective big business and then trickling down it will hit local business directly. Thousands of jobs will be lost and our struggling coastal towns will shivel and die. We are headed for tough times with the housing crunch and the national economy but there is a chance our town may survive and continue to grow. I think it's possible not to go back into the local recession of the past 15 years caused by changes in logging and fishing industries. But I don't think it's possible if the tourist dollars are cut by over half. Economically Coos Bay is a difficult place to live for many folks. There are few family wage jobs. We live in isolation and struggle for every bit of growth we can achieve. Positive change does not come easily for the area. Please do not put another nail in the coffin. Don't set us back another 15 years. God gave the beach to all of us. I realize that dogs and kites and ATVs may possibly disturb the snowy plover. In most cases I would lean toward protection but in this case I believe the cost is too great and the facts are not confirmed. Keep our beaches and dunes open. It's not just for the locals. It's for the state and the people who come here to enjoy it.

Tim Henke

Tammy J. Rodgers
Mohle Adams

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GP-26-1

Response to Comment GP-26-1

Please see the Response to Comment GP-24-1 for a discussion of the potential socioeconomic and recreational use effects of implementing the HCP.

Comment Letter GP-27

GP-27

 **"Robert & Nicole Ault"**
11/06/2007 01:40 PM

To: <FW1ORDHCP@fws.gov>
cc:
Subject: I agree with Tim!

I agree with Tim!

-- Robert Ault
[Redacted]

I'm writing concerning the proposed plan for snowy plover habitat protection. As a voting coastal resident of Coos County I am opposed to closing any more public access to the beach or putting more limits on beach and dune use. I was born in Eugene and have lived on the coast for many years. I have seen this community suffer through many self imposed economic downturns. Further limiting ORV areas and recreational use will severely effect the local and state economy. I personally am not an ATV rider but I do watch as motor home after motor home drive through town pulling ATV after ATV. People drive from all over the northwest and beyond just to ride the Oregon dunes. People buy real estate here just to be close to the dunes and beach. People spend millions of dollars locally just because of the dunes and beach. Tourism is one of the last big revenue streams for the entire Oregon coast and what happens to already stressed local economies when this cash flow dries up. We have the worst schools in the state, the worst drug problems in the state, under funded law enforcement and fire departments and further limiting our resources to deal with these problems will severely effect all aspects of our community. How many tourist dollars will be lost when beach access is limited? This is on a scale with the spotted owl debacle except instead of effective big business and then trickling down it will hit local business directly. Thousands of jobs will be lost and our struggling coastal towns will shrivel and die. We are headed for tough times with the housing crunch and the national economy but there is a chance our town may survive and continue to grow. I think it's possible not to go back into the local recession of the past 15 years caused by changes in logging and fishing industries. But I don't think it's possible if the tourist dollars are cut by over half. Economically Coos Bay is a difficult place to live for many folks. There are few family wage jobs. We live in isolation and struggle for every bit of growth we can achieve. Positive change does not come easily for the area. Please do not put another nail in the coffin. Don't set us back another 15 years. God gave the beach to all of us. I realize that dogs and kites and ATVs may possibly disturb the snowy plover. In most cases I would lean toward protection but in this case I believe the cost is too great and the facts are not confirmed. Keep our beaches and dunes open. It's not just for the locals. It's for the state and the people who come here to enjoy it.

GP-27-1

Tim Henke
[Redacted]

Response to Comment GP-27-1

Please see the Response to Comment GP-24-1 for a discussion of the potential socioeconomic and recreational use effects of implementing the HCP.

Comment Letter GP-28

GP-28

 **"Juli Whelchel"**
[Redacted]
11/06/2007 02:11 PM
Please respond to "Juli Whelchel"

To: <FW1ORDHCP@fws.gov>
cc:
Subject: Beach/Dune Closure

I am a local real estate broker and I would absolutely agree with Mr. Timothy Henke's statement below. I feel like this community is just finally getting the chance to expand and grow which is what it should be able to do. To make this change would be detrimental to our community, the people who live here, as well as countless tourists who come to enjoy such a beautiful place. How this is even a thought or consideration is amazing to me. I am 26 years old and one of the few people I went to school with who can afford to live here due to the lack of employment. If this were to go into effect, real estate in general would be in ruins. Please don't take away our beaches, or my job!

I'm writing concerning the proposed plan for snowy plover habitat protection. As a voting coastal resident of Coos County I am opposed to closing any more public access to the beach or putting more limits on beach and dune use. I was born in Eugene and have lived on the coast for many years. I have seen this community suffer through many self imposed economic downturns. Further limiting ORV areas and recreational use will severely effect the local and state economy. I personally am not an ATV rider but I do watch as motor home after motor home drive through town pulling ATV after ATV. People drive from all over the northwest and beyond just to ride the Oregon dunes. People buy real estate here just to be close to the dunes and beach. People spend millions of dollars locally just because of the dunes and beach. Tourism is one of the last big revenue streams for the entire Oregon coast and what happens to already stressed local economies when this cash flow dries up. We have the worst schools in the state, the worst drug problems in the state, underfunded law enforcement and fire departments and further limiting our resources to deal with these problems will severely effect all aspects of our community. How many tourist dollars will be lost when beach access is limited? This is on a scale with the spotted owl debacle except instead of effective big business and then trickling down it will hit local business directly. Thousands of jobs will be lost and our struggling coastal towns will shrivel and die. We are headed for tough times with the housing crunch and the national economy but there is a chance our town may survive and continue to grow. I think it's possible not to go back into the local recession of the past 15 years caused by changes in logging and fishing industries. But I don't think it's possible if the tourist dollars are cut by over half. Economically Coos Bay is a difficult place to live for many folks. There are few family wage jobs. We live in isolation and struggle for every bit of growth we can achieve. Positive change does not come easily for the area. Please do not put another nail in the coffin. Don't set us back another 15 years. God gave the beach to all of us. I realize that dogs and kites and ATVs may possibly disturb the snowy plover. In most cases I would lean toward protection but in this case I believe the cost is too great and the facts are not confirmed. Keep our beaches and dunes open. It's not just for the locals. It's for the state and the people who come here to enjoy it.

*Thank You,
Juli Whelchel*

[Redacted]

[Redacted]

GP-28-1

Response to Comment GP-28-1

Please see the Response to Comment GP-24-1 for a discussion of the potential socioeconomic and recreational use effects of implementing the HCP.

Comment Letter GP-29

GP-29



"Mary Olson"
[Redacted]

To: <FW1ORDHCP@fws.gov>
cc: [Redacted]
Subject: OPRD HCP DEIS

11/06/2007 02:50 PM

I'm writing concerning the proposed plan for snowy plover habitat protection. As a voting coastal resident of Douglas County, I am opposed to closing any more public access to the beaches or putting more limits on beach and sand dune use. GP-29-1

Our community is economically challenged. With the downturn of the fishing and timber industry, we are forced to rely heavily on the tourism dollar for local business. The ATV industry brings thousands of dollars into our community.

I think the coastal community has become an endangered species. At what cost do we protect birds while destroying the small communities on the Oregon Coast?

Please keep our beaches and dunes open to the public.

Mary Baker-Olson
[Redacted]

Response to Comment GP-29-1

Please see the Response to Comment GP-24-1 for a discussion of the potential socioeconomic and recreational use effects of implementing the HCP. In addition, it should be noted that OPRD is not proposing to close any access points to the beach. Access to the wet sand portion will be allowed even at occupied nesting sites. As mentioned in MR-2, there are likely to be areas within an SPMA or RMA where restrictions would not be applied.

Comment Letter GP-30

GP-30



"Ross Baseler"
[Redacted]

To: <FW1ORDHCP@fws.gov>
cc:
Subject: The Snowy Plover

11/06/2007 02:51 PM

I'm writing concerning the proposed plan for snowy plover habitat protection. As a voting coastal resident of Coos County I am opposed to closing any more public access to the beach or putting more limits on beach and dune use. I was born in Medford and have lived on the coast for almost 30 years. I have seen this community suffer through many self imposed economic downturns. Further limiting ORV areas and recreational use will severely effect the local and state economy. I personally am not an ATV rider but I do watch as motor home after motor home drive through town pulling ATV after ATV. People drive from all over the northwest and beyond just to ride the Oregon dunes. I have friends who used to be local residents that drive as far as Fort Bragg California to enjoy what this area has to offer. People buy real estate here just to be close to the dunes and beach. People spend millions of dollars locally just because of the dunes and beach. Tourism is one of the last big revenue streams for the entire Oregon coast and what happens to already stressed local economies when this cash flow dries up. We have the worst schools in the state, the worst drug problems in the state, under funded law enforcement and fire departments and further limiting our resources to deal with these problems will severely effect all aspects of our community. How many tourist dollars will be lost when beach access is limited? This is on a scale with the spotted owl debacle except instead of effecting big business and then trickling down it will hit local business directly. Thousands of jobs will be lost and our struggling coastal towns will shrivel and die. We are headed for tough times with the housing crunch and the national economy but there is a chance our town may survive and continue to grow. I think it's possible not to go back into the local recession of the past 15 years caused by changes in logging and fishing industries. But I don't think it's possible if the tourist dollars are cut by over half. Economically Coos Bay is a difficult place to live for many folks. There are few family wage jobs. We live in isolation and struggle for every bit of growth we can achieve. Positive change does not come easily for the area. Please do not put another nail in the coffin. Don't set us back another 15 years. God gave the beach to all of us. I realize that dogs and kites and ATVs may possibly disturb the snowy plover. In most cases I would lean toward protection but in this case I believe the cost is too great and the facts are not confirmed. Keep our beaches and dunes open. It's not just for the locals. It's for the state and the people who come here to enjoy it.

Ross Baseler
[Redacted]

GP-30-1

Response to Comment GP-30-1

Please see the Response to Comment GP-24-1 for a discussion of the potential socioeconomic and recreational use effects of implementing the HCP.

Comment Letter GP-31

GP-31

 **"Greg Hoover"**
[Redacted]
11/06/2007 03:08 PM

To: <FW1ORDHCP@fws.gov>
cc:
Subject: OPRD HCP DEIS

I am writing in regards to your effort to close OUR beaches to try and protect a bird that MIGHT want to nest there.
We already have miles upon miles of our beaches closed to us, in the hopes that a bird that has not been proven to be indigenous, will nest there.

My wife and I own 3 businesses related directly to the local dunes and beaches. Discovery Point Resort, an RV park that caters to ATV'ers, dog walkers and kite flyers utilizing our beaches. Dune Country ATV that rent's and sells ATV parts and The Pointe Condominiums that advertises direct dune and beach access.

These three business contribute dramatically to the local economy via taxes and employment of up to 20 persons.

If this bill succeeds it might just decimate everything that my wife and I have been working 24/7 for, for the last 6 years.

I hope you take into account what a decision such as this might do to an already strained economy.

As registered and active voters, we may need to utilize our rights in the future in regards to Proposition 37.

Thank you

Greg and Simi Hoover
[Redacted]
[Redacted]

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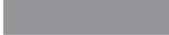
GP-31-1

Response to Comment GP-31-1

Please see the Response to Comment GP-24-1 for a discussion of the potential socioeconomic and recreational use effects of implementing the HCP.

Comment Letter GP-32

GP-32

  To: fw1ordhcp@fws.gov
cc:
Subject: Comment on Western Snowy Plover Habitat Conservation Plan

11/06/2007 05:16 PM

I would like to suggest in Section 7 that Public Outreach include verbose information posted at the logical entrances to all protected areas, indicating the need for the protection, rather than simply indicating the area is a protected area. Further, I would like funding to include maintain the signs/kiosks required for the more complete information. | GP-32-1
| GP-32-2

I have the opinion that quite a number of people would be more compliant with the requirements if they knew the details, but would tend to be less compliant if they were simply directed to 'leash your dog', or 'stay out of the beach grass area'.

Roland Garrison


Response to Comment GP-32-1

Section 5 of the HCP and Chapter 2 in Volume I of the FEIS describe the signage that would be used at access points and nesting sites to inform the public about snowy plover protections and the location of SPMAs. The type of information that would be posted on these signs would be determined by OPRD and USFWS during development of site management plans.

Response to Comment GP-32-2

The funding commitments in Section 7 of the HCP include commitments to install and maintain signage at access points and at the boundary and nesting locations in occupied SPMAs.

Comment Letter GP-33

GP-33



"Sally Harper"

01/01/2008 07:45 PM

To: <FW1ORDHCP@fws.gov>
cc:
Subject: OPRD HCP EIS

I'm in favor of most any protection given to the snowy plover. Walking on the wet sand with my dog on a leash is not a problem. I realize (judging from past "letters to the editors") not everybody feels this way.

Thank you for the opportunity to respond.

Bill Harper

[Redacted]

[Redacted]

Comment Letter GP-34

GP-34

 **Jeri Bissell**
[Redacted]

To: <fw1ordhcp@fws.gov>
cc:
Subject: OPRD HCP DEIS

01/03/2008 10:33 AM

I am writing to comment on the Habitat Conservation Plan proposed for the Oregon Coast. Part of this plan affects my local beach, the Bandon State Natural Area. I and many other people walk our dogs in this area, and have for years. We have obeyed the leash rule during nesting season. I feel the restrictions being placed upon this beach area, in a popular tourist town are unreasonable. No dogs and no kite flying? I can see this in isolated areas but not in this area.

Jeri Bissell
[Redacted]

GP-34-1

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Response to Comment GP-34-1

Please see the Response to Comment GP-23-1 for a discussion of how and why restrictions on kite flying and dogs would be implemented at occupied nesting areas, which include the Bandon SPMA.

Comment Letter GP-35

GP-35 GP-35

 **Fran Recht** To: fwfordhcp@fws.gov
 cc:
Subject: Snowy Plover HCP and Draft EIS comments

12/29/2007 10:13 PM

Please find attached comments on the HCP and Draft EIS for the Western Snowy Plover.

Fran Recht

 Snowy Plover HCP EIS comments December 29.doc

December 29, 2008

Dear Fish and Wildlife Service:

I would like to comment on the proposed HCP and draft EIS submitted by Oregon Parks and Recreation Department for the Western Snowy Plover. I am familiar with many of the aspects of the HCP as I was an active, involved member of the steering committee that worked to advise OPRD between 2002 and 2004 on this plan.

As a general and overall statement I am very supportive of the HCP, and OPRD's committed efforts to achieve Western Snowy Plover recovery through diverse approaches in dispersed areas along the coast. I think that they have done a fine job of describing issues that affect snowy plover recovery and outlining meaningful measures to address the most important factors that will be required to rebuild and sustain snowy plovers on Oregon's coast. I think the HCP/EIS (with some modifications) can achieve success and that OPRD has taken a proactive approach in applying for an Incidental Take Permit and committing the resources needed and dedicating itself to continued cooperative work with other involved agencies/co-managers.

However, I do not think though that the phasing plan described in the HCP that leaves Netarts Spit and Pistol River sites to be the last actively managed unoccupied sites nor the decision to chose Alternative 2 as the preferred alternative are justified in EIS or are adequate to provide the increased certainty sought by the HCP, given the high levels of uncertainty identified in the incidental take study for fledging, hatchlings and adult impacts to plovers from recreational activities (or the level of uncertainty given population demographics in Oregon or climate change impacts). Specifically, I think it was an arbitrary decision to decide that only 6 rather than 9 SPMA sites controlled by OPRD sites and 11 rather than 12 RMA areas would be subject to HCP requirements and to put Netarts and Pistol River sites as the last to be actively managed. I think that (without changes in the HCP and EIS to correct these decisions) given the level of uncertainty regarding the take impacts of recreation and the uncertainty of climate change and demographic changes and recreational use patterns that USFWS can not be able to find that the Applicant will be able to meet the standard that "to the maximum extent practicable" they are minimizing and mitigating the impacts of such taking; or that they will have enough certainty to know that "The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild".

Given the agreed upon goal to have:

Areas scattered geographically to provide for a well-distributed snowy plover population, yet close enough so as to facilitate snowy plover dispersal between occupied and unoccupied areas; the Netarts spit at the southern most end of the northern range was identified as an area of special importance due to its location. The Pistol River site also of key importance as it is the most southerly location in the plover range managed by OPRD. The decision to leave these areas for active management to last was due to political pressure, not scientific justification. In fact the taking analysis calls out the Pistol River as very important due to the very low recreational use impacts in the area (for hatchling, fledgling, and adult survival). (E.g. see section 5.12 of that analysis-- :

GP-35-1
GP-35-2
GP-35-3

GP-35

GP-35

It is also possible that the number of hatchlings lost at the currently unoccupied sites may be greater because levels of recreation are higher at all of the proposed SPMAs, with the exception of Pistol River.)

GP-35-4

Similarly of all the areas in Tillamook County the Netarts managed by OPRD has rather low levels of recreational use close to that of South Sand Spit operated by USFS and less than other OPRD managed SPMA sites

GP-35-5

The EIS also notes for these two areas that there would have very little impacts as compared to the no action alternative recreational use-wise (or to alternative 2), so there EIS is flawed in claiming this as a reason for not choosing this alternative:

GP-35-6

p. 37 of Chap 3

Location	Dog Exercising	Driving	Non-Motorized Vehicle Use
Netarts Spit	There would be no difference compared with Alternative 1. Dogs are required to be on leash in areas adjacent to State Parks.	There would be no difference compared with Alternative 1. Driving is already prohibited at this location by State Rule.	Non-motorized vehicle use could occur on the Ocean Shore to the south of the SPMA, accessible from the existing State Park access. The area to the north would continue to be accessible from the Happy Camp access point.
Pistol River	There would be no difference compared with Alternative 1. Dogs are required to be on leash in areas adjacent to State Parks.	There would be no difference compared with Alternative 1. Driving is already prohibited at this location by State Rule.	Non-motorized vehicle use could occur on the Ocean Shore immediately adjacent to the north of the SPMA.

In describing both Alternative 2 (see 3.3-29) and Alternative 3, the EIS notes that, because there are alternatives at all 6 (9) SPMAs and 11 (12) RMAs targeted under Alternative 2 (or Alternative 3), the potential effects on recreational opportunities are expected to be minimal. In describing Alternative 3, for example, the EIS states (3-3-39):

As indicated in table 3.3-7, there would be multiple locations in proximity to all of the SPMAs and RMAs where recreational activities would be allowed to continue unrestricted. For all the recreational activities, there is a location immediately adjacent to the restricted area where the activity could occur unrestricted. Although these restrictions would limit some recreational opportunities in these areas relative to Alternative 1, the potential effects would likely be minimal because alternate locations are available in close proximity to the restricted areas.

GP-35-6
(cont.)

In addition, the locations of the SPMAs and RMAs were specifically selected to minimize potential effects on recreation based on recreational use survey data (Shelby and Tokarczyk 2002). As indicated in table 3.3-1, recreational use at Bullards Beach and Sixes River Mouth are currently low (57 people per day and 27 people per day, respectively, on a summer weekend), indicating that changes in allowed recreational uses would likely have a minimal effect on recreationists. Compared to other more frequently used beaches, these areas are considered low-density use areas where the heaviest concentration of use occurs outside of the proposed management boundary. Although the level of recreational use at Nestucca Spit is relatively high (295 people/day), the portion of the beach identified as the SPMA would generally be located at a distance from known concentrations of recreationists.

Because of the availability of alternate beach locations in the immediate area where the majority of activities could occur unrestricted, the potential effects on recreational opportunities under Alternative 3 are expected to be minimal. However, because there are no restrictions proposed for unoccupied sites under Alternative 1, the potential effects of Alternative 3 are expected to be greater than Alternative 1 at unoccupied sites.

It is said in the EIS that: "Although Alternative 3 was considered during the development of the draft of the HCP, and subsequently eliminated by OPRD due to recreational use and other management conflicts...." (p.2 of EIS Alternatives Section).

However these statements are not supported by evidence in the record, and in fact all evidence in the record is contrary to this state reason for rejecting Alternative 3 (including the analysis of cumulative impacts-- . As such the decision to go with Alternative 2 is flawed and the HCP relying on that Alternative is inadequate and doesn't meet standards to minimize take.

(see for example the analysis of cumulative impacts of Alternative 3, 3-13.4 including analysis of recreational and socio-economic and environmental justice factors that show few if any expected impacts)

GP-35	GP-35
<p>Alternative 3 would include the SMAs Nestucca Spit, Bullards Beach and Sixes River Mouth operated by OPRD and one additional RMA (North Sand Lake Spit owned by USFS) but no additional restrictions would come into play over the 25 year period unless these became targetted sites (when 3 other SMA sites were already occupied and their 'order' of targetting came up) or in the additional RMA if it became occupied or as requested by the managing landowner.</p>	<p>enforcement of dog and driving laws and wet sand restrictions (the highest risk uses) are to be emphasized, with invasive species control, outreach to civic groups, brochure development, signage or habitat work etc. being other snowy plover related duties in the "off" seasons.</p>
<p>Even then, there are minor impacts as compared to Alternative 1 with alternative sites for the same recreational activities very nearby (see table 3.3-8) in these three areas. Furthermore, at the Sixes River site driving is already prohibited year round here.</p>	<p><i>I support the following HCP statement and feel that this is a critical aspect for effective recovery, that "OPRD will take proactive action to contract with the Oregon State Police and/or local law enforcement offices to provide additional enforcement support, where necessary and possible."</i></p>
<p>Alternative 3 is more scientifically defensible, is more precautionary (giving more areas over a broader geographic range) given the uncertainties of climate change (and how bird preferences for dispersal will be affected) given the increasing storm systems, wave heights, and the resulting beach profile and sand changes we might see. It is also more precautionary because over a 25 year period there may be changes in population demographics that affect recreational use and taking potential. Additional potential active management sites would provide needed flexibility. That is overall, Alternative 3 provides a better hedge to our bets of recovery in light of a dynamic and changing situation and the uncertainty of predictions in the taking's analysis regarding recreational use impacts and whether such impacts can keep up with habitat restoration and predator management activities.</p>	<p>In regards to Adaptive Management, the HCP calls for monitoring and adaptation, but I don't see incorporated the very specific recommendation in the Takings report for takings thresholds to be regularly re-evaluated due to the high level of uncertainty identified. That recommendation was to assure evaluation takes place every 5 years. This requirement and funding for such an evaluation should be required by the HCP:</p>
<p>I also note there is not one OPRD managed area in Lincoln or southern Tillamook County that has been identified for prompt snowy plover recovery-- to help assure dispersal of the plovers. As stated above the Netarts spit is named as one of the last areas to be managed for active plover recovery. Additionally, one area on the central Oregon coast that has now been acquired for conservation purposes by state Oregon Watershed Enhancement Board and I believe OPRD money (Camp Winema on the Salmon River estuary) has not even been mentioned in the HCP as a potential area for snowy plover habitat conservation efforts, monitoring activities or otherwise, though management for plovers is certainly a part of watershed and species recovery goals.</p>	<p>It should also be noted that the dynamics of the snowy plover population along the Oregon Coast will likely change over time and that they are part of a larger coastal population that includes California and Washington. Although the assessment is based on population performance metrics between 2000 and 2006, these metrics will change over the 25-year permit term. As such, the assessment of take should also change to reflect the most current population performance. During the 25-year permit term, it is recommended that the thresholds for incidental take be reassessed every 5-years to ensure that tolerable levels remain biologically relevant, especially in areas where there is currently no data available (i.e., currently unoccupied, targeted SPMA's under OPRD ownership).</p>
<p>In regards to other sections of the proposed actions in the HCP, I am pleased to see that there is a commitment to 3 full time park rangers. However the wording seems too general to me to provide the level of commitment for enforcement and education that I think the HCP requires. The wording of concern to me says these park rangers will: "<i>inform and educate beach users of park rules governing the Ocean Shore, and about beach resources including the snowy plover. Where necessary, i.e., where violations occur, warnings and/or citations will be issued.</i>"</p>	<p>There is uncertainty in this assessment and its conclusions. Due to the limited nature of the data set, a very liberal standard was used for accepting model results ($r^2 > 0.10$, and $p < 0.20$). Despite this liberal standard numerous models were excluded due to their low explanatory powers. Due to these limitations, the take assessment and its conclusions should be applied carefully (using best professional judgment), but should serve as a useful starting point for estimating the impacts of restoration and recreation activities on snowy plover performance in Oregon.</p>
<p>The word "including the snowy plover" implies that they may be doing a whole host of activities. I think that there needs to be a commitment in the HCP, that their job duties will not be diluted from snowy plover related tasks (i.e. that this is not a general park ranger, but 3 FTE positions dedicated for snowy plover outreach and enforcement work). I believe that it also should be specified that during the nesting season that enforcement and that field presense for active public outreach regarding the snowy plover are the priority duties of the position. In fact, I'd like to see it even more specified to say</p>	<p>I support the HCP's awareness of the importance of Public Education and Information and the need for staff, volunteers and the general public to understand snowy plover needs and what's being done and why their help is needed. This section leaves the specific education tasks to each SMA plan. While that may be an adequate approach, there is a need to define upfront in the text of the HCP itself, that staff, volunteers and the public will be informed of the rules that apply (not only the biology and habitat protection that is mentioned generally here--this whole section doesn't even mention the applicable rules, more less emphasize them).</p>

GP-35

GP-35

I am also concerned that the HCP statement regarding Department Staff- Education and Interpretation that OPRD only mentions coastal field staff -- "Provide training to coastal field staff on the requirements of the HCP. Park staff will be trained on the natural history and identification of snowy plover so staff can field questions from visitors."
Its not only coastal field staff that need the training, all the state park employees, hosts, volunteers need to know, inform, and help enforce HCP requirements. There are only a very few employees that are called "coastal field staff" and the HCP will be ineffective if not every single employee that works in a SMA area doesn't thoroughly understand and knows they are expected to actively support, do outreach and help assure effectiveness of the HCP.

GP-35-14

Many coastal campsites are reserved by telephone. Receipts are sent to each person making reservation. For those located in areas where there are beach restrictions, a statement will be included on the receipt notifying individuals of the beaches with use restrictions and requesting their cooperation in adhering to any restrictions."

It is also known that some existing State Parks staff 'look the other way' especially regarding beach driving and dog activities, since they want to 'get along' with the locals who are the main offenders. There needs to be effective and clear direction to staff about expectations of their role in assuring an effective HCP, that they are expected to enforce rules, and there needs to be effective staff supervision to assure employee performance and 3rd party monitoring of driving and dog rules and staff effectiveness.

GP-35-15

I have received those receipts myself and I feel a statement on the receipt is totally inadequate as a communications means. It will hardly be noticed and will not likely be an effective means of assuring compliance. I believe that a changes in this section of the HCP document needs to be made to assure more effective compliance.

GP-35-17
(cont.)

In terms of Habitat Protection Goal, I like the goal that says:

GP-35-16

In occupied or unoccupied areas being actively managed for plover recovery, the reservation contractors must be required to ask potential campers if they are planning to bring dogs, ATVs or horses with them. If so they should be told as a courtesy that that area might not be the best choice for them during the March through Sept nesting season as these areas do not allow horses on the dry sands or dogs and ATVs on the beach then and they should be provided a suggestion of a nearby alternative camp areas with less restrictions. If they want to still stay there they should be required to sign and return a statement, prior to the reservation being allowed to be finalized, that they will not take their dogs or ATVs on the beach and that they know horse use is restricted to the wet sand portions of the beach (or the appropriate management rules), and that they understand violating the restrictions will result in a fine.

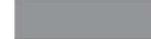
"Goal: Protect habitat or potential habitat in OPRD SPMA's by limiting the development of new facilities (including trails) located in or near a SPMA.

Action: Whenever OPRD staff desire to develop a facility near an OPRD SPMA boundary, OPRD staff shall inspect the area, review the proposed project, and determine whether the development could potentially impact snowy plover, in cooperation with ODFW and USFWS. No development that will increase the capacity of existing facilities will occur within a SPMA."

However I don't believe this goal goes far enough. The HCP should specify that, as policy, OPRD will also review and comment on the facility and trail development plans of agencies with RMA to help assure avoidance of increases in the capacity of existing facilities or trails that will occur within a RMA. It should also state that no OPRD funding will go to trails, facilities or other development in RMAs.

Thank you for accepting my comments on the HCP and EIS.

Fran Recht



In terms of Park Reservations, the statement of outreach to those making reservations is inadequate.

GP-35-17

"e) Park Reservations

Response to Comment GP-35-1

The proposed HCP reflects the OPRD's proposed management approach that best meets their stated objectives to maintain public access to the Ocean Shore while protecting and conserving snowy plover populations over the long term. For information about the analysis of different alternatives by OPRD in the HCP and by USFWS in the FEIS, please see the Response to Comment NGO-5-7.

For a discussion of how SPMA's were selected for management and why management of Netarts Spit would be deferred under the HCP, please refer to MR-5. It should also be noted that management of an SPMA at Pistol River has been removed from the HCP. Please refer to MR-4 and MR-5 for additional information on why management of this site is no longer considered in the HCP.

Response to Comment GP-35-2

For information regarding the adequacy of the conservation measures, please see the response to NGO-5-10. Due to the potential for global climate change to result in reasonably foreseeable changes in the future, the HCP has been updated to include specific measures to address this potential, as noted in Section 7 of the HCP, under Changed Circumstances. For additional information on the analysis of global climate change in the EIS and the HCP, please see the Response to Comment NGO-4-2.

Response to Comment GP-35-3

Please see MR-5 for information about why management of an SPMA at Netarts Spit would be deferred under the HCP. In addition, management of an SPMA at Pistol River has been removed from the HCP. Please refer to MR-4 and MR-5 for additional information on why management of this site is no longer considered in the HCP.

Response to Comment GP-35-4

Management of an SPMA at Pistol River has been removed from the HCP. Please refer to MR-4 and MR-5 for additional information on why management of this site is no longer considered in the HCP.

Response to Comment GP-35-5

The commenter is correct in asserting that current recreational use is low at the Netarts Spit SPMA. In fact, low recreational use was a consideration in selecting

which areas to manage for snowy plovers under the HCP. Please refer to MR-5 for a discussion of the biological constraints at the Netarts Spit SPMA that informed deferring that site for later management.

Response to Comment GP-35-6

Please see MR-5 for information about why management of an SPMA at Netarts Spit would be deferred under the HCP. In addition, management of an SPMA at Pistol River has been removed from the HCP. Please refer to MR-4 and MR-5 for additional information on why management of this site is no longer considered in the HCP.

The table presented in the comment (Table 3.3-7 from the DEIS) refers to Alternative 3. In the DEIS, both Alternative 2 (the HCP) and Alternative 3 included management of SPMAs at Netarts Spit and Pistol River. Therefore, recreational impacts at those sites would not be different between the alternatives and would not be considered as a reason for selecting one alternative over another. For information about why OPRD did not select additional sites to manage as SPMAs under the HCP, please see Section 8 of the HCP.

The FEIS does not make a determination as to which alternative should be implemented. The purpose of the EIS is to evaluate the potential effects of the HCP and the alternatives to inform the public of the potential environmental effects of its discretionary action, issuing the ITP. Alternative 3 is evaluated in the EIS as an alternative to the proposed HCP. Specifically, Alternative 3 is included in the EIS to provide the public with an additional basis (outside of the No-Action) for comparing the environmental risks of an alternative course of action. If it is determined that the management prescriptions associated with Alternative 3, or other actions, are necessary to meet Federal Endangered Species Act (ESA) issuance criteria, USFWS and OPRD could engage in further discussions.

Response to Comment GP-35-7

The proposed HCP (Alternative 2 in the EIS) identifies the management actions that OPRD would take to avoid, minimize, and mitigate the effects of its activities, including public use and recreation management, beach management, and natural resources management on snowy plovers. These measures must be adequate to meet the issuance criteria prescribed in 50 Code of Federal Regulations (CFR) 17.22(b)(2), 50 CFR 17.32(b)(2), and Section 10(a)(2)(B) of the ESA before issuing an ITP. In evaluating the adequacy of the proposed HCP, USFWS will take into consideration any uncertainty associated with the take analysis presented in the HCP, and/or potential increases in recreational use on the Ocean Shore over the 25-year permit

period. The decision on whether or not to issue an ITP will be made after completion of the National Environmental Policy Act (NEPA) and ESA Section 10 processes.

Alternative 3, Management of Additional OPRD Sites, is evaluated in the EIS as an alternative to the proposed HCP. If it is determined that the management prescriptions associated with Alternative 3, or other actions, are necessary to meet the ESA issuance criteria described above, USFWS and OPRD could engage in further discussions.

Please refer to the Response to Comment NGO-4-2 for a discussion of how global climate change is considered in the HCP and EIS. As noted in the response to that comment, additional measures have been added to the HCP (Section 7.6, “Unforeseen and Changed Circumstances”) to address the potential for future changes affecting the ability to implement the HCP due to global climate change.

Response to Comment GP-35-8

The determination of which sites OPRD would manage for snowy plovers was based on land ownership and management, snowy plover occupancy or the potential for occupancy, and other conflicting uses, such as heavy recreational use or predator populations. There were no areas in Lincoln County or southern Tillamook County that met these screening criteria. Please refer to MR-5 for a discussion of why management at Netarts Spit would be deferred under the HCP.

Response to Comment GP-35-9

Camp Winema was not considered for snowy plover management in the recovery plan (U.S. Fish and Wildlife Service 2007) or this HCP for a number of biological reasons, including a narrow beach area, volatile erosion conditions, and high surf. For these reasons, it was determined that it would not be a suitable site for targeted snowy plover management under the HCP. For more information about this and other OPRD-owned sites that were not carried forward for snowy plover management as part of the HCP, please see Section 8 of the HCP.

Response to Comment GP-35-10

Please see the Response to Comment NGO-4-5 for information regarding the responsibilities of the beach rangers. As described in that response, OPRD will continue to provide three full-time beach rangers to enforce compliance with all Ocean Shore and State Park rules, including beach use restrictions designed to protect snowy plovers.

For a discussion of the funding commitments in the HCP, including those specific to law enforcement, please refer to Section 7, “Implementation, Organization, and Structure” in the HCP and MR-8.

Response to Comment GP-35-11

Please refer to Section 7, “Implementation, Organization, and Structure” in the HCP and MR-8 for a discussion of the funding commitments in the HCP, including those specific to law enforcement. As described in that response, OPRD will continue to provide three full-time beach rangers to enforce compliance with all Ocean Shore and State Park rules, including beach use restrictions designed to protect snowy plovers.

Response to Comment GP-35-12

As described in Section 5 of the HCP, annual compliance reports will be submitted by OPRD to USFWS. These reports will estimate the level of take associated with covered activities each year. If issued, ESA compliance documents (ITP, biological opinion) issued by USFWS will identify the amount of take authorized by the HCP over the term of the ITP.

Response to Comment GP-35-13

As described in Section 5 of the HCP, the public outreach and education efforts associated with implementation of the HCP would include 1) recruiting and training volunteers to serve as docents at SPMA's between May and August; 2) providing signage at access points to inform the public of the presence of snowy plovers and the importance of snowy plover protection measures; and 3) installing signage at SPMA boundaries to indicate the presence of nesting sites and the boundaries of the restricted areas. The type of information that will be presented by docents will be site-specific, and will likely include information on the biology and ecology of the species, the regulations that protect it (ESA), and the rules that OPRD is implementing and enforcing to protect snowy plovers on the Ocean Shore (e.g., recreational use restrictions). The purpose of the public outreach program has been clarified in the HCP.

Response to Comment GP-35-14

Training will be provided to all State Parks staff assigned to coastal parks and programs, and to all volunteers responsible for disseminating information about snowy plovers. The HCP has been updated to reflect this clarification.

Response to Comment GP-35-15

See the Response to Comment NGO-3-40 for a discussion of how recreational use restrictions at SPMAAs would be enforced under the HCP.

Response to Comment GP-35-16

Review of trail and facility development at RMAs would be addressed by the RMA landowner and USFWS.

Response to Comment GP-35-17

Information on the type of restrictions on motorized vehicle use and dog exercising would be made available to the public at SPMA access points, either through signage, docent and volunteer interactions, or by beach rangers. This level of outreach and information should ensure that the public understands where and how OHV/ATV use and dog exercising may occur.

Comment Letter GP-36

GP-36
GP-36



Jordan Epstein*
 To: <FW1ORDHCP@fws.gov>
 cc:
 Subject: OPRD HCP EIS

01/04/2008 11:38 AM

To: Laura Todd,
 US Fish and Wildlife Service
 Newport Field Office
 2127 SE OSU Drive
 Newport, OR 97365

Dear Ms. Todd,

I have read the executive summary of the proposed HCP for Snowy Plover and in general I applaud the efforts of OPRD and USFWS to find ways to protect this endangered species of bird. My specific thoughts follow.

(1) I would urge that vehicles be permanently banned on all the SPMAs and RMAs, whether currently occupied or not. Vehicles can rapidly cause destruction to habitat. Only a permanent ban, and this means all year and not just during the nesting season, will allow the sandy area the time to recover to that state necessary for Snowy Plover habitation or for natural vegetation.

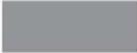
(2) I also urge that your recommendations for occupied SPMAs and RMAs be followed in currently unoccupied SPMAs and RMAs. Areas that are currently unoccupied may be so because there are too many disturbances, whether those are dogs, other animals, walkers, drivers, and so forth. For unoccupied areas to once again become occupied, they will need restrictions at least as stringent as, and probably more stringent than, those on currently occupied areas. At the very least, all restrictions proposed for occupied areas need to be the same for unoccupied areas, i.e., no dogs, no kite-flying, fences, ropes, signs, etc. These restrictions should be in place for at least the nesting season, even if there are no known nest sites. Also, I would prohibit horses in the restricted areas.

(3) Maintain restrictions for the entire nesting season, i.e., March 15 – September 15. The very presence of the restrictions can go a long way in educating the public that these beaches are also habitat for other creatures and we need to be mindful of that.

Finally, I would like to note that I make these comments as one who has frequented one of the unoccupied RMAs for many years. I am a volunteer with Oregon CoastWatch and regularly (at least seasonally) monitor a mile of beach along Bayocean Spit. I have seen relatively few people there and, thankfully, vehicles are prohibited. However, dogs and horses frequently accompany people and would without question disturb Snowy Plover nesting. This past December birders did see Snowy Plovers at the Spit near the northern end, so this area could be occupied in the future, as it was in the past. But it requires stringent restrictions now, before birds decide to nest. The chances of them nesting will be significantly diminished under current conditions.

Thank you very much for giving me this opportunity to comment.

Sincerely,
 Jordan Epstein



GP-36-1

GP-36-2

GP-36-3

GP-36-4

GP-36-5

Response to Comment GP-36-1

Please see the Response to Comment NGO-5-26 for information about why the HCP does not propose to ban vehicles at SPMAs and RMAs year-round.

Response to Comment GP-36-2

To balance recreational use with natural resource protection, lesser restrictions are proposed for actively managed areas that do not yet have nesting populations of snowy plovers. However, site-specific recreational conflicts not otherwise addressed by the proposed recreational use restrictions in these areas (i.e., dogs on leash and prohibitions on motorized and non-motorized vehicle use) could be considered and addressed in the site management plan if deemed necessary. Given these considerations, the proposed recreational use restrictions at unoccupied SPMAs and RMAs would likely afford additional nesting opportunities on the coast and would control the level of potential disturbance, while balancing the public's ability to recreate on the beach.

Furthermore, recreational use is only one factor that may affect the potential for nesting populations of snowy plovers to be attracted to unoccupied areas. Site management plans developed for actively managed, unoccupied SPMAs and RMAs would address limiting factors at each site, which could include lack of adequate habitat, larger predator populations, or recreational use. For more information on the order of the development of site management plans for OPRD-owned or leased SPMAs, see Chapter 2, "Alternatives" of Volume I of the FEIS.

Snowy plovers begin arriving at their Oregon breeding sites in early March (Wilson 1980). Since some individuals nest at multiple locations during the same year, birds may continue to arrive through July. On the Oregon coast nesting may begin as early as mid-March (Wilson-Jacobs and Meslow 1984), with peak nest initiation occurring from mid-May to early July (Stern et al. 1990). If nesting has not occurred by mid-July, it is unlikely that further nesting would occur. Therefore, the restrictions would be lifted to provide greater recreational use opportunities.

Response to Comment GP-36-3

OPRD recognizes that horseback riding can adversely affect snowy plovers. Therefore, under the HCP, OPRD would restrict horseback riding within roped-off areas at occupied SPMAs and RMAs during the nesting season, and would direct equestrian use to the wet sand portion of the beach through signage and public outreach and education. For information about how the recreational use restrictions would be implemented, please see MR-2.

Response to Comment GP-36-4

In general, recreation use restrictions would be implemented during the nesting season (from March 15 to September 15). However, if nesting has not occurred by mid-July, it is unlikely that further nesting would occur. Therefore, the restrictions would be lifted since they would be unnecessary, allowing for greater recreational use opportunities.

Response to Comment GP-36-5

Under the HCP, recreational use restrictions would be implemented at unoccupied sites after completion of a site management plan at SPMAs, and at the request of the landowner at RMAs. These restrictions would include requiring dogs to be leashed and prohibiting driving and non-motorized vehicle use. These restrictions would be greater than those currently in place. As mentioned in the Response to Comment FA-1-1, the responsibility for developing a site management plan for Bayocean Spit belongs to the U.S. Army Corps of Engineers (Corps). The Corps may choose to further limit recreational use or implement other management activities on federally owned lands to protect snowy plovers based on site-specific considerations as part of its site management plan, which would require consultation with USFWS.

Comment Letter GP-37

GP-37

GP-37



**Carol Cwiklinski &
Steve Small**
[Redacted]
01/04/2008 01:40 PM

To: FW1ORDHCP@fws.gov
cc:
Subject: OPRD HCP DEIS

Attached is a public comment document  Public Comment Plovers.doc

4 January 2008

Re: Public comment on Habitat Conservation Plan for Western Snowy Plover

1. There were no clear directions given on how to go about making a public comment on the Plan. The OPRD web site had the documents and directed me to the FWS web site for comment, but gave no deadline for submitting. The FWS web site had no link for an address to submit comments, nor did it have a deadline date for comment submission. After searching around for a couple days, I finally found the original press release, informing me I had to submit my comments today.

Solution: Any opportunity for public comment should provide clear directions. The OPRD web site should have provided a mailing address, subject line, and deadline information for public comment on the plan. Therefore, I think an extension on the public comment period is warranted.

2. In reference to Natural History page 8, Table 4-1, Numbers of Snowy Plovers Counted During Winter Window Surveys in 2007. On Bayocean, no birds were reported during winter surveys.

Although not during winter surveys, on at least two occasions in 2007, two snowy plovers were seen using Bayocean spit during winter. One occasion was during the 2007 Tillamook Christmas Bird Count.

Solution: Some kind of statement should be included in the plan to say that a negative survey does not mean birds are absent, as the above information shows. Perhaps a statement indicating that birds were seen outside the survey period should be included within the document. If not included, the current level of information is misleading.

GP-37-1

GP-37-2

Carol Cwiklinski
[Redacted]

Response to Comment GP-37-1

Thank you for your feedback. In order to provide additional opportunity to comment on the DEIS and HCP, the public comment period was extended for two additional weeks from February 26, 2008 to March 12, 2008. A second extended comment period was provided between April 17, 2009 and June 19, 2009.

Response to Comment GP-37-2

Text has been added to Section 4 of the HCP to elaborate on the protocols used for winter and breeding survey techniques. In addition, the data have been qualified to state that a negative survey does not mean birds are absent.

Comment Letter GP-38

GP-38



Jean Clancey

To: fwfordhcp@fws.gov
cc:
Subject: regulations regarding snowy plover

01/04/2008 05:24 PM

Laura Todd, US Fish and Wildlife, Newport OR
January 4, 2008

Dear Ms. Todd:

I am a frequent user of the Baker Beach area of Central Oregon's coastline. We have camped for years at Sutton Beach Campground, take out-of-state visitors there to walk out through the dunes, frequently hike and ride horses in the area and on the beach. And I have participated on horseback in the SOVL beach clean-up for many years.

All this said, I appreciate the way the concerned public agencies have worked with coast users in drafting and implementing plans to protect the plovers. I have seen plovers out there, especially in the area just north of Sutton Creek, where the dunes have been bulldozed. The fences that guide beachgoers away from potential nesting areas are respected.

But I take exception to new rules that would exclude dogs from the beach all together. And forbidding the use of kites seems far-fetched. All of my friends and my activities on the beach have included dogs, and if we are unable to take them along in the future, I am sure that all of our beach camping and hiking in the area will cease. It just makes no sense. The policies you have implemented to date insuring plover recovery are quite successful. What is the point in becoming punitive with the public that has worked so well with you in this effort? If there is a compelling reason and you are convinced there is no other way than to ban dogs, then please educate us. Otherwise, please reconsider this new proposal.

Thank you, Jean Clancey

GP-38-1

Response to Comment GP-38-1

The proposed HCP has been prepared to avoid, minimize, and mitigate the potential effects of OPRD's management activities and the public's recreational use of the Ocean Shore on snowy plovers. The conservation measures in the HCP specific to dog exercising and kite flying are necessary to reduce potential effects on snowy plovers. For more information about OPRD's obligations to maintain recreation use and access to the Ocean Shore, please see MR-6.

For information on the proposed restrictions on dogs, please see MR-3. For more information on the necessity of kite restrictions, see the Response to Comment GP-5-4. For information regarding the potential effects of the HCP on tourism, please see the Response to Comment GP-24-1.

Comment Letter GP-39



2 January 2008

John Griffith, County Commissioner



COOS COUNTY COMMISSIONER JOHN GRIFFITH COMMENT ON DRAFT ENVIRONMENTAL IMPACT STUDY THAT SUPPORTS OREGON PARKS AND RECREATION DEPARTMENT ENDANGERED SPECIES ACT SEC. 10 DRAFT HABITAT CONSERVATION PLAN FOR AN INCIDENTAL TAKE PERMIT OF PACIFIC COAST POPULATION OF WESTERN SNOWY PLOVER

Acronyms used in this comment:

BLM	Bureau of Land Management
BO	Biological Opinion, part of the Endangered Species Act process.
BOC	Coos County Board of Commissioners and its members
DEIS	The Draft EIS that is being commented on here
ESA	Endangered Species Act
HCP	The draft Habitat Conservation Plan being commented on here
ITP	An ESA Section 10 Incidental Take Permit
NEPA	The National Environmental Policy Act
OPRD	Oregon Parks and Recreation Department
USFS	United States Forest Service
USFWS	United States Fish and Wildlife Service
WSP	ESA-listed Pacific Coast population of western snowy plover

1. Regarding the "Purpose and Need for Action" statement in draft EIS, pg. 1-2

OPRD jurisdiction in the HCP- involved lands is limited to preserving and protecting scenic and recreational use of Oregon's ocean shore. Its authority is through no more than a state-declared recreation easement. ORS 390.610. OPRD does not own most of the land involved in its ESA Sec. 10 ITP request. If it did, Oregon would not need the law adopted in 1967 by the Oregon Legislature declaring a public recreation easement on the ocean shore generally between the line of ordinary vegetation and high tide line. ORS 390.605 et seq. While the BOC does not in this comment raise a question about Oregon's ownership of land lower in elevation than the high tide line, ORS 390.615, we object to OPRD's request for an ITP on the basis that OPRD lacks sufficient authority in the affected lands. In its recreation easement, OPRD lacks the authority necessary to comply with ESA Sec. 10 (a)(2)(A) and (B) to carry out its HCP, and therefore cannot be issued an ITP.

Explanation:

As explained in the DEIS, "Private landowners, corporations, State or local governments, or other non-Federal landowners who wish to conduct activities on their land that might incidentally

This document is the opinion of Commissioner John Griffith and has not formally been endorsed by the Board of Commissioners

GP-39

GP-39

harm (or "take") wildlife that is listed as endangered or threatened must first obtain an incidental take permit (ITP) from Fish and Wildlife Service (FWS)." DEIS pg. 1-1. Although it is a state government, Oregon does not own ("on their land," above) most of the land involved in this DEIS.

GP-39-1
continued

The declared recreation easement in ORS 390.610 is a recreation easement only. At ORS 390.610 (4), "The Legislative Assembly further declares that it is in the public interest to do whatever is necessary to preserve and protect scenic and recreational use of Oregon's ocean shore." OPRD was given authority by the Oregon legislature to manage recreation in the declared easement area, to keep conflicts from arising among incompatible recreational activities. But in its DEIS and HCP, OPRD plans to evict recreation altogether in certain beach segments during certain times of year.

GP-39-2

OPRD's managing commission, the Oregon Parks and Recreation Commission, adopted an Oregon Administrative Rule in 1994 to begin restricting recreation at beaches used by WSP. OAR 736-021-0040(3). However, administrative rules cannot offend state law. The Oregon Legislature does not review OAR.

GP-39-3

By requesting an ITP, OPRD risks its current authority to manage recreation on Oregon beaches by asking to create a "federal nexus" where one does not now exist. This also appears to violate the policy statement in ORS 390.610.

GP-39-4

OPRD presented no facts in its DEIS to show how "recovery" is a recreational use. In fact, OPRD agrees with me that it cannot close off beaches for non-recreational uses in its proposed HCP, pg. 1-2 "Thus, the beach bill precludes government and private landowners from fencing off the dry sand portion of their property that would prevent the public from using it for recreational purposes."

GP-39-5

OPRD states that it lacks authority for non-recreation purposes on land it does not own, at pg. 2-37, second paragraph of the DEIS. "Upon further consideration, this alternative was eliminated from detailed consideration in this DEIS because OPRD does not have the authority to implement or enforce site management plans for nesting populations of snowy plover on lands that they do now own or manage."

GP-39-6

For example, Coos County has roads, established in 1853 and in 1890, in WSP areas. The DEIS and HCP do not mention that fact. Coos County also owns beach-land at New River, another WSP area listed in the DEIS. In the Oregon Beach Law, OPRD can prevent landowners from erecting structures that could limit the public's ability to recreational use of the ocean shore, as noted two paragraphs above. But the law does not grant to OPRD the authority to compel landowners to participate in OPRD enterprises that are not recreational. The DEIS does not provide facts that show OPRD has the authority to compel Coos County or another landowner to allow OPRD or anyone else to erect signs and fences on their beach property for WSP management.

WSP-occupied areas are at the southern end of the 1853 road and the western end of the 1890 road. County ordinance forbids the placing of obstructions to the traveling public in county roads without BOC approval. WSP signs, fencing, etc. could be considered obstructions to public travel. The Beach Law is a recreation easement only. Since these county roads are not paved, most of the traffic is recreational. The Beach Law did not supersede or eliminate county roads.

This document is the opinion of Commissioner John Griffith and has not formally been endorsed by the Board of Commissioners

GP-39-1

GP-39	<p>The county roads precede creation of the BLM and USFS.</p> <p>OPRD's HCP request is open-ended (all give and no get by Oregon). Besides adopting all past demands of snowy plover biologists at the outset, Alternative 2 restrictions and their duration and applicable areas will expand over the 25-year life of the requested ITP. On DEIS pg. ES-4, OPRD states that besides areas already highly restricted to recreation, up to six additional Snowy Plover Management Areas would be managed for WSP, and at up to 11 Recreation Management Areas recreation restrictions would "automatically" occur if WSP occupation starts. OPRD would also implement recreation restrictions in these 11 other areas at the request of the landowner, even if unoccupied by WSP. These measures are the opposite of fulfilling OPRD's obligation in ORS 390.610(4). There is no functional difference in this and in OPRD's eliminating recreational access and use for any other non-recreational use request by a landowner, for example, evicting the public for the private enjoyment of a beach for the landowner or his guests.</p> <p>The DEIS and HCP also present potential NEPA problems. OPRD declined to discuss with local governments whether to pursue an ITP. Instead, OPRD went off on its own and requested an ITP. Coos, Tillamook and Lane counties removed themselves from the OPRD HCP steering committee process because OPRD refused to discuss any other alternatives to an ITP. DEIS pg. ES-4. OPRD also would not correct errors between drafts of its HCP when errors were pointed out by the counties. OPRD has an obligation in NEPA to work with local governments. OPRD did not do that. OPRD apparently convened its steering committee to tell committee members what it planned to do, rather than to have a conversation with committee members.</p> <p>As noted above, Tillamook, Lane and Coos counties withdrew from OPRD's HCP steering committee because OPRD was not using a steering committee per the USFWS HCP handbook guidelines.</p> <p>The DEIS references a BO that will be written as part of an award of an ITP. Using experience as a guide, the USFWS over-stated estimated "take" in a 2000 BO for the north spit of Coos Bay, for BLM. The level of "take" estimated had not happened before, when recreation in the area was pretty much wide open. There were no data to support the estimate, but it became part of the BO nonetheless. I hope OPRD does not allow the same data-free process to occur with its HCP, but given OPRD's disregard for NEPA and local governments, I anticipate that it will.</p> <p>OPRD has cited other Oregon laws that it believes grant it authority to manage its beach-lands for non-recreational uses. However, those laws reference land owned by OPRD. As stated above, Pacific Ocean shore lands OPRD does not own are not state lands. Those other laws are not relevant to this discussion and DEIS.</p> <p>OPRD believes it has within its declared easement the authority to restrict recreational access and use of the ocean shore for the public's health and safety. However, OPRD's request for an ITP is not related to public health or safety.</p> <p>2. Only the first sentence of the "Need for Action" statement addresses what OPRD purports to be its need. The rest deals with process.</p> <p>The first sentence reads: "The need for this action is to provide broader protection and conservation for the snowy plover, while allowing for long-term management of the portions of</p>	GP-39-6 continued	GP-39	<p>Oregon's coast under OPRD jurisdiction."</p> <p>This Need statement fails on at least two key points. As noted in 1 above, OPRD does not Need to provide "broader protection and conservation for the snowy plover." Although it might <i>want</i> to do that, OPRD <i>needs</i> only to fulfill its obligations in Oregon law. Second, OPRD does not Need an ITP to continue management of Oregon's ocean coastline.</p> <p>Explanation: I believe I addressed the first failure of OPRD's Need statement in our comment at 1 above.</p> <p>In the second failure of its Need statement, OPRD listed no facts in the DEIS to support its argument that it is obliged (Need) to request an ITP. Moreover, WSP numbers and nesting/fledging success are rising under current – No Action Alternative – management, particularly now that managing agencies are using scientific application of lethal predator control.</p> <p>ESA Sec. 10 makes clear that requesting Sec. 10 Permit(s) is a discretionary choice for non-federal entities. OPRD references Oregon's endangered species law, but that is not relevant to the ESA. The ESA process is contained in the ESA. OPRD staff has told its management commission and the public that if OPRD does not get an ITP the federal government will take over management of Oregon's ocean beaches. OPRD makes that claim in the DEIS at pg. ES-1, second paragraph. Again, OPRD cites no facts, laws or rules to base that opinion. OPRD tries to imply a Need for an ITP at pg. 1-5 of this DEIS: "Since populations of snowy plover nest, roost, forage, and raise chicks on the sandy beaches of Oregon's coast, OPRD must ensure that their management activities do not result in take of snowy plover." I could agree hypothetically that this statement could be correct if OPRD were referring to ground-disturbing management activities by OPRD. But OPRD cited no USC or CFR that it believes authorize the federal government to take over management of Oregon's ocean shoreline, or that could be used to base an allegation that OPRD's obeying ORS 390.605 et seq. is unlawful.</p> <p>A member of the public might violate Sec. 9 whether or not OPRD has an ITP (depending on the severity of the alleged violation), but that is not OPRD's business. Allowing citizens to use their declared rights to access and recreational use of Oregon's ocean shore does not relieve citizens of any obligation they have not to violate ESA Sec. 9. OPRD is not obliged to enforce the ESA, or to adopt rules to disincline someone else from violating the ESA. Enforcement of the ESA is a federal obligation, ESA Sec. 11 (e). OPRD has not shown in this EIS or HCP how or why it wants to assume that role.</p> <p>3. Although I support none of the alternative in this DEIS, if forced to choose from only that list, my choice would be Alternative 1, No Action.</p> <p>Even in Alternative 1, OPRD has not worked with local governments and citizens. Nor has it considered its affirmative obligations in Oregon's beach law in its WSP management so far. It has instead granted WSP managers' requested recreation restrictions. OPRD describes Alternative 1 "current management" as "Management activities on covered lands would be implemented to avoid potential effects on snowy plover, to the extent possible." DEIS pg. 2-3. Again, this is not "doing whatever is necessary to preserve and protect scenic and recreational use of Oregon's ocean shore." ORS 390.610(4). In my opinion, OPRD should obey the beach law by making requesters of restrictions provide supporting data to prove that lesser restrictions</p>	GP-39-11 continued
		GP-39-7			GP-39-12
		GP-39-8			GP-39-13
		GP-39-9			GP-39-14
		GP-39-10			GP-39-15
		GP-39-11			GP-39-16
	This document is the opinion of Commissioner John Griffith and has not formally been endorsed by the Board of Commissioners			This document is the opinion of Commissioner John Griffith and has not formally been endorsed by the Board of Commissioners	

GP-39	<p>would not be sufficient. This DEIS continues that reliance on data-free opinion by failing to state a basis for restrictions, WSP management area size(s), or recreational activities to be restricted. Its beginning point assumes there were data to support its premises, without listing any. I am aware of only two observational, objective studies of WSP responses to recreation: Gary Page et al., "Status of the Snowy Plover on the Northern California Coast," October 1977, Calif. Dept. of Fish and Game; and K. Fahy, C.D. Woodhouse "1995 Snowy Plover Linear Restriction Monitoring Project, Vandenberg Air Force Base" Vandenberg Air Force Base project No. OS005097. These studies were done using WSP nest observers hidden in blinds. The DEIS fails to cite either of these, but lists other citations to a body of literature that appears to be irrelevant, for example, several references to marbled murrelet studies. I note that the DEIS bibliography does list Oregon field data reports by Lauten and Castelein. But these are not WSP/recreation tolerance or response studies. They are production and mortality data, with reference to public compliance with managing agency restrictions.</p>	GP-39-17	GP-39	<p>Although the DEIS and HCP list disturbance as a main stressor to WSP, they have no problem with WSP field biologists manipulating WSP nests, floating WSP eggs to predict when they will hatch, or other disturbances while at the same time restricting recreation that is far less invasive. Another example is in the size of areas restricted to recreational users, compared with agencies' own management posture when activities the state and federal government condone are involved. A recent example is the removal of a large piece of the New Carissa still stuck on the beach at the northern end of the large (more than 2 miles long) WSP area on the beach at the north spit of Coos Bay. BLM notified me that WSP managers have no problem with a heavily industrial enterprise scheduled to begin in March 2008 to remove that piece of the ship. Heavy cutting and extracting machinery will be used on the wreck, but our citizens' driving on the wet sand part of the beach, denied in 1999 and every year since by WSP managers, was purported to be harmful to WSP even though no data exist to base that opinion. The DEIS has a section on noise, beginning at 3.6-1. OPRD gives itself a pass for noise associated with habitat restoration, because it would do the heavy work outside of the time WSP are nesting. But as a WSP managing agency, it did not object to the industrial noise that will be emitted by New Carissa wreck removal contractors.</p>	GP-39-19	GP-39-20	GP-39-21
	<p>4. OPRD references its "Oregon Shore Recreational Use Study," Shelby and Tokarczyk, 2002, which missed recreational use patterns of the Coos Bay north spit and other areas in Coos County. DEIS pg. 3.3-1. I recommend that this reference be dropped from the DEIS.</p>	GP-39-18		<p>OPRD further gives itself a pass on "recovering" WSP where its participation would have a deleterious effect on OPRD investment. An example is at South Beach, Newport area. OPRD has a large park there, and considerable investment. That beach, all the way up to the Newport jetties, is as good or better potential habitat than, say, the north spit of Coos Bay, Elk River, or the beach segments closed every year for WSP up by Florence. The reason is that predator loading on the latter beaches is much greater than at South Beach, Newport area. If OPRD were truly interested in habitat-based decision-making for the WSP and its recovery, it would nominate beach segments even where it has its own investments, rather than where it thinks resistance to beach closures will be less because fewer people live nearby.</p>	GP-39-22		
	<p>The study authors missed the beaches that are targets of the first wave of WSP restrictions, but that are nevertheless very important to our citizens and our economy. For example, in the 29 September 2005 designation of critical habitat for the WSP, the Federal Register noted that only 71 people visited the WSP critical habitat area at the north spit in 1999. Fed. Reg. Vol. 70, No. 188, pg. 56986. Part of the reason could be that the beach was entirely closed to the public that year. In the same paragraph, the Federal Register noted that 18,400 visitors were denied use of the area due to a ship, the M/V New Carissa, being stuck on the beach. OPRD worked on both analyses. OPRD, BLM and USFS apparently inflated the visitor number to extract more money from the New Carissa insurer in a settlement agreement. In a typical year prior to WSP recreation restrictions, possibly 71 people visited the area on a single day. Driving on that beach was allowed year around prior to 1994, and still allowed on the wet sand portion of the north spit beach until 1999. No data exist that vehicle use ever resulted in a WSP or its nest being run over there. Nevertheless, OPRD closed that beach to vehicles in 1999 and every year since. As a result, the Shelby study does not reflect what Coos County citizens and visitors had already lost in beach access and recreation. The Shelby study also lists recreational uses that do not exist on area beaches, and missed uses that are practiced by locals and visitors. Ours is a more self-reliant and mobile recreating public than what the Shelby reporters saw at northern Oregon sites. Most of our citizens use vehicles for access and for their actual recreational experience. Ergo, the Shelby report conclusion that walking or sitting on a beach are the predominant recreational incentives for going to the beach does not apply to Southern Oregon beaches.</p>		<p>John Griffith Coos County commissioner Citizen of southern Oregon</p>				
	<p>These data shortcomings, particularly in southern Oregon coastal sites, are prevalent in the Shelby report. Most of the study efforts were at the more accessible sites on our coastline. The DEIS notes, pg. 3.3-4 that the "South Coast region (Umpqua River to California Border), including Coos and Curry counties, is relatively remote." As such, we are more dependent on visitors and locals being able to use and access what we have because our economy does not have as many "legs under the stool" as urban areas or the north coast have.</p>						
	<p>5. OPRD and other WSP managers have an apparent double standard.</p>						
	<p><small>This document is the opinion of Commissioner John Griffith and has not formally been endorsed by the Board of Commissioners</small></p>		<p><small>This document is the opinion of Commissioner John Griffith and has not formally been endorsed by the Board of Commissioners</small></p>				

Response to Comment GP-39-1

This comment is the same as the comment submitted in Comment Letter LA-2.
Please see the Response to Comment LA-2-1.

Response to Comment GP-39-2

This comment is the same as the comment submitted in Comment Letter LA-2.
Please see the Response to Comment LA-2-2.

Response to Comment GP-39-3

This comment is the same as the comment submitted in Comment Letter LA-2.
Please see the Response to Comment LA-2-3.

Response to Comment GP-39-4

This comment is the same as the comment submitted in Comment Letter LA-2.
Please see the Response to Comment LA-2-4.

Response to Comment GP-39-5

This comment is the same as the comment submitted in Comment Letter LA-2.
Please see the Response to Comment LA-2-5.

Response to Comment GP-39-6

This comment is the same as the comment submitted in Comment Letter LA-2.
Please see the Response to Comment LA-2-6.

Response to Comment GP-39-7

This comment is the same as the comment submitted in Comment Letter LA-2.
Please see the Response to Comment LA-2-7.

Response to Comment GP-39-8

This comment is the same as the comment submitted in Comment Letter LA-2.
Please see the Response to Comment LA-2-8.

Response to Comment GP-39-9

This comment is the same as the comment submitted in Comment Letter LA-2. Please see the Response to Comment LA-2-9.

Response to Comment GP-39-10

This comment is the same as the comment submitted in Comment Letter LA-2. Please see the Response to Comment LA-2-10.

Response to Comment GP-39-11

This comment is the same as the comment submitted in Comment Letter LA-2. Please see the Response to Comment LA-2-11.

Response to Comment GP-39-12

This comment is the same as the comment submitted in Comment Letter LA-2. Please see the Response to Comment LA-2-12.

Response to Comment GP-39-13

This comment is the same as the comment submitted in Comment Letter LA-2. Please see the Response to Comment LA-2-13.

Response to Comment GP-39-14

This comment is the same as the comment submitted in Comment Letter LA-2. Please see the Response to Comment LA-2-14.

Response to Comment GP-39-15

This comment is the same as the comment submitted in Comment Letter LA-2. Please see the Response to Comment LA-2-15.

Response to Comment GP-39-16

This comment is the same as the comment submitted in Comment Letter LA-2. Please see the Response to Comment LA-2-16.

Response to Comment GP-39-17

This comment is the same as the comment submitted in Comment Letter LA-2. Please see the Response to Comment LA-2-17.

Response to Comment GP-39-18

This comment is the same as the comment submitted in Comment Letter LA-2. Please see the Response to Comment LA-2-18.

Response to Comment GP-39-19

This comment is the same as the comment submitted in Comment Letter LA-2. Please see the Response to Comment LA-2-19.

Response to Comment GP-39-20

This comment is the same as the comment submitted in Comment Letter LA-2. Please see the Response to Comment LA-2-20.

Response to Comment GP-39-21

This comment is the same as the comment submitted in Comment Letter LA-2. Please see the Response to Comment LA-2-21.

Response to Comment GP-39-22

In addition to a site having a high potential to support snowy plover habitat, SPMA's and RMA's were selected in areas with relatively low recreational use. Low-use areas were selected when possible to limit the potential conflicts between snowy plovers and recreational use. South Beach is a popular recreational area with a high level of public use. It is also a short, narrow beach and is located near a large residential area where a high number of native and introduced predators are present. For these reasons, South Beach does not provide optimal habitat and was determined not to be a suitable site for snowy plover management.

Comment Letter GP-40

GP-40

To: <Laura_Todd@fws.gov>
From: "John Griffith" [REDACTED]
Date: 01/03/2008 06:55PM
Subject: Additional comment by John Griffith, WSP DEIS

The DEIS references Environmental Justice at 3.4, pg. 3.4-1, but does not analyze effects on low-income and poverty population, which the DEIS notes is high in Coos, western Douglas and Curry counties.

Although the DEIS references potential business effects by closing beaches for WSP, it dismisses them by stating that "because low-income and minority populations do not appear to be disproportionately represented among visitors to the Oregon coast, displacement effects would not be expected to excessively affect these groups." 3.4-22.

That, again, is because OPRD used Shelby as its gauge of who's going to the beach and what they're doing. Had Shelby surveyors gone to the parts of the beach that are affected by WSP closures in Coos County, specifically the north spit of Coos Bay, the report would reach different conclusions.

There is nothing in the DEIS except a dismissive handling of the environmental justice concern.

OPRD should analyze what the effects are to low-income and poverty families in Coos, Curry and western Douglas counties from WSP restrictions.

Many of these families will just not go to the beach, subtracting from their quality of life. The DEIS notes that there's other beaches near enough to the closed ones. But, like restaurants, beaches are not created equal. Some have none of the attributes others have, and that is why some families will be completely or nearly completely denied the opportunity to go to a beach worth going to.

ig

GP-40-1

Response to Comment GP-40-1

As noted in the Response to Comment GP-24-1, displacement effects on all visitors, including local residents and visitors from out of the area, would be minimal because similar recreational use opportunities are available at nearby beaches. These include opportunities along the north spit of Coos Bay. As shown in Table 3.3-6 of Volume I of the FEIS, opportunities for dog exercising, kite flying, and non-motorized vehicle use are available immediately north of this area. Because of the availability of similar recreational opportunities at alternate beaches in close proximity to the potentially restricted areas, none of the alternatives would substantially affect any user group, including persons in low income and minority groups. Visitors to the beach would likely frequent the same beaches reached by the same access points and would also frequent the same local businesses.

It should be noted that the recreation survey conducted by Shelby and Tokarczyk (2002) included visitors to the Coos Bay North Spit area among the coastal areas where surveys were conducted. Survey results for Segment 5, which includes the Coos Bay North Spit area, indicate that the proportion of visitors who were classified as part of a minority group was similar to the proportion of minority groups within the statewide population. Although low income populations who live and recreate in the potentially affected coastal areas in Coos, Curry, and Douglas counties may be proportionately higher than the statewide averages, persons in low income and minority groups would not experience disproportionately greater impacts because potential displacement effects on all persons who visit these areas would be minimal. Additional information has been added to Section 3.4, “Socioeconomics and Environmental Justice” of Volume I of the FEIS to clarify the assessment.

Comment Letter GP-41

GP-41

GP-41



"Nancy Batchelder"

To: <fwfordhqp@fws.gov>

CC:

Subject: FW: OPRD HCP EIS

11/26/2007 08:45 AM

I had forwarded the message on to a distribution list. Apparently someone thought that they should respond to me, so I will forward their testimony to you.

Nancy Batchelder, MMC
City Recorder
City of Yachats

PUBLIC RECORDS LAW DISCLOSURE: This email is subject to the State Retention Schedule and may be made available to the Public.

From: Cliff and Mary [REDACTED]
Sent: Friday, November 23, 2007 8:31 AM
To: Undisclosed-Recipient;
Subject: OPRD HCP EIS

November 23, 2007

Ms. Laura Todd
U.S. Fish and Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport, OR 97365-5258

Ref: OPRD HCP EIS

Ms. Todd,

My neighbors and I live directly above, and often frequent, Baker Beach and the other beaches nearby. We walk on them, photograph them extensively, monitor their use as members of the Coast Watch program, and exercise our dogs on them. We are, to the very last person, reasonable, responsible, law-abiding citizens, eager to preserve these places for the on-going enjoyment of all our citizens.

The primary issue that still makes us nervous concerns your proposal to completely eliminate dogs from our beaches. My wife and I routinely take our dog to the beach. Our neighbors do the same. Our black lab is very well trained and well behaved around everyone. We never let her go near the roped-off portions of Baker Beach, always opting instead to stay on the wet sand. After all, that's what you asked us to do a few years back, and we've always taken your request to heart. On only one occasion have we seen a dog inside the roped-off areas. That was when a yellow lab was running around, off any leash, inside the roped-off area last year, at the same time several Forest Service trucks were at the south end of Baker Beach. The dog belonged to one of those people.

When your first proposal was received a year ago, my neighbors and I did a great deal of research. I for one contacted every member of your citizen's committee which was responsible for making recommendations regarding the Snowy Plover issue and how best to protect their beach habitat. I sent each of them a large package of information, and contacted them via both phone and e-mail during that time. I noticed right away that the majority of these committee members didn't even live on the coast! If you were going to ask people their opinion on how best to deal with any problems you perceive, shouldn't those you ask for assistance actually *live* in the area proposed for new and onerous regulations?! To do otherwise strikes us all as a design for failure.

Wouldn't it make more sense – and certainly be viewed as more reasonable – to simply ask people to keep their dogs out of the roped-off portions of the beach, and rely on their sense of community to abide by these requests? To arbitrarily eliminate the option of exercising our animals on the beach sends the message that none of us can be trusted to abide by the law. To eliminate our access to the beach to exercise our animals is, in our view, vast overkill, unreasonable seizure of our beaches, and will only create a heretofore non-existent group of militant owners who are fed up with government intervention in our lives.

And why is it that you propose to eliminate our dogs from being on leashes on the beach, yet will continue to allow dozens of horses on the beach, at all hours, with no restrictions? If your answer is that some folks operate a horse-riding business, then perhaps a dog-walking business would also be allowed, at all hours, with no restrictions? And please tell me when a kite has ever – *ever!* – caused harm to a bird? The whole idea boggles the imagination.

Ms. Todd, my wife and I, along with our neighbors, respectfully request that you and your committee take the time and make a real effort to avoid imposing restrictions that aren't necessary. My neighbors and I would be more than happy to volunteer any amount of time to a committee of folks who actually live on the coast and who frequent the beaches often, to come up with a coherent and reasonable plan for protecting both the habitat of the Snowy Plover and the rights of the citizens of Oregon.

I look forward to hearing from you on this. Meanwhile, thank you for your time.

Sincerely,

Cliff (and Mary) Harvey

Comment Letter GP-42

GP-42



"Carl"

[Redacted]

11/06/2007 11:45 PM

To: <fw1ordhcp@fws.gov>
cc: "Carrie Lovellette" [Redacted]
Subject: Draft Habitat Conservation Plan Released Yesterday

Although I fully support a habitat conservation plan for recovery of the Snowy Plover, I am not convinced the proposed draft will adequately achieve the results necessary to support significant propagation of the species. I believe the draft proposal must establish restricted areas from all human activities during the nesting season in areas where habitat is conducive to the birds recovery. Closure and rerouting of trail systems around supportive ecosystems along with effective signage and enforcement are critical in obtaining effective results. In the area of Tahkenitch Creek even though signs were posted on the beach restricting motor vehicle access to known nesting sites I saw several vehicles miles into the restricted areas with many more tire tracks from motorcycles, atvs, and other vehicles. Along the trail through the signed areas warning of the nesting sites I found many spent shotgun shells. I do not believe the draft plan goes far enough nor covers nearly enough habitat areas to create a sustainable population.

GP-42-1

Thank you for your time and consideration and I appreciate the opportunity to share my experience and viewpoint.

Best Regards,
Carl Blomquist

Response to Comment GP-42-1

Under the HCP, recreational use would be restricted to specific areas within SPMAs and RMAs to protect nesting populations of snowy plovers, and to encourage development of new nesting sites. OPRD would enforce recreational use restrictions in these areas using beach rangers, State troopers, a docent and volunteer program, an increased public education program, and additional OPRD staff as needed.

Prohibition of all recreational use within the entire boundary of RMAs and SPMAs would not be necessary to protect snowy plovers, and would not allow OPRD to meet its objectives to provide the public with access to the Ocean Shore. Please refer to MR-6 for a discussion of OPRD's obligations under the Public Trust Doctrine and Beach Bill.

Comment Letter GP-43

GP-43



barbara butterfield

11/07/2007 11:45 AM

To: FW1ORDHCP@fws.gov
cc:
Subject: Oregon dunes closures

To Whom it May Concern:

I lived on the coast over 30 years and raised my family there. We saw how the fishing industry was shut down, the logging industry and the mills that have all suffered under the watch eye of our Environmental Protection Agency - to protect the animals and birds - What about the people??? People have lost way more than any bird - birds move on and make their nests elsewhere - people who have only known logging or fishing or millwork have to relearn skills by going back to school or taking jobs that pay far less - Mothers have to leave their homes to get work to help pay the bills.

Most of these decisions are made by people who sit behind their desk and never really see for themselves the impact their decisions have on families. And their paycheck is probably a lot higher than any of these hardworking people will ever see their entire lifetime.

I hope that someday the hardworking people of this country will get the break they deserve and will be able to keep their jobs and enjoy the pleasures this world has to offer like going to the beach and have family fun on the dunes. Is that too hard to ask????

Barbara Butterfield

Do You Yahoo!?

Tired of spam? Yahoo! Mail has the best spam protection around
<http://mail.yahoo.com>

Comment Letter GP-44

GP-44



"Denise Cedar"

12/13/2007 09:09 PM

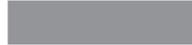
To: FW1ORDHCP@fws.gov
cc:
Subject: OPRD HCP DEIS

Dear Fish and Wildlife Service:

Please protect the snowy plover. I love going to the beach, but I am completely willing to avoid certain areas of beach in order to allow these tiny birds to breed and thrive. Although I love animals, I am also willing to support predator control if it is needed. If plovers go extinct because we humans are not willing to leash our dogs, stop driving on the beach, or avoid flying kites where plovers nest, we will have lost something irreplaceable. It takes thousands of years for a species to evolve, but only decades (or less) to lose it.

If I were writing the plan myself, it would have even stronger protections. I understand that FWS is probably trying to find a compromise that won't provoke more of the ignorant fear-mongering such as the comments of the Coos Co. Commissioner John Griffith (which I read on the Internet) stating that "Our state government is embarking on a path to eliminate our beach access". Please do pass the plover protection plan, but also make great effort to educate the public so that they understand the need and the rationale for the protection. Education trumps ignorance. We humans are big enough, and potentially intelligent and big-hearted enough, that we can share a few acres of sand with another species which depends upon our magnanimity for survival.

Thank you,
Denise Cedar



--

Eat well, laugh often!

Comment Letter GP-45

GP-45



Bob Clark

12/02/2007 02:22 PM

To: fw1ordhcp@fws.gov
cc:
Subject: OPRD HCP EIS

Re: Comment regarding, Snowy Plover protection, OPRD HCP EIS.

Comment: All Oregon public beaches should remain accessible to human beings. Oregon's public beach access law (circa 1913) should be valued more than the Federal Endangered Species Act. If public beach access is denied human beings, then public beaches should be sold to private property owners who could work to protect endangered species. Why have public beaches if the people owning the lands, namely all Oregonians, can not access the beaches?

GP-45-1

Limiting dogs to leashes, limiting kite flying and motorized vehicles seems like the most restriction Oregon government should place on public access to beaches and public lands inhabited by the snowy plover. If this doesn't help snowy plover recovery, Oregon should not implement any further restrictions and should disobey consequent Federal actions that would stiffen restrictions on public access.

GP-45-2

Get easy, one-click access to your favorites.
Make Yahoo! your homepage.
<http://www.yahoo.com/r/hs>

Response to Comment GP-45-1

Please refer to MR-6 for a discussion of OPRD's obligations under the Public Trust Doctrine and Beach Bill. Except where lands are federally owned, OPRD has the authority under these laws to manage the Ocean Shore for public use and recreation. Therefore, even if the entire coast were privately owned, OPRD would be responsible for ensuring that the management actions and the public's use of the Ocean Shore met the requirements of the ESA. .

The HCP is not proposing to ban recreational activities from the beach entirely, but rather to restrict certain uses within key areas where recreational use is relatively low compared with the beneficial effects that would occur for snowy plovers. The intent is to provide assurances to the public that recreational use would not be limited in areas outside of those proposed for protection by the HCP. Of the 362 miles of coast, the HCP is proposing potential restrictions along approximately 48 miles (recreational use restrictions currently affect about 19.8 miles of the Ocean Shore annually), unless otherwise modified through the implementation of adaptive management measures in the future.

As noted in Section 3.3, "Recreation" of Volume I of the FEIS, at each SPMA and RMA, there are alternate beach locations open to unrestricted recreational activities. These areas are most often located immediately adjacent to the SPMAs and RMAs and are reached via the same access points. Tables 3.3-6 and 3.3-7 list the alternate locations for each proposed SPMA and RMA under Alternatives 2 and 3, respectively.

In addition, the HCP and EIS have been updated to clarify that although the extent of the recreational use restrictions could occur anywhere within an SPMA or RMA, they may not be applied to the full extent of the management boundary. The specific locations for recreational use restrictions would be determined during the development of the site management plans for SPMAs and through consultation with USFWS for RMAs..

Response to Comment GP-45-2

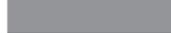
The proposed HCP and the measures specific to recreational use restrictions have been prepared to avoid, minimize, and mitigate the potential effects of OPRD's management activities and the public's recreational use of the Ocean Shore on snowy plovers. Contributions toward recovery of the species realized as a result of the HCP are a benefit of the plan, and not a mandatory requirement. For more information about the relationship of the HCP to the Recovery Plan, see MR-7.

Comment Letter GP-46

GP-46



"Ethel Dibaba"



To: <fw1ordhcp@fws.gov>
cc:
Subject: Snowy Plover

12/07/2007 03:35 PM

To Whom It May Concern,

We NEED to keep the sand dunes and beaches open. If we don't our area will be more depressed than it is already. The real estate market is down so far we have lost two companies all ready. There are homes and condo's for sale in Winchester Bay. They depend on ATV'er's to buy these homes. If they, the ATV'er's are not allowed to use the dunes they won't buy home and builders will go broke. I don't believe that the snowy plover will have any trouble moving to any area in the dunes. The snowy plover doesn't just live in the dunes area. We have seen them up at Scottsburg and in the Willamette Valley. PLEASE DON'T CLOSE THE DUNES.

Thank You For Your Consideration,

Ethel F. Dibaba

Comment Letter GP-47

GP-47



11/08/2007 12:20 AM

To: fw1ordhcp@fws.gov
cc:
Subject: OPRAD HCP EIS

The Snowy Plover should be saved and protected to allow it to regenerate.

All dogs should be disallowed from Snowy Plover sites. (And, yes, I have 2 dogs.)

GP-47-1

All vehicles should be banned from the nesting areas.

GP-47-2

All protection necessary for the life of these birds should be put in place.

Thank you,

Roxy Hills

Response to Comment GP-47-1

Under the HCP, dogs would be prohibited from occupied SPMAs and RMAs, and required to be on leash at actively managed, unoccupied SPMAs. These restrictions were proposed to minimize the potential effects of the covered activities on snowy plovers. USFWS must decide if these measures are adequate to meet the issuance criteria prescribed in 50 CFR 17.22(b)(2), 50 CFR 17.32(b)(2), and Section 10(a)(2)(B) of the ESA before issuing an ITP.

Response to Comment GP-47-2

Please refer to the Response to Comment NGO-5-26 for a discussion of prohibitions on driving under the HCP and why additional restrictions are not proposed.

Comment Letter GP-48

GP-48

GP-48



Betty Jean Keele
11/30/2007 12:23 PM

To: <fw.fordhcp@fws.gov>
cc:
Subject: Comments on Snowy Plover restrictions

Laura Todd
U.S. Fish and Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport Oregon, 97365-5258

I have been following the ongoing saga of Plover protection at Baker Beach and the Oregon coast for about 8 or 9 years. It has been of great interest to me to see several changes that seem to be helping the Snowy Plover recover. Several changes have provided positive changes. In fact, I believe the increase in the Plover population in these last years has been remarkable, going from about 50 birds from 1993 to over 120 birds in 2007 according to the USFM web site. With this success its hard for me to see the justifications in the new restrictive regulations.

I believe the actions that have been shown to be the most beneficial for recovery are:

- Removing the fore-dunes and European Beach Grass to improve and increase proper habitat. Baker Beach has back drop dunes that leave the nest vulnerable to the summer storms. The newly flattened areas allow much improved habitat. This is demonstrated by the new nests found at Dunes Overlook.
- Predator control. Crows, foxes and sea gulls have either been relocated or disposed of if they got too familiar with the nesting sites.
- Roping off the nesting areas to alert people where not to travel. People do try to comply.
- Better public education and by working with the public to foster better public cooperation with protecting the nesting areas. For example opening the beaches early if no fledglings are around before Labor Day.

These actions along with others have shown increased numbers of birds. The goal if I understand is approximately 3000 breeding birds on the West coast, including all of Wash, Ore, and Calif. Wash and Oregon need to achieve about 250 breeding pairs. Currently Oregon has about 160 adult residents and Washington has about 70 adult residents according to Lauten et al. 2006b and Pearson et al. 2007. This means we have now reached 230 approximately. To me this means we are moving forward with current activities to increase the size of the population. I realize we may need to almost double the population to reach breeding pairs but we have come a remarkable way in less than 10 years.

So given this, why close the beach to Dogs and Rites? We are having success without more restrictions. The public is ok with the current Regulations. Why make a segment of the public angry with more restrictions when what is being done is working?

GP-48-1

I looked and could not find any dates for public input or discussion. It seems if you want the public to buy into more regulations for Plover recovery you should listen to the public as you did before. Getting Public support for your Plover recovery should be a major priority for your recovery plan.

GP-48-2

Please don't add un-needed restrictions. Your own numbers show success. Why change what is succeeding??

Betty Jean Keele.
[Redacted]

Response to Comment GP-48-1

Please refer to MR-7 for a discussion of why OPRD is proposing conservation measures to protect snowy plovers, and how those relate to the larger recovery plan for the species.

The HCP is not proposing to close beaches entirely to dogs or kite flying. The restrictions that would be implemented depend on the occupancy status of each site and may not be implemented in the full extent of the SPMA or RMA. For more information about the extent of the recreational use restrictions, please see MR-2.

For information about the necessity of restrictions on dogs, please see MR-3. For information on the necessity of kite restrictions, please see the Response to Comment GP-5-4.

Response to Comment GP-48-2

Please refer to the Response to Comment LA-6-3 for a discussion of public comment opportunities provided as part of the HCP or EIS processes.

Comment Letter GP-49

GP-49



"John Meyers"

To: <fw1ordhcp@fws.gov>

cc:

Subject: snowy plover plan

11/07/2007 09:55 AM

To whom it may concern.

Historically the snowy plover was rare in Oregon. Massive amounts of money have been spent to restore populations that have NEVER been present. I have watched with much interest the efforts south of Bandon near Floras lake and Bradley lake. Fences have been erected with leaking transmission oil 4 wheelers, cigarette smoking and littering work crews from county corrections. Biologists used a raft to cross Floras Creek that was made of disintegrating Styrofoam when the creek was only 2 feet deep at the most. A "guard" drove from Coos Bay to Floras lake daily and did not even get out of the truck. All this effort, time, resources-natural and economic to establish a plover population that has never been anything but rare. The plan is not going to let me kitesurf along miles of beach yet the biologists drive big 4 wheelers and even trucks down the closed beach to "monitor/patrol" the closed areas. Government trappers shoot sniper type rifles to reduce the predators. Yet my kite 1/2 mile out on the ocean is seen as a predator. The plan will only work if you have the support of the public and most of the public does not support the plan. After all I have seen it is almost impossible to support the plan and I am an environmentalist who looks at the big picture, not just one bird who's population was rare to begin with in this state. My suggestion is develop areas for the plover that are not heavily used by the public, develop support by practicing what you preach, don't drive club cab trucks down the beach to determine the density of the eggs to see if the embryos are developing, Walk!!!!!! Don't use D4 bulldozers to eradicate beach grass have work crews do it by hand. Don't leave fencing rolled up in the surf zone to entangle other animals, Yes this happened at Floras lake with the fencing there. Hire biologists who can see the big picture and not just one species.

GP-49-1

GP-49-2

Thanks
John Meyers

Response to Comment GP-49-1

As noted in Section 3.3, “Recreation” of Volume I of the FEIS, the SPMA and RMA were chosen specifically to balance recreational use with snowy plover protections. OPRD consulted land use planning documents and recreational use survey data to select locations where the impacts on recreational use and natural resources would be minimized.

Response to Comment GP-49-2

The methods used to restore, maintain, and manage snowy plover habitat include a variety of mechanical and manual equipment and techniques. The methods used are dependent on the extent, location, and degree of management required. In general, the use of mechanized equipment (e.g., trucks, bulldozers) on the beach has the potential to affect snowy plover populations by disturbing nesting, roosting or foraging individuals, or by crushing birds or chicks in the path of the vehicle. These effects would need to be considered by SPMA and RMA managers when determining the necessity, frequency, and timing of the use of these vehicles. Land manager considerations should include the locations of nesting areas, speed at which those vehicles are operated (driving slowly in wet sand while traversing stretches of beach), and the time of day vehicles are used (driving motor vehicles at night seems to be particularly hazardous to snowy plovers). Specific to habitat restoration activities, it is not economically or technically feasible to restore and maintain snowy plover habitat using only manual equipment. Bulldozers and other mechanized equipment expedite restoration and the ability of the area to provide suitable habitat for snowy plovers. All habitat restoration activities would occur outside the nesting season to minimize potential effects on nesting populations of snowy plovers.

Comment Letter GP-50

GP-50



Bob Peschka

11/08/2007 08:03 AM

To: FW1ORDHCP@fws.gov
cc:
Subject: OPRD HCP DEIS

I have just finished reading in the Statesman Journal (Salem, OR) an extensive article about plans to expand current beach restrictions because of nesting habitat of the Western Snowy Plover.

Recovery of the nesting population does seem to be underway, albeit not at the pace that you desire, which apparently is going to lead to more restrictions on our beaches.

I found your plan to further restrict our beaches to be a good example of "the right hand doesn't know what the left hand is doing". Let me explain, and I'll try to be brief.

I am a member of an appointed state advisory committee that meets once a year to review grant requests from Oregon counties that wish to develop or improve campgrounds, with an emphasis on RV campgrounds. We met yesterday in Salem and heard requests from several counties, including one from Coos county Oregon.

GP-50-1

The Coos county request was for funds to continue the development of the Riley Campground located about 7 miles North of North Bend, and positioned between Highway 101 and the dunes - with easy access to the dunes by ATVs. In fact, the entire focus of this campground will be access to the dunes by ATV riders. About 50 campsites will open in early 2008, and another 50 or so will open in a future Phase.

During the presentation by the Coos County representative, I asked if consideration had been given to the Western Snowy Plover nesting habitat before expending such a huge sum of money in an RV campground designed to attract ATV riders. He said he did not feel there would be any problem.

So, we have your agency asking for further restrictions on dune/beach useage, and Coos County encouraging more ATV use of those same areas.

Clearly, the right hand does not know what the left hand is doing.

Just for the record, I oppose further restrictions for one simple reason: The present set of restrictions are allowing some recovery, although a bit slow. So, patience is the watch word here. Recovery won't occur overnight, no matter how many restrictions you impose.

GP-50-2

Robert Peschka

Bob & Shirley Peschka
Polk About Sams
Dallas, Oregon Polk County
Assistant Director, TriCounty Chapters

Response to Comment GP-50-1

The areas planned for snowy plover protections nearest to the planned campground expansion are Tenmile Creek RMA and the Coos Bay North Spit RMA (Figure 2-3 of Volume I of the FEIS). Both RMAs are in areas where driving, including ATV/OHV use, is already prohibited year round. There would be no direct conflicts with the HCP and the proposed campground facilities at Camp Riley, although increased recreational use in the vicinity of Tenmile Creek and Coos Bay North Spit RMAs could result in an increase in the potential for recreational use violations. The HCP addresses the need for increased enforcement as part of implementing the HCP.

Response to Comment GP-50-2

Please refer to MR-7 for a discussion of why OPRD is proposing conservation measures to protect snowy plovers, and how those relate to the larger recovery plan for the species.

Comment Letter GP-51

GP-51



"Jon Pope"

[Redacted]

To: fw1ordhcp@fws.gov
cc:
Subject: Snowy Plover comment

12/14/2007 04:45 AM

Dear Fish and Wildlife Service

I support your plan for Oregon beaches because it includes good protection for the birds while retaining some access to the affected beaches. I think this plan is especially good because the proximity of birds and people will cause people to learn more about the birds' survival needs. Nothing protects better than informed people, because most will do the right thing when they know what to do and what's at stake. Education of people about how "to act" around nesting plovers, where not to go, etc., will have a long term impact better than total exclusion would.

The snowy plover is but one bird species among many whose habitat is threatened by human activities. For this reason I think the debate about whether the snowy plover is a distinct species is a pointless diversion. We don't need yet another population of wildlife driven off the map of Oregon.

Jonathan Pope
Brooks

[Redacted]

Comment Letter GP-52

GP-52



Richard Powers

To: <fw1ordhcp@fws.gov>
cc:
Subject: OPRD HCP EIS.

11/28/2007 06:13 PM

Hi,

Just finished a quick review of the '07 plan for the Snowy Plover.

Some suggestions for the final document;

1. In the early part of the document [executive summary, I think], it mentions non-lethal predator management only. Much later, [section 5-16 and 5-20] there are lethal management techniques listed. I suggest you mention both types of predator management and gave an example of each type, e.g, "fencing" for non-lethal and "shooting" for lethal from the outset. The meaning of "euthanasia" wasn't clear. Do you mean that you capture an animal and then kill it at a shelter or? Also didn't understand "denning".

GP-52-1

GP-52-2

The use of pesticides or other toxic chemicals to kill predators is troublesome. Perhaps you described how you intend to use the chemicals elsewhere and I missed it. But if not, you should include a section showing how they will be used. Adding toxic chemicals to the natural environment raises the issue of exposure to unintended targets such as dogs or even children. Perhaps, you might use such chemicals only as a last resort.

GP-52-3

2. I attended the public meeting on the Snowy Plover in Tillamook and there were strong feelings expressed by most of the public speakers that night. In addition, I recall that while many people aired their complaints, there were only a few themes. A good number of complaints had to do with dogs and not allowing them to run free on the beach. I don't remember the specifics of the other complaints but your staff recorded them. So I looked in Appendix C to see what was included by way of feedback from the public. But Appendix C simply listed people on the steering committee and the places and times of the public meetings. I wanted to know how what you are now proposing differs from what was previously proposed so that I could see that the public's comments and concerns were heard. I suggest you include a section in this Appendix that lists the main concerns [5 or 6 anyway] voiced at the various meetings and how this current plan deals with them. The public needs to know that they are listened to!

GP-52-4

I hope my comments have been helpful.

Sincerely,

Richard B. Powers

Response to Comment GP-52-1

Please see the Response to Comment NGO-6-4 for a discussion of how predator management would be implemented at SPMA's under the HCP. The HCP has been updated to clarify that both nonlethal and lethal predator management could be used,

although only nonlethal management methods would be used at actively managed, unoccupied sites.

Response to Comment GP-52-2

As used in this context, euthanasia involves trapping a problem individual and quickly and humanely killing it. These methods can include lethal injection (e.g., sodium pentobarbital) or exposure to lethal levels of gas (e.g., carbon dioxide). Denning is a form of lethal predator control that involves placing a gas cartridge in the den of a targeted fox or coyote.

Response to Comment GP-52-3

The use of pesticides is not a covered activity of the HCP. As summarized in Section 5 of the HCP, an interagency Predator Damage Management Plan was prepared for snowy plovers in Oregon in 2002. The use of avicides and rodenticides are included as options for predator management under that plan, along with a host of other lethal and nonlethal predator management practices. The effects of chemicals employed for predator management were considered in an Environmental Assessment and a biological opinion published in 2001 (U.S. Fish and Wildlife Service 2001). Such management practices were considered to have a negligible effect on predator populations and a low impact on non-target species. Regardless, lethal predator control, including the use of avicides and rodenticides, would only be used to target individual problem animals, and only to the extent necessary to remove a site-specific threat to snowy plovers.

Response to Comment GP-52-4

For information regarding the changes between the 2004 draft HCP and the current HCP, please see the Response to Comment LA-2-8. A summary of the key changes between the 2007 public draft and the proposed HCP is also provided in Section 1.8 of the HCP. From a NEPA perspective, Section 1.3, “Environmental Review Process” in Volume I of the FEIS, describes the public outreach process completed to date. A summary of comments received from the public during the NEPA public scoping period is available in the 2005 report *Scoping Report for the Oregon Parks and Recreation Department Habitat Conservation Plan for the Western Snowy Plover* (U.S. Fish and Wildlife Service 2005). Volume II of this FEIS also provides a response to all substantive comments received during the public comment period for the DEIS.

Comment Letter GP-53

GP-53



"L Read"

To: <FW1ORDHCP@fws.gov>
cc:
Subject: OPRD HCP EIS

11/16/2007 12:16 AM

Laura Todd
U.S. Fish and Wildlife Service
Newport Field Office
2127 SE OSU Drive
Newport, Oregon 97365

RE: Snowy Plover Habitat Conservation Plan

To Laura Todd,

We have read and agree with the habitat conservation plan and proposed management action for the Western Snowy Plover. We have some additional concerns expressed toward the later part of this comment.

As recreational users of the Oregon coast and beach areas several times a year, the proposed plan will not affect our recreation in any significant way. We are please to see the Snowy Plover will have the opportunity for survival and further expansion of habitat. The restrictive measures of no vehicle use and dog-leashing are minimal for the majority of users who use the beach within unoccupied areas in SPMA's and RMA's.

We would hope the Pistol River SPMA could be implemented sooner, rather than as a final condition so the southern most area of the Oregon coast could establish habitat.

Once any of the RMA's are occupied, we would hope that in addition to management of erecting rope/fence and enforcement, that habitat restoration and predator control be implemented as fully as in SPMA's if needed.

Sincerely,
Larry and Lois Read

GP-53-1

GP-53-2

GP-53-3

Response to Comment GP-53-1

Thank you for your comment.

Response to Comment GP-53-2

As discussed in the responses MR-4 and MR-5, OPRD has removed the option for management of an SPMA at Pistol River from the HCP due to public comment and biological constraints. In its place, OPRD would expand the boundary of the Bandon SPMA to the southern edge of the China Creek parking lot to include nesting locations at China Creek, as illustrated in Figure 1-9 of Volume I of the FEIS.

Response to Comment GP-53-3

RMAs represent areas that currently are or could be managed by other landowners for snowy plovers within the covered lands. OPRD does not have control over the specific habitat restoration and predator management commitments made on those lands because they do not directly manage them. Instead, the landowners would consult directly and independently with USFWS to determine what management actions, such as predator control or habitat restoration, should be implemented at their sites.

Comment Letter GP-54

GP-54



Greg Ringer

12/04/2007 11:35 AM

To: FW1ORDHCP@fws.gov
cc:
Subject: OPRD HCP DEIS

Dear Sir/Ms:

I strongly support increased conservation of habitat for the Western snowy plover in Oregon, including further restrictions on access and recreational use in coastal areas where the birds might nest.

GP-54-1

While some private landowners and outdoor enthusiasts may be displeased, I believe the proposed ban on dogs, kites and ATV's on 32 miles of Oregon beaches is a critical step in maintaining the ecological viability of our wildlife habitat, and the long-term sustainability of our communities - both human and biotic - in the Pacific Northwest.

It is critical that we find ways to support local residents who enjoy Oregon's natural environment, and the multiple opportunities it provides for leisure. Yet, we must also ensure that our natural heritage remains fully protected for benefits that are both tangible and economically quantifiable (flood protection, cleaner air and drinking water), and less appreciated or defined, though equally relevant (aesthetic beauty, "sense of place," and yes - nesting sites for the plovers).

GP-54-2

For this reason, it is imperative that we strengthen preservation of our remaining intact habitats, rather than sacrifice them for short-term economic benefits. I encourage FWS and the State to fully implement the preferred choice and ban further activities in both existing and potential plover habitat in Oregon.

Respectfully submitted,

Greg Ringer, Ph.D.
DrGreg & Friends

Response to Comment GP-54-1

Thank you for your comment. Please refer to MR-6, which describes the public's general right to use the Ocean Shore for recreational purposes in accordance with guidelines and limitations outlined in the Public Trust Doctrine and Oregon's Beach Bill. As authorized by the Beach Bill, OPRD is required to provide recreational use opportunities for the public. Therefore, the provisions of the HCP are intended to balance the need to protect snowy plovers with providing recreational use opportunities.

Please note that of the 362 miles of coast, the HCP is proposing potential restrictions along approximately 48 miles (versus the 32 miles noted in the comment) along the Ocean Shore. Currently, recreational use restrictions are implemented on about 19.8 miles of the Ocean Shore annually.

Response to Comment GP-54-2

As stated in MR-6, part of OPRD's management responsibilities include providing and maintaining public access to recreational opportunities on the Ocean Shore. The proposed HCP has been prepared to avoid, minimize, and mitigate the potential effects of OPRD's management activities and the public's recreational use of the Ocean Shore on snowy plovers. To balance snowy plover protections with recreational use opportunities, specific locations (SPMAs and RMAs) were selected where recreational use restrictions would be put in place as described in the HCP, or at RMAs, as described in USFWS-approved site management plans. These areas were selected based on their potential to provide the greatest benefit to snowy plovers while minimizing effects on recreational use opportunities. USFWS must decide if these measures are adequate to meet the issuance criteria prescribed in 50 CFR 17.22(b)(2), 50 CFR 17.32(b)(2), and Section 10(a)(2)(B) of the ESA before issuing an ITP.

Comment Letter GP-55

GP-55

CP-55



"Linda Sanchez"
 To: <FW1ORDHCP@fws.gov>
 CC: [Redacted]
 Subject: Fw: Dune and beach closure in Oregon
 11/06/2007 09:14 PM

Dear Sirs,

I agree with Tim and what he says in this letter. Please put my letter with his.

Linda D. Sanchez
 John G. Sanchez
 Julie A. Collis
 Jennifer M. Sanchez

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

From: [H. LeVoy Wilson](#)

To: [barbara butterfield](#) ; [Bev Whitcomb](#) ; [Bill Julian](#) ; [David Clark](#) ; [Dianne L. Faber](#) ; [Dorothy Newby](#) ; [Jacquie Cooper](#) ; [Linda Sanchez](#) ; [Mike & Jessie Noorlander](#) ; [Raina Wilson](#) ; [Todd Evans](#) ; [Vivinia Hert](#)

Sent: Tuesday, November 06, 2007 8:19 PM

Subject: Fw: Dune and beach closure in Oregon

Tim is my son-in-law and he speaks for me in this issue and I am going to send my input in on this issue.

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

From: [Timothy Henke](#)

To: [Redacted] ; [Ross Baseler](#) ; [Tammy J. Rodgers](#) ; [Redacted] ; [Sandy and Chuck Huckleberry](#) ; [Breeze and Ty](#) ; [Melissa Butcher](#) ; [Ginger Boucher](#) ; [Redacted] ; [Tim Fitzgerald](#) ; [H. LeVoy Wilson](#) ; [Juli Wheelchel](#) ; [Redacted]

Sent: Tuesday, November 06, 2007 1:14 PM

Subject: Dune and beach closure in Oregon

Hi,

I heard today that the Fish and Wildlife wants to close all the beaches to all ATV use to protect snowy plover habitat. You can read more about it here: <http://www.fws.gov/oregonfwo/>. Bottom right by the little plover picture. They even want to close the beaches to kite flying and dog walking as well as general public access in many places. The beach won't be public any more. Please send an email with your opinion on this matter to FW1ORDHCP@fws.gov with OPRD HCP DEIS in the subject line if you want to keep our beaches open. Also please forward this email to anyone you know that may also be concerned. The Register Guard had an article in today's paper concerning the matter if you want that kind of information.

Here is what I wrote. Feel free to change as you like or just say I agree with Tim and send it again.

I'm writing concerning the proposed plan for snowy plover habitat protection. As a voting coastal resident of Coos County I am opposed to closing any more public access to the beach or putting more limits on beach and dune use. I was born in Eugene and have lived on the coast for many years. I have seen this community suffer through many self imposed economic downturns. Further limiting ORV areas and recreational use will severely effect the local and state economy. I personally am not an ATV rider but I do watch as motor home after motor home drive through town pulling ATV after ATV. People drive from all over the northwest and beyond just to ride the Oregon dunes. People buy real estate here just to be close to the dunes and beach. People spend millions of dollars locally just because of the dunes and beach. Tourism is one of the last big revenue streams for the entire Oregon coast and what happens to already stressed local economies when this cash flow dries up. We have the worst schools in the state, the worst drug problems in the state, underfunded law enforcement and fire departments and further limiting our resources to deal with these problems will severely effect all aspects of our community. How many tourist dollars will be lost when beach access is limited? This is on a scale with the spotted owl debacle except instead of affective big business and then trickling down it will hit local business directly. Thousands of jobs will be lost and our struggling coastal towns will shrivel and die. We are headed for tough times with the housing crunch and the national economy but there is a chance our town may survive and continue to grow. I think it possible not to go back into the local recession of the past 15 years caused by changes in logging and fishing industries. But I don't think it's possible if the tourist dollars are cut by over half. Economically Coos Bay is a difficult place to live for many folks. There are few family wage jobs. We live in isolation and struggle for every bit of growth we can achieve. Positive change does not come easily for the area. Please do not put another nail in the coffin. Don't set us back another 15 years. God gave the beach to all of us. I realize that dogs and kites and ATVs may possibly disturb the snowy plover. In most cases I would lean toward protection but in this case I believe the cost is too great and the facts are not confirmed. Keep our beaches and dunes open. It's not just for the locals. It's for the state and the people who come here to enjoy it.

Tim Henke



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GP-55-1

Response to Comment GP-55-1

Please see the Response to Comment GP-24-1 for information about the potential recreational and socioeconomic effects of implementing the HCP.

Comment Letter GP-56

GP-56



"WAYNE SCHMIDT"
[Redacted]

To: <FW1ORDHCP@fws.gov>
cc:
Subject: OPRD HCP DEIS

11/17/2007 12:05 PM

ATTN: Laura Todd

Please count my vote for the plovers. The HCP is a good plan, and I wish you the best success in implementing it.

Thank you for your good work.

Wayne Schmidt
[Redacted]

GP-56-1

Response to Comment GP-56-1

Thank you for your comment.

Comment Letter GP-57

GP-57

 **"Jim Strawn"**
[Redacted]
11/06/2007 12:53 PM

To: <FW1ORDHCP@tws.gov>
cc:
Subject: OPRD HCP DEIS

A friend of mine let me know of an issue currently under debate concerning the proposed restrictions and closures of Oregon beaches. I have been a resident of Douglas and Coos counties for seven of the last eight years and completely concur with Tim's assessment. In case it was missed, here is his letter. Please consider it as my opinion as well.

Thank you,
Jim Strawn
[Redacted]

Im writing concerning the proposed plan for snowy plover habitat protection. As a voting coastal resident of Coos County I am opposed to closing any more public access to the beach or putting more limits on beach and dune use. I was born in Eugene and have lived on the coast for many years. I have seen this community suffer through many self imposed economic downturns. Further limiting ORV areas and recreational use will severely effect the local and state economy. I personally am not an ATV rider but I do watch as motor home after motor home drive through town pulling ATV after ATV. People drive from all over the northwest and beyond just to ride the Oregon dunes. People buy real estate here just to be close to the dunes and beach. People spend millions of dollars locally just because of the dunes and beach. Tourism is one of the last big revenue streams for the entire Oregon coast and what happens to already stressed local economies when this cash flow dries up. We have the worst schools in the state, the worst drug problems in the state, underfunded law enforcement and fire departments and further limiting our resources to deal with these problems will severely effect all aspects of our community. How many tourist dollars will be lost when beach access is limited? This is on a scale with the spotted owl debacle except instead of effective big business and then trickling down it will hit local business directly. Thousands of jobs will be lost and our struggling coastal towns will shrivel and die. We are headed for tough times with the housing crunch and the national economy but there is a chance our town may survive and continue to grow. I think it's possible not to go back into the local recession of the past 15 years caused by changes in logging and fishing industries. But I don't think it's possible if the tourist dollars are out by over half. Economically Coos Bay is a difficult place to live for many folks. There are few family wage jobs. We live in isolation and struggle for every bit of growth we can achieve. Positive change does not come easily for the area. Please do not put another nail in the coffin. Don't set us back another 15 years. God gave the beach to all of us. I realize that dogs and kites and ATVs may possibly disturb the snowy plover. In most cases I would lean toward protection but in this case I believe the cost is too great and the facts are not confirmed. Keep our beaches and dunes open. It's not just for the locals. It's for the state and the people who come here to enjoy it.

Tim Henke
[Redacted]

GP-57-1

Response to Comment GP-57-1

Please see the Response to Comment GP-24-1 for information about the potential recreational and socioeconomic effects of implementing the HCP.

Comment Letter GP-58

GP-58

From "Johnson, Tracey [REDACTED]"
To <FWIORDHCP@fws.gov>
03/03/2008 01:24
Cc PM
Subject OPRD HCP EIS

Section 5-9 of the Snowy Plover HCP discusses the distinction between occupied and unoccupied sites. The last paragraph states, "A previously identified unoccupied SPMA/RMA will be considered occupied if at least two snowy plovers are present and/or nest scrapes are discovered". The term and/or leaves a gray area in deciding whether a site is occupied or not. For instance, if two plovers are present AND nest scrapes are discovered, it seems obvious that the site is occupied. However, when read as "two plovers are present OR nest scrapes are discovered", the guideline is open to interpretation. If two plovers are present but nest scrapes are not discovered, how will the site be managed? These two plovers could be breeding, even if nest scrapes are not found. In other words, are there any estimates available on the probability of detecting a plover nest when it is present? How many times will the site be searched?

It seems this distinction has important implications for management for the remainder of the season (e.g., dogs will still be allowed on the beach on-leash - Section 5-11, and unrestricted horseback riding will be allowed - Section 5-13). If the site is deemed unoccupied, but in reality is occupied, the breeding birds go unprotected.

GP-58-1

Tracey N. Johnson
PhD Candidate
Department of Fisheries and Wildlife
[REDACTED]

Response to Comment GP-58-1

The use of “and/or” means that either condition or both conditions could be present, but both conditions are not necessarily required. If two snowy plovers are present, the site would be considered occupied. If nest scrapes are observed, the site would be considered occupied. If both nesting snowy plovers and nest scrapes are present, the site would also be considered occupied.

Comment Letter GP-59

GP-59

From: Jones, Steve [REDACTED]
To: FWIORDHCP@ws.gov
Subject: OPRD HCP EIS
Date: 03/12/2008 12:19 PM

As a native Oregonian, I urge you to extend protection for the Snowy Plover to the maximum extent permitted under the most protective plan proposal. The habitat degradation and threat to the bird's survival is scientifically documented. Protection of such threatened species is your agency's legal obligation irrespective of special interest input.

Further, it is in the economic interest of taxpaying Oregonians to protect the natural beauty of Oregon as tourism grows in importance replacing traditional wood products-based job creation.

Thank you.

M. Stephen Jones
[REDACTED]

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Comment Letter GP-60

GP-60

GP-60

From: [Ernie Fegles](#)
To: fw1ordhcp@fws.gov
Subject: Snowy Plover
Date: 03/11/2008 03:58 PM
Attachments: [Beach_grass_3-5-08.doc](#)

Take this for what it is worth. I have lived in the Florence/Reedsport area all my life, 49.5 years. We are losing our dunes. Not to the off road people but to beach grass. In my 49.5 years I have watch a steady decline of the dunes. You can't blame the off road people. The beach grass is the root of all the problems related to the dunes. In another 50 years we will all look back and cry at the loss of this beautiful resource. I think the real problem is that we have no knowledge of how it used to be before we planted this stabilizing grass. Now that we have planted it we seem to be just letting it take over. We all need to wake up and stop this encroachment process. I am not blaming anyone just trying to let you know what my experience has been. Just this weekend on a trip to Florence from Reedsport I stated to my wife just look at the changes. This used to be all dunes. We pulled over at the Dunes Overlook to see what the Army Corps is doing. I can't believe the amount of fore dune that has grown since the last time they removed it. Unbelievable! The people removing the fore dune should be able to realize what it would take to remove all the beach grass and restore the habitat as it was before beach grass. Can any of you all imagine what our coast would look like with out beach grass? As a youngster my father would take us from the South jetty road in Florence and we would travel to Sparrow park road to visit my grandparents in Reedsport. I know this is a snowy plover forum but can you really tell me this is all not related. I don't think anyone can. I guess I just what people to know what I see. Maybe I am the only one. I'll ad one more thought, the only thing I now that kills beach grass is the ATV people. When allowed to ride on the stuff it seems that the constant travel kills it. I am not saying they should drive everywhere as we are all aware of the mess a few leave for the majority when they visit.

Ernie Fegles

GP-60-1

Response to Comment GP-60-1

As described in Section 4 of the HCP, one of the most significant causes of habitat degradation for coastal breeding snowy plovers in Oregon has been the encroachment of introduced European beachgrass. As part of the HCP, OPRD could restore snowy plover nesting habitat in several of the SPMAAs, as necessary, which would likely include removal of European beachgrass within specific portions of those areas. The extent of habitat restoration would be contingent on the site and determined during preparation of the USFWS-approved site management plans for each SPMA.

While ATV use may temporarily dislodge patches of European beachgrass, it is not considered a long-term management tool.

Comment Letter GP-61

GP-61

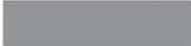
From: [mark bickett](mailto:mark.bickett@fws.gov)
To: FW1ORDHCP@fws.gov
Subject: OPRD HCP EIS
Date: 03/12/2008 11:21 AM

To: Laura Todd
U.S. Fish and Wildlife Service

Re: Habitat Conservation Plan for Western Snowy Plover etc.

I heartily endorse any conservation plans for this bird's healthy recovery. Future generations will be very grateful for our efforts now, and the minor inconvenience of closed beach areas at certain times of the year should be acceptable to all but the most self-centered and inconsiderate of beach users.

In fact, considering the noise, behavior and destruction caused by vehicles and ATV's we experience (even where they are prohibited), while trying to enjoy the beach, it will be a welcome relief. Please go forward with your plans.

Mark Bickett & Jeanette Entwisle


Comment Letter GP-62

GP-62

From: [Huckeba, Ken B](#)
To: FW1ORDHCP@fws.gov
Subject: Snowy Plover
Date: 03/06/2008 12:25 PM

Hi, I frequent the beaches of Oregon and California. I've noticed a disturbing fact. Snowy plovers don't particularly care where they live. I can send pictures of them in virtually any part of these two states. We have a healthy amount of them in the middle of an oil field here in the middle of the San Joaquin Valley. Any place there's regular watering of a lawn and there are sandy areas nearby, those little guys thrive. No, it's not the beach, and it's not natural, but the birds certainly don't seem to care one bit.

GP-62-1

Ken Huckeba
[REDACTED]

Response to Comment GP-62-1

This HCP and the EIS focus on the Pacific coast population of western snowy plovers, which is federally listed as threatened under the ESA. Individuals from the Pacific coast population have been documented in some inland areas, such as the San Joaquin Valley, during the winter months, but this species is defined as coastal because it nests on the west coast. The interior population of this species nests on inland reservoirs and dry lake beds and overwinters in areas that coincide with coastal populations. For more information see the 12-month Finding on a Petition to Delist the Pacific Coast Population of the Western Snowy Plover (71 *Federal Register* 20607 20624).

Comment Letter GP-63

GP-63

From: pamela.johnston
To: FW1ORDHCP@FWS.GOV
Subject: OPRD HCP EIS
Date: 03/11/2008 09:09 PM

My opinion of Snowy Plover management is simple. The survival of th Plover is more important than human recreation. There are many ways for people to have fun, and only one way for Snowy Plovers to live on Oregon's beaches. Please extend the protection of this species.

Sincerely,

Pamela K Johnston



Comment Letter GP-64

GP-64

From: [Gen Windsor](#)
To: FW1QR2HCP@FWS.GOV
cc: [REDACTED]
Subject: OPRD HCP EIS
Date: 03/11/2008 02:51 PM

Dear Fish and Wildlife Decision-Makers:

Please be as generous as humanly possible to the Snowy Plovers.

We humans have taken and taken and taken until most creatures are hard pressed to live at all, much less in the ways they did only a few decades ago.

The walkers, dune buggy and other ATV riders, swimmers, surfers, and fishermen can ALL do their thing elsewhere while the Snowy Plovers are raising their young in the very few places left to them.

Please give them the space to live. My world and yours would be measurably diminished by the loss of Snowy Plovers.

Most sincerely,

Genevieve Windsor
[REDACTED]

Comment Letter GP-65

GP-65
GP-65

From: [John Abraham](#)
To: FW1.ORDHCP@fw.s.gov
Subject: OPRD HCP EIS
Date: 03/11/2008 09:03 AM

Hello:

My name is John Abraham. My wife Gemma and I bought a beautiful home on the Tillamook Bay in July of 2002. We now have the home as a vacation rental to help supplement the costs and mortgage payments and we are members of The Tillamook Chamber of Commerce.

I am contacting you in regards to a new "Habitat Conservation Plan" developed by the Oregon Parks Department that proposes to expand nesting habitat of the Snowy Plover and perhaps restrict access on 60 miles of beaches at 23 additional sites.

Survival could hinge on the public's acceptance of restrictions that would be imposed annually from March 15 – September 15, the very height of the tourist season and would include some very popular places in Tillamook County:

- Nehalem spit at Nehalem
- Bayocean spit at Tillamook Bay
- Netarts spit at Netarts Bay
- Nestucca spit near Pacific City

Snowy Plover habitat protection plan restrictions include:

- no driving
- no horseback riding
- no kite flying
- no driftwood collection
- no dogs
- no hiking above "wet sand line"

The proposal of restricting beach access for the preservation of the Snowy Plover comes at a great cost! Here are the responses by some local officials:

"Everybody I've talked to is either furious or bewildered by this," Coos County Commissioner John Griffith said. "They can't believe people running parks and recreation could have created it."

Tillamook County Commissioner Charles Hurliman said "the plover restrictions undermine the 1967 law that declared all beaches public as a check against development."

Sandy Hemenway of the Tillamook Chamber of Commerce says..."Tillamook Chamber along with the other chambers in Tillamook County are strongly opposing this issue. If this plan goes into affect it will be devastating to our area beaches and businesses within the county."

We need to think about the preservation of the families and businesses that rely on these beaches for their peaceful enjoyment and economic survival. It also defies an Oregon way of life. One of the

most common scenes on Oregon travel brochures and advertisements is the family on the beach. Flying kites, walking your dog, collecting driftwood, horseback riding. The very activities they propose to restrict. What will we tell our grandchildren? "Back in the 1900's we used to roam free on the beaches with our pets and kids!"

Please feel free to contact us if you have any questions.

Thank you for your time and consideration.

John & Gemma Abraham

GP-65-2

GP-65-1

GP-65-2

GP-65-3

Response to Comment GP-65-1

Please see the Response to Comment GP-24-1 for information about the recreational and socioeconomic effects of implementing the HCP.

Response to Comment GP-65-2

Please refer to MR-6 for a more detailed description of OPRD's management responsibilities under the Public Trust Doctrine and Beach Bill.

Response to Comment GP-65-3

Please see the Response to Comment GP-24-1 for information about the potential recreational and socioeconomic effects of implementing the HCP.

Comment Letter GP-66

GP-66

From: [Al and Lona Pierce](#)
To: FW1ORDHCP@fws.gov
Subject: OPRD HCP EIS
Date: 03/09/2008 12:19 PM

The postcard mailed from Oregon Parks and Rec. on this topic had the wrong email address to send comments to – not particularly helpful!

Comment for snowy plover coastal conservation plan:

I support efforts to establish and enhance snowy plover nesting habitat in the north Oregon coast region, where protected habitat seems to be most lacking. The proposed safeguards during the nesting season do not exclude people walking on the beach or playing close to the water, which is what the majority of tourists do. Successful nesting sites already present in Oregon should be protected to at least maintain present populations.

Local business interests do not seem to realize that birders are good customers. They will drive from inland cities to the coast to see these birds, and spend money while there. As long as there are areas near towns where people can fly kites, drive on the beach, or let their dogs romp in the surf, we ought to be able to restrict such activities in certain localities for the plovers. Many people will prefer areas where dogs aren't running around nor cars driving – it's more peaceful. Many families avoid beaches with cars and dogs on them. Kites are fun, but if there are beaches where kite flying is promoted, it would be even greater entertainment: can compare all the different types and enjoy the camaraderie.

A greater variety of permitted beach uses in different locales attracts a greater variety of beach users. I'd head for the quieter stretches where there is a possibility of seeing more birds. Towns that advertise rare birds nearby will discover this natural resource can be beneficial. Quiet beaches will attract more wildlife in general and safeguard native plants. Another lure for many Oregonians. We all aren't going to the coast to tear around on dune buggies.

Over the long term, research will show if plovers do better in totally isolated beaches with very little human activity, or if they do just as well with people nearby but not intruding on their upland beach habitat. If the birds must feed at the water's edge, habitat near the more popular tourist destinations might not do that well in spite of restrictions on boisterous activities.

Lona Pierce


Comment Letter GP-67

GP-67

GP-67

From: [REDACTED]
To: FWIORDHCP@FWS.GOV
cc: [REDACTED]
Subject: Comments on the plan for the Snowy Plover habitat plan
Date: 03/12/2008 11:13 AM

I have not completed my review of the plan, however the comment period is expiring, so excuse any comments that may already be addresses.

I am very much in favor of the plan, and I do not think the areas selected for protection should be reduced any significant amount.

The comment I will make is related to limitations on activities that are currently ongoing; specifically dog exercise. I feel the plan will be much more effective if it takes into account the fact that more and more households are enjoying dogs as pets, and that outdoor activity with that dog is a mainstay of the dog owners recreational activity. This will change, but will not change as much as needed with the implementation of signs or borders. Enforcement does not address the core issue; it simply adds pressure to the situation.

The better solution would be to identify candidate areas near the restriction areas that meet the needs of most of these citizens. I would propose that the area of beach required is not as large as currently used, it is simply the only open area to hike with dogs. If there were a larger off-leash area, with a possible narrower each access for these activities, I feel that the needs of almost all dog owner would be met, without causing friction with the neighborhood or the Plover recovery effort. For this to be successful, this area must be large enough to allow low-density activities; that is one of the core reasons that many visitors come to the area. Each area should probably be 20 acres at a minimum, with areas 4 to 5 times that available on a regional basis. One of the real frustrations I have when traveling with my animals is the lack of available area to get out and have a hike with them off-leash. My wife is disables, so assisting her appropriately is extremely difficult if I also have the dogs on leash; they are well trained and kept under voice control, so they are not running at large. Further, because of the mobility limiting issues, giving 150 lbs. of dogs adequate exercise for their physical health is not realistically possible on leash.

I realize my specific instance is a boundary case, however I also would like you to recognize that when dog owners are visiting the coast, spending their recreational money to maintain the communities along the coast, they will do one of two things. They will go where their dogs are welcome, or they will flaunt the regulations. If the coastal communities want the tourism benefit, I am hopeful they will recognize the need to provide adequate areas for those tourists

to recreate.

This could be a real boon to the coastal community. Data suggests that pet owners are increasing their spending on pets significantly (up from \$23 billion in 1998 to an estimated \$43.4 billion in 2008)*. Further, when people vacation, they take their pets, as they are considered part of the family **. Don't plan the dogs out of the process; they will find a way back in somehow, and making this an adversarial process will be a detriment to the Snowy Plover, the coastal communities, and to the pet-owning citizens.

* http://www.appma.org/press_industrytrends.asp

** http://www.appma.org/press_releasedetail.asp?id=84 (specific quote below)
Why do people pamper their pets to the tune of billions of dollars a year? Pet owners report in APPMA's National Pet Owners Survey it because they have a special bond with their pets and consider them a best friend, a companion or like a child or member of their family.

Roland Garrison
[REDACTED]

GP-67-1

GP-67-2

GP-67-3

Response to Comment GP-67-1

Please see MR-3 for a discussion of where dogs would be allowed to exercise under the HCP. As discussed in the response, dog exercising would be allowed to occur unrestricted on the majority of the Ocean Shore under the HCP. Therefore, the HCP does not propose to set aside special areas.

Response to Comment GP-67-2

Please see the response to GP-24-1 for a discussion of the potential socioeconomic effects of implementing of the HCP. MR-3 provides additional information on where dogs would be allowed to exercise.

Response to Comment GP-67-3

Please see the response to GP-24-1 for a discussion of the potential socioeconomic effects of implementing of the HCP. MR-3 provides additional information on where dogs would be allowed to exercise.

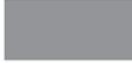
Comment Letter GP-68

GP-68

From: [Adele.com](#)
To: FW1ORDHCP@fws.gov
Subject: OPRD HCP EIS.
Date: 03/05/2008 07:35 PM

I support the draft plan and all closures regarding the snowy plover as well as all efforts to restore habitat for the species.

Adele Dawson



Comment Letter GP-69

GP-69

GP-69

From: [Lyn B.](#)
To: FW1ORDHCP@fws.gov
Subject: OPRD HCP EIS
Date: 03/12/2008 12:22 PM
Attachments: [WSP OPRD E MAILED.pdf](#)

Oregon Fish & Wildlife
 To Whom it may concern:

We wrote and sent to Mr. Michael Carrier an extensive letter back in March of 2004 the essence of which still applies and submitted it along with a petition signed by over 100 people in the Pistol River/Gold Beach area. We absolutely opposed any additional restrictions on the beach at Pistol River State Park then and still do. I have attached a copy of the letter to this email although there are a point or two that were made back then that no longer apply (i.e. Surf-Ocean Commission v. Norton). But the essence of our position remains the same.

Lyn Boniface


March 2, 2004

Mr. Michael Carrier, Director
 Oregon Parks & Recreation Department
 725 Summer Street NE, Suite C
 Salem, OR 97301

RE: Western Snowy Plover Habitat Conservation Plan/Incidental Take Permit

Dear Mr. Carrier:

We are residents of Pistol River, Oregon and attended the meeting in Gold Beach at the Gold Beach Resort in early February 2004 regarding the draft Oregon Shores Management Plan and the Western Snowy Plover Habitat Conservation Plan (hereinafter referred to as "WSPHCP") and wish to make our public comments.

Our concerns regarding the WSPHCP are numerous. We will outline as many of them here as we can.

ZIP CODE LISTING

It is our understanding that the Western Snowy Plover has been designated as "endangered" in certain areas based upon a zip code listing which is currently being challenged in the legal system. If the legal challenge is successful it would make your WSPHCP irrelevant. GP-69-1

Why is the Oregon Parks & Recreation Department spending time, money and resources pursuing a plan that may not be necessary or applicable? GP-69-2

A good example of unnecessary cost is the meeting that was held at the Gold Beach Resort. The use of the meeting room cost \$ 50.00 which may seem small but when taken together with the other public meetings OPRD has held in connection with the plans add up to something more significant. Perhaps the meeting in Gold Beach could have been held at City Hall and cost nothing.

CRITICAL HABITAT DEFINITION

The definition of "Critical Habitat" is being reworked by the U.S. Fish & Wildlife Service due to the success of the Coos County law suit against the USFWS for unlawful designation of Critical Habitat. A basic element of the WSPHCP is the designation of "Critical Habitat". It seems to us that with an item such as this, upon which your whole plan is based, in question the OPRD would not be pursuing an HCP/ITP at this time and wasting the funds that taxpayers have provided your department. GP-69-3

<p style="text-align: right;">GP-69</p> <p>Western Snowy Plover HCP/ITP - continued</p>	<p style="text-align: right;">GP-69</p> <p>Western Snowy Plover HCP/ITP - continued</p>
<p><u>RECOVERY PLAN vs. HCP</u></p>	<p><u>STATUS OF WESTERN SNOWY PLOVER</u></p>
<p>Your WSPHCP is, in essence, a Western Snowy Plover <u>RECOVERY</u> Plan as opposed to a true Habitat Conservation Plan/Incidental Take Permit. All that is required for an ITP under the Endangered Species Act, Section 10(a)(2)(B) is the following (see attached):</p>	<p>OPRD should not be working on an HCP/ITP at all until the status of the Western Snowy Plover is known. It is our understanding that there is a case currently in litigation, Surf-Ocean Beach Commission v. Norton, which, if successful, would determine that the Western Snowy Plover is no longer a listed, endangered species.</p>
<ol style="list-style-type: none"> i. the taking will be incidental; ii. the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; iii. the applicant will ensure that adequate funding for the plan will be provided; iv. the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. 	<p>Again, why put the resources in to something that is not required and which the overall necessity for is very much in question?</p>
<p>OPRD has chosen to go beyond the "minimize and mitigate" and "not appreciably reduce the likelihood" and drafted a <u>RECOVERY PLAN</u> by which the department would be bound. A <u>RECOVERY PLAN IS NOT REQUIRED FOR AN HCP/ITP</u></p>	<p>Our above outline speaks to the potential ethical, legal and common sense issues about which we are concerned with the WSPHCP in general. With these in mind we also wish to address Pistol River specifically. In reviewing the results of the 2001 "Oregon Shores Recreational Use Study" that is cited in your documentation we would question who was surveyed and how many people were involved in the survey. Certainly we were not included nor have we heard from any of our neighbors that they were included either. We are here every day, day-in and day-out. We see the real uses of the beach. We can state categorically that the survey you are citing is flawed in the Pistol River area.</p>
<p>The applicant, OPRD, cannot ensure that adequate funding for the plan will be provided. The state does not have enough money to function as it is and you want to spend some of the money on <u>MAYBE</u> getting a bird to nest somewhere that it currently does not? Does OPRD have enough excess funds to cover the cost of implementing and monitoring this plan? I know that Curry County does not have the funds or the manpower to monitor whether a person walks on the dry sand or not.</p>	<p>You are proposing closing virtually all of Pistol River State Park to dogs outright and if Pistol River ever becomes and "occupied" site then you propose not to allow people or horses on the dry sand, only the wet. Additionally you propose closing the parking lot from March 15 – September 15 each year if the site becomes occupied.</p>
<p>With the Oregon economy and budget in the situation that it is, why would the OPRD chose to do any more than the minimum requirements that would satisfy the ESA?</p>	<p>Do you realize this is the only access to the river and the spit? And that a person, or person riding a horse, could not get to the "wet sand" in this area without traversing some amount of dry sand?</p>
<p><u>UNLAWFUL</u></p>	<p>Yes, there are some turnouts on the highway north of the section that you are proposing to affect where a person could park and get out to the beach. It is not possible, however, to traverse around Henry Rock (the big rock) in order to actually get to the spit or the river which is inside of Pistol River State Park. If a person did get around the rock then they would have to cross the river to get to the spit.</p>
<p>OPRD has an obligation pursuant to the Oregon Revised Statutes, Ocean Shores; State Recreation Areas, 390.610(4) (see attached).</p>	<p>We might point out here also that while the parking lot affords a person that might be affected by physical challenges the opportunity to get right down onto the beach none of the other turnouts to the north do. At all of the turnouts you either have to hike down rocks or cliffs or over very large sand dunes which are not particularly easy to walk on to get down on to the beach.</p>
<p>"The Legislative Assembly further declares that it is in the public interest to do <u>WHATEVER IS NECESSARY TO PRESERVE AND PROTECT SCENIC AND RECREATIONAL USE OF OREGON'S OCEAN SHORE.</u>"</p>	<p>We believe that you might create yourselves some liabilities under Title II of the Americans with Disabilities Act of 1990 should you decide to close the parking lot down.</p>
<p>Preserve and protect scenic and recreational use of Oregon's Ocean Shore - while we are sure that the Snowy Plover finds the shore scenic and recreational we don't believe this is what the legislature had in mind when they made this statute. We are certain that they had people in mind.</p>	<p>It has also been said that you might consider basically bulldozing the sand dunes to get rid of the "alien" European Beach Grass that harbors the awful predators that eat the little Snowy Plover. The Beach Grass was planted for a reason. It was planted so that the sand dunes would continue to exist. Here in Pistol River we have literally hundreds of wind-surfers that come and surf every year. Why do you think they come here? Could it be because we have wind? There you go. If you were to get rid of the Beach Grass it would not take our famous Pistol River wind very long to blow the dunes east across Highway 101 and who knows how much further from there. Maintaining the dunes is very important to the overall health of the shore.</p>
<p>The proposed HCP/ITP could cause certain beach activities such as camping and horseback riding to become activities that would require a permit and certain other activities such as walking, kite flying and having a dog on the beach potentially banned entirely instead of allowed outright. The OPRD needs to abandon this proposed HCP/ITP as part of their obligation under ORS 390.610(4).</p>	<p>You also spoke about managing the predators of the Snowy Plover. You would kill one animal for the sake of another? Does that make sense? Not in our book.</p>
<p>By going far beyond the minimum requirements of an HCP/ITP, OPRD is not meeting its legal obligation under ORS 390.610(4) and, therefore, the draft HCP could be construed as unlawful.</p>	

GP-69

Western Snowy Plover HCP/ITP - continued

Whatever "habitat" is currently in existence for the Western Snowy Plover in or perhaps near Pistol River can be conserved without restricting the beach more than it already is. As far as we know there has only been one incident in Oregon of vandalism against the Snowy Plover. So generally speaking we would say that the people who use the beaches do try and consider other living creatures in their walks, horse rides, etc. and do not purposefully destroy the life that exists at the shore. GP-69-13
GP-69-14

There are no Snowy Plovers in Pistol River State Park at the present time and quite frankly there probably never were and most likely never will be no matter how much you manage the habitat that you think they might like. And if there ever were a WSP found in a particular location I can guarantee you that the people of Pistol River would do what they could to avoid damaging the eggs or the birds while still being able to utilize the Ocean Shore as they are entitled to do under ORS 390.610(4). GP-69-15

The Pistol River area is one of the most pristine and beautiful beaches on the south coast of Oregon. Many people, both visitors and residents, utilize this beach year round but more so in the summer months. We see horses, people, people with dogs, kite flying, surfing, wind-surfing, clamming, sunset walks, tide-pooling, beachcombing and more. GP-69-16

Potentially closing the only practical access to Pistol River State Park could seriously jeopardize tourism in our area as well as adversely affect the livelihood of the owners of Hawks Rest Ranch who make a living providing trail rides for people during the summer months. The summertime is when Curry County, in general, makes a living. Tourism is the name of the game and if your proposed restrictions go into effect you could potentially seriously damage the economy of this area.

Habitat CONSERVATION does not mean RESTORATION nor does it mean RECOVERY of the bird. GP-69-17

As was true with the Spotted Owl they adapted very easily to other nesting locations and all of the "information" that was put out by the activists turned out to be false. The whole Spotted Owl fiasco caused irreversible economic damage to Oregon and the Snowy Plover is on the same course.

We are certain that the Snowy Plover is adaptable, as was the Spotted Owl, and will find solace in parts of the beach that are not accessible by people. It may be true that there are only 100 Snowy Plovers living in Oregon but there are approximately 20,000 of them west of the Continental Divide and over a million of them north of the US/Canada border as well as being abundant in Mexico and just about everywhere else in the United States. GP-69-18

We urge you to abandon the draft WSPHCP/ITP that you currently have and wait until the results of the legal battles currently underway are known. Do not waste any more of our taxpayer dollars pursuing something that need not be done. If it turns out that a true HCP is necessary in the future we would urge you to formulate it in such a way that it meets only the minimum requirements applicable under the Endangered Species Act and that it not go above and beyond the scope of what is needed.

While legal action is not the choice any of us would make, the residents of Pistol River have been known in the past to step up to the plate when legal help was necessitated. The feelings on this particular issue are quite strong community wide and it would not be out of the realm of possibilities that we would step up again.

Sincerely,

Lyn Boniface

James J. Boniface, Jr.

Enclosures

Response to Comment GP-69-1

It is assumed that the commenter is referring to two petitions filed in 2002 and 2003 that contended that the Pacific Coast population of western snowy plovers did not qualify as a distinct population or as a threatened species. In April 2006, USFWS found that the snowy plover is markedly separate from other populations of plover due to behavioral differences, including the fact that they stay on the coast their entire lives. The discreteness of this population meets the legal requirements to qualify as a distinct population segment (DPS) under the ESA, and offer snowy plover protection as a threatened species. The HCP has been prepared to provide OPRD with incidental take protection for their management actions that have the potential to result in take of this federally listed species. For more information see the 12-month Finding on a Petition to Delist the Pacific Coast Population of the Western Snowy Plover (71 *Federal Register* 20607 20624).

Response to Comment GP-69-2

Many of the management actions that OPRD is responsible for on the Ocean Shore, including management of the public's use of the beach for recreation, have the potential to result in take of snowy plovers. OPRD has prepared the HCP to avoid, minimize, and mitigate the potential effects of its management actions on snowy plovers, and to meet the requirements of Section 10 of the ESA. The HCP is needed to afford OPRD incidental take protection under the ESA and is unrelated to the designation of critical habitat for snowy plovers. For more information about the HCP in the greater context of snowy plover recovery, please see MR-7.

In order for the public to be involved in the process of developing the HCP, OPRD has provided several opportunities in the form of public meetings. Each of these meetings is equally important to provide opportunities for individuals to comment.

Response to Comment GP-69-3

We assume that the commenter is referring to the petitions filed in 2002, challenging the designation of critical habitat for snowy plovers in California, Oregon, and Washington. On September 29, 2005, 12,145 acres of critical habitat were designated along the shoreline of California, Oregon, and Washington (70 *Federal Register* 48094 48098). The area designated as critical habitat is owned by landowners other than OPRD. The HCP is not contingent on the 2005 designation.

Response to Comment GP-69-4

Please refer to MR-7 for a discussion of why OPRD is proposing conservation measures to protect snowy plovers, and how those relate to the larger recovery plan for the species.

Response to Comment GP-69-5

Please refer to Section 7, “Implementation, Organization, and Structure” in the HCP and MR-9 for a discussion of the funding commitments in the HCP. The effectiveness of the conservation measures, including the adequacy of the funding commitments in the HCP, will be assessed each year in annual compliance reports and evaluated every 5 years by OPRD, USFWS, and ODFW.

Response to Comment GP-69-6

OPRD has prepared the HCP to avoid, minimize, and mitigate the potential effects of its management actions on snowy plovers, and to meet the requirements of Section 10 of the ESA. The HCP is needed to afford OPRD incidental take protection under the ESA.

Response to Comment GP-69-7

Please refer to MR-6 for a description of OPRD’s management responsibilities under the Public Trust Doctrine and Beach Bill.

Response to Comment GP-69-8

Please refer to the responses to GP-69-1 and GP-69-2 for information about critical habitat designation and its relationship to the HCP.

Response to Comment GP-69-9

The purpose of the Oregon Shore Recreational Use Study (Shelby and Tokarczyk 2002) was to provide information to inform OPRD planning efforts on the Ocean Shore related to recreational use. Therefore, data collection survey methods relied on on-site observations and survey information collected from individuals who used the beach during the survey period (July to September 2001). The intent of the study was to provide the best available information given the limitations of collecting data for such a large area and for a widespread group of beach users. OPRD recognizes that the data are not perfectly representative and have taken potential variations into

consideration in its planning efforts. USFWS is required to use the best available scientific data, as represented by the Oregon Shore Recreational Use Study (Shelby and Tokarczyk 2002).

Response to Comment GP-69-10

None of the alternatives, including the HCP, propose to close access points. While portions of the dry sand may be roped off near access points and certain activities (dog exercising, kite flying, driving, and non-motorized vehicle use) may be limited on the wet sand, pedestrian and horse access to the wet sand portion of the beach would be maintained at all SPMA and RMA. Furthermore, as noted in MR-4 and MR-5, management of an SPMA at Pistol River has been removed from the HCP.

Response to Comment GP-69-11

Please refer to the Response to Comment GP-60-1 for information about the necessity of managing European beachgrass. European beachgrass would only be eradicated from discrete portions of some SPMA in an attempt to restore snowy plover habitat. The extent of that eradication would be determined during development of site management plans for each SPMA. Possible beach erosion issues would also be considered during development of site management plans. Furthermore, as noted in MR-4 and MR-5, management of an SPMA at Pistol River has been removed from the HCP.

Response to Comment GP-69-12

Corvids (e.g., ravens, crows, jays) and some carnivore populations (e.g., red fox and raccoon) flourish in areas with high human use, such as the beach, and are known to prey on shorebird nests and chicks, including snowy plovers. Given that snowy plovers are a listed species requiring protection under the ESA, predator management measures are employed to deter predation of shorebirds. Although predator management can include lethal methods at occupied snowy plover nesting sites, the actual methods employed (i.e., lethal or nonlethal) vary by site and from year to year. In all cases, predator management would be limited to animals that are targeting snowy plovers as prey.

Response to Comment GP-69-13

Management of Pistol River as an SPMA has been removed from the HCP for the reasons discussed in MR-4 and MR-5.

Response to Comment GP-69-14

According to field data recently collected for 2007, there were eight recorded human-caused nest failures on the Oregon coast, three of which were considered to be acts of vandalism (Lauten and Castelein pers. comm.). For information on why the HCP has been prepared and why OPRD has requested an ITP from USFWS, please see the Response to Comment GP-5-2.

Response to Comment GP-69-15

Management of Pistol River as an SPMA has been removed from the HCP for the reasons discussed in MR-4 and MR-5.

Response to Comment GP-69-16

Horseback riding would only be restricted from the roped-off areas of the beach at occupied sites during the nesting season, and would be allowed unrestricted on the wet sand portions of the beach. The horseback riding operations along the coast would still be allowed to access all beaches and would not be affected by any of the alternatives, including the HCP. Furthermore, as noted in MR-4 and MR-5, management of and SPMA at Pistol River has been removed from the HCP.

Response to Comment GP-69-17

Please refer to MR-7 for a discussion of why OPRD is proposing conservation measures to protect snowy plovers, and how those relate to the larger recovery plan for the species.

Response to Comment GP-69-18

Please refer to the Response to Comment GP-69-2 for information about why the HCP is needed. As noted in the response, the HCP is needed to afford OPRD incidental take protection under the ESA.

Comment Letter GP-70

GP-70

From: [REDACTED]
To: FW1ORDHCP@FWS.GOV
Subject: OPRD HCPEIS
Date: 03/11/2008 10:49 PM

RE: Snowey Plover
take all possible action to insure the life and habitat of this precious bird,
Roxy Hills

Comment Letter GP-71

GP-71

GP-71

From: [John Hammond](#)
To: fwlorchcp@fws.gov
Subject: Plover plan
Date: 03/09/2008 02:50 PM

Dear Ms. Laura Todd:

I have viewed the info available at this web site. I attended a public hearing on an earlier version of the plan in Tillamook, three(?) years ago. I have a small second home in Cape Meares, and a life-long interest in Oregon's wildlife.

I am very supportive of efforts to insure the long-term well-being of the Snowy Plover. I urge you to abide by the general principle that "when in doubt, we should err--if we are going to err--on the side of more rather than less protection". In the case of habitat and species protection, if we discover that the restriction was not necessary, nothing of permanent value is lost; we can correct the matter by easing the restriction. But if we have erred on the side of too little protection, something of great value might be lost, namely the flourishing and even, perhaps, the very existence of a wild population.

So I want to make it clear in the beginning that I support strong protection measures. I notice that my neighborhood, Bay Ocean Spit, is mentioned in the plan; as having no Plovers, but a desirable nesting environment for them, and should they show up, management restrictions will be proposed. I would welcome and be gladdened if the Plovers arrive, and wish to assure you I would be first to urge strong measures to ensure their well-being.

Two more thoughts:

1. It seems to me that the goal of maintaining only 200 nesting pairs is pushing the envelope of safety for the Oregon population. There is not much room here for unexpected changes that might put such a small population at risk. I would plead that the 200 figure be understood as an urgent minimum to achieve, rather than a signal to relax protective efforts.

2. At the hearing I attended, a number of folks representing various businesses that serve tourists (motels, restaurants, etc.) expressed the fear that beach restrictions of the kind proposed would discourage people from coming to the coast. They feared a loss to their businesses. I think that just the opposite is likely to be true. If and when the word gets around that the Oregon coastal communities are willing to risk possible business losses for the sake of a small seabird, a lot of people are going to say, "The citizens of the Oregon coast must be pretty unusual folks. I admire and am encouraged by their sense of environmental responsibility. I would like to give people like that the benefit of my vacation budget, and I'll take my chances on possible inconveniences caused by beach restrictions."

Thank you for this opportunity to comment on the management plan.

Sincerely,
 John Hammond

GP-71-1

GP-71-2

Response to Comment GP-71-1

Comment noted. However, the nesting pair goals for Oregon are specific to the larger snowy plover recovery plan (U.S. Fish and Wildlife Service 2007), and are outside the scope of this HCP. Please refer to MR-7 for a discussion of why OPRD is proposing conservation measures to protect snowy plovers, and how those relate to the larger recovery plan for the species.

Response to Comment GP-71-2

As noted in the Response to Comment GP-24-1, the potential socioeconomic effects of implementing the alternatives would be minimal. For more information about the potential recreational and socioeconomic effects of implementing the HCP, please see that response.

Comment Letter GP-72

GP-72

From: [REDACTED]
To: FW1ORDHCP@fws.gov
Subject: RE: OPRD HCP DEIS--Snowy Plover
Date: 03/13/2008 08:05 AM

Concerning Plover conservation, you might consider how many raccoons are caught from around peoples homes and dumped, along with the feral cats people catch, sterilize and turn loose instead of eliminating them. It might help to remove some of these pests permanently, along with the other avenues of protection. A feral cat serves no good purpose, despite those folks who think they are doing the right thing. They eat a lot of birds etc.

GP-72-1

Thanks for listening.
Pat Miles

Response to Comment GP-72-1

Please refer to the Response to Comment GP-14-1 for a discussion of how predator management would be implemented under the HCP.

Comment Letter GP-73

GP-73

From: [Russ Pearce](#)
To: FW1ORDHCP@FWS.GOV
Subject: snowy plover comment period
Date: 03/11/2008 03:51 PM

only 1 days notice to send a comment is really not enough time to get comments from those that really want to send a comment to you. this just shows a person that you dont have ANY creditability. i think the birds do well enough if youd just leave them alone! your department is acting hipocritically. you allow horse back riding on the beaches and tourists build sand castels, so why wont you allow small scale miners to prospect on the beach. russ pearce [REDACTED]

GP-73-1
GP-73-2
GP-73-3

Never miss a thing. Make Yahoo your home page.
<http://www.yahoo.com/r/hs>

Response to Comment GP-73-1

The availability of the DEIS for public review was announced in the *Federal Register* (Volume 72, Number 213) on November 5, 2007. The public comment period was open for 60 days until January 4, 2008. Based on several request for additional time to review the DEIS, the public comment period was extended for two additional weeks as noticed in the *Federal Register* (Volume 73, Number 38) from February 26, 2008 to March 12, 2008. The public comment period was extended again between April 17, 2009 and June 19, 2009.

Response to Comment GP-73-2

Please refer to the Response to Comment GP-69-2 for information about why the HCP is needed.

Response to Comment GP-73-3

Small-scale mining (the collection of small amounts of natural materials for personal use) is covered under the category of natural product removal and is currently allowed with an Ocean Shore Permit from OPRD. The HCP does not propose to limit small-scale mining other than to prohibit it from occurring within areas of the dry sand that would be restricted at occupied SPMA's and RMA's. However, all activities, not just natural product removal, would be restricted from occurring within these areas under the HCP during the nesting season.

Comment Letter GP-74

GP-74

From: [Garibaldi Charters](#)
To: FW1ORDHCP@FWS.GOV
Subject: Snowy plover Plan surfaces again - ORPD HCP EIS
Date: 03/12/2008 11:14 AM

ORPD-I am commenting on one specific area proposed in the plan though most everything I say will apply to the other area's being proposed for Tillamook County and much of the Oregon Coast. When you try to create habitat for these birds that are not even truly endangered, you can only be pushing someone else's environmentalist agenda. The Coastal Snowy Plover, according to scientific reports, is not genetically different from the thousands of Snowy Plover that live, breed and thrive in the Willamette Valley. Possibly, they survive more successfully in the valley because there are fewer predators there than live in the heavily forested, less populated habitats that occur on the Oregon Coast. You have stated that predators are a major problem.

GP-74-1

It seems to us that you are negating Oregon's Beach Bill by restricting access to our beaches for a bird that is not known to have existed in the proposed area's in Tillamook County. You will be setting a precedent, if successful, for taking away more beach and coastal dune access. What bird or plant will be next, and how much beach area will you leave for the seemingly expendable human beings to enjoy?

GP-74-2

In the plan, you propose that if the birds do not show up in five years, rather than give up, which I might have been able to accept, you will "aggressively manage" the area. I assumed this meant you would plant the birds and fence off the beach, but was informed by a county commissioner who has read the plan in depth that you would then "bulldoze down the dunes" to create better bird habitat. I live in Sandlake on Galloway road just 1/2 mile from the area proposed. Do you realize the extent to which the dunes protect our whole community from 100+ mile an hour windstorms, tsunamis and other forces of nature and the ocean every year? The proposed area also changes dramatically each season because of Sandlake's volatile, ever changing channel into the ocean. No nesting birds have ever been found there and for good reason-they would not survive. I know-I ride my horses frequently on the dunes and beach in this area. What looks great on paper can not be supported by reality here. It is time you really listened to the people who live and work on the Oregon Coast if you are to have any hope of understanding our "ecosystem when taken as a whole"-new language I learned from enviro's also trying to take away our ocean access in the form of Marine Reserves. The "whole ecosystem" should include humans too, should it not? Linda Buell, [REDACTED]

GP-74-3

GP-74-4

Response to Comment GP-74-1

Please refer to the Response to Comment GP-69-1 for information about the differences between coastal and inland populations of snowy plovers. The Pacific Coast Population of western snowy plover is considered a DPS.

The availability of the DEIS for public review was announced in the *Federal Register* (Volume 72, Number 213) on November 5, 2007. The public comment period was open for 60 days until January 4, 2008. Based on several request for additional time to review the DEIS, the public comment period was extended for two additional weeks as noticed in the *Federal Register* (Volume 73, Number 38) from February 26, 2008 to March 12, 2008. The public comment period was extended again between April 17, 2009 and June 19, 2009.

Response to Comment GP-74-2

Please refer to MR-6 for a description of OPRDs management responsibilities under the Public Trust Doctrine and Beach Bill.

Response to Comment GP-74-3

There is no specific mention of additional “aggressive management” measures outside of the habitat restoration prescriptions mentioned in the HCP. Please refer to Section 5 in the HCP for a detailed discussion of how SPMA’s would be managed under the HCP.

Response to Comment GP-74-4

As described in Appendix F of the HCP, snowy plovers have been observed at Sand Lake, although the last sighting was in 1984, when four snowy plovers were observed. South Sand Lake is included as an RMA because it is located on an open, low, and relatively flat spit next to an estuary, and is currently closed to driving, which makes it potentially attractive to snowy plovers. It is also located on the northern Oregon coast, which could facilitate the species distribution. South Sand Lake RMA has been included in the recovery plan for the species (U.S. Fish and Wildlife Service 2007).

If the landowners responsible for this RMA (the southern portion of this RMA is privately owned and the area outside the covered lands to the north is owned by the U.S. Forest Service [USFS]) were to manage this site for snowy plovers, habitat restoration would likely be required. Restoration activities would need to consider how the mouth of the river changes over time, and would be determined by USFWS

in consultation with the landowner. It is important to note that, for the purposes of the HCP, the boundary of this RMA extends from the mean low tide line to the mean high tide line adjacent to USFS land, and from the mean low tide line to the actual or statutory vegetation line adjacent to the privately owned land (see Section 1.2.3, “Covered Lands” in Volume 1 of the FEIS). Additional management activities to be implemented within the RMA or on Federal lands adjacent to the RMA by either landowner could occur in consultation with USFWS.

Comment Letter GP-75

GP-75

From: [Barb Kirchner](#)
To: FW1ORDHCP@FWS.GOV
Subject: Snowy Plover
Date: 03/11/2008 11:05 PM

Laura Todd, U.S. Fish and Wildlife Service, Newport Field Office, 2127 SE OSU Drive, Newport, OR 97365-5258; facsimile (541) 867-4551.

Snowy Plover Plan:

In my opinion the present plan is working and there is no reason to change it. Baker Beach fledglings have increased. The timing of allowing people and/or animals on the beach or into marked areas of the dunes is working. There is no reason to fix something that isn't broken.

Barbara J. Kirchner



Comment Letter GP-76

GP-76

From: [Patrick](#)
To: FW1ORDHCP@FWS.GOV
Subject: snowy plover
Date: 03/11/2008 07:24 PM

The Snowy plover is not and endangered species and to agitate people with the threat of shutting down there beaches so you can implant snowy plovers is wrong. We will not allow this to happen. Besides there is a great deal of predator related deaths to ground dwelling birds here. that is why they do not live on our coast as well as other places like Oklahoma. I protests any further efforts to implant the snowy plover. We have plenty of birds and if you would start a program to eliminate the cormorant and the starling then we will support your efforts. These birds do a great deal of damage. Pat Ireton

GP-76-1

GP-76-2

Response to Comment GP-76-1

The snowy plover is listed as a threatened species under both the State and Federal ESA.

Response to Comment GP-76-2

Cormorants and starlings have not been observed preying on snowy plover nests. Please refer to the Response to Comment GP-14-1 for a discussion of how predator management would be implemented under the HCP.

Comment Letter GP-77

GP-77

From: [Bill Fujii](#)
To: FW1ORDHCP@fws.gov
Subject: Thank you for your continued work to recover the Snowy Plover
Date: 03/10/2008 06:35 PM

Thank you for your continued work to recover the Snowy Plover. We remain concerned that efforts are moving very slowly and that much is left to chance. One wonders

Response to Comment GP-77

The original comment letter was incomplete. No further response.

Chapter 8 References

8.1 Printed References

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8.2 Personal Communications

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Chapter 9 Preparers

9.1 Introduction

Table 9-1 lists the project team members primarily responsible for the preparation of the Western Snowy Plover Habitat Conservation Plan (HCP) Final Environmental Impact Statement (FEIS).

Table 9-1. Western Snowy Plover HCP FEIS Preparers

Name/Title/Affiliation	Project Role	Education (highest degree)
Federal Lead Agencies and State Partners		
Laura Todd U.S. Fish and Wildlife Service	Project Manager	MS, Biology
Rick Amidon U.S. Fish and Wildlife Service	Regional NEPA Coordinator	BS, Wildlife and Fisheries Management
Rich Szlemp U.S. Fish and Wildlife Service	NEPA Coordinator	MS, Zoology
Kate Schutt, PLA Oregon Parks and Recreation Department	HCP Manager; Planning Manager	MLA, Landscape Architecture
Consultant Team		
Rick Oestman ICF International	Project Director	MS, Fisheries Biology
Kim Marcotte ICF International	Project Manager	MS, Horticulture/Agronomy and International Agricultural Development
Craig Hansen ICF International	QA/QC & Strategy and HCP Development	MS, Wildlife Management
Paul Whitney ICF International	Wildlife Lead	PhD, Zoology
Troy Rahmig ICF International	Snowy Plover Biologist	MS, Biology
Betsy Torell ICF International	Water Quality	BS, Wildlife Science
Jason Cooper ICF International	Cultural Resources	MS, Anthropology
Laura Cooper ICF International	Technical Editor	BA, Psychology
Kate Walsh ICF International	Document Production	BA, Photography ; BA, Art History

Name/Title/Affiliation	Project Role	Education (highest degree)
April Zohn Lux Environmental Consulting, LLC	Lead Author	BS, Marine Science
Leon Aliski Dean Runyan Associates	Recreational Lead	MS, Economics
Thomas Wegge TCW Economics	Socioeconomics Lead	MS, Environmental Economics