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County of Dare, North Carolina

Testimony on S. 2372

A bill to authorize pedestrian and motorized vehicular access in the Cape Hatteras National Seashore Recreational Area

June 27, 2012

Dare County North Carolina, known as the Outer Banks, is home to the Cape Hatteras National Seashore Recreational Area (CHNSRA), which has the distinction of being America's first national seashore. The CHNSRA is unique in that it was created to be a recreational area. In the wake of the Great Depression, the Federal Government launched this new recreational concept as a bold and innovative endeavor to stimulate tourism and bolster the economy.

The people of Dare County cooperated with the Federal Government in creating this new national seashore. People sacrificed through gifts of land and favorable sales of property to the National Park Service. This was done in good faith based on solemn promises made by Washington that there would always be recreational access for the people.

At the urging of the National Park Service, people built businesses and infrastructure to support and promote tourism to the area. For generations the area flourished and the area became a popular tourism destination because of its world-class fishing and a host of family-oriented recreational activities.

The County of Dare through its elected leaders, and in concert with grassroots community partners, has been involved in every phase of the Federal Government's planning and rulemaking for the seashore. Throughout this process we have participated in the negotiated rulemaking process, and engaged in Public Hearings on the Draft Environmental Impact Statement (DEIS), Final Environmental Impact Statement, (FEIS) and the ORV Management Plan. Along with others, we have repeatedly offered practical solutions to address the concerns required by Executive Orders 11644 and 11989 without compromising the area's unique culture and economy.

Based on decades of experience working with the National Park Service, we have concluded that S. 2372 is a practical solution for providing access to the seashore while assuring that science-based measures will protect shorebirds and turtles.

Following are reasons why S. 2372 makes sense today for the Cape Hatteras National Seashore Recreation Area –

PROVIDES FLEXIBILITY FOR THE SUPERINTENDENT TO BETTER MANAGE THE SEASHORE –

The passage of S. 2372 would reinstate the “Interim Management Plan,” a tool developed by the National Park Service that was in place before the consent decree and proven effective in balancing resource protection with responsible recreational access. The Interim Management Plan was fully vetted and had a National Environmental Policy Act (NEPA) review.

A key provision of the Interim Plan is that it provides adaptive management techniques that give the Superintendent authority to use his or her best professional judgment in adapting corridors and routes as the physical characteristics of the beach change on a dynamic basis. This common sense approach allows the Superintendent to modify access by responding directly to changing conditions on a real time basis, rather than arbitrarily written mandates.

For example, when buffers are established to protect a resource, once the species have begun moving away from the nesting area, the Superintendent could monitor and modify the established buffer on an on-going basis. This would ultimately provide more effective resource protection, while at the same time providing more access. This represents a win-win situation for both protected resources and the American public.

This flexibility is vital because conditions at the seashore are dynamic and in a constant state of flux. As the landscape of the seashore changes due to weather and tide conditions the natural environment of the area changes as well. These changes can be assessed, analyzed, and adjusted as needed by the Superintendent.

We believe the Superintendents of the CHNSRA, including the current one, are dedicated professionals with the ability and experience to manage the seashore in a responsible way. Depriving the Superintendent of this flexibility denies reasonable access without affording any resource protection benefit.

Reinstating the Interim Management Plan will not remove all regulatory controls and create a reckless situation where the seashore is unprotected. Nothing could be further from the truth. The Interim Plan has comprehensive rules that will allow the

Superintendent to actively manage the seashore and better protect all species of wildlife.

The Interim Plan also had the benefit of citizen participation through Public Hearings. As a matter of principle, we believe the development of environmental policy is best done openly in the sunshine of full and transparent public review. The consent decree, put in place after a lawsuit by special interest groups, never enjoyed public support due in large part that it was prepared behind closed doors without taxpayer input.

RESPONSIBLE ORV ACCESS IS A MATTER OF PRACTICAL NECESSITY

Dare County has championed the cause of providing access for all users of the seashore. We strongly support pedestrian access and have long encouraged the National Park Service to add additional parking, walkovers and other infrastructure to enhance and improve the pedestrian visitor experience.

We also recognize the physical reality that ORV use is the only practical way to gain access to some of the key recreational sites within this uniquely designed seashore. On first visit to the Cape Hatteras National Seashore Recreational Area, many are surprised to discover that without ORV access, people of all ages would have to hike large distances, of over a mile, to reach some of the remote recreational areas. Only the most athletic can traverse the hot sand carrying small children, recreational equipment, water and other vital supplies.

Without ORV access, the physically disabled, the elderly, and the many who suffer from chronic medical conditions are unable to reach the seashore and enjoy the place that is supported by their tax dollars. This is inconsistent with the recreational purpose for which the CHNSRA was originally created.

Mobility impaired visitors depend upon their vehicle not only for transportation to the seashore, but as a necessary lifeline in the event of a medical emergency, a sudden change of weather or temperature conditions, or need for toilet facilities. It is unfair that these people be restricted to the areas directly in front of the villages as is now provided in the ORV Management Plan.

At the Cape Hatteras National Seashore Recreational Area, ORV access is a matter of practical necessity.

RESOURCE PROTECTION MUST BE BALANCED WITH RECREATIONAL ACCESS

We believe people and nature can live in harmony in the Cape Hatteras National Seashore Recreational Area. For generations our community has been on the

vanguard of sustaining the natural resources in order to preserve them for our children, and grandchildren, and generations to come. No one is more committed to preserving a solid, long-term, ecological future for the beaches of the Outer Banks than the people of Dare County.

The public is often surprised to learn that none of the birds protected at the CHNSRA are endangered. While the piping plover is considered threatened on its migratory path through the Outer Banks, it is not indigenous to the area, and it is not endangered.

Other shorebirds that are afforded protection are not endangered, but listed as species of concern. This is an important distinction because non-endangered birds at the Cape Hatteras National Seashore Recreational Area are being given greater levels of protection than is given to the same species at other National Parks and Seashores.

Those who oppose recreational access fail to disclose the truth that the greatest threat to wildlife at the CHNSRA is from weather and natural predators. As they herald the rise and fall of breeding numbers from year to year, they imply that ORV access is the villain. In reality, it is weather conditions, including severe nor'easters and hurricanes that frequent the Carolina coast, that destroy bird and turtle nests.

Furthermore, the National Park Service has implemented a highly controversial "Predator Removal Program" that traps and kills hundreds of mammals each year to prevent raccoons, otters, foxes and other natural predators from robbing nests of their eggs. People who love all animals are shocked to discover that NPS disrupts the natural balance of nature by annihilating one species in a misguided attempt to save another.

Sadly, none of the special interest groups, who claim to defend wildlife, have raised their voice as advocates for the hundreds of mammals that have been systematically murdered each year. Instead, they would have you believe that ORV access is destroying shorebirds and sea turtles rather than admit the truth that the greatest threat to wildlife is from weather and natural predators.

To truly understand the dynamics of the Cape Hatteras National Seashore Recreational Area, it is important to note that restrictive closures have shut down vast geographical areas to protect a very small number of birds.

For example, during the recent week of June 14, 2012, only 27% of the seashore's miles were open to everyone. Unfortunately, this did not include Oregon Inlet, Cape Point, and other popular destinations for affordable, family-oriented recreation. During this same time, the National Park Service documented only 5 active Piping Plover nests in the entire Cape Hatteras National Seashore Recreational Area.

Let there be no doubt, Dare County is seriously committed to protecting those 5 nests in a responsible way. However, we believe they can be adequately protected by the Superintendent without shutting down most of the seashore. Here again, it is a matter of balance and avoiding extremist approaches.

It is also worth noting that because bird counts at the CHNSRA consist of such relatively small numbers, even modest gains are often distorted. For example, with a total population of only 5 nests, an increase of 1 nest yields a 20% increase. Special interest groups fan public sentiment by quoting these percentages and claiming that wildlife is thriving, instead of putting the actual number of non-endangered birds in its proper perspective.

Those who oppose reasonable recreational access justify it by claiming that a significant portion of the seashore is designated as a year-round ORV route. However, they leave out an important part of the truth. They fail to disclose that although an area may be designated as open for access, it is only theoretically open, because if any bird activity is observed, that area is immediately closed.

Although a route may be designated on a map for year-round ORV use, the appearance of one bird can shut down an entire area. Designated ORV routes do not guarantee access. They are only open until a bird appears at which time they are immediately closed.

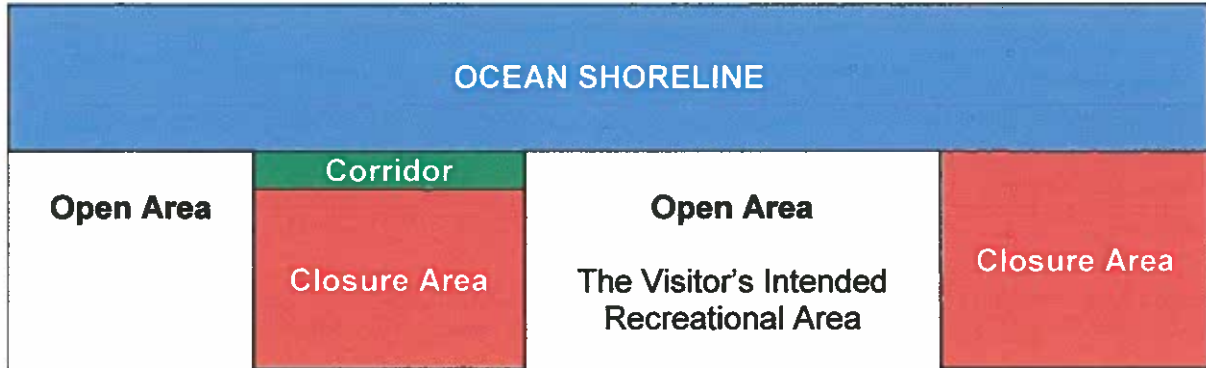
CORRIDORS ARE NEEDED TO PROVIDE ACCESS IN A WAY THAT DOES NOT DISTURB WILDLIFE

Corridors are a vital tool in providing access while managing resources. The National Park Service should incorporate the use of corridors through and around buffers so the public is not unnecessarily denied access to an otherwise open area.

Corridors effectively provide a small path around resource closures in order to provide access to open areas that would otherwise be blocked. Corridors allow visitor access to an open area that may be sandwiched between two closed areas. These corridors have limited negative impacts to the protected species, but they are crucial to providing access during closure periods.

In some instances, corridors can be made through or around closure areas. In other places, corridors can be established below the high tide line. Since unfledged chicks are not found in nests between the ocean and the high tide line, this type of pass through corridor would have no negative effect on wildlife and should be established throughout the seashore.

In the example below, the visitors intended recreational area would be accessible through a small pass through corridor. Without this corridor, the area marked "Open" would actually be closed because it would otherwise be impossible to get there.



Corridors are vital to providing access in a way that does not hinder resource protection. Therefore, Dare County believes pass through corridors should be maintained for pedestrians and ORVs in **all areas** of the Cape Hatteras National Seashore Recreational Area throughout the entire breeding and nesting season.

RESTRICTIVE CLOSURES HAVE CAUSED ECONOMIC HARM FOR THE AREA

Highly restrictive beach closures have had a devastating impact on the community surrounding the seashore. Excessive and extreme closures have consequences. Sadly, at the Cape Hatteras National Seashore Recreational Area, these consequences have caused hard working, small businesses to suffer irreparable harm.

Tourism is our primary industry. It is the engine that drives our economy. Family-owned businesses are the backbone of Dare County and those who offer service and hospitality to Outer Banks visitors are suffering because of restrictive closures.

Closures have taken a heavy toll on a wide range of businesses including automotive parts & repair, bait & tackle shops, campgrounds, charitable service providers, child care centers, fishing rod builders, marinas, motels and cottages, professional artists, restaurants, and retail shops.

The negative impact has been the most vivid for those near the closure areas. When special interest groups claim that tourism has increased under the consent decree, they are guilty of not telling the entire story. Dare County is a large geographical area and even when tourism is up in a neighborhood that may be over an hour away from Hatteras Island, it is still a fact that people near the closures are struggling to survive.

Our people are being forced to work harder, deplete their savings, and short-change their family's future. Meanwhile, by cherry-picking economic indicators, the special interest groups rationalize that tourism is up in spite of unprecedented closures.

Sadly, even businesses whose revenue has stayed level or showed a modest increase have accomplished this at a costly price. Many have had to cut back employee hours, forego much-needed capital improvements, and sacrifice profits.

Our small business owners do not ask for special favors or government handouts, just a fair opportunity to earn their part of the American dream.

ADDITIONAL CONCERNS –

User Fees Impose a Burden on the People

The Cape Hatteras National Seashore Recreational Area rightly belongs to the American people. For generations, families have depended on access to the seashore for recreation. This access has historically been provided at no cost for the residents and visitors of the CHNSRA.

Families plan all year long to visit Cape Hatteras. They save diligently in order to afford a destination where an American family can still enjoy a wholesome recreational experience at a reasonable price. This budgetary dynamic is a crucial one for the working people that frequent the CHNSRA. For these visitors, adding a fee to access the beach is akin to charging a fee to breathe the air.

Instituting fees for use of the CHNSRA threatens to hurt tourism and adversely affect the visitor experience. This applies not only to the National Park Service properties on the Outer Banks, but to the overall tourism-based economy on which Dare County depends.

User fees disproportionately affect those on fixed incomes, single parents, low-income visitors, and minorities. A \$120 user fee for someone earning the minimum wage of \$7.25 per hour is more greatly affected than someone earning an upper class income. We believe high user fees favor the rich and privileged over the poor and working middle class families that depend on free access to the Cape Hatteras National Seashore Recreational Area.

The yearly and weekly fees, as imposed by the National Park Service, are excessively high and make no provision for the many who visit the seashore for a length of stay of less than one week. By ignoring the needs of those who make day trips and weekend excursions to the Outer Banks, the Park Service further impairs the visitor experience.

Training and Permits Must Be Available Online and Highly Accessible

The American public and the visitors to the CHNSRA have responded well to educational efforts done by a variety of user groups and the County of Dare. Our residents and visitors have a long-standing position of promoting and supporting responsible stewardship of the Cape Hatteras National Seashore Recreational Area.

While additional education and training is desirable in any endeavor, we believe that requiring mandated training prior to the issuance of a permit is unwarranted in this case because of the effective job that has been done to promote and sustain responsible use of the CHNSRA.

If NPS continues to impose a training requirement, over our objection, then the following practical issues must be considered: Training and permits must be available online.

Visitors to the CHNSRA generally have one (1) week in which to pack in as much vacation as possible. Most arrive on Saturday afternoon and stay through the calendar week. This long established pattern sets in place a weekly cycle that threatens to choke the resources of NPS in handling a long line of incoming visitors each Saturday. Furthermore, the NPS permit office needs to be open well into the evening hours in order to accommodate those traveling tremendous distances to reach Dare County.

NPS Must Create New Infrastructure to Support their New Rules

In their ORV Management Plan, the National Park Service mandates new routes and vehicle free areas (VFA's). However, they have not embarked on a program to create the additional off beach parking and ramps that are needed for those who want pedestrian access to these areas.

To impose new guidelines without the support system in place will only impede and restrict access and risk further harm to the visitor experience.

Seasonal Village Closures Should Be Based on Conditions Not Arbitrary Dates

We believe that the seasonal closings of Village beaches has not been a problem that warrants the arbitrary and inconsistent dates outlined in the Final Environment Impact Statement (FEIS) upon which the ORV Management Plan was written.

Seasonal closures, in front of Hatteras Island Villages, should be based and depend on the season rather than arbitrary dates. This can be effectively developed, on an annual basis, by the Superintendent in partnership with officials from Dare and neighboring Hyde Counties.

Several Items to Set the Record Straight

The National Park Service in preparing its ORV Management Plan has made false, misleading and deceptive statements that warrant comment. We offer these as additional comments to establish a clear and consistent record that reflects the position of Dare County –

- NPS said in its summary of the proposed ORV rule – “**minimizing conflicts among various users.**” In this comment, and in others like it, NPS would have everyone believe that the people who use the Cape Hatteras National Seashore Recreation Area are in conflict with each other. We find this not to be true. It is our experience that those who favor responsible ORV access, which represents the overwhelming majority, have taken great strides to accommodate the few who disagree. We believe there is something for everyone at America’s first national seashore and have a documented track record of willingness to compromise and accommodate the needs of all user groups.
- NPS stated that, “**A consent decree agreed to by the plaintiffs, the NPS, and the interveners, Dare and Hyde counties.**” Here again, the National Park Service makes a statement that warrants additional information. The County of Dare did in fact join as an intervener in the consent decree. However, NPS fails to disclose that our involvement was as a matter of practical necessity in order to best represent the people of Dare County. The consent decree, prepared by a few special interest groups behind closed doors, was never exposed to the light of public comment and review. We entered the case as an intervener rather than risk letting the special interest groups and a sympathetic Federal Judge close the seashore entirely. It was a situation where we had to choose the lesser of two evils. As Dare County Vice-Chairman Allen Burrus asked, “Do we choose to get shot in the foot, or in the head?” Although Dare County was a party to the consent decree as an intervener, for NPS to imply that Dare County was in any way in conceptual agreement with the consent decree is disingenuous.
- The National Park Service claimed it conducted a “small business survey.” However, the work, which was done by contractor RTI, was never concluded or published prior to the close of public comments on the Environmental Impact Statements. This prevented the public from having access to the survey and being able to make informed comments about it. Following the eventual release of the small business survey, we determined it was based upon a small sample size with a poor rate of return. The skewed results of this survey stand in stark contrast to sworn, notarized statements from business owners that were submitted by Dare County during the public comment process. Our survey of business owners documents a consistent pattern of how the Consent Decree has hurt small businesses.

- Finally, we challenge the NPS conclusion in saying that the economic impact: **“will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety or State, local, or Tribal governments or communities.”** The National Park Service has dismissed and ignored the concerns of the local business community. The hard-working small business owners of Dare County have indeed suffered harm and will continue to do so under the ORV Management Plan. NPS may take comfort in saying the negative impact will not be harmful in a “material way.” This statement is untrue and insensitive to those in our community who have seen their savings depleted, businesses ruined and have had to lay-off valuable, long-term employees.

CONCLUSION

Dare County supports S. 2372 as sound legislation that will benefit the residents and visitors of the Cape Hatteras National Seashore Recreational Area. At the same time, we are deeply committed to protecting shorebirds and turtles with adaptive management tools that are based on peer reviewed science.

We believe the Interim Management Strategy, which would be reinstated upon passage of S. 2372, best balances resource protection with recreational access. It would allow access decisions to be made by the Park Superintendent, who is ultimately accountable to Congress, rather than the courts or a rigid and flawed ORV Management Plan.

On behalf of the residents and visitors of Dare County North Carolina, we respectfully ask you to help us preserve our culture, our history, and our way of life by supporting S. 2372.

Respectfully submitted

A handwritten signature in blue ink that reads "Warren C. Judge". The signature is written in a cursive style and is positioned above the printed name.

Warren C. Judge, Chairman
Dare County Board of Commissioners