



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003

IN REPLY REFER TO
PAS 1939.2823.3223

March 9, 2005

Tad Dougherty
Camarillo Airport Manager
County of Ventura
555 Airport Way, Suite B
Camarillo, California 93010

Subject:
Notice Regarding Federally Listed Species on Local Beaches, Ventura County, California

Dear Mr. Dougherty:

The purpose of this letter is to inform you that on numerous occasions in 2003 and 2004, we received information that ultralight aircraft originating from the Camarillo Airport were observed flying below 500 feet at Ormond Beach, located in Oxnard, Ventura County. Witnesses allege that they observed federally threatened western snowy plovers (*Charadrius alexandrinus nivosus*) and endangered California least terns (*Sterna albifrons browni*) flush from breeding areas at Ormond Beach in response to the low flying aircraft. These instances are currently the subject of further investigation by our Division of Law Enforcement as they may constitute violations of the Endangered Species Act of 1973, as amended (ESA), and the Airborne Hunting Act.

Ormond Beach is part of the largest and most important expanse of wetland and beach habitats in Ventura County. Concerned local citizens and organizations together with Federal, state, and local governments have spent over 20 years working to protect endangered shorebirds and their habitats from human related disturbance. Ormond Beach is vital to these species as it supported most (80 percent or more) of the breeding western snowy plovers in Ventura County and approximately 15 percent of all of the breeding California least terns in the world, prior to 2003. Low-flying aircraft were first reported at Ormond Beach during 2003, concurrent with the breeding season for western snowy plovers and California least terns.

Western snowy plovers are known to use Ormond Beach to breed and forage from Arnold Road to the Perkins Road estuary. Ormond Beach is contiguous with the beaches of Point Mugu Naval Base and the western snowy plovers often move back and forth, especially in the winter. During the nesting season, March through September, there is less movement because the birds are incubating eggs, defending their territories and chicks. In 2003, 26 western snowy plover nests were detected, which produced an estimated 16 fledglings, on Ormond Beach. During the 2004 breeding season, the number of nests reported fell to 22 for western snowy plover with an estimated 13 fledglings.

The California least tern is a common summer resident at Ormond Beach. Spring migrants arrive and move through the area in late April. California least terns that nest at Ormond Beach arrive in early to mid-May, and leave the area by late August to mid-September. California least terns forage over Ormond Lagoon and the ocean immediately offshore during their seasonal migrations and during breeding. The estimated number of California least tern nests reported for the 2003 breeding season was 45 nests, which produced an estimated 19 fledglings at Ormond Beach. During the 2004 breeding season, the number of California least tern nests reported fell to 29 for California least tern with an estimated 4 fledglings.

Aircraft flying within 500 feet of the ground may harm or harass western snowy plovers and California least terns, particularly during their breeding seasons, which combined run between March 15 and September 15. Low flying aircraft may cause these species to abandon territories, eggs, and chicks. Abandoned eggs and chicks become susceptible to temperatures (high or low), predation, and burial by blowing sand. Repeated flushing of western snowy plovers and California least terns also results in excessive energy demands on adults that could result in their deaths. Flushing of western snowy plovers and California least terns by low-flying aircraft have been observed by several people at Ormond Beach. This disturbance may result in fewer birds nesting at Ormond Beach, or complete abandonment of the site, resulting in a further setback for these threat-

ened and endangered species. The potential for low-flying aircraft, such as ultralights, to harass or harm western snowy plovers or California least terns on the Ventura County coast is not limited to Ormond Beach. Maps of western snowy plover and California least tern breeding sites are enclosed for your reference. The enclosed maps depict areas, crosshatched in red, where pilots should fly no lower than 500 feet above the ground, unless the pilots are in an emergency situation.

We have enclosed the pertinent provisions of the ESA and Airborne Hunting Act. Both the western snowy plover and the California least tern are protected by these laws. Section 9 of the ESA, found at Title 16, United States Code, Section 1538, prohibits the unauthorized taking of protected species by any person subject to the jurisdiction of the United States. "Take" is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting to engage in any such conduct. Regulations implementing the ESA (50 CFR section 17.3) further define "harass" to mean an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering. "Harm" includes significant habitat modification or degradation that results in the killing or injury of wildlife by significantly impairing essential behavioral patterns including breeding, feeding, or sheltering. Pursuant to the Airborne Hunting Act, Title 16, United States Code, Section 742j-1(a)(2), the use of an aircraft to harass any bird, fish, or other animal is prohibited, except as authorized by permit. Regulations implementing the Airborne Hunting Act (50 CFR section 19.4) define "harass" to mean disturbing, worrying, molesting, rallying, concentrating, harrasing, chasing, driving, herding, or tormenting.

We are seeking your assistance in getting the cooperation of all ultralight pilots to avoid flights 500 feet or lower over western snowy plover and California least tern breeding and foraging sites

in Ventura County. This is important not only to comply with the ESA and Airborne Hunting Act, but also to assure that ongoing efforts to conserve these species are not undermined.

If you have any question regarding this letter or if you are seeking technical assistance, please contact Chris Dellith at (805) 644-1766.

Sincerely,



Carl T. Benz
Assistant Field Supervisor
South Coast/Desert Division

Enclosures

cc: Chuck Raysbrook, California Department of Fish and Game
Morgan Wehjte, California Department of Fish and Game
Peter Brand, California Coastal Conservancy
James Rupp, City of Oxnard
Marie Pallidini, U.S. Fish and Wildlife Service, Division of Law Enforcement
Kerry O'Hara, Department of Interior
Steve Bennett, Ventura County Board of Supervisors
Linda Parks, Ventura County Board of Supervisors
Kathy Long, Ventura County Board of Supervisors
John Flynn, Ventura County Board of Supervisors
Ventura County Ultralight Aircraft Society
Skyrider Ultralights, Inc.
Jackie Fowler, California Department of Transportation, Division of Aeronautics
David Kessler, Federal Aviation Administration
Barbara Fosbrink, California Department of Parks and Recreation

Sec. 3 ENDANGERED SPECIES ACT OF 1973

DEFINITIONS

SEC. 3. [16 U.S.C. 1532] For the purposes of this Act—

(1) The term “alternative courses of action” means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(2) The term “commercial activity” means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however,* That it does not include exhibitions of commodities by museums or similar cultural or historical organizations.

(3) The terms “conserve,” “conserving,” and “conservation” mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(4) The term “Convention” means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(5)(A) The term “critical habitat” for a threatened or endangered species means—

(i) the specific areas within the geographical area occupied by the species,

at the time it is listed in accordance with the provisions of section 4 of this Act, on which are

found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(6) The term “endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(7) The term “Federal agency” means any department, agency, or instrumentality of the United States.

(8) The term “fish or wildlife” means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(9) The term “foreign commerce” includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

Sec. 9 ENDANGERED SPECIES ACT OF 1973

PROHIBITED ACTS

SEC. 9. [16 U.S.C. 1538] (a) GENERAL--(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or (G) violate any regulation pertaining to such spe-

cies or to any threatened species offish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to-

(A) import any such species into, or export any such species from, the United States;

(B) remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any state or in the course of any violation of a state criminal trespass law;

(C) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(D) sell or offer for sale in interstate or foreign commerce any such species; or (E) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(b)(1) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT. The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any- fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act: *Provided That*

such holding and any subsequent holding or use of the fish or wildlife as not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

(2)(A) The provisions of subsections (a)(1) shall not apply to

(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

(ii) any progeny of any raptor described in clause (i); until such time as any such raptor or progeny is intentionally returned to a wild state. (B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

(c) VIOLATION OF CONVENTION. (1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to

the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if-

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II of the Convention;

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied;

(C) the applicable requirements of subsection (d), (e), and (f) of this section have been satisfied; and

(D) such importation is not made in the course of a commercial activity; be presumed to be an important not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(d) IMPORTS AND EXPORTS.--

(1) IN GENERAL.--It is unlawful for any person, without first having obtained permission from the Secretary, to engage in business-

(A) as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (ii) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants; or

(B) as an importer or exporter of any amount of raw or worked African elephant ivory. (2) REQUIREMENTS.--Any person required to obtain permission under paragraph (1) of this subsection shall

(A) keep such records as will fully and correctly disclose each importation or exportation offish, wildlife, plants, or

African elephant ivory made by him and the subsequent disposition, made by him with respect to such fish, wildlife, plants, or ivory;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his place of business, an opportunity to examine his inventory of imported fish, wildlife, plants, or African elephant ivory and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require. (3) REGULATIONS. The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(4) RESTRICTION ON CONSIDERATION OF VALUE OF AMOUNT OF AFRICAN ELEPHANT IVORY IMPORTED OR EXPORTED.— In granting permission under this subsection for importation or exportation of African elephant ivory, the Secretary shall not vary the requirements for obtaining such permission on

the basis of the value or amount of ivory imported or exported under such permission.

(e) REPORTS.—It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(f) DESIGNATION OF PORTS.—(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port of ports designated by the Secretary of the Interior. For the purposes

of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at non-designated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc-4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) VIOLATIONS.—It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

TITLE 16. CONSERVATION
CHAPTER 9. FISH AND WILDLIFE SERVICE 16 USCS § 742j-1 (2005)

§ 742j-1. Airborne hunting

(a) Prohibition; penalty. Any person who--

- (1) while airborne in an aircraft shoots or attempts to shoot for the purpose of capturing or killing any bird, fish, or other animal; or
- (2) uses an aircraft to harass any bird, fish, or other animal; or
- (3) knowingly participates in using an aircraft for any purpose referred to in paragraph (1) or (2);

shall be fined not more than \$ 5,000 or imprisoned not more than one year, or both.

(b) Exception; report of State to Secretary.

(1) This section shall not apply to any person if such person is employed by or is an authorized agent of or is operating under a license or permit of, any State, or the United States to administer or protect or aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops, and each such person so operating under a license or permit shall report to the applicable issuing authority each calendar quarter the number and type of animals so taken.

(2) In any case in which a State, or any agency thereof, issues a permit referred to in paragraph (1) of this subsection, it shall file with the Secretary of the Interior an annual report containing such information as the Secretary shall prescribe, including but not limited to--

- (A) the name and address of each person to whom a permit was issued;
- (B) a description of the animals authorized to be taken thereunder, the number of animals authorized to be taken, and a description of the area from which the animals are authorized to be taken;
- (C) the number and type of animals taken by such person to whom a permit was issued; and
- (D) the reason for issuing the permit.

(c) "Aircraft" defined. As used in this section, the term "aircraft" means any contrivance used for flight in the air.

(d) Enforcement; regulations; arrest; search; issuance and execution of warrants and process; cooperative agreements. The Secretary of the Interior shall enforce the provisions of this section and shall promulgate such regulations as he deems necessary and appropriate to carry out such enforcement. Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of this section may, without warrant, arrest any person committing in his presence or view a violation of this section or of any regulation issued hereunder and take such person immediately for examination or trial before an officer or court of competent jurisdiction; may execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this section; and may, with or without a warrant, as authorized by law, search any place. The Secretary of the Interior is authorized to enter into cooperative agreements with State fish and wildlife agencies or other appropriate State authorities to facilitate enforcement of this section, and by such agreements to delegate such enforcement authority to State law enforcement personnel as he deems appropriate for effective enforcement of this section. Any judge of any court established under the laws of the United States, and any United States magistrate [United States magistrate judge] may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

(e) Forfeiture. All birds, fish, or other animals shot or captured contrary to the provisions of this section, or of any regulation issued hereunder, and all guns, aircraft, and other equipment used to aid in the shooting, attempting to shoot, capturing, or harassing of any bird, fish, or other animal in violation of this section or of any regulation issued hereunder shall be subject to forfeiture to the United States.

(f) Certain customs laws applied. All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as such provisions of law are applicable and not inconsistent with the provisions of this section; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this section, be exercised or performed by the Secretary of the Interior or by such persons as he may designate.

Enclosure 3:

This enclosure includes four (4) overlapping aerial photographs (following page) of the coast provided by U.S. Fish & Wildlife Service, Ventura Fish & Wildlife Office.

The aerial photographs follow serially from Ventura Pier at the north (west) and extend to Ormond Beach at the south (east).

The beach areas of these aerial photographs are hash marked to indicate areas that are designated as either

- (a) Western Snowy Plover Habitat
- (b) Least Tern Breeding Habitat
- (c) BOTH Western Snowy Plover Habitat and Least Tern Breeding Habitat

COMMENT: According to the hash marked areas, nearly 100% of the beach area, beginning from immediately south (east) of the Ventura Pier and extending to and ending at a point exactly in line with the west (north) shoulder of Arnold Road is designated as one or more of the habitat areas listed above.

COMMENT: Apparently there are NO Western Snowy Plovers or Least Terns inhabiting the area immediately north (west) of the Ventura Pier, nor does either specie inhabit the area immediately south (east) of Arnold Road at Ormond Beach.

FULL SIZE JPG images are available at the VCUAS Members Only web page.

Download: VenturaCoast01.jpg



Download: VenturaCoast02.jpg



Download: VenturaCoast01.jpg



Download: VenturaCoast02.jpg

