STATEMENT OF HERBERT C. FROST, ASSOCIATE DIRECTOR, NATURAL RESOURCE STEWARDSHIP AND SCIENCE, NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS OF THE HOUSE COMMITTEE ON NATURAL RESOURCES, CONCERNING H.R. 4094, TO AUTHORIZE PEDESTRIAN AND MOTORIZED VEHICULAR ACCESS IN CAPE HATTERAS NATIONAL SEASHORE RECREATIONAL AREA, AND FOR OTHER PURPOSES

April 27, 2012

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today to present the Department of the Interior's views on H.R. 4094, a bill entitled "to authorize pedestrian and motorized vehicular access in Cape Hatteras National Seashore Recreational Area, and for other purposes."

The Department strongly opposes H.R. 4094. This bill would reinstate the 2007 Interim Protected Species Management Strategy (Interim Strategy) governing off-road vehicle (ORV) use at Cape Hatteras National Seashore (Seashore). In response to a lawsuit challenging its adequacy, the Interim Strategy was modified by a court-approved Consent Decree on April 30, 2008. The Seashore was managed under the Consent Decree through 2011. Meanwhile, the final ORV Management Plan / Environmental Impact Statement (EIS), and special regulation went into effect on February 15, 2012.

The Department supports allowing appropriate public use and access at the Seashore to the greatest extent possible, while also ensuring protection for the Seashore's wildlife and providing a variety of visitor use experiences, minimizing conflicts among various users, and promoting the safety of all visitors. We strongly believe that the final ORV management plan and special regulation will accomplish these objectives far better than the defunct Interim Strategy.

The final ORV management plan for the first time provides long-term guidance for the management of ORV use and the protection of affected wildlife species at the Seashore. The plan is designed to not only provide diverse visitor experience opportunities, manage ORV use in a manner appropriate to a unit of the National Park System, and provide a science-based approach to the conservation of protected wildlife species, but also to adapt to changing conditions over the life-span of the plan. It includes a five-year periodic review process that will enable the NPS to systematically evaluate the plan's effectiveness and make any necessary changes.

The Seashore's dynamic coastal processes create important habitats, including breeding sites for many species of beach-nesting birds, among them the federally listed threatened piping plover, the state-listed threatened gull-billed tern, and a number of species of concern including the common tern, least tern, black skimmer, and the American oystercatcher. All of these species experienced declines in breeding population at Cape Hatteras over the 10–20 years prior to the implementation of the Consent Decree in 2008. For example, in 1989 the Seashore had 15 breeding pairs of piping plovers; and by 2001-2005, that number had dropped to only 2-3 pairs

attempting to nest each year. The numbers of colonial waterbird nests within the Seashore also plummeted from 1,204 nests in 1999 to 320 nests in 2007.

Under the National Park Service Organic Act, the Endangered Species Act, the Migratory Bird Treaty Act, the Seashore's enabling act, and National Park Service (NPS) regulations and policies, the NPS has an affirmative responsibility to conserve and protect all of these species, as well as the other resources and values of the Seashore. Executive Order 11644 (1972), amended by Executive Order 11989 (1977), requires the NPS to issue regulations to designate specific trails and areas for ORV use based upon resource protection, visitor safety, and minimization of conflicts among uses of agency lands. The regulation that the NPS subsequently promulgated (36 C.F.R. § 4.10) requires the NPS to designate any routes or areas for ORV use by special regulation and in compliance with Executive Order 11644.

The special regulation that went into effect on February 15 brings the Seashore into compliance with that regulation and with the Executive Orders and other applicable laws and policies, after many years of non-compliance. In addition to resource impacts, the approved plan addresses past inconsistent management of ORV use, user conflicts, and safety concerns in a comprehensive and consistent manner.

The Interim Strategy was never intended to be in place over the long-term. At the time it was developed, the Seashore had no consistent approach to species protection and no ORV management plan or special regulation in place. While the Interim Strategy took an initial step toward establishing a science-based approach, key elements such as buffer distances for American oystercatchers and colonial waterbirds, and the lack of night driving restrictions during sea turtle nesting season, were inconsistent with the best available science. The 2006 USFWS biological opinion for the Interim Strategy indicated that it would cause adverse effects to federally listed species, but found no jeopardy to those species mainly because of the limited duration of implementation (expected to be no later than the end of 2009). Similarly, the 2007 NPS Finding of No Significant Impact (FONSI) for the Interim Strategy indicated the action had the potential to adversely impact federally listed species and state-listed species of concern, but found that a more detailed analysis (an EIS) was not needed because of the limited period of time that the Interim Strategy would be implemented.

By contrast, the species-specific buffer distances and the night driving restrictions contained in both the Consent Decree and in the plan/EIS are based on scientific studies and peer-reviewed management guidelines such as the U.S. Fish and Wildlife Service (USFWS) Piping Plover and Loggerhead Turtle Recovery Plans, and the U.S. Geological Survey (USGS) Open-File Report 2009-1262 (also referred to as the "USGS protocols,") on the management of species of special concern at the Seashore. Buffer distances for state-listed species are based on relevant scientific studies recommended by the North Carolina Wildlife Resources Commission, USFWS, and USGS.

Although breeding success depends on a number of factors, with the measures in place under the Consent Decree, there has been a striking improvement in the condition of protected beach-nesting wildlife species. The Seashore has experienced a record number of piping plover pairs and fledged chicks, American oystercatcher fledged chicks, least tern nests, and improved

nesting results for other species of colonial waterbirds. The number of sea turtle nests also significantly increased, from an annual average of 77.3 between 2000-2007 to an average of 129 between 2008-2011. These improvements occurred even though many miles of beach remained open, unaffected by species protection measures, and Seashore visitation numbers remained stable.

During the preparation of the EIS for the management plan, the NPS evaluated the potential environmental impacts of long-term implementation of the Interim Strategy. The analysis determined that if the Interim Strategy were continued into the future, it would result in long-term, moderate to major adverse impacts to piping plovers, American oystercatchers, and colonial waterbirds, and long-term, major adverse impacts to sea turtles. Impacts to sea turtles and three species of colonial waterbirds had the potential to rise to the level of "impairment," which would violate the National Park Service Organic Act.

Because the number of nesting birds has increased significantly since 2007, if the Interim Strategy were to be reinstated, it could be counterproductive to visitor access. Many popular destinations, such as Cape Point and the inlet spits, would still experience resource protection closures, particularly when highly mobile piping plover and American oystercatcher chicks are present. Several of the beach-nesting bird species at the Seashore may renest several times during the same season if eggs or very young chicks are lost. Under the Consent Decree, with its science-based buffers, there has been a noticeable reduction in the number of renesting attempts for piping plovers and American oystercatchers, which means the duration of closures is typically shorter. No matter which management approach is in effect, the birds will continue to attempt to nest at these sites, even if resource protection is inadequate, because that is where the most suitable habitat is located. The Interim Strategy would allow a higher level of human disturbance in proximity to nests and chicks at these key sites, which increases the chances that nests and young chicks will be lost, which in turn increases the likelihood that birds will renest one or more time at those sites. This could extend the length of time that any particular site would be closed due to breeding activity, even if the apparent size of the closure is smaller than that under the ORV plan or Consent Decree.

In addition to reinstating the Interim Strategy, H.R. 4094 provides authority for additional restrictions only for species listed as "endangered" under the Endangered Species Act of 1973, and only for the shortest possible time and on the smallest possible portions of the Seashore. This would conflict with numerous other laws and mandates including the National Park Service Organic Act, the Migratory Bird Treaty Act, the Seashore's enabling act, the aforementioned Executive Orders, and NPS regulations implementing these laws, which provide for the protection of other migratory bird species and other park resources.

H.R. 4094 also provides that the protection of endangered species at Cape Hatteras shall not be greater than the restrictions in effect for that species at any other national seashore. Species protection measures cannot reasonably be compared from seashore to seashore without considering the specific circumstances at each site and the context provided by the number and variety of protected species involved, the levels of ORV use, and the underlying restrictions provided by the respective ORV management plans and special regulations. Even though Cape Hatteras has a wider variety of beach nesting wildlife species than Cape Cod or Assateague, for

example, its plan actually allows for a much higher level of ORV use on larger portions of the Seashore. It would be neither reasonable nor biologically sound for Cape Hatteras to use less protective measures if they were designed for a location where the level of ORV use is much lower to begin with. Nor does it appear that such an arbitrary approach could possibly comply with the "peer-reviewed science" requirement imposed elsewhere in the bill. The Cape Hatteras plan was specifically designed to be effective for the circumstances at Cape Hatteras.

The bill would require, to the maximum extent possible, that pedestrian and vehicle access corridors be provided around closures implemented to protect wildlife nesting areas. This concept was thoroughly considered during the preparation of the plan and EIS. The plan already allows for such access corridors when not in conflict with species protection measures. But because of the Seashore's typically narrow beaches, and the concentrations of nests at the best available habitat near the inlets and Cape Point, nesting areas are often close to the shoreline, and access corridors cannot always be allowed without defeating the fundamental purpose of such closures, which is to protect beach-nesting wildlife. Several species of shorebirds that nest at the Seashore have highly mobile chicks, which can move considerable distances from nests to foraging sites. Inadequate resource closures in the past have resulted in documented cases of human-caused loss or abandonment of nests and chick fatalities. Corridors that cut through a resource closure area would essentially undermine the function of the closure and render it compromised or even useless.

Finally, the final ORV management plan/EIS and special regulation, are the products of an intensive five-year long planning process that included a high level of public participation through both the National Environmental Policy Act (NEPA) process and negotiated rulemaking, including four rounds of public comment opportunities. The NPS received more than 15,000 individual comments on the draft plan/EIS and more than 21,000 individual comments on the proposed special regulation. In completing the final ORV management plan/EIS and special regulation, the NPS considered all comments, weighed competing interests and ensured compliance with all applicable laws.

Mr. Chairman, that concludes my testimony. I would be glad to answer any questions that you or other members of the subcommittee may have.

STATEMENT OF HERBERT C. FROST, ASSOCIATE DIRECTOR, NATURAL RESOURCE STEWARDSHIP AND SCIENCE, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES, SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS FOR AN OVERSIGHT HEARING ON "ACCESS DENIED: TURNING AWAY VISITORS TO NATIONAL PARKS"

April 27, 2012

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the issue of access to national parks, particularly with regard to the impact of management plans on visitor access and local economies at Cape Hatteras National Seashore and Biscayne National Park.

Providing for visitor enjoyment of our national parks is required by the National Park Service Organic Act, along with the mandate to conserve the scenery and the natural and historic objects of our parks unimpaired for future generations. They are areas where, in carrying out the Organic Act and other laws, we are responsible for protecting wildlife, ecosystems, water quality, and natural quiet; preserving our nation's culture and history; educating visitors; and leaving a legacy of our nation's natural and cultural heritage. For that reason, the management plans for our parks that the National Park Service develops need to carefully weigh competing requirements, needs, and desires, particularly in terms of visitor use.

The two parks that are the subject of this hearing, Cape Hatteras National Seashore (Seashore) and Biscayne National Park (Park), have management plans—final and draft, respectively—that are seen by some as curtailing access to these two popular and highly valued Atlantic Coast parks. The off-road vehicle (ORV) management plan that was implemented this year at the Seashore has been highly controversial among both opponents and proponents of ORV restrictions. Similarly, the proposed General Management Plan (GMP) at the Park is controversial among opponents and proponents of the plan's proposed marine reserve zone and non-combustion engine use zone. In both cases, the National Park Service is acting to preserve and protect the natural resources that are fundamental to the reason both of those areas are included in the National Park System. These management plans are instruments that will help us invest in the future viability of the wildlife and the ecosystems of the two parks. Restricting a relatively modest amount of use of these two parks now will help ensure that the public continues to have access to these natural resources over the long run.

The National Park Service does not take lightly the imposition of restrictions on activities that were more freely enjoyed in the past; we understand the disappointment and loss new restrictions can generate. We are also keenly aware of how important parks are to gateway communities, and how changes in rules for recreational activities can affect the well-being of businesses in those communities. Our process for developing management plans includes taking into consideration the views of all affected parties. This public process helps us refine plans in ways that will minimize the disruption to traditional uses and businesses built around those uses while we act to comply with laws and regulations and balance competing interests.

Cape Hatteras National Seashore

Cape Hatteras National Seashore stretches for about 67 miles along three islands of the Outer Banks of North Carolina. The Seashore is famous for its soft sandy beaches, its outstanding natural beauty, and its seashore wildlife that inhabits the sand dunes, marshes, and woodlands. Long a popular recreation destination, Cape Hatteras attracts about 2.2 million visitors a year who come to walk the beach, swim, sail, fish, and enjoy the ambiance of the shore. In the towns that dot the Outer Banks, a major tourism industry has developed to serve the visiting tourists and local beachgoers, including fishermen. In 2010, visitors to the Seashore spent approximately $108 million, which supported about 1,700 jobs.

We appreciate the long tradition and popularity of ORV use at Cape Hatteras, which many anglers use to haul gear to popular fishing spots, and the economic value that activity generates for the local communities. However, ORV use at the Seashore was out of compliance with laws and regulations for many years, and, after several efforts to achieve compliance faltered, an ORV management plan and special regulation for Cape Hatteras National Seashore were finally adopted on February 15, 2012. This management plan is being implemented following four years of management of the Seashore under a court-ordered Consent Decree, which imposed new restrictions on ORV use and helped begin reversing the decline of key seashore wildlife species.

Under the science-based species protection measures of the Consent Decree, many of which are incorporated in the ORV management plan and special regulation, there has been a significant trend of improving conditions for beach nesting birds and sea turtles. During this period, the Seashore experienced record numbers of piping plover breeding pairs and fledged chicks, American oystercatcher fledged chicks, and least tern nests, as well as improved nesting results for other species of colonial waterbirds. Although a number of factors, including weather, predation, habitat availability, and the level of human disturbance ultimately affect shorebird and waterbird breeding success, under the Consent Decree the science-based buffers effectively minimized human disturbance of nesting areas at critical times during the breeding cycle. The number of sea turtle nests in the Seashore also significantly increased under the Consent Decree, which imposed a night driving restriction for the first time. During 2008 - 2011, the Seashore averaged 129 sea turtle nests annually, compared to an annual average of 77.3 from 2000 - 2007.

Although the prescribed buffers have resulted in temporary closures of some popular locations when breeding activity was occurring, even at the peak of the breeding season there have generally been many miles of open beach entirely unaffected by the species protection measures. And, during this same period, annual visitation at the Seashore continued at a level similar to that of 2006 - 2007. Dare County, where the Seashore is located, experienced record occupancy tax revenues in 2010 and near-record revenues in 2011, despite the impacts of Hurricane Irene that, among other effects, closed North Carolina Highway 12 to Hatteras Island from August 27 to October 10, 2011.

The ORV management plan and special regulation reflect the outcome of a five-year long intensive public process that included a high level of public participation through both the National Environmental Policy Act (NEPA) process and negotiated rulemaking. In 2006, the National Park Service began public scoping for the plan/EIS, and concurrent with that process,

established a Negotiated Rulemaking Advisory Committee whose function was to assist directly in the development of special regulations for management of ORVs. The committee, composed of 29 representatives of diverse interests, met eleven times, for a total of 20 meeting days, between January 2007 and February 2009. There were also numerous subcommittee meetings on a number of issues such as agenda planning; natural resources; permits, passes and fees; routes and areas; socio-economic analysis; vehicle characteristics and operations; and village beaches. Although the committee did not reach consensus on a proposed regulation, it provided a valuable forum for the discussion of a wide variety of ORV management and resource protection issues and generated a large volume of useful information for the NPS.

During the NEPA and rulemaking processes, the NPS also provided four rounds of public comment opportunities. The NPS received more than 15,000 individual comments on the draft plan/EIS and more than 21,000 individual comments on the proposed special regulation. The views of those who wanted less restrictive measures than the proposed plan called for were fully considered along with the views of those who wanted more restrictive measures. Currently, the ORV management plan and special regulation are the subject of a complaint that was filed by a coalition of ORV organizations with the U.S. District Court in the District of Columbia on February 9, 2012.

Biscayne National Park

Biscayne National Park, located south of Miami, has over 151,000 acres of marine and estuarine waters, which make up about 95 percent of the park. Its coral reef is its signature feature. Some of the park's half-million annual visitors come just to enjoy the scenery and picnic, but the main attraction is the opportunity for water recreation – swimming, snorkelling diving, boating, and fishing. Economic data suggest that Biscayne National Park supports more than 400 local jobs.

The process to develop a new GMP to update the park's 1983 plan began in 2000. Public meetings were held in 2001, 2009, and 2011. A preferred alternative, Alternative Four, was chosen in 2010. During the public comment period in 2011, more than 18,000 public comments were received and more than 300 people attended public meetings. The National Park Service is currently analyzing the public comments and expects to finalize the GMP by the end of this year.

Two of the proposals in Alternative Four have generated significant interest and controversy: one is the proposed establishment of a marine reserve zone (MRZ), which would be a no-take area, where fishing of any kind would be prohibited. The other is the proposed establishment of non-combustion engine use zones.

The proposal for a MRZ is intended to allow a portion of the coral reef a reprieve to recover its health and to offer visitors the opportunity to see an intact and unfished coral reef system. Coral reefs contain some of the most diverse ecosystems in the world, forming important habitat for thousands of corals, algae, fish, and other marine organisms. They also serve as natural areas for recreation, boost the marine tourism economy, support recreational and commercial fisheries, protect coastlines from storm damage, and function as rich warehouses for genetic and species diversity.

Coral reefs are in decline worldwide and Biscayne's reef is part of that trend. Peer-reviewed studies from the National Park Service, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, Miami-Dade County, the University of Miami, the University of South Florida, the University of North Carolina-Wilmington, and others have consistently detailed the loss of biological integrity of the park's coral reef. The studies show that the reef's coral and fish resources are greatly diminished from previous years. They also document a clear relationship between healthy fish populations and healthy reef ecosystems – coral reefs need healthy fish. Biscayne's reef shows dramatic losses of living coral, from approximately 28 percent coverage three decades ago to only five to seven percent today. Fish populations in the park have been declining for years, with 64 percent of species observed less frequently in 2006-2007 than in the late 1970s and early 1980s. Some species have disappeared from the park completely.

Marine scientists the world over agree that the most effective tool for marine ecosystem repair is a MRZ. Other tools can be effective for maintaining sustainable fish populations, but the National Park Service mission is different than merely achieving sustainable fisheries. Natural coral reef ecosystems contain the full size and age spectrum of all the species found in them. Fishing size limits, slot limits, and bag limits cannot achieve the goal of ecosystem repair. Temporary closures produce short-term growth but not long-term population enhancement. Catch and release is an effective tool for shallow water species but has proven to be far less successful with reef species.

Areas where fish are not harvested also provide important recreational opportunities. Snorkeling and diving a healthy and vibrant coral reef, full of large fish and brilliant corals, are activities that many people find enjoyable and educational. MRZs are also good investments in tourism: areas that consistently contain large numbers of big fish, such as grouper and snapper, attract greater numbers of scuba divers, snorkelers, and others interested in seeing beautiful fish in their natural habitat. In MRZs, large fish often swim right up to snorkelers and divers, providing an experience unmatched in other places. By allowing Biscayne's reef ecosystem to recover, the proposed marine reserve zone could make the park one of South Florida's premier tourist destinations for divers, snorkelers, and marine enthusiasts.

The draft GMP's preferred alternative would set aside seven percent of the park's waters as a marine reserve zone for this unparalleled recreation opportunity. The remaining 151,000 acres, or 93 percent of park waters, including 70 percent of the park's reef tract, would remain open to fishing. The park carefully considered many factors in determining the location and size of the marine reserve zone. Those factors included the sea floor habitat and habitat connectivity, living coral cover, type of reef, shipwrecks, and minimization of impacts on other users.

The proposed marine reserve zone has significant public support. In reviewing the more than 18,000 public comments on the Park's draft GMP, our initial analysis indicates that more than 90 percent of the comments support alternatives containing a marine reserve zone.

While the purpose of this marine reserve zone is for resource restoration and enhanced visitor experiences, not fishery management, numerous studies show that marine reserve zones are also good investments in fisheries. Research has shown that within a few years of establishing a zone, "spillover" from fish swimming out of the zone will benefit fishing in surrounding waters. As fish

in a zone become larger and more prolific, many will eventually swim out, leading to greater catches in areas adjacent to the zone. Most large "trophy" fish caught in Florida are taken adjacent to closed no-take areas.

The other issue that has attracted heightened interest in the GMP is the proposal to establish non-combustion engine use zones. These areas, commonly known as "pole and troll" zones, are needed to protect fragile resources along portions of the mainland shoreline adjacent to impenetrable mangrove forests, in shallow seagrass areas, and near bird rookeries. These zones are fairly small and are in the extremely shallow waters (less than 2-1/2 feet deep), which prudent boaters would not motor across anyway. Many fishermen specifically requested these no-motor zones in the areas where they are proposed under Alternative Four. The zones will not prevent anyone from entering or using the park, and there are no areas proposed for non-combustion engine use zones that would prevent visitors from launching motorized boats.

At both Biscayne and Cape Hatteras, the National Park Service is committed to providing for everyone's enjoyment of the parks' resources to the greatest extent possible, while ensuring protection of those resources, now and in the future. We believe that continued implementation of the current long-term ORV management plan and special regulation at Cape Hatteras, and the GMP for Biscayne, once finalized after consideration of public comments, will, over the long term, provide the best course to serve the varied interests of the both parks while meeting the National Park Service's resource protection responsibilities.

Mr. Chairman, that concludes my testimony. I would be pleased to answer any questions you or other members of the subcommittee may have.