



May 11, 2010

Via U.S. Mail and Electronic Submission

Mike Murray, Superintendent
Cape Hatteras National Seashore
1401 National Park Drive
Manteo, NC 27954

Re: Draft Cape Hatteras National Seashore Off-Road Vehicle Management Plan/
Environmental Impact Statement

Dear Superintendent Murray,

The American Sportfishing Association (ASA) offers the following comments on the National Park Service's (NPS) Draft Cape Hatteras National Seashore Off-Road Vehicle Management Plan/Environmental Impact Statement (DEIS). ASA has serious concerns with the preferred alternative included in the DEIS. The Alternative F, the NPS preferred alternative, is the most restrictive management option to date, far exceeding any sense of balance between resource conservation and public access and betraying all promises made to the public regarding recreational uses in the seashore. Because of the highly unbalanced nature of the preferred alternative, and that important socio-economic information is missing or incomplete, we urge the NPS to make significant changes to the preferred alternative in order to provide both reasonable resource protection and reasonable public access to public lands.

ASA is the sportfishing industry's trade association, committed to representing the interests of the entire sportfishing community. We invest in long-term ventures to ensure the industry will remain strong and prosperous as well as safeguard and promote the enduring economic and conservation values of sportfishing in America. ASA also represents the interests of America's 60 million anglers who generate over \$45 billion in retail sales with a \$125 billion impact on the nation's economy creating employment for over one million people.

Dating back to when Cape Hatteras National Seashore (CHNS) was created, the Department of the Interior promised the communities the seashore surrounds that public access for recreation would be maintained and promoted. The unique characteristics of the seashore and its recreational opportunities require the use off-road vehicles (ORVs) to access remote spits and inlets. While the citizens and businesses of Dare and Ocracoke counties very much understand and support the need for resource protection within the seashore, the NPS's DEIS severely disadvantages reasonable public access while providing overly excessive protections to bird and

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turtle species. The NPS treats the local communities as if they are located on the outside edges of the seashore, when the reality is the communities are literally surrounded by a national seashore and depend on reasonable access to the seashore for their economic survival. While the NPS states that they are protecting the seashore for future generations, it is sacrificing the livelihoods, enjoyment and culture of the present generation to do so. This is directly contrary to promises made by the NPS upon creation of the unit; in contradiction to Executive Order 13474 that states "that recreational fishing shall be managed as a sustainable activity in national wildlife refuges, national parks... or any other relevant conservation or management areas or activities under any Federal authority..."; and the recent White House initiative to promote recreation in the outdoors.

How to Improve the Preferred Alternative

To state that the preferred alternative is the result of the Negotiated Rulemaking Advisory Committee's input is an affront to every member of that committee who promoted ORV and pedestrian access for a variety of activities including surf fishing, kite boarding, kayaking, and bird watching. The majority of the provisions included within the preferred alternative far exceed anything proposed by a majority of the Negotiated Rulemaking Committee. Alternative F is even more restrictive than the compromise position developed by a subcommittee of the Negotiated Rulemaking Committee, which received a 19-5 affirmative vote in December 2009. This includes excessively large resource closures (buffers), unnecessary year-round and floating closures, and the lack of access corridors around or through resource closures. In addition, the DEIS fails to recognize that the limiting factor in nesting rates is often due to weather and predation. Creating an ORV management plan that assumes ORV interactions are the primary cause of bird disturbances is unfair and inaccurate.

In addition, while science should be the foundation of all resource management decisions, it should only serve as a guiding principle and tool— not be the final result. Scientific information must inform management in such a way that recognizes that humans and their activities, including recreation, are also part of the ecosystem. The seashore must not be managed in order to achieve resource goals that can only be achieved if humans are not present. Unfortunately, that is what the preferred alternatives strives to achieve. This is reflected in large, inflexible buffers that far exceed protections afforded to the federally threatened piping plover under its recovery plan, which are then applied to state managed species that are not considered threatened species.

While the state may list the American oystercatcher and a variety of colonial waterbirds as having special status, in the state of North Carolina that special status is to indicate the state's desire to acquire more robust data on the species, not that these species are on the verge of extinction. They therefore do not warrant protections that exceed those afforded to species federally listed as threatened or endangered. It is very transparent that the Preferred Alternative comes from the direct input of the three organizations suing the NPS for more restrictions to beach access and is far from a consensus position, much less representative of a

balanced approach to public policy. To placate current and potential litigants is not sound public policy and only serves to result in injustices borne by the local communities.

In order to restore balance to the DEIS, and therefore regain the trust of the local communities, we highly recommend that the NPS revisit the proposal put forth by several members of the Cape Hatteras community, who depend on reasonable access to the seashore. This proposal, submitted to the NPS after the conclusion of the Negotiated Rulemaking process, truly builds on the committee discussions. It provides the necessary protections for wildlife resources while having the support of a majority of the local community, which is vital when the interactions between the local communities and park resources are as intertwined as they are in CHNS. Highlights of this proposal include:

- Resources Closures as outlined below:

Species	Breeding/Nesting Buffer	Unfledged Chicks
Piping Plover	50 meters	200 meters
Wilson's Plover	30 meters	30 meters
American Oystercatcher	Flush + 15 meters	Flush + 15 meters
Least Tern	30 meters	30 meters
Other Colonial Waterbirds	30 meters	30 meters

- Pedestrian and ORV corridors or bypasses provided through, around or below the high tide line in all SMAs during the entire breeding and nesting seasons (within guidelines) to maintain access.
- NPS should aggressively pursue the adaptive management initiatives identified in the DEIS with the object to *improve* its success with both resources protection *and* visitor access. The initiatives identified include vegetation management, habitat management, enhanced predator management, colonial waterbird social attraction, piping plover check fledge rate, piping plover chick buffer distance and pass-through buffers during the incubation period.
- Opportunities to implement less restrictive closures as a result of the above initiatives should be considered more frequently than the 5-year periodic review process identified in the DEIS.
- A proactive Turtle Night Nest Watch Program to allow for maximum nest protection and reasonable ORV and pedestrian access at night.
- Keep the beach open at night in key areas (e.g., Cape Point and Oregon Inlet) where access for popular activities such as fishing and night sky watching can be accommodated
- Ten-meter square turtle protection areas.
- Permit camp fires and leashed pets throughout the park, as to not advantage beach front home owners.

Socio-Economic Analysis

ASA is especially concerned that the NPS has not fulfilled its duty in conducting an adequate socio-economic analysis. Unfortunately, the entire Socioeconomic Impacts section of the DEIS was rushed and prematurely released, resulting in estimated impacts for the preferred alternative that are based on subjective reasoning, more than the other alternatives. For example, a survey was conducted into potential business impacts, but it is not yet completed and was not included in the DEIS's results (as stated on p. 566). Only parts of the business survey were applied in the DEIS, and it states the business survey results will be included in the final plan/EIS. This is unacceptable because reviewers are not provided full and objective information upon which to make their comments.

In addition, page 570-571 talks about a survey of vehicle use on the beach. The data were not ready for use in the draft EIS. Given that the socioeconomic impact analysis is incomplete, ASA is very concerned that not only is NPS making decisions that affect the economic future of these small businesses, but the public will not have a chance to comment or review the final results of the analysis. This is once again an affront to the local businesses and communities that were promised a fair hearing in the development of this plan and who have invested untold hours in a process they believed would be objective and based on complete data.

The DEIS states that small businesses, which make up 95-98% of business in CHNS, would be impacted more than others by the closures. According to the severity definitions given on pages 571 & 572, all of the alternatives presented in Table 61 (page 562) would place "major" impacts on the seashore villages. Footnotes throughout the tables in the pages describing each alternative tell us that about half or more of the impacts from closures will accrue to the seashore villages.

In addition, most socioeconomic analyses conducted by federal resource management agencies require "use values" (angling, beach driving, etc) and "non-use values" (existence of birds, etc.) be considered when setting public policy or damage awards. Federal natural resource damage policy (NRDA) and others require consideration of use and non-use values. The DEIS does not include use values, yet non-use values are included starting in the first paragraph and appear to be based completely on assumptions and personal opinions. There are no descriptions of how these statements were developed. Recognizing the failure to include use values, which measure net impacts to anglers and other beach users, the non-use preservation values should be rejected.

The third paragraph on page 568 is a concern. It states that NPS visitation statistics cannot support any claims that the consent decree impacted visitation. It says: "... the information does not support projections of decreases in visitation..." This is misleading. The NPS asserts that state visitation was down in 2008 statewide. However, fishing license data show sportfishing license sales in North Carolina statewide were up 13-15% (according to the U.S. Fish and Wildlife Service.) We know that many factors combine to drive visitation levels, but

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without the 2007 consent decree, 2008 visitation levels could have been even higher. No one knows for sure. In addition, the analysis does not use data from the first full year of the consent decree (2009.) Many 2008 visitors were either unaware of the scope and breadth of the consent decree's beach closures or had already made reservations for that travel year. Therefore, ASA disagrees with the impression given by the Draft EIS's comment quoted here.

The impacts of the various proposed alternatives beginning on page 573 cannot be accepted or even considered at this time, as the DEIS earlier stated that more data will be released soon. And when that happens, NPS will either confirm or update the DEIS's estimates. To release estimates now may falsely bias readers, which can lead to harmful decisions. It is poor public policy to release draft data in a public process such as this. The DEIS also reported that local businesses expressed concern about the data being applied to estimate future impacts, but that still occurs starting on page 573.

Conclusion

The level of trust the local communities in CHNS have for the NPS has severely declined since the start of the Negotiated Rulemaking Process. There has been no public outreach by the NPS to the communities since the consent decree was instituted, and the seashore is being managed sixty miles away in Manteo, NC. The deep mistrust is not founded in the resources, but in the notion that the NPS seems determined to cripple a struggling local economy and a way of life. ASA strongly urges the NPS to complete essential data needs and then re-issue the document with the appropriate and necessary changes to the preferred alternative in order to provide both reasonable resource protection and reasonable public access to public lands.

Thank you for your consideration.

Sincerely,



Patty Doerr
Ocean Resource Policy Director

cc: Mr. Jon Jarvis, Director, National Park Service
Mr. Will Shaffroth, Assistant Secretary for Fish, Wildlife and Parks
The Honorable Richard Burr, U.S. Senate
The Honorable Kay R. Hagen, U.S. Senate
The Honorable Walter B. Jones, U.S. House of Representatives