

Testimony from Warren Judge, Chairman of the Dare County, NC Board of Commissioners in Support of S3113, to Reinstate the Interim Management Strategy Governing Off-Road Vehicle Use in the Cape Hatteras National Seashore

Thank you Senator Akaka (Mr. Chairman), I appreciate the opportunity to be here today. It is an honor and a privilege to represent the 33,000 people who call Dare County, North Carolina their home and the six million people who visit Dare County and the Outer Banks every year.

I am here today on behalf of those people to ask for your support of S3113 to return the management of the Cape Hatteras National Recreational Area to the Park Superintendent. I have attached supporting material by outside counsel, Holland and Knight.

The National Park Service created the Cape Hatteras National Seashore in 1937. In 1952, in an effort to alleviate the concerns of the people of Hatteras Island after taking miles of privately owned lands, Conrad Wirth, the Director of the Park Service, sent an open letter to the people of the Outer Banks assuring them that “there will always be access to the beach for all people, whether they are local residents or visitors.” His letter went on to acknowledge that the people who had lived in the area for generations would be responsible for caring for the tourists that would arrive to the newly created Seashore and that these communities would enjoy the prosperity created by the Park. Until April of this year, Director Wirth’s vision for the Park has been carried out. For decades the National Park Service has balanced

the rights of all Americans to access the Seashore with the need to protect the Park's resources.

In April of this year, environmental groups put an end to the National Park Service's successful and accepted management practices. As a result of a lawsuit and under the threat of an injunction closing even larger portions of the Seashore, a consent order was issued by a U.S. Federal District Court judge resulting in the closure of significant portions of the Seashore to human access, including the most popular swimming areas in the Seashore and the traditional and world renowned fishing areas. Special interests groups, in particular National Audubon and the Defenders of Wildlife, were relentless in their pressure on the Park and the management in their efforts to close the Seashore. These special interest groups have no practical sense and advocate the removal of people from the Cape Hatteras National Recreational Area contrary to Director Wirth's acknowledgment that "man is an integral part of nature and a very important consideration of designing solutions in dealing with nature".

Senators, this is an issue of access for all people to their favorite place in the Recreational Area. Have you ever been to Oregon Inlet? It is a first class location to surf fish, and has some of the best family swimming beaches you will ever find. The back side beaches and tidal pools offer moms and dads a great place to take their small children to experience the ocean outside of the wave zone. Cape Point is world renowned for fishermen; there is no better place in the world to drum fish. Cape Point is where the Gulf Stream and the Labrador Current collide. This phenomenon brings Surfers from all over the world. If you surf Hawaii and Australia, you will surf Cape Point. South Beach, too, is a world class

beach and known the world over. You do not visit Hatteras Island without spending a day on South Beach.

This is an issue of our heritage and our culture. It is about our people; generations of Hatterassmen who are descendents of shipwrecked victims. It is about two brothers, Stocky and Anderson Midgett, who operated a bus from Oregon Inlet to Hatteras Inlet delivering supplies and people up and down the Island -- the Beach was the highway. This is about John Couch, a second generation family business owner, who has provided services for visitors. It is about Allen Burrus a five generation family business owner. Allen's family has owned and operated a Grocery Store in the same location since 1866. Allen's grandfathers watched as the Federal Government took their land for the Cape Hatteras National Seashore Recreational Area, and promised them that they would always be able to hunt, fish, and have access to the ocean. It is about Carol Garris, a wife and mother who with her husband had the American Dream, to own their own business. They worked hard and were successful. When the Consent Degree closed many miles of beach, their business was devastated. Not only is their business in jeopardy, but they are facing personal financial ruin. This is about Carol Dillon, a 79 year old woman, a native of Buxton, who has operated the Outer Banks Motel just north of Cape Point for 50 years. Carol was at the Public Meeting in the early 1950's when Director Conrad Wirth promised the people of Hatteras Island and Dare County that taking their land and making it a National Recreational Area was in their best interests. The land would be preserved forever for all to enjoy.

There are hundreds more of these faces that I can share with you today. These are the people whose businesses, as a result of a Court's order, have declined by as much as

50% since April, even as we are in the prime part of our season. Senators, there are no factories in Dare County; there are no Corporate Headquarters. However, we are as American as you can be. We are hundreds of small businessmen and women; from charter boat captains to commercial fisherman, from fishing tackle stores to gift shops; from motels and cottages to rental homes; from variety stores to eco sports outlets. We go to work everyday to provide for ourselves and to serve as hosts to millions of excited vacationing visitors as they come to Dare County and the Cape Hatteras National Recreational Area for the times of their lives. Many eke out a living and are content to do that for the opportunity to enjoy the outdoors that Hatteras Island provides. Government should not take that away. Government should do all that it can to preserve this way of life.

These same men and women that I have spoken about are the very ones who care for the environment and beauty of the Cape Hatteras National Recreation Area. You will find them cleaning the beaches as they organize beach sweeps to remove litter and trash that is harmful to birds; sitting up all night waiting for a nest of turtle eggs to hatch and then guide them safely to the ocean protecting them from their natural predators on land. These same people have more knowledge of all the birds and nests on Cape Hatteras than any special interest group spokesman that will come before you. The Interim Management plan that was adopted in 2007 worked, the birds and turtles were protected and the people had access to the Recreational Area. The people of Hatteras Island understood and accepted the plan. It gave Park Managers the ability to manage. That ended when those, who are unwilling to balance interests, who are single minded in their pursuits, filed legal action to obtain their

goals without thought to the impact to small communities and to the working people who live in those communities.

In a minute, you will hear from the attorney who represented those environmental groups in their efforts to close the seashore's beaches. He will no doubt tell you about his interpretation of the law, and about the correctness of his client's actions, about the failures of the National Park Service, and even provide you with statistics that he says support his view. Though other lawyers and biologists disagree with his opinions and statistics, he will not tell you that, nor will he tell you about the impact of his and his client's actions on the people of my community. While he may not care about the people of Hatteras Island and Dare County, these same people do care about the resources he says he is trying to protect. These are the same resources that attracted them to Dare County and attract the visitors upon whom all of our livelihoods depend. We too want to protect these resources, but do not believe it should be done without thought of the human impact. The Interim Management Plan provided the balance that we seek. It was developed by the National Park Service in conjunction with the U.S. Fish and Wildlife Service. It protected the resources of the Park and the interests of the community. It gave the National Park Service the flexibility to continue doing that. It should be restored while we all work together to come up with a permanent plan that accomplishes these same goals.

The people of Hatteras Island and Dare County are counting on you to help them, to keep the promises made by those before you. Please help us preserve our culture, our history, our way of life. Please support S3113.

**RESOLUTION SUPPORTING S 3113 AND HR 6233
TO REINSTATE THE INTERIM MANAGEMENT STRATEGY
GOVERNING ORV USE IN THE CAPE HATTERAS NATIONAL SEASHORE**

WITNESSETH:

Whereas, The Cape Hatteras National Seashore Recreational Area (CHNSRA) was created by Congress in 1937; and

Whereas, at the time of its creation and thereafter, residents and visitors to the CHNSRA were assured that there would always be access to the beaches by residents and visitors alike and residents and visitors have enjoyed that access until enjoined from significant areas of the beaches by court order in April of 2008; and

Whereas, in December of 2007 in an effort to develop a plan to balance the public use of the CHNSRA with the need to protect the natural resources of the CHNSRA, the Secretary of the Interior implemented a negotiated rulemaking committee consisting of thirty different stake holders in the CHNSRA, with members representing various interests including, among others, property owners, environmental groups, fishermen, homeowners associations, business people, local governments, and tourist officials; and

Whereas, in July of 2007, the National Park Service (NPS), with the approval of the US Fish and Wildlife Service, adopted an Interim Protected Species Management Plan (Interim Plan) to protect the natural resources of the CHNSRA while still providing for public access to the popular and traditionally used beaches of the CHNSRA; and

Whereas, in July of 2007 a Finding Of No Significant Impact (FONSI) for the Interim Plan was issued determining that the Interim Plan would have no significant environmental impact on the bird, turtle and plant species of the CHNSRA; and

Whereas, the Interim Plan was intended to serve until the negotiated rulemaking was complete and a final management plan could be implemented by the NPS; and

Whereas, in October 2007, environmental groups, who are active participants in the negotiated rule making process, filed suit in US Federal Court seeking to enjoin off road vehicle access to large areas of the CHNSRA, which included the most popular and most traditionally used areas of the CHNSRA, until the negotiated rulemaking was complete; and

Whereas, in April of 2008, a Consent Order was issued by the US Federal District Court, modifying the Interim Plan and resulting in the closure to the public of large areas of the CHNSRA, including the most popular and traditionally used beaches in the CHNSRA; and

Whereas, as set forth in the FONSI, the Interim Plan allowed public use of these traditional and popular beaches while providing adequate protection to the bird, turtle and plant species of the CHNSRA and was generally accepted by the local citizens and visitors to the CHNSRA; and

Whereas, the April 2008 Court Order has resulted in unprecedented closures of the beaches of the CHNSRA, has created significant economic harm to the businesses of Nags Head, Hatteras Island and to the Dare County economy, resulting in significant levels of discontent among the local population, visitors to CHNSRA, and others who have previously enjoyed access to the beaches of CHNSRA; and

Whereas, the Dare County Board of Commissioners, on behalf of the people of Dare County and the visitors to the CHNSRA, request that in order to restore the public's right of access to the beaches of CHNSRA, Congress intervene immediately.

Now, therefore be it resolved that the Dare County Board of Commissioners, at its July 21, 2008 regular meeting, unanimously approved this resolution supporting the adoption of S 3113 and HR 6233 to reinstate the interim management strategy at the Cape Hatteras National Seashore until the National Park Service issues a special regulation and long term off-road management plan for use of the Cape Hatteras National Seashore by the public.

This the 21st day of July, 2008.

Dare County Board of Commissioners

BY: _____
Chairman

Attest _____
Clerk

**BACKGROUND PAPER IN SUPPORT
OF TESTIMONY BY WARREN JUDGE ON S. 3113**

NATIONAL PARKS SUBCOMMITTEE

ENERGY AND NATURAL RESOURCES COMMITTEE

UNITED STATES SENATE

Lawrence R. Liebesman¹

Holland and Knight LLP

July 30, 2008

We are outside counsel to Dare and Hyde Counties, North Carolina, and to the Cape Hatteras Access Preservation Alliance in the case of Defenders of Wildlife et. al v. National Park Service (No. 2: 07-cv-00045 BO). The following information supplements the testimony of Warren Judge, Chairman, Dare County Board of County Commissioners on S.3113.

LEGISLATIVE BACKGROUND

To understand Cape Hatteras National Seashore, one must first look to the Organic Act and Enabling Legislation of the National Park Service ("NPS")—where Congress made clear the objective of creating the agency went beyond preservation and protection of natural resources and wildlife.

While these objectives are central to both pieces of legislation, other objectives are also critical. Preservation of wildlife and natural resources is not to take place without proper

¹ Lawrence R. Liebesman is a Partner in Holland & Knight's environmental practice and has over 30 years experience as an environmental lawyer and litigator including 11 years as a Senior Trial Attorney at the Justice Department's Environment and Natural Resources Division. He is the co-author of the Endangered Species Deskbook published by the Environmental Law Institute.

consideration of, and accommodation to, these other objectives. For example, the Organic Act states that the NPS is to "promote and regulate the use" of national parks, in conformity with the fundamental purpose of such parks, which is not only to "conserve scenery and natural historic objects and the wild life therein," but also to "provide for the enjoyment of the same." 16 U.S.C. § 1. The statute reveals Congress's intent to create a National Park System for "the common benefit of all people of the United States." 16 U.S.C. § 1a-1. Congress expressly recognized the economic importance of the parks. The report from the Committee on Public Lands in connection with the Organic Act, dated July 7, 1916, observed, "The great trend toward the parks means retaining in this country the millions expended by our tourists in foreign travel previously spent abroad. This economic value . . . is a factor of importance, in addition to the benefits to our people in their outdoor education and exercise." S. Rep. No. 64-662 at 1 (1916). Thus, it is manifest that Congress, in creating the NPS, intended our national parks to be visited and used—and to generate economic benefits.

The NPS has likewise recognized these "fundamental" aspects of its management obligations. The NPS Management Policies, 2006, states "[e]njoyment of park resources and values by the people of the United States is part of the fundamental purpose of all parks. The [NPS] is committed to providing appropriate, high quality opportunities for visitors to enjoy the parks, and the Service will maintain within the parks an atmosphere that is open, inviting, and accessible to every segment of American society." Management Policies, 2006, § 8.2.

These considerations are especially significant at the Cape Hatteras. The Enabling Act that created this "National Seashore Recreation Area" requires that the land be "set apart as a national seashore **for the benefit and enjoyment of the people . . .**" 16 U.S.C. § 459 (1946) (emphasis added), Att. 1. Significantly, Section 3 of the Enabling Act specifically reserved the

right of legal residents to earn a livelihood by fishing within the boundaries of the Seashore. *See* 16 U.S.C. § 459a-1, Att. 1. Section 4 states that "certain portions of the area are especially adaptable for recreational uses, particularly "swimming, boating, sailing, *fishing*, and *other recreational activities* of similar nature which shall be developed for such uses as needed." 16 U.S.C. § 459a-2 (emphasis added), Att. 1. Thus, Section 4 specifically recognized that areas traditionally used for recreation should continue to be so used. This language undercuts claims by certain environmental groups that Congress intended to create a wilderness preserve or wildlife protection zone.

This Enabling Act is significant in two respects. First, Congress's original designation of the Seashore as a "National Recreational Area" indicates that Congress specifically wanted recreation to predominate at Cape Hatteras. *See Federal Executive Branch Policy Governing the Selection, Establishment, and Administration of National Recreation Areas by the Recreation Advisory Council*, Circular No. 1 (Mar. 26, 1963) ("Within National Recreation Areas, outdoor recreation shall be recognized as the dominant or primary resource management purpose. If additional natural resource utilization is carried on, such additional use shall be compatible with fulfilling the recreation mission, and **none will be carried on that is significantly detrimental to it**") (emphasis added).² *See also*, NPS, Administrative Policies for the Recreation Areas of the National Park System ("Congress extended the role of the Service still further in the management of recreation areas when it established Cape Hatteras National Seashore in 1937. . . . The 1937 act said this first national seashore was 'especially adaptable for recreational uses . . .'" Second,

² Though this Policy postdates the formation and subsequent renaming of Cape Hatteras from a "National Seashore Recreational Area" to a "National Seashore" (in 1953), the Policy specifically mentions its relevancy: "Many names have been used in the past in describing areas to be acquired and developed, or to be administratively designated, predominantly for recreation use. Some of these are National Seashore, . . . and similar names which embody either the physical resource base or the functional purpose to be served. This policy statement includes such areas." Circular No. 1.

no evidence suggests that Congress ever modified its original intent because it has never designated any part of the Seashore as a "wilderness" area under the 1964 Wilderness Act, 16 U.S.C. §§ 1131-1136 – and, therefore, made subject to restrictions to motorized recreation. Had Congress wanted to turn the Seashore into a wilderness area and alter its status as a National Recreational Area, it could have done so under that 1964 statute.³ It did not.

Further, the legislative history of the Enabling Legislation reflects Congress's original intent to maintain continued access by the public to further the public recreational purposes of the Seashore. In Senate Report No. 75-1196 (Aug. 9, 1937) by the Committee on the Public Land, then-Acting Secretary of the Interior Oscar L. Chapman noted that the Seashore would have particular *recreational* benefits for the public. S. Rep. No. 75-1196 at 2 (emphasis added), Att. 1; *see also*, H.R. Rep. No. 75-1271 at 2 (July 19, 1937). Mr. Chapman expressed the need for Congress to protect the coast line for the public, explaining that "less than 1 percent of the total coast line of the United States is in public ownership and available for *public recreational use*" and "[a]s a major type of landscape which has great potential value for *recreational use*, the Seashore would be well represented in the National Park System." S. Rep. No. 75-1196 at 2 (emphasis added), Att. 1. Mr. Chapman went further to say that the area "is particularly adapted to concentrated use for water sports, so necessary for the densely populated sections of the central eastern seaboard." *Id.* He further noted that "Sea bathing is the primary recreational feature of the area, but the excellent fishing and opportunities for safe sailboating on the protected waters of the sound as well as offshore boating, are highly important . . . [and] that fishing is unusually good in this area" *Id.*

³ It is possible to have designated wilderness areas at a national seashore. For example, the Fire Island National Seashore has a small designated "wilderness" area that is regulated in a different manner than the rest of the Seashore. With regard to the Cape Hatteras National Seashore, however, Congress chose not to set aside any land as designated wilderness.

Subsequent comments by the NPS Director in 1952 when the land was acquired and the Park officially created bears out this intent. In an open letter to the People of the Outer Banks addressing the new boundary lines for the Cape Hatteras National Seashore Recreation Area dated October 27, 1952, NPS Director Wirth made it clear that the basic legislation authorizing the formation of the Seashore reserved fishing rights to the people and that *access to the beach was fundamental to protecting those rights*. Conrad L. Wirth, *A Letter to the People of the Outer Banks*, The Coastland Times (Oct. 31, 1952), Att. 1. Indeed, Director Wirth assured the residents that "there will always be access to the beach for all people, whether they are local residents or visitors from the outside." *Id.* This would include vehicular access. In his letter, he told the local residents that it will be necessary to establish "**certain regulations within the Seashore such as designated places for vehicles to get to the beach in order to reduce sand dune erosion to a minimum**; to manage ocean fishing where large numbers of bathers are using the beach and to confine bathing to certain areas." *Id.* (emphasis added). Director Wirth also acknowledged that the communities that lived in the area for generations would become responsible for caring for the tourists that would arrive at the newly-established Seashore, *id.*, and recognized that these communities have a right to enjoy the prosperity that would flow from the creation of the Seashore. *Id.* Subsequently, former Director Wirth reaffirmed this position in a letter to then-Interior Secretary Lujan. In commenting on lack of action in stabilizing the Oregon Inlet, former Director Wirth noted that, when the Seashore was created, he had made a promise of cooperation with the State of North Carolina and local government to work together as partners to "bring enjoyment to millions of visitors." Letter from Conrad L. Wirth, Former NPS Director, and Secretary of Interior Manuel Lujan (letter taken from the Coastland Times Sunday, May 18, 1993), Att. 1. He further stated that "this promise was made in response to

local concerns as to how the park would affect local people, their businesses and their rights to continue fishing and in recognition that man is an integral part of nature and a very important consideration of designing solutions in dealing with nature." *Id.*

It is clear that Congress created the Seashore with an eye towards the recreational and commercial benefits historically enjoyed by the residents of the Outer Banks. While preservation and protection of natural resources and wildlife are important, they are not the sole objectives of the legislation, nor are they to be achieved in a vacuum, without due accommodation for the right of the recreational public to access the Seashore, including access by motor vehicles.

MANAGEMENT OF SEASHORE PRIOR TO CONSENT DECREE

Environmental groups' picture of wildlife and natural resources on the brink of disappearance significantly overstates the situation at the Seashore. While the NPS is currently involved in developing a final special rule under Executive Order 11644 as amended and 36 C.F.R. 4.10⁴ and is moving forward with a negotiated rule-making process,⁵ the NPS has not allowed off-road vehicles ("ORVs") "unrestricted" access to the Seashore. As noted in a Letter from Michael Murray, Seashore Superintendent, to George Holding, United States Attorney, dated July 31, 2007 ("Letter"), while two draft ORV management plans in the 1970s were never

⁴ President Nixon ordered federal agencies in charge of public lands "to establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands." Executive Order 11644 (Feb. 8, 1972), as amended by Executive Order 11989 (May 24, 1977). 36 C.F.R. 4.10 specifies where ORVs may be driven, namely on park roads, in parking areas, and in those "Routes and areas designated for off-road motor vehicle use . . . promulgated as special regulations."

⁵ The ORV Planning Advisory Committee for Negotiated Rulemaking held its first official meeting on January 3–4, 2008, in Avon, North Carolina. Made up of various Seashore stakeholders, its task is to negotiate and develop special regulations (that is, a proposed rule) for the management of ORVs at Cape Hatteras National Seashore. For more information, see <http://parkplanning.nps.gov/projectHome.cfm?parkId=358&projectId=10641>.

finalized, the Service has adopted key elements of those plans, along with the 1984 General Management Plan to designate ORV routes and other conditions. These elements included:

- Consolidation and designation of beach access routes or "ramps"
- Identification of a permitted ORV travel area (or "corridor") on the beach from the toe of the dune to the ocean
- Speed limits and license requirements for vehicle operators
- Protection of vegetation and sea turtle and bird nesting areas
- Designation of summer seasonal ORV closures in front of villages
- Signage to notify visitors of the above

See Letter at 2.

As further described in Murray's letter, even before the adoption of the complete Interim Plan, the NPS implemented increasing efforts to manage ORV use over the years in order to improve protection of valuable wildlife resources. This has led to increasing protection of shorebird and turtle resources at the Seashore. For example, during the 2006 breeding season, NPS staff at the Seashore implemented 331 actions involving installation, modification, and removal of resource closures associated with protected species, including 97 bird closures, modifications, and removals; and 84 sea turtle nest closures, 75 modifications in preparation for hatching, and 75 closure removals. These steps have a beneficial impact on wildlife. The Interim Plan that was adopted by the NPS in July 2007 provides even greater protection. Among the protective measures implemented as part of the Interim Plan are:

- Year-round closure of areas historically occupied by nesting or wintering plovers and that currently include suitable habitat,

- Closure (to ORVs as well as to pedestrians and pets) of suitable breeding habitat through the breeding season,
- Establishment of a minimum 150-foot buffer around all nesting plovers,
- Expansion of closed areas once eggs hatch, and
- Monitoring to ensure that new closures are added or expanded as required by bird activity.

Interim Plan Finding of No Significant Impact ("FONSI") at 4-15.

The Interim Plan was adopted in all essential respects under procedures that are functionally equivalent to a special rule under 36 C.F.R. § 4.10; that is, the Interim Plan's regulation of ORV routes and areas are consistent with, and as stringent as, the requirements in 36 C.F.R. § 1.5 and Executive Order 11,644. *See* 36 C.F.R. § 4.10 as charted below. This included an open public process that environmental groups involved in the litigation actively participated in.

<u>Requirement</u>	<u>Authority</u>	<u>Functional Equivalent</u>
The new regulation shall be published in the Federal Register.	36 C.F.R. § 1.5(b)	Interim Plan mentioned in 71 Fed. Reg. 33703 (June 12, 2006); participation in scoping and public review made available through the Planning, Environment, and Public Comment website—see FONSI at 29.
The superintendent shall prepare a written determination justifying the action (reasons for the regulation, and an explanation of why less restrictive measures will not suffice). This determination shall be available to the public upon request.	36 C.F.R. § 1.5(c)	<i>See generally</i> , Environmental Assessment ("EA").
The public will be informed of closures, designations, etc. in accordance with § 1.7 of this chapter.	36 C.F.R. § 1.5(e)	See below.
Public notice required by signs, maps, newspaper publication, or "other appropriate methods" including the use of electronic media. Also requires the superintendent to "compile in writing all the designations, closures, permit requirements and other	36 C.F.R. § 1.7(a)	FONSI at 7 (symbolic fencing); FONSI at 10 (use of website to publish bird and closure

restrictions imposed under discretionary authority.”		information; interpretive signing); CHNS website (http://www.nps.gov/caha) (availability of beach access map and report).
Each respective agency head shall develop and issue regulations and administrative instructions detailing trails for ORVs, etc.	Executive Order 11,644 Sec. 3(a).	FONSI at 4-16: preferred alternative.
The respective agency head shall ensure adequate opportunity for public participation in the promulgation of such regulations and in the designation of areas and trails.	Executive Order 11,644 Sec. 3(b).	FONSI at 28-29: (information sessions, public scoping meetings, and public review and comment were part of EA process—Plaintiffs representatives testified and provided detailed comments.
Each respective agency head shall develop and publish regulations prescribing operating conditions for ORVs on the public lands. These regulations shall be directed at protecting resource values, preserving public health, safety, and welfare, and minimizing use conflicts.	Executive Order 11,644 Sec. 4.	FONSI at 4-16: preferred alternative sets forth such conditions.
The respective agency head shall ensure that ORV areas and trails are well marked, and shall provide for the publication and distribution of information, including maps, describing such areas and trails and explaining the conditions on vehicle use.	Executive Order 11,644 Sec. 5.	FONSI at 7 (symbolic fencing); FONSI at 10 (use of website to publish bird and closure information; interpretive signing); CHNS website (http://www.nps.gov/caha), beach access map and report.
The respective agency head shall prescribe appropriate penalties for violation of regulations, and shall establish procedures for the enforcement of those regulations.	Executive Order 11,644 Sec. 6.	36 C.F.R. § 1.3(a) (“A person convicted of violating a provision of the regulations . . . shall be punished by a fine as provided by law, or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings); FONSI at 10 (periodic patrols to enforce compliance with closures).
Before issuing ORV regulations or designating ORV areas or trails, the Secretary of the Interior shall, as appropriate, consult with the Secretary of Energy and the Nuclear Regulatory Commission.	Executive Order 11,644 Sec. 7.	Not appropriate here—no energy or nuclear facilities at issue.

The respective agency head shall monitor the effects of the use of ORVs on lands under their jurisdictions. On the basis of the information gathered, they shall from time to time amend or rescind designations of areas or other actions taken pursuant to this order as necessary to further the policy of this order.	Executive Order 11,644 Sec. 8(a).	FONSI at 7 ("The park will monitor and document results . . . which can then allow for adjustments")
The Council on Environmental Quality shall maintain a continuing review of the implementation of this order.	Executive Order 11,644 Sec. 8(b).	FONSI at 4 (annual assessment of habitat to plan the upcoming pre-nesting closures); Amended Biological Opinion (annual review process).
The respective agency head shall, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.	Executive Order 11,644 Sec. 9(a).	FONSI at 2 (use of "adaptive" management practices and procedures that allow for responding to changes in the environment); FONSI at 7 ("[B]ecause of the dynamic nature of the Seashore beaches and inlets, the management may change by location and time").

Thus, although the Interim Plan is not a final rule—a process that is currently underway—it provided outside environmental groups and other stakeholders with all the procedural protections and opportunities of a final special rule and addressed the substantive requirements of the Executive Order and the applicable regulations. The development and approval of the Interim Plan was a reasonable exercise of NPS management discretion.

Lawrence R. Liebesman
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Washington, DC 20006
Tele: (202)955-3000; Fax (202) 955-5564
E-mail: lawrence.liebesman@hklaw.com

ATTACHMENT 1



LII / Legal Information Institute

U.S. Code collection

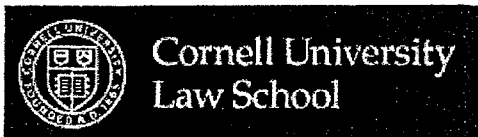
TITLE 16 > CHAPTER 1 > SUBCHAPTER LXIII > § 459

§ 459. Cape Hatteras National Seashore Recreational Area; conditional establishment; acquisition of lands

When title to all the lands,
except those within the
limits of established
villages, within boundaries
to be designated by the

Secretary of the Interior within the area of approximately one hundred square miles on the islands of Chicamacomico, Ocracoke, Bodie, Roanoke, and Collington, and the waters and the lands beneath the waters adjacent thereto shall have been vested in the United States, said area shall be, and is, established, dedicated, and set apart as a national seashore recreational area for the benefit and enjoyment of the people and shall be known as the Cape Hatteras National Seashore Recreational Area: Provided, That the United States shall not purchase by appropriation of public moneys any lands within the aforesaid area, but such lands shall be secured by the United States only by public or private donation.

LII has no control over and does not endorse any external Internet site that contains links to or references LII.



[Search Law School](#) [Search Cornell](#)

LII / Legal Information Institute

U.S. Code collection

TITLE 16 > CHAPTER 1 > SUBCHAPTER LXIII > § 459a

§ 459a. Acceptance of donations; acquisition of property by purchase and condemnation

interests in land, buildings, structures, and other property, within the boundaries of said national seashore recreational area as determined and fixed hereunder and donations of funds for the purchase and maintenance thereof, the title and evidence of title to lands acquired to be satisfactory to the Secretary of the Interior: Provided, That he may acquire on behalf of the United States under any donated funds by purchase, when purchasable at prices deemed by him reasonable, otherwise by condemnation under the provisions of section 3113 of title 40, such tracts of land within the said national seashore recreational area as may be necessary for the completion thereof.

The Secretary of the Interior is authorized to accept donations of land,

LII has no control over and does not endorse any external Internet site that contains links to or references LII.



LII / Legal Information Institute

U.S. Code collection

TITLE 16 > CHAPTER 1 > SUBCHAPTER LXIII > § 459a-1

§ 459a-1. Administration, protection, and development; commercial fishing by residents; hunting

The administration, protection, and development of the aforesaid national seashore recreational area shall be

exercised under the direction of the Secretary of the Interior by the National Park Service, subject to the provisions of sections 1, 2, 3, and 4 of this title, as amended: Provided, That except as hereinafter provided nothing herein shall be construed to divest the jurisdiction of other agencies of the Government exercised on August 17, 1937, over Federal-owned lands within the area of the said Cape Hatteras National Seashore Recreational Area: Provided further, That the provisions of the Federal Power Act [16 U.S.C. 791a et seq.], shall not apply to this national seashore recreational area: And provided further, That the legal residents of villages referred to in section 459 of this title shall have the right to earn a livelihood by fishing within the boundaries to be designated by the Secretary of the Interior, subject to such rules and regulations as the said Secretary may deem necessary in order to protect the area for recreational use as provided for in sections 459 to 459a-3 of this title: And provided further, That hunting shall be permitted, under such rules and regulations as may be prescribed by the Secretary of the Interior in conformity with the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755) [16 U.S.C. 703 et seq.], as follows:

- (a) Upon the waters of the sounds included within the national seashore recreational area,
- (b) in the area north of the Currituck County line,
- (c) on Ocracoke Island, and
- (d) within not more than two thousand acres of land in the remaining portion of said national seashore recreational area, as shall be designated by the Secretary of the Interior; except on lands and waters included in any existing or future wildlife or migratory bird refuge and adjacent closed waters.

LII has no control over and does not endorse any external Internet site that contains links to or references LII.

Calendar No. 1247

75TH CONGRESS }
1st Session }

SENATE

{ REPORT
No. 1196

ESTABLISHMENT OF CAPE HATTERAS NATIONAL SEASHORE, N. C.

AUGUST 9 (calendar day, Aug. 13), 1937.—Ordered to be printed

Mr. ADAMS, from the Committee on Public Lands and Surveys,
submitted the following

REPORT

[To accompany H. R. 7022]

The Committee on Public Lands and Surveys, to whom was referred the bill (H. R. 7022) to provide for the establishment of the Cape Hatteras National Seashore in the State of North Carolina, and for other purposes, having carefully considered this proposed legislation, report favorably thereon with the recommendation that the bill do pass. Complete facts with regard to this bill are contained in the letter from the Acting Secretary of the Interior, dated July 19, 1937, and addressed to the chairman of the Committee on the Public Lands of the House of Representatives, which letter is set forth hereinbelow in full.

OFFICE OF THE SECRETARY OF THE INTERIOR,
Washington, July 19, 1937.

Hon. RENÉ L. DEROUEN,
Chairman, Committee on the Public Lands,
House of Representatives.

MY DEAR MR. CHAIRMAN: I have received your letter of May 18 enclosing a copy of H. R. 7022 entitled "A bill to provide for the establishment of the Cape Hatteras National Seashore in the State of North Carolina, and for other purposes", and requesting a report thereon. This proposed legislation provides for the establishment of a national seashore within boundaries to be designated by the Secretary of the Interior on the islands of Curacoomico, Ooracoke, Bodie, Roanoke, and Collington, in the State of North Carolina. A map showing the general area of the proposed Cape Hatteras National Seashore is enclosed. Under the proposal, the area would be preserved as primitive wilderness, except for certain portions which would be especially suitable for swimming, boating, sailing, fishing, and other recreational activities of a similar nature. The bill provides for the acquisition of the necessary lands

Printed.

by donation, out of donated funds, or by condemnation. The area would be administered under the direction of the Secretary of the Interior by the National Park Service. In the event that all of the lands designated by the Secretary of the Interior under the proposal have not been conveyed to the United States within 10 years of the passage of the legislation, the project may be abandoned at the discretion of the Secretary of the Interior.

One of the outstanding types of landscape which is not adequately represented in the national-park system is that of the seashore. It is a recognized fact that the seashore has a strange appeal to a wide range of the population. Yet statistics show that less than 1 percent of the total coast line of the United States is in public ownership and available for public recreational use. As a major type of landscape which has great potential value for recreational use, the seashore should be well represented in the national-park system. In recognition of this fact, this Department has conducted an exhaustive survey of the ocean and Great Lakes shore lines. One of the most promising areas investigated is at Cape Hatteras, where a narrow barrier reef extends for a distance of about 27 1/2 miles along the North Carolina coast.

The scenic theme of Cape Hatteras is that of the sand beach, which is of excellent quality for a distance of 150 miles. The fact that these barrier islands almost inaccessible from the mainland has preserved them from private commercial recreational development. Also of scenic interest is Diamond Shoals which extends out into the ocean about 6 miles from the extreme easterly point of Cape Hatteras. Here the current from the south meets the current from the north, resulting in a wild, spectacular battle of surf, in contrast to the protected waters of Pamlico Sound across the narrow barrier.

The area is rich in bird life. It is on one of the three principal migration routes of the United States for ducks, geese, and other migratory waterfowl. The birds winter in the inland waterways of North and South Carolina and Georgia. Pamlico Sound, lying between Cape Hatteras and the mainland, is one of the most important concentration points for migratory birds east of the Mississippi Valley. There are also a larger number of bird species which stay in the area throughout the year.

There are definite historical values attached to Cape Hatteras. Because many ships have been destroyed on the treacherous Diamond Shoals referred to above, it has become known as the "graveyard of the Atlantic." The old ruins of Cape Hatteras Lighthouse, now abandoned and under the administration of the War Department, is an excellent site at which to demonstrate the influence of Diamond Shoals on maritime history. Roanoke Island, within the boundaries authorized by the bill, was the site of an English colony established in 1584 by Sir Walter Raleigh.

The area is particularly adapted to concentrated use for water sports, so necessary for the densely populated sections of the central eastern seaboard. In summer, the air is cooled by the water bodies which surround the islands. In winter the water is warmed by the Gulf Stream, which passes nearer to Cape Hatteras than to any other point north of Florida. Sea bathing is the primary recreational feature of the area, but the excellent fishing and opportunities for safe sailboat racing on the protected waters of the sound, as well as offshore boating, are highly important. The bathing on the sound side of the islands is protected and safe for children, while surf bathing may be had on the ocean side of the islands.

Fishing is unusually good in this area, ranging from deep-sea fishing for tarpon, sailfish, and dolphin to sound fish such as bluefish and channel bass.

It is recommended that the bill be amended as follows:

On page 2, line 3, after the word "Seashore" change the period to a colon and add the following:

"Provided, That the United States shall not purchase by appropriation of public moneys any lands within the aforesaid area, but such lands shall be secured by the United States only by public or private donation."

On page 4 strike out all after line 1 through the end of the section and insert in lieu thereof the following:

"If the State of North Carolina shall agree that if all the lands described in section 1 of this Act shall not have been conveyed to the United States within ten years from the passage of this Act, the establishment of the aforesaid national seashore may, in the discretion of the said Secretary, be abandoned, and that, in the event of such abandonment, the said State will accept a reconveyance of title to all lands conveyed by it to the United States for said national seashore. The lands donated to the United States for the purposes of this Act by parties other than said State shall revert in the event of the aforesaid abandonment to the said State."

ESTABLISHMENT OF CAPE HATTERAS NATIONAL SEASHORE, N. C. 3

donors, or their heirs, or other persons entitled thereto by law. In the event of said abandonment, the Secretary of the Interior shall execute any suitable quit-claim deeds, or other writings entitled to record in the proper counties of North Carolina, stating the fact of abandonment, whereupon title shall revert to those entitled thereto by law and no further conveyance or proof of reversion of title shall be required."

In view of the facts presented, I recommend that H. R. 7022, with the amendments suggested above, be given favorable consideration by Congress.

I have been advised by the Bureau of the Budget that the proposed legislation, as recommended for amendment, would not be in conflict with the program of the President.

Sincerely yours,

OSCAR L. CHAPMAN,
Acting Secretary of the Interior.

A LETTER TO THE PEOPLE OF THE OUTER BANKS

When I visited with you earlier this month, I told you that we would study further some of the problems that were bothering you and see if some adjustments in the boundary of the Cape Hatteras National Seashore Recreational Area could be made to meet our joint problems more satisfactorily. This we have done. Rather than make another three-day trip to your Islands, I believe that the best way to get the results of these studies to all of you in a clear and concise way is to print them in your local paper. Victor Meekins has agreed to see that every family on Ocracoke, Hatteras, and Bodie Islands, south of Whale Bone, gets a copy.

This issue of The Coastland Times contains a set of maps and descriptions which show in detail the new boundary lines for the Cape Hatteras National Seashore Recreational Area. In general, the new lines leave more room for expansion around the towns and they bring in the boundary at Pamlico Sound to within 150 feet of the shores of Ocracoke and Hatteras Islands. The new boundary lines have the approval of the Secretary of the Interior; and I have discussed them with Mr. George Ross, Director, North Carolina Department of Conservation and Development, who also approves of them.

During the week of October 6, I met with many of you individually and in public meetings held in the towns of Ocracoke, Hatteras, Avon, and Rodanthe, to answer questions about the Cape Hatteras National Seashore Recreational Area project. We discussed its purposes, boundary lines, and the programs for its acquisition and development. Congressman Herbert C. Bonner and others joined in several of the meetings and discussions. You asked many questions; many of these were on how the establishment of the Recreational Area would affect you personally, your business, or your property. I hope, and believe that those questions were answered to the satisfaction of those who asked them.

In the public meetings, you brought out four main points:

1. Many of you were uncertain as to just where the Recreational Area boundary lines would be around the communities and felt that not enough room was being left for community expansion.
2. There was the question as to the rights of individuals to continue commercial and sport fishing.
3. There was concern as to whether your present hunting rights would be affected.
4. There was a feeling that once the Recreational Area is established the local people would be denied access to the ocean beach.

I wish to re-emphasize the answers to these questions, with the aid of the accompanying maps.

As to the first question, I promised you that we would restudy the boundaries and change them if necessary and desirable. The study was based on a personal visit to all of the communities and the Recreational Area, as well as the statements made to me by many local people personally and in public meetings. Our studies showed that the old Recreational Area boundary lines were too confining, so we have changed them in all cases by moving the boundary lines around the communities closer to the ocean. On the ocean side of the towns, the new, approved boundary lines include in the Recreational Area only those lands along the ocean which are necessary to protect and control the sand dunes, to re-establish them where necessary, and hold them to protect the communities from the intrusion of the ocean. The National Park Service intends to resume the sand fixation work that it started in the 1930's and more firmly establish the dunes.

The boundary line has also been changed on the Sound side. It has been moved in to a distance of 150 feet from the shore lines of Ocracoke and Hatteras Islands, except in front of the communities, and the offshore islands outside of that line are eliminated from the Recreational Area. The boundary line of the Cape Hatteras National Seashore Area does not extend in front of the communities on the Sound side. In the case of Bodie Island it was more practical to describe a meets and bounds line, as shown on the accompanying maps, than it was to use an irregular line 150 feet offshore.

In regard to fishing and hunting (questions 2 and 3),--under the basic legislation authorizing the Cape Hatteras National Seashore Recreational Area, fishing and hunting rights in the Sound were reserved to the people. That being the case there is no real need to include Pamlico Sound waters in the Recreational Area. This is so because the North Carolina fishing and hunting laws and regulations and those of the Federal Government which have been in effect for a great many years in the Sound area will still apply to waters both inside and outside the Recreational Area boundaries. Therefore, the new boundary line in the Sound has been set only 150 feet offshore from Hatteras and Ocracoke Islands. That is purely an arbitrary distance. It brings the line close enough in so that everyone can know definitely where it is. Due to the irregularity of the shore line, it may be necessary to make minor adjustments in some places so that any small offshore islands will be either wholly in or wholly out of the Recreational Area. In other words, the line won't split any islands.

The following larger islands are excluded from the Recreational Area:

Off Bodie Island--those among others: Pond, Grun, House, Warren, Headquarters, Bells, Bowser, Cedar, Cutoff and Herring Shoal, Big Tim, and Little Tim Islands.

Off Hatteras Island--these among others: both Great Island, Midgett, Noache, Bull, Big, and Kings Islands.

Off Ocracoke Island--these, among others: Outer Green, Cockrel, and Negro Islands.

The guarantees in the laws relating to hunting and continuation of commercial fishing in the waters of the Sounds will apply within this 150 feet offshore strip exactly as they do outside of it. The State and Federal fishing and hunting regulations within this strip cannot be affected by any National Park Service regulation.

The law says that hunting will be permitted on Ocracoke Island, on the waters of the Sounds and on not more than 2,000 Island Refuge and its waters. The law requires the Secretary of the Interior to designate the 2,000-acre hunting area would be selected by a committee composed of two representatives of the State of North Carolina, to be designated by the Governor, and one each from the Fish and Wildlife Service and the National Park Service of the Department of the Interior. The National Park Service will move toward the establishment of this committee and the designation of these lands at the earliest possible moment, after the lands have been acquired. Of course, no part of the 2,000 acres will be in the Pea Island Refuge.

Concerning access to the beach (question 4),--when I met with you I explained that when the lands for the Recreational Area are acquired and become public property there will always be access to the beach for all people, whether they are local residents or visitors from the outside. However, it will be necessary to establish certain regulations, such as: to designate places for vehicles to get to the beach in order to reduce sand dune erosion to a minimum; to manage ocean fishing where large numbers of bathers are using the beach; and to confine bathing to certain areas.

These latter are safety measures, as it would be dangerous to permit surf fishing where there are large numbers of people in bathing and, likewise, fishermen would not want bathers to interfere with their fishing.

With the changed boundary lines in the Sound and the enlargement of the areas excluded for community expansion, as indicated on the accompanying maps the establishment of the committee to determine the 2,000 additional acres of land on the islands to be open to hunting, and making clear the problem of access to the ocean beach, I feel that we have found a reasonable solution that meets the needs of the Recreational Area. I might add that if, at any time, the State is in a position to build a road on Ocracoke, we can easily reach agreement on the right-of-way for it.

Now, a word concerning the future development of the Area. As stated above, the National Park Service proposes to resume the sand fixation work; to re-establish the natural plant and wild-life within the area; and to provide access to the beach for everybody. We plan also to tell the story of the sea. Cape Hatteras has perhaps one of the most interesting and heroic sea histories in the entire United States, if not in the world. It is the plan of the National Park Service to establish a museum to tell the story of the sea, and especially the part that the Cape Hatteras coast line and you people have played in it. The fascinating history of the Outer Banks, combined with the story that is told at the Wright Memorial and at Fort Raleigh on Roanoke Island will make this part of North Carolina one of the most important tourist objectives in the United States.

As our plans move forward we will call upon the people of the communities on Ocracoke, Hatteras, and Bodie Island to work with us in establishing the museum. Many of you have relics of the past and stories of great accomplishments handed down through your families that are needed to record and relate this history. It is hoped that when the museum is ready you will see fit to donate or loan appropriate objects for exhibit purposes. When our plans are formulated in more detail they will be made known to you, and we are going to ask for your advice and suggestions.

The National Park Service has always believed in free enterprise, and has practiced it in all the areas of the National Park System. In the case of the Cape Hatteras National Seashore Recreational Area, we expect the people in the communities on the Islands of Ocracoke, Hatteras and Bodie to take care of the tourists. No developments for tourist accommodations are planned or will be permitted on government property. Consequently, the property within the communities will, without any doubt, have an increasing commercial value because of the existence of the Recreational Area; its greatest value will be for use in taking care of the public.

You have never experienced this kind of a development before, but we in the National Park Service have seen it many, many times throughout the United States when national areas are established. Business interests outside of your communities know what this development is going to mean to the communities; they are already among you and are acquiring land in anticipation of the establishment of the Area. They know that there will be a large influx of people and that land values will rise.

Subj: Conrad Wirth 2nd letter

Date: 07/14/2000 10:18:36 PM Eastern Daylight Time

From: fff@interpath.com (Frank Folb)

To: dheel@bigfoot.com (Wayne Mathis), frg@interpath.com (Natalie Perry), HeronsNest@interpath.com (Mike McAllister), guitarcouch@aol.com (John Couch), dag@interpath.com (David A. Goodwin), deadhead@beachaccess.com (Larry Hardham)

Letter taken from The Coastland Times, Sunday, May 18, 1993

The Honorable Manuel Lujan, Jr.
Secretary
U. S. Department of Interior
Washington, D. C. 20240

Dear Secretary Lujan:

I am sincerely grateful for your friendly reception extended to Governor James B. Martin and the people of Dare County, North Carolina on March 20, 1989 and your call for the Department of Interior to fully and immediately cooperate with the State of North Carolina and local governments as concerns the stabilization of the north point of Hatteras Island and the protection of the Herbert C. Bonner bridge across Oregon Inlet. On October 27, 1952, when establishing the Cape Hatteras National Seashore, I as Director of the National Park Service promised the people of that area that "The National Park Service and its staff stand ready to cooperate with you at all times in the development of your communities, if you want us to. I hope we can work together as partners, and that we can look forward to a long and pleasant association that will bring enjoyment to millions of visitors and prosperity to you."

This promise was made in response to local concerns about how the Park would affect the local people, their businesses and their rights to continue fishing, and in recognition that man is an integral part of nature and a very important consideration of designing solutions in dealing with nature. To date, as concerns the stabilization of Oregon Inlet, the Department of Interior has not upheld that promise.

I am and have always been a man of my word, and I respectfully urge you to uphold the promises made on behalf of the Department of Interior in 1952.

Sincerely,
Conrad L. Wirth
Former Director
National Park Service
Department of Interior

Present address:
West Acres Box 400
New Lebanon, N. Y. 12125

----- Headers -----

Return-Path: <fff@interpath.com>

Received: from rly-yc05.mx.aol.com (rly-yc05.mail.aol.com [172.18.149.37]) by air-yc03.mail.aol.com (v75_b1.4) with ESMTP; Fri, 14 Jul 2000 22:18:36 -0400

Received: from isnmmp01.interpath.net (isnmmp01.interpath.net [216.48.1.27]) by rly-yc05.mx.aol.com (v75.18) with ESMTP;

NATIONAL PARK SERVICE

for the Recreation Areas of the National Park System



GENERAL

PURPOSE

The purpose of this booklet is to state in one document the administrative policies of the National Park Service for the management of the Recreational Area Category of the National Park System. Additionally, at the beginning of each major part of the administrative policies, such as for Resource Management Policy, Fish and Wildlife Management Policy, Master Plan Policy, and Physical Developments Policy, there is included a discussion of the background and philosophy on which the administrative policies are based.

Secretary Udall said in his memorandum of July 10, 1964 (full text in Appendix A):

In looking back at the legislative enactments that have shaped the National Park System, it is clear that the Congress has included within the growing System three different categories of areas—natural, historical, and recreational.

Natural areas are the oldest category, reaching back to the establishment of Yellowstone National Park almost a century ago. A little later historical areas began to be authorized culminating in the broad charter for historical preservation set forth in the Historic Sites Act of 1935. In recent decades, with exploding population and diminishing open space, the urgent need for National Recreation Areas is receiving new emphasis and attention.

* * * a single, broad management concept encompassing these three categories of areas within the System is inadequate either for their proper preservation or for realization of their full potential for public use as embodied in the expressions of Congressional policy. Each of these categories requires a separate management concept and a separate set of management principles coordinated to form one organic management plan for the entire System.

It is hoped that this compilation of administrative policy will contribute to better public understanding of the management programs and plans for the areas in the Recreational Area Category, thereby promoting the knowledgeable use and enjoyment of our Nation's parklands.

The broad foundations for these administrative policies are in the several acts of Congress establishing national parkways, national seashores, national recreation areas, national lakeshores, national scenic riverways, and similar areas in the Recreational Area Category of

the National Park System. The policies laid down by the Congress for the management of any particular recreation area may be found in the legislation establishing that area. These legislative mandates represent the basic policy guidance for the management of recreation areas and, of course, are controlling in any situation in which the Congress has acted. Of direct relevance, too, is the intent of Congress as disclosed in the hearings and reports on the legislation.

It is the purpose of administrative policy to implement the mandates of Congress and to prescribe guidelines for the day-to-day management of recreation areas. Separate booklets deal with administrative policies for natural areas and historical areas of the National Park System.

The Natural Area Category comprises those areas of the National Park System whose purpose is to preserve for all time the superlative examples of our Nation's scenic beauty, wilderness, native wildlife, indigenous plant-life, and areas of scientific significance.

Types of areas in the Historical Area Category of the National Park System include national historic sites, national historical parks, national military parks, national memorials, national memorial parks, national monuments, and national battlefield sites. Historical areas preserve antiquities, such as ancient Indian ruins and sites related to our national history.

The Recreational Area Category of the National Park System consists of those areas identified by the President's Recreation Advisory Council (now the President's Council on Recreation and Natural Beauty) in its policy Circular No. 1 of March 26, 1963, as follows:

Many names have been used * * * in describing areas * * * predominantly for recreation use. Some of these are National Seashore, National Lakeshore, National Waterway, National Riverway, National Recreation Demonstration Areas, and similar names which embody either the physical resource base or the functional purpose to be served.

CONGRESSIONAL POLICIES

The Congress has expressed its interest, over several decades, in the development of recreation areas to assure "adequate outdoor recreation resources" for all our citizens.

Congress passed, on June 23, 1936, a Park, Parkway, and Recreation Area Study Act. This act directed the Secretary of the Interior to make, through the National Park Service, "a comprehensive study * * * of the public park, parkway, and recreational-area programs of the United States * * * such as will provide data helpful in developing a plan for coordinated and adequate public park, parkway, and recreational-area facilities for the people of the United States."

On June 30, 1936, Congress passed the Blue Ridge Parkway Act. This national parkway, connecting Shenandoah and Great Smoky Mountains National Parks, resulted from a study by

the National Park Service, the U.S. Forest Service, and the Bureau of Public Roads.

The Blue Ridge Parkway legislation specified that the lands "be given special treatment for recreational purposes," and called on the National Park Service and the U.S. Forest Service to "correlate such recreational development as each may plan."

On October 13, 1936, the National Park Service and the Bureau of Reclamation entered into a cooperative agreement to permit development of recreational areas associated with the Boulder Canyon Project in Nevada and Arizona. The Bureau retained authority over Boulder Dam, its engineering works, and Boulder City. The Service took "jurisdiction over the remainder of the Boulder Canyon Project area, including the airport on the outskirts of Boulder City, and * * * authority over and responsibility for all activities conducted or to be conducted thereon."

On November 14, 1936, Presidential Executive Order No. 7496 as signed the National Park Service additional recreational responsibilities that have had a far-reaching effect in meeting the recreation needs of 24 States. Through emergency relief appropriations, the Government was then acquiring submarginal lands, some of which had recreational value. The Executive order gave the National Park Service responsibility for acquisition and development of recreational demonstration areas under the program.

With the generous support of the Congress, the Service acquired 397,000 acres of recreational lands and established 46 recreational demonstration areas in 24 States, usually near urban centers. The people poured into the new camping, bathing, hiking, boating, and picnic areas. Eventually, most of these areas were turned over to the States and local communities where they serve an important segment of the Nation's recreational needs today.

The Congress extended the role of the Service still further in the management of recreation areas when it established Cape Hatteras National Seashore in 1937. The Congress later changed the name to Cape Hatteras National Seashore Recreational Area. The 1937 act said this first national seashore was "especially adaptable for recreational uses * * *" and should be managed for these and other purposes. One of the other purposes for which the area was to be managed was the preservation of certain portions thereof "as a primitive wilderness." In the act of June 29, 1940 (P.L. 689, 76th Congress), public recreational hunting was authorized at Cape Hatteras.

In 1946, Congress authorized the National Park Service to administer recreation on lands under the basic jurisdiction of other Federal agencies. Public Law 633 authorized National Park Service appropriations for "administration, protection, improvement and maintenance of areas, under the jurisdiction of other agencies of the Government, devoted to recreational use pursuant to cooperative agreements."

By authority contained in the 1936 Park, Parkway, and Recreation Area Study Act, the Service conducted detailed surveys of the Atlantic and Gulf coasts, the Pacific coast and the shorelines of the Great Lakes. The purpose of these studies was to identify opportunities for conserving

portions of natural or historically important shorelines for park and recreation uses at the local, State, or Federal level.

Under the same authority, the Service studied the recreational potential of the several reservoirs (Glen Canyon, Curecanti, etc.) authorized under the Upper Colorado River Storage Act of April 11, 1956. These and other studies laid the groundwork for legislation authorizing several national seashores and national recreation areas. Congressional legislation for these areas during the 1960's has brought about an unprecedented expansion in the management responsibilities of the National Park Service for recreation areas. Since the Cape Cod National Seashore Act of August 7, 1961, twenty-two areas in the Recreational Area Category have been assigned to the National Park Service for management.

The legislation respecting several of these areas introduced innovations in land acquisition and management which have had a profound influence upon the administrative policies of the Service for the management of recreation areas. For example, in the Cape Cod legislation of August 7, 1961 (P.L. 126, 87th Congress), the Congress authorized the Secretary of the Interior to "issue regulations specifying standards for approval by him of zoning bylaws." When zoning bylaws, in accord with the prescribed standards, were issued by towns within the seashore, the Secretary's power of condemnation was suspended with respect to improved property subject to these zoning bylaws. The act also extended to the landowners the option of selling improved property to the United States, retaining "the right of use and occupancy" of such improved property for noncommercial residential purposes during the lifetime of the owner or the owner's spouse, or for a fixed term of 25 years or less.

As in the Cape Hatteras legislation, the Cape Cod Act also authorized public hunting as an appropriate recreational activity.

In the Ozark National Scenic Riverways legislation of August 27, 1964, the Congress indicated that, where appropriate to the management of the area, the Secretary should acquire lesser interests in land than the fee, including specifically the acquisition of "scenic easements." This legislation also provided certain options to landowners to reserve residential use and occupancy when selling their lands to the Government. The act also provided that the Secretary should permit public recreational hunting.

In the Lake Mead National Recreation Area legislation of October 8, 1964 (P.L. 639, 88th Congress), the Congress provided specifically that grazing and mineral leasing, among other things, should be permitted to the extent that such uses are not inconsistent "with either the recreational use or the primary use of that portion of the area heretofore withdrawn for reclamation purposes."

The far-reaching report of January 31, 1962, of the Outdoor Recreation Resources Review Commission (established by Congress by the Act of June 28, 1958, led to the establishment of the Bureau of Outdoor Recreation in the Department of the Interior on April 2, 1962.

Many of the recreation planning duties assigned the National Park Service by the Park,