



Warren Judge
Chairman, Dare County Board of Commissioners
County of Dare, North Carolina

Testimony on H.R. 4094
To authorize pedestrian and motorized vehicular access in the Cape
Hatteras National Seashore Recreational Area

April 27, 2012

Dare County North Carolina, known as the Outer Banks, is home to the Cape Hatteras National Seashore Recreational Area. Most of the seashore is within Dare County, with a portion in Ocracoke being located in neighboring Hyde County.

The Cape Hatteras National Seashore Recreational Area (CHNSRA) was established as America's first national seashore with the promise that this unique area would always have recreational access for the people.

The people of Dare County have cooperated with the National Park Service in developing America's seashore into a popular attraction with cultural and historical significance. 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 actively participated in every phase of the Federal Government's planning and rulemaking process.

We advocated for the "Interim Management Strategy" and participated in the negotiated rulemaking process. We also engaged in Public Hearings on the Draft Environmental Impact Statement (DEIS), Final Environmental Impact Statement, (FEIS) and ORV Management Plan. We, and others, offered practical solutions

that would satisfy the concerns required by Executive Orders 11644 and 11989 without compromising the area's unique culture and economy.

The National Park Service's ORV Management Plan, and the Final Environmental Impact Statement upon which it is based, are seriously flawed. It lacks a sound scientific basis and reflects a distorted economic analysis. It also does not reflect the will of the people that was articulately expressed during public hearings.

Throughout the public process, there was an outpouring of positive and substantive comments by the people of Dare County. Thousands of others, from across the nation, who love the Cape Hatteras National Seashore Recreational Area, joined us in this effort.

We, the people, spoke as a virtually unanimous voice in recommending practical solutions for management of the seashore. However, the National Park Service did not listen to the clearly expressed will of the people and incorporate our concerns and suggestions.

It has been our longstanding position that people and wildlife can live in harmony and that reasonable recreational access is consistent with proper resource management. For decades, we have maintained that meaningful access is fundamental to the visitor experience and the continued growth and economic vitality of the Outer Banks.

Following are the specific areas of concern that we have identified for the seashore. We seek relief through passage of H.R. 4094, which would reinstate the Interim Management Plan for the Cape Hatteras National Seashore Recreational Area.

- **NO FEES** for ORV permits
- **TRAINING & PERMITS** available online and at multiple locations with convenient hours
- **NEW INFRASTRUCTURE** should be established before new corridors & VFA's
- **FLEXIBILITY FOR THE SUPERINTENDENT** to adapt corridors and routes
- **SEASONAL VILLAGE CLOSURES** based on conditions not arbitrary dates

- **ROUTES** that recognize established patterns of historical use
- **CORRIDORS** to provide access through & around areas of resource closures
- **ACCOMMODATIONS FOR HANDICAPPED PERSONS** for safe access to all areas of the seashore
- **PREDATOR REMOVAL PROGRAM** that destroys hundreds of mammals each year to protect a few selected species

NO FEES FOR ORV PERMITS

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 & PERMITS available online and at multiple locations with convenient hours

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 reasonable 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. Visitors to the Outer Banks most frequently arrive on Saturday afternoon and stay through the calendar week.

This pattern sets in place a weekly cycle that will 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.

NEW INFRASTRUCTURE should be established before new corridors & VFA's

NPS proposes new infrastructure for parking, ramps and access that should be implemented prior to the new routes, corridors and vehicle free areas (VFA's) that are outlined in the ORV Management Plan.

Vehicle free areas (VFA's) will require additional off beach parking for those who want to be pedestrians within the new VFA's.

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

FLEXIBILITY FOR THE SUPERINTENDENT to adapt corridors and routes

The County of Dare has long supported giving flexibility to the Superintendent of the CHNSRA to use his or her best professional judgment in adapting corridors and routes as the physical nature and characteristics of the beach change on a dynamic basis. This common sense approach allows the Superintendent to modify access based upon the changing conditions that exist at the time, rather than arbitrarily written mandates.

For example, when buffers are established to protect a resource, once the species have begun moving from the nesting area, the Superintendent could monitor and modify the established buffer on an on-going basis. This would ultimately provide more dynamic and 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.

Also, 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 best 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.

Dare County has long supported giving flexibility to the Superintendent. This was a fundamental principle in our participation in the drafting of early guidelines for the seashore including the Interim Management Strategy. Providing this flexibility for the Superintendent was a keystone of our position throughout the negotiated rulemaking process, the public hearings on the Draft Environmental Impact Statement (DEIS), and comments on the Final Environmental Impact Statement (FEIS).

NPS needs to trust and empower its Superintendent to adapt and alter corridors and routes.

SEASONAL VILLAGE CLOSURES based on conditions not arbitrary dates

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 Hyde Counties.

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.

ROUTES

The ORV Routes outlined in the ORV Management Plan have shortcomings that will significantly impair the visitor experience for the majority who visit the Cape Hatteras National Seashore Recreational Area. Eleven historically recognized routes have been excluded. These crucial areas should be revised to allow an adaptive management process that would reopen these closure areas.

CORRIDORS

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 does not suffer restricted access to an otherwise open area.

Corridors effectively provide a small path around temporary 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.

ACCOMMODATIONS FOR HANDICAPPED PERSONS for safe access to all areas of the seashore

It is crucial that mobility impaired persons have free and open access to all areas of the seashore. It is fundamentally unfair that they be restricted to the areas directly in front of the villages as is now provided in the ORV Management Plan.

Restricting access for the large number of handicapped visitors who frequent the Cape Hatteras National Seashore Recreational Area is a serious safety issue. 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.

Our mobility-impaired community includes those using wheelchairs, walkers, and canes. It also includes elderly visitors, many of whom are frail. Additionally, those coping with chronic medical needs could be hurt and caused to suffer. For example, visitors who need the continuous administration of oxygen would benefit from having their vehicle nearby as an energy-generating source for their oxygen supply system.

PREDATOR REMOVAL PROGRAM

People who love animals are shocked when they discover that the National Park Service has an on-going program to trap and kill hundreds of mammals each year in the Cape Hatteras National Seashore Recreational Area. In an attempt to protect a few species of shorebirds, the Department of the Interior has decided to trap and kill their natural predators.

This controversial program, euphemistically called “Predator Removal,” involves a small number of federally designated species, including the Piping Plover (*Charadrius melodus*), as well as some non-federally listed shorebirds. However, none of the protected birds are classified as endangered, yet their natural predators are systemically trapped and killed.

The mammals targeted for annihilation include Raccoon, Otter, Fox, Mink, Opossum, Muskrat and Nutria. 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.

Dare County Commissioner, Jack Shea in an Op-Ed article wrote, “The environmentalists claim they want to protect wildlife, especially the innocent baby birds. But, what happens to the innocent baby raccoons, fox and mink whose murdered mother will never return home to the den?” He asks a series of probing Questions, “Is the life of one species more precious than others? If so, who decides? Where is the outrage? Why do the “environmentalists” not advocate protection for all species? Why have they not raised their voice in defense of these slaughtered mammals?” He concludes, “Perhaps their silence reveals the pragmatic truth that the greatest threat to birds and turtles is from natural predators, not humans. Instead, they loudly condemn recreational access while touting a party line that tries to make humans the villain.”

ADDITIONAL COMMENTS

The National Park Service in preparing its ORV Management Plan has made false, misleading and deceptive statements that warrant comment. We offer these additional comments in order 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. This is a matter of public record during the negotiated rulemaking proceeding, of which Dare County was a participant.

- The Piping Plover was described by the National Park Service as **"listed under the Endangered Species Act (ESA)."** NPS in this brief statement omits to give the American people the full truth about the species that prevents access to the most popular portions of the seashore for most of the tourism season.

The Piping Plover is a non-indigenous "threatened" species that is not "endangered." Words have meaning. NPS has chosen to describe this bird in a way that creates a false and misleading impression to the American people.

- 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 comment to clearly reflect our position.

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 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 of the ORV rule: **“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.

The negative impact for our businesses has been already been severe and profound. If the ORV Management Plan is allowed to continue, it will cause even more harm to our fragile economy. NPS is out of touch with the local business community and insensitive to their needs and concerns.

ECONOMIC IMPACT

In his remarks to the Subcommittee on National Parks, Forests and Public Lands, Dare County Chairman Warren Judge referenced comments made by several Hatteras Island business owners. These remarks are representative of the harm that has been done to Dare County business owners by restricting visitor access to the Cape Hatteras National Seashore Recreational Area.

Family-owned businesses are the backbone of Dare County. Hard working, local families have for generations provided employment opportunities for the community, and offered outstanding service and hospitality to Outer Banks visitors.

These small business owners do not ask for special favors or government handouts, just a fair opportunity to earn their part of the American dream. Unfortunately, the consent decree has had a devastating and unfair impact on many Dare County businesses.

The consent decree has taken a heavy toll on a wide range of business types 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.

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.

CONCLUSION

H.R. 4094 represents sound legislation for that will benefit the residents and visitors of the Cape Hatteras National Seashore Recreational Area.

The people of Dare County have already suffered enough. Now we face even further economic insecurity under the newly enacted ORV Rule, which imposes greater restrictions than the consent decree.

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. For generations our community has been on the vanguard of sustaining the natural resources in order to preserve them for our children and grandchildren to enjoy.

Dare County supports science-based resource management and believes a careful balance between protection and access is provided in the Interim Management Strategy that would be reinstated upon passage of H.R. 4094.

H.R. 4094 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 H.R. 4094.

Respectfully submitted

A handwritten signature in blue ink that reads "Warren C. Judge". The signature is written in a cursive style with a horizontal line underneath it.

Warren C. Judge, Chairman

Dare County Board of Commissioners