

UNITED STATES OF AMERICA

+ + + + +

NATIONAL PARK SERVICE

+ + + + +

PUBLIC HEARING

+ + + + +

THURSDAY,
NOVEMBER 3, 2005

+ + + + +

The Public Hearing was held in the Theatre
at the City Museum, 801 K Street, NW, Washington,
D.C., at 5:30 p.m., Jess Commerford, moderating.

PRESENT:JESS COMMERFORD
PAT REED

Moderator

ALSO PRESENT:PATRICK PAQUETTE
JASON RYLANDER
DESTRY JARVIS
RICHARD BAKER
JOE LAWS
CAROL FORTHMAN
JIM LYONS
BRIAN TURNBAUGH
LARRY LIEBESMAN
STEWART MANN
DENISE RYAN
FRANK WATROUS**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

<u>AGENDA ITEM</u>	<u>PAGE</u>
<u>CALL TO ORDER:</u>	
Pat Reed	3
<u>PROTECTED SPECIES MANAGEMENT STRATEGY:</u>	
Jess Commerford	4
<u>STATEMENTS:</u>	
<u>NATIONAL FISHING ALLIANCE:</u>	
Patrick Paquette	20
<u>DEFENDERS OF WILDLIFE:</u>	
Jason Rylander	23
Destry Jarvis	29
Richard Baker	32
Joe Laws	34
<u>AMERICAN SPORT FISHING ASSOCIATION:</u>	
Carol Forthman	37
Jim Lyons	41
Brian Turnbaugh	44
<u>LAW FIRM OF HOLLAND & KNIGHT:</u>	
Larry Liebesman	47
Stewart Mann	52
<u>D.C. AUDUBON SOCIETY:</u>	
Denise Ryan	55
Frank Watrous	56
<u>ADJOURN:</u>	
Jess Commerford	60

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

P-R-O-C-E-E-D-I-N-G-S

6:35 p.m.

MR. REED: Good evening. I'm Pat Reed. I'm the Acting Superintendent at the Outer Banks Group to include, of course, Cape Hatteras National Seashore and I would like to thank you all for taking time out of your busy schedules to join us this evening, too, as we move through this portion of the public scoping process to give us your comments and thoughts and your ideas as we work to develop an Interim Protected Species Management Strategy and an Environmental Assessment associated with that strategy.

The purpose and objectives of the public scoping meeting are to explain the planning process and the time line as we go through this process, to share information from the internal scoping, the purpose, the need, the objectives and the issues that are associated with the Interim Protected Species Management Strategy, also to share with you ideas that we heard during informational meetings.

Although we didn't hold one here in Washington, there were a series that were held early in October along the Outer Banks. And, of course, to receive your comments, which is the main purpose of the public scoping session. And so thank you again

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for joining us. At this time, I would like to turn
2 the program over to Jess Commerford, who is an
3 environmental planner, who is going to help guide us
4 through the rest of the formal program this evening.
5 Jess?

6 MODERATOR COMMERFORD: Good evening,
7 everyone. As Pat said, thanks for coming out this
8 evening. We appreciate everyone taking the time to be
9 here with us. What you see in front of you, this was
10 on the boards and my impression is most of you have
11 had an opportunity to take a pretty good look at these
12 boards and the materials as you came in, but we're
13 going to review some of that material again and cover
14 a little new ground in this presentation.

15 But what you see before you is a slide
16 illustrating the NEPA process and the process to
17 develop the interim strategy for Protected Species
18 Management at the Park. And that started with the
19 internal scoping, which was held with Park Service
20 personnel. And that internal scoping was used to
21 develop some of the preliminary concepts and
22 preliminary alternatives that you see here this
23 evening and that's on a handout, which hopefully most
24 of you have had a chance to get a copy of, at this
25 point.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 That was followed by three open house
2 sessions down in North Carolina in the Park and those
3 meetings were conducted in the first week of October.

4 And I see at least one familiar face here this
5 evening and thank you for coming up. That was more of
6 a question and answer session and it was really a
7 series of meetings designed to help folks understand
8 what the planning process for developing an interim
9 strategy really was all about.

10 And then you see kind of the rest of what
11 happens here. I won't go through this in detail, but
12 it basically leads up to a decision being made on the
13 interim strategy in the March time frame. It is
14 important this evening and we'll touch on this two or
15 three times to really distinguish between an interim
16 strategy for Protected Species Management and the ORV
17 Master Plan, which will follow.

18 The interim strategy is a seven month
19 process, which is focused specifically on protection
20 of protected species and it will be considering the
21 ORV Plan development, but it's important to note that
22 any solutions that are arrived at through the interim
23 strategy could change as part of the development of
24 ORV Management Plan and the EIS that will be
25 associated with that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The Management Plan itself is a three year
2 process which will consider all aspects of ORV
3 management of the park, not just the relationship to
4 Protected Species Management. It will be accompanied
5 by an EIS and it may be developed with a negotiated
6 rule making process in consultation with an advisory
7 committee, which will be established, for that
8 process.

9 We're here specifically tonight to do
10 scoping for the National Environmental Policy Act
11 process or NEPA, which, in this case, is an
12 Environmental Assessment, and that process starts
13 through the development of a purpose, need and
14 objective statement for the project for taking action
15 and identifying issues. And we will define some of
16 this in a little bit more detail in a moment. And
17 that's also on a flyer that was handed out out front
18 that gives a little more explanation for that.

19 This information is on the website for the
20 project. That address is available for everyone and a
21 lot of this information was sent out via email and
22 flyers to folks who have been participating in the
23 process thus far, particularly the folks who came to
24 the open house sessions.

25 The purpose of the action is really the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 broad goal statement or the development of interim
2 strategy and it really tells folks what the proposal
3 and the alternatives tend to accomplish by taking
4 action. The purpose of this strategy is to evaluate
5 and implement strategies to protect sensitive species
6 and provide for recreational uses as directed in the
7 enabling legislation of the seashore, NPS management
8 policies and other laws and mandates until the longer
9 term ORV Management Plan is developed.

10 The need for taking action is really the
11 because statement, which defines why we are taking
12 action now. And that action is needed now because a
13 clear and concise set of management strategies is
14 needed and the lack of an approved strategy has led to
15 inconsistent management of protected species and has
16 created confusion for both the public and Park staff.

17 And it is needed to provide a management strategy on
18 which to consult with U.S. Fish and Wildlife Service
19 under Section 7 of the Endangered Species Act.

20 A management strategy is needed that
21 complies with the Endangered Species Act, the
22 Migratory Bird Treaty Act, NPS management policies and
23 Park enabling legislation to avoid adverse effects to
24 protected species and public concerns about species
25 management and recreational use need to be addressed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 immediately. There is actually more detail on the
2 enabling legislation and some of that information is
3 defined on the board. So if you didn't get a chance
4 to take a look at that as you came in, you'll have an
5 opportunity to do that after the meeting.

6 The objectives in the process are really
7 smaller goals that need to be met in large part for
8 the strategy to be considered a success. NPS has
9 developed five categories of those objectives for the
10 strategy so far. It is really important to note as we
11 go through these, that these are preliminary
12 objectives the Park Service has identified, but
13 subject to refinement through the scoping process as
14 part of the development of the Environmental
15 Assessment.

16 And the five categories of the objectives
17 that have been identified are management methodology,
18 civic engagement, visitor uses and experience,
19 protected species and park operations. For management
20 objectives, it's really to look at establishing an
21 adaptive interim management strategy with practices
22 and procedures that have the ability to respond to
23 changes in the seashores dynamic, physical and
24 biological environment and establish procedures for
25 prompt and efficient public notification of protected

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 species management actions and the reasons those
2 actions are being taken.

3 The public engagement objective is to
4 establish an ongoing and meaningful dialogue with
5 multiple groups and individuals interested in and
6 affected by protected species management and to ensure
7 development of a strategy that is implementable.

8 Visitor use and experience objectives
9 include providing for continued recreational uses and
10 access consistent with the required management of
11 protected species at the seashore and to increase
12 opportunities for public awareness and understanding
13 of NPS resource management and visitor use policies
14 and the responsibilities as they pertain to the
15 seashore and protected species management.

16 The protected species management
17 objectives include providing threatened, endangered
18 and other protected species and their habitats,
19 protection from adverse impacts related to
20 recreational uses as required by laws and policies, as
21 I said before, the Migratory Bird Treaty Act, the
22 Endangered Species Act and National Park Service
23 management policies, and to consult with Fish and
24 Wildlife to ensure the NPS management actions comply
25 with the requirements of the Endangered Species Act.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The park operations objective is to
2 provide for effective protected species management
3 while maintaining other park operations.

4 A few issues have been identified to date
5 and in the NEPA planning process issues really relate
6 to concerns or obstacles to accomplishing the
7 objectives that we just identified and there are issue
8 statements that describe the relationship between the
9 action elements that could be taken and the
10 environmental resources which could be affected,
11 including natural, cultural and socioeconomic
12 resources.

13 Issues identified to date, and again these
14 are preliminary, which will largely develop through
15 the internal scoping process and subject to refinement
16 as part of the public scoping process, include visitor
17 use and experience, which is management of protected
18 species that could result in adverse or beneficial
19 changes to visitor use and experience, the economy of
20 the communities within the seashore, the management of
21 protected species that could affect the local and
22 regional economy and local commercial fishing
23 activities and how management of protected species
24 could affect access for commercial fishing.

25 Protected species, how recreational

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 activities at the seashore could affect federally
2 threatened or endangered species in their habitat on
3 both the beach and soundside of the seashore.
4 Conflicts between the listed species and recreational
5 uses could create direct or indirect losses of the
6 species. Other sensitive species, including habitat
7 for American oystercatcher and other locally sensitive
8 species, as well as those species listed by the State
9 of North Carolina may be vulnerable to recreational
10 activities.

11 Recreational activities at the seashore
12 could create noise that could impact protected species
13 by altering the natural quiet and sounds of the
14 seashore. And human activities in wetland areas could
15 adversely affect wetlands and other habitat important
16 to protected species at the seashore.

17 Finally, the coastal barrier ecosystem
18 where natural processes such as hurricanes and other
19 storm events may create habitat for protected species
20 resulting in conflicts between management of that area
21 and habitat as habitat and management of the area for
22 recreational uses.

23 Hopefully you got a chance to take a look
24 at some of the alternative concepts that have been
25 developed to date. And again, I stress that those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 were developed through internal scoping with Park
2 Service staff and are definitely subject to refinement
3 and further development through the public scoping
4 process, that's why we're here this evening to gather
5 that input.

6 The alternatives is to include a full
7 range of reasonable alternatives required by the NEPA
8 process. And as I said, in this instance,
9 Environmental Assessment, were the purpose and need to
10 find the problems, the alternative is really different
11 ways to solve those problems, which is to say they
12 meet the objectives and purpose while resolving the
13 need and issues. The alternatives are within stated
14 constraints, including, in particular, National Park
15 Service policies and practices, and each of the
16 alternatives should minimize impacts to all or several
17 of the resources identified.

18 Alternatives are really the heart of the
19 NEPA process for the Environmental Assessment. They
20 should provide real options for decision makers. They
21 require creative approaches. They are based on
22 environmental rather than technical, logistic or
23 economical differences. That's not to say that we
24 don't look at economic impacts and that sort of thing,
25 we do. By environmental we include socioeconomic

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 impacts and cultural resources and the other things I
2 mentioned earlier. But it is to say that the
3 alternatives need to be different with respect to the
4 environmental impacts to those resources to
5 distinguish one from the other.

6 And they need to be reasonable. So what
7 do we mean by reasonable? Reasonable alternatives
8 need to be economically feasible. They need to
9 display common sense. They need to meet the
10 objectives of taking action that we just identified.
11 They need to be technically feasible. And they don't
12 necessarily need to be the cheapest or easiest
13 solution to the problem.

14 So how are the alternatives developed?
15 First, as I stated earlier, Park Service starts this
16 process through internal scoping where they review
17 their requirements under the Organic Act, National
18 Park Service management policies and other related
19 federal requirements and then look at review of the
20 parks enabling legislation, which, as I said, is
21 illustrated in some detail on the board, in
22 particular, for Cape Hatteras and its purpose and
23 significance under that legislation, in particular.

24 And then develop the purpose, need and
25 objectives for the interim strategy that we just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 discussed, and these are listed on the handout again,
2 which leads to developing a range of alternatives as
3 we have discussed. And as I said, we have got some
4 preliminary ones identified in the handout.

5 These alternatives are developed looking
6 at relative federal laws, National Park Service
7 policies, protocols and scientific aspects, practical
8 knowledge, including folks that are familiar with the
9 park and the vicinity, and most importantly public
10 input, which is why we're here this evening. And
11 these again are driven by the five categories of the
12 objectives that we identified earlier.

13 The goal is to look at all reasonable
14 alternatives, as I said, but sometimes there can be a
15 somewhat infinite number of alternatives. And when
16 there are several, the goal is to develop a spectrum
17 of options that really capture most of the different
18 possibilities and it's that range of alternatives that
19 is really important for bounding the analysis, rather
20 than the total number.

21 The alternative section of the NEPA
22 document is required to include no action under the
23 regulations. In this instance, which means no further
24 management actions beyond the baseline, and in this
25 instance, National Park Service is using the 2004

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 management year as that baseline. So no action for
2 management and strategies. It typically looks at what
3 your baseline condition is going in without any new
4 changes. And so, in this instance, the 2004
5 management policies would be continued during the
6 interim period.

7 This slide is more relevant for most of
8 you folks. We had a good size crowd in North Carolina
9 for the last two nights and there were a lot of folks
10 who had the opportunity to participate in the open
11 houses. And what you see on this slide is really some
12 common issues or common themes that were heard at the
13 three open house meetings during the question and
14 answer sessions the first week of October.

15 And I might say that we had a reporter at
16 those three sessions for the Q&A period and the
17 transcripts for these are available on the Park
18 Service website at the same address that's there. So
19 you all will have an opportunity to go look at that
20 and read for yourselves the discussions that took
21 place. But the common range of the comments really
22 had to do with the effect of the interim strategy on
23 ORV access at the seashore, the effect of the interim
24 strategy on species protection, the 2005 Escort
25 System, turtle management, in particular, economic

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 impacts associated with the interim strategy and other
2 management practice suggestions.

3 And we made the point during those
4 meetings in October, and I'll say that here again,
5 that all of the comments that were received through
6 the open houses are being carried forward as part of
7 this process as well and being considered as part of
8 the scoping process.

9 That being said, some of the comments that
10 were made in the October meetings and through this
11 scoping process are probably more appropriately
12 handled through the ORV Management Plan, in that they
13 are outside of really the spectrum of protected
14 species management. Having said that, we will find a
15 way to carry forward the comments that are made that
16 are really more relevant for the overall ORV
17 Management Plan into that process as that moves
18 forward over the next three years.

19 So there are a variety of opportunities
20 for you to provide comments through this process. We
21 will be accepting comments tonight. You have an
22 opportunity to do that through the open house. It's
23 important to note that everything that is identified
24 on the pads where you've been making comments will get
25 captured in the official record, so everything that is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 captured there or written comments that are submitted
2 to the Park Service carry equal weight to what is on
3 the record for the meeting this evening.

4 So take the opportunity to do that as
5 well. As I said, these comments need to be received
6 by Park Service on November 17th. And you see here the
7 address for the website. You can go to this website
8 and submit comments through the website and certainly
9 find other information with the address and everything
10 else where you can mail other materials. Also submit
11 comments in writing to the superintendent at the park.

12 The address is here and that's also available out
13 there. It's also on the website.

14 And we have forms. I don't know if you
15 saw those as you came in. They are self-addressed and
16 so one side has space there where you can provide
17 written comments and fold that in. You can either
18 drop that off this evening if you want to fill it out
19 or take it with you and mail it back in, if you
20 prefer. Please, include your full name and mailing
21 address on that when you do so, so we can provide
22 further information on this process as it moves
23 forward, too.

24 And I'll say one more time, this isn't the
25 end of this. This is the process that's being used to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 develop an interim strategy and it is separate and
2 apart from the overall ORV Management Plan, which will
3 be moving forward and there will be other
4 opportunities to provide input for that process as we
5 move forward, and it will be accompanied by a full
6 environmental impact statement as the ORV Management
7 Plan is developed.

8 So with that, we're going to go to the
9 public comment portion of the meeting this evening and
10 we're scheduled to do that for about another hour.
11 And we'll go ahead and get started on that. And then
12 if most of you have seen the agenda for about an hour
13 after that, we will be here for more of the open house
14 format where you can visit with Park Service staff and
15 have an opportunity to make other comments as we do
16 that.

17 There are a few ground rules for the
18 public part of the meeting this evening. I want to go
19 over that a little bit. If there are any elected
20 officials with us this evening, typically if folks are
21 elected by the broader community, a chance to speak
22 first. Do we have anyone who is elected this evening
23 that wishes to go to the head of the line?

24 When you come up, I need you to speak in
25 the microphone. It's really the only way for us to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 accurately capture your statements for the reporter,
2 who will be providing a transcript for us. And I'll
3 call the name of the folks who signed up to speak and
4 I'll identify one or two folks that are coming up
5 after that to give you a chance to prepare.

6 I would greatly appreciate it if other
7 folks would not talk while the person who is assigned
8 to speak comes up and speaks. If we get background
9 noise, that affects our ability to capture what you
10 are saying. To be consistent with the meetings in
11 North Carolina to give everyone an opportunity to
12 speak, I would ask you to limit your remarks to about
13 four minutes. And when you hit that, I'll give you
14 the signal that you are there. And if you could wrap
15 up in a few seconds after that, it will be greatly
16 appreciated.

17 And I know the crowd is a little smaller
18 here, but we are required to be consistent with the
19 other public meetings and we've done about four minute
20 time limits on the speakers at the other meetings and
21 we need to stick with that this evening. And I
22 appreciate your cooperation in that regard. That
23 having been said, if you have written testimony or
24 written remarks that you would like that are longer
25 than you have an opportunity to present this evening,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 provide those to us and they will get attached. They
2 will be presented to the Court Reporter and become
3 part of the official record for the evening.

4 Likewise, if you have supporting testimony
5 or information or other things that you would like
6 entered into the record, please, feel free to do that
7 when you come up to speak and we will include it.
8 With that, we'll go ahead and get started. As always,
9 I apologize in advance if I butcher some names as I
10 call people up here, but Patrick Paquette and Jason
11 Rylander will follow.

12 MR. PAQUETTE: Good evening. My name is
13 Patrick Paquette. I'm actually here with two hats on.

14 I currently serve as the Executive Vice President of
15 the National Board of the United Mobile Sport
16 Fishermen. We represent 33 ORV groups along the east
17 coast, actually, 32 and one on the Gulf of Mexico
18 coast in Texas, that comprises over 88,000 ORV users
19 and many of our constituents report to us that they
20 visit the park as a tourist destination for the
21 purpose of fishing.

22 I am also, my primary responsibility here
23 tonight is, the National Shore Access representative
24 for the Recreational Fishing Alliance or National
25 Political Lobby for Recreational Fishermen and that's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 who I'm speaking on behalf of.

2 I first wanted to address the general idea
3 of scoping and suggest that the perspective of scoping
4 of the scoping documents in general tend to be
5 written, at least in my read and in the read of a lot
6 of our members, as somewhat threatening. We believe
7 that the theory behind putting the interim plan
8 together should be, or at least a goal of it, to find
9 the median or the middle ground that all user groups
10 that are conflicting in all perspectives can live with
11 until the, hopefully, successful negotiated rule
12 making process goes through.

13 And the wording and the attitude and the
14 perspective of some of the documents that as you read
15 them, they don't lead off with the uses of the park.
16 They don't seem to be centralized around the enabling
17 legislation. They seem to be centralized around laws
18 that are going to affect that. And I would just
19 suggest it would be our input generally that that is
20 not necessarily the way to engage all user groups at
21 least the two sectors that I represent. Because what
22 we feel as ORV users and as recreational fishermen is
23 that we are the people being thrown out of the park or
24 being told that we are not welcome in the park.

25 And it is a lot of tone is what I hear

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 from members getting angry about. And as we all know,
2 once anger and resentment starts, negotiation,
3 understanding and communication don't happen. So I
4 would just ask that be taken into account, because it
5 should be a collaborative effort. The ORV groups that
6 are going to be most affected by this Interim Plan,
7 and when I say ORV groups, I mean, all users, because
8 there just isn't enough parking.

9 I have never been able to go down there
10 and see a way where we could take all the vehicles off
11 the beach and put them all into parking spaces. There
12 is going to be loss. People are not going to be able
13 to fit to use the park if they had access on foot and
14 if everything ends up getting closed. So I guess I
15 think the scoping needs to be a little bit wider in
16 what I have read for the Interim Plan.

17 As far as ORV use, I also just want to
18 make a statement for the record that there is a
19 difference between the 24 year-old young man out of
20 control in an oversized jeep that has no business
21 being on a beach with an open bottle of booze in the
22 truck and a box of fireworks as to responsible ORV use
23 of the beaches. And the damage that gets caused in
24 most part is by a small segment of people that could
25 be responsibly regulated out of ORV use on the beach.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And that the organized ORV public in more national
2 parks than not, and in more other types of parks the
3 same way, participates in the training, participates
4 in forming the guidelines of what is allowed as far as
5 speed limit, tire size and safety equipment.

6 So I just think that that kind of stuff
7 that isn't necessarily reflected in the alternatives,
8 but I think should be in there somewhere, because we
9 can minimize some of the -- we can come into
10 compliance with some of these lesser or less stringent
11 laws and policies without just talking about close or
12 not close. And we are going to be submitting an
13 extremely detailed comment by the 17th.

14 And just one more comment.

15 MODERATOR COMMERFORD: Wrap up if you can.

16 MR. PAQUETTE: Well, actually, I'll leave
17 it for our written. Thank you.

18 MODERATOR COMMERFORD: Thank you. Jason
19 Rylander? I'll try to give you a high sign when you
20 all hit four minutes and then if you can wrap up
21 shortly after that, I would appreciate it.

22 MR. RYLANDER: My name is Jason Rylander.
23 I'm a staff attorney with Defenders of Wildlife.
24 Defenders of Wildlife filed a Notice of Intent to sue
25 in May, because the National Park Service had failed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to protect threatened and endangered species, failed
2 to consult with the Fish and Wildlife Service on
3 management plans and violated numerous federal laws
4 and executive orders related to park management and
5 the authorization of off-road vehicle use.

6 We filed that notice because of these
7 violations and because despite recovery plan
8 guidelines calling for prefencing of potential nesting
9 areas and despite resource management recommendations
10 for seasonal closures, the Park Service had failed to
11 protect these areas this spring.

12 Defenders commends the Park Service for
13 improvements this summer that led to one of the most
14 successful piping plover breeding seasons in many
15 years and we are hopeful that this interim strategy
16 and negotiated rule making will finally address some
17 of these issues that should have been addressed 30
18 years ago when President Nixon issued his first
19 Executive Order on ORV management.

20 But the Park Service's recommendations in
21 the matrix that is displayed up here give us serious
22 concerns that that will happen. Over the years the
23 seashore has heard a consistent message from the
24 scientific community to protect habitat and limit
25 disturbance. But the National Park Service has

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 rejected the guidance of the Piping Plover and Sea
2 Turtle Recovery Plans, rejected the recommendations of
3 Fish and Wildlife Service biologists and National Park
4 Service Resource Management and now its commissioned
5 protocols from the USGS and largely rejected that as
6 well.

7 It seems the National Park Service keeps
8 looking for a way out, but the way out is to obey the
9 law and to protect America's wildlife and natural
10 resources. It is kind of inexplicable having had only
11 a limited time to review this. The four alternatives,
12 A through D, simply don't reflect the scientific
13 guidance of the USGS protocols. Option B appears to
14 provide the best level of protection, but is
15 nonetheless inadequate.

16 The protocols are clear. If we're going
17 to recover the piping plovers and sea turtles and sea
18 beach amaranth and other threatened species and divert
19 the decline of other water birds, off-road vehicle use
20 must be prohibited in some prime habitat areas to
21 reduce disturbance.

22 Many specifics, I would like to talk
23 about, but I'll just raise a few here. A 150 foot
24 closure for piping plovers exhibiting courtship
25 behavior may be inadequate to protect disturbance.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Gull billed terns should be included as they are a
2 declining species as well. The May 1st deadline for
3 closures for colonial waterbirds appears to be
4 inconsistent with state guidelines and past practices
5 at Cape Hatteras.

6 On night driving, alternative B is the
7 only one that addresses night driving, and that in
8 itself is inadequate. Night driving should be banned,
9 as it is at most national seashores to protect turtles
10 and other species. Lights from off-road vehicles,
11 campfires, flashlights, etcetera, disorient turtles
12 and can prevent nesting and hatchlings from returning
13 to the sea. ORV tracks can run over nests and
14 hatchlings as has happened at Hatteras before. And it
15 can obliterate turtle crawls that could help patrols
16 identify nests and protect them.

17 Monitoring isn't good enough to protect
18 turtles if ORVs are permitted at night. Also, none of
19 the recommendations here appear to preserve any
20 oceanside feeding habitat for wintering birds. And
21 alternative C and D appear to call into question
22 whether areas on the inlets and soundside, which
23 provide moist sand for sand foraging habitat will be
24 protected. And that's unacceptable.

25 Some of these closure recommendations are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 improvements, but the closures are also only as good
2 as law enforcement. Continuing rampant violation of
3 closures and corridors at Cape Hatteras Seashore is a
4 serious problem. If that's not corrected, closures
5 must be larger to protect disturbance.

6 The Escort Service also in Option D is
7 untenable. NPS monitoring suffered greatly last
8 summer because of the resources devoted to the Escort
9 Service at Hatteras Spit and that area got very
10 limited use from ORVs. Expansion of the Escort
11 Service to all areas would require massive personnel
12 and money, which simply cannot be justified.

13 We'll submit a more detailed critique in
14 writing, but the message is clear. Follow the
15 science. You asked for the protocols. You have the
16 recovery plans. Follow them and stop trying to cut
17 corners on protection.

18 There are a couple of issues I want to
19 touch on very quickly. Economics. ORV use is not as
20 important to the economy of the Outer Banks as ORV
21 groups would have you believe. The Vogelsong Visitor
22 Use Survey found that ORV uses make up 7 to 11 percent
23 of Cape Hatteras Seashore visitors. Last season the
24 groups predicted that the barely adequate closures
25 this summer to protect two piping plover nests would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 decimate the local economy.

2 That is patently false. According to the
3 Coastland Times, Dare County had its most profitable
4 season ever, and I would like to submit this for the
5 record. The number of visitors, hotel occupancy and
6 revenue is up across the board from 2004.

7 As tourism has expanded, more and more
8 people are looking for that primitive wilderness
9 experience that Congress articulated in the Organic
10 Act for Cape Hatteras. Demographics are changing.
11 Homeowner groups are urging the banning of ORVs in the
12 villages.

13 Other residents testified last night that
14 walking in tire tracks and worrying about speeding
15 cars on the beach ruins their visitor experience of
16 walking on a remote and pristine beach. The
17 experience of the typical park visitor must be taken
18 into account and given greater weight than the 10
19 percent or so who use ORVs to access the more remote
20 areas.

21 Two last points, then I will wrap up.
22 Please, protect your staff. Resource management is
23 continually vilified by people on the ORV side who
24 support a policy outcome that is contrary to the
25 recommendations of resource management in some cases.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The Park Service staff is doing their job and using
2 the best available science to do it. When you ignore
3 the recommendation to scapegoat them, we'll not be
4 able to keep quality people on the ground.

5 Lastly, some OBPA board members have been
6 saying that the Service is not only replacing resource
7 management, but will be replacing them with "more
8 user-friendly personnel." To the extent that these
9 discussions are happening in secret, it's unfair to
10 other park users. It is also unfair to ORV groups for
11 promises to be made that may not be able to be kept
12 and that may, in fact, violate the law.

13 Bottom line, follow the law, protect
14 threatened and endangered species, consult with the
15 Fish and Wildlife Service, listen to your scientists
16 and we can preserve the scenic recreational and
17 wildlife legacy of Cape Hatteras National Seashore for
18 generations to come.

19 MODERATOR COMMERFORD: Thank you. Destry
20 Jarvis?

21 MR. JARVIS: My name is Destry Jarvis. I
22 have spent the last 33 years in a variety of
23 capacities inside the National Park Service, outside
24 the National Park Service for nonprofit and for-profit
25 consultants and have extensive experience with Park

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Service management law and policy.

2 At the present time, Cape Hatteras
3 National Seashore is, in my opinion, in violation of
4 the 1916 Organic Act, the Endangered Species Act, the
5 Cape Hatteras Enabling Statute, two Presidential
6 Executive Orders on off-road vehicles and its own
7 management policies.

8 Even considering the proposed changes in
9 management policies that are out in draft for public
10 comment, Deputy Director Steve Martin testified in the
11 Senate on Tuesday that the central goal of the changes
12 in management policies is to have the Park Service
13 adopt the practice of making parks better for the
14 future than they are at present. Even that standard
15 is not being met at Cape Hatteras.

16 The 1916 Act calls for parks to be
17 conserved unimpaired. The Endangered Species Act
18 requires protecting listed species from harm. The
19 Cape Hatteras Enabling Legislation terms the area to
20 be managed as a primitive wilderness. No development
21 or project for the convenience of visitors shall be
22 undertaken that would be incompatible with the
23 preservation of fauna and flora.

24 The second of two Presidential Executive
25 Orders issued in 1977 says that the respective agency

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 head shall, whenever he determines that the use of
2 off-road vehicles will cause or is causing
3 considerable adverse impacts to wildlife, etcetera,
4 will immediately close such areas to the types of off-
5 road vehicles causing such effects.

6 Recognizing that this is not an off-road
7 vehicle plan, but a protected species plan, much of
8 this stated in the alternatives is focused on off-road
9 vehicle implications of protected species. The USGS
10 synthesis of management alternatives and their
11 recommendations of options, at a minimum their
12 specific alternatives for protecting species should be
13 one of the alternatives if not the primary alternative
14 of this Interim Species Protection Plan. It caters
15 far too much to ORV concerns when that is not its
16 purpose.

17 In your first slide in your presentation
18 this evening, you indicated that the result of the
19 process would be a FONSI. Well, not necessarily.
20 Under CEQ guidelines under NEPA, you do an EA to
21 determine whether an EIS is necessary and only then if
22 you find there is no impact do you do a FONSI. That
23 is not the proper conclusion of this process.

24 I would say that the statement in the
25 beginning of the USGS synthesis is the right place to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 begin. Recreation activity has been implicated as a
2 cause for low reproductive success and declining
3 populations of all of these species, and for
4 disturbance or mortality of migrating and wintering
5 piping plovers, colonial waterbirds, oystercatchers,
6 etcetera. That should be your guiding principle.

7 I think it's also important to note, and I
8 will conclude with this, that you were not just
9 charged to protect what's there now, but the habitat
10 that is potential for the restoration of these
11 species. You can't just put up a fence around a nest
12 and think that that is sufficient under the law and
13 the policies of the National Park Service.

14 MODERATOR COMMERFORD: Thank you. Richard
15 Baker and Joe Laws after that.

16 MR. BAKER: Good evening. My name is
17 Richard Baker. I live in Windsor, Virginia. I have
18 been visiting and enjoying Cape Hatteras National
19 Seashore for 40 years. I did a little mental
20 arithmetic and figured out in the past five years I
21 have visited over 40 National Park Service-managed
22 areas, and one of the most rewarding experiences you
23 find in these areas are the primitive wilderness
24 experience that have been mentioned.

25 I have learned that if you are, say, in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Yosemite or at the Grand Canyon, with a little bit of
2 effort you can get off the beaten path and get into a
3 wilderness experience. This is a very satisfying
4 experience for me and one that I treasure for myself
5 and my children and for future generations of our
6 country, that I feel it really is a sacred trust for
7 us to protect.

8 My comments certainly go more to the long-
9 term usage of off-road vehicles and this use needs to
10 be balanced with the long-term effects that it has.
11 You will notice down in Cape Hatteras, say, the
12 Canadian Hole Day Use area north of Buxton, the
13 lighthouse area in Buxton that has really enlarged the
14 parking facilities tremendously and, for instance, the
15 day use area west of Frisco Pier on the south beach
16 where I was there this past 4th of July weekend. In
17 the middle of the day on a perfect beach day, there
18 were still numerous parking spots to be had in those
19 areas.

20 So as we look to the future and long-term
21 management, I urge that the trust that we have for
22 future generations for the preservation of our natural
23 treasures be kept in mind. Thank you.

24 MODERATOR COMMERFORD: Thank you. Joe
25 Laws and Carol Forthman after that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. LAWS: My name is Joe Laws and I have
2 homes both in Cape Hatteras and here in Virginia, and
3 I am always immediately suspicious of anybody who
4 begins their dialogue upon our Hatteras Island issues
5 with "I have been coming to Cape Hatteras for" and you
6 can always pick the number of years. It will be some
7 add number of years, and then comes the big "but," but
8 I wish you had a McDonald's, but I wish you had
9 toilets at the airport, but something. There is
10 always a but, always a change involved.

11 And along came 1937 and the biggest
12 visitor to the Hatteras Island came the National Park
13 Service. And, of course, that entails the biggest
14 "but," the changes that they have always tried to
15 bring about and it's fine. For the most part, it has
16 been somewhat of a give and take relationship in spite
17 of the bad press that the Park Service has received.

18 It has been my experience that the Park
19 Service over its time here on the island has become
20 somewhat of an exclusionary and more of a "thou shall
21 not" type of a presence. It just seems to be a
22 natural bet. So this predisposition to restrictive
23 behaviors is what I take most issue with.

24 The NPS is portrayed to be under pressure
25 from environmentalist groups to restrict access in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 order to reach compliance with various statutes and
2 management policies, etcetera. It seems to me that
3 the NPS by virtue of this predisposition is lending
4 its weight and authority to a more restrictive use of
5 national seashore rather than an open and an unbiased
6 advocacy. After all, what identifies an
7 environmentalist?

8 Here in my pocket I have a National Park
9 Service pass. Does that identify me as an
10 environmentalist? I also have an ORV, four wheel
11 drive vehicle, and I use it on the beach both day and
12 night. And does that preclude me from being an
13 environmentalist? I think not.

14 I think that, as one of the gentlemen up
15 here mentioned, conscientious behavior, vis-a-vis
16 driving on the beach, is not necessarily at odds with
17 the objectives we're trying to reach with the
18 Protective Species Act. I don't think that they are
19 mutually exclusive. I think we can work together to
20 reach such conclusions, but I don't think we need to
21 say one can't be had because of the other.

22 In my particular house, I'm lucky enough
23 to have purchased four lots side by side down in
24 Hatteras, much to the chagrin of my realtor who says
25 all you're going to do down there, Joe, is build a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 compound. Well, that's exactly what I want it for, a
2 compound, because I think of myself as an
3 environmentalist. I have kept it natural. I have got
4 an enormous amount of wildlife there.

5 On the other hand, it has been my
6 observation over 30 some odd years now that other
7 species have migrated down. We now have black raven
8 type birds on the beach. When I first started going
9 to the beach you never saw a black type of a bird
10 there. All of a sudden, a friend of mine pointed it
11 out and said look at that. That daggone bird looks
12 like he's a seagull. And sure enough, here was this
13 bird walking along pretending he was a seagull,
14 thinking he was a seagull, acting like a seagull, but
15 it was not an indigenous species.

16 I have got feral cats up the yazooie. All
17 my little small birds, my noncompetitive birds have,
18 for the most part, disappeared. I now have cardinals,
19 mockingbirds, gackles, but the birds that are not able
20 to compete with cats. Raccoons, I have got raccoons
21 in my attic. I must trap three raccoons a month,
22 sometimes three a week in my house. For some reason
23 or another, the word has gone out that my house has
24 become the safe haven for raccoons.

25 So in any event, what I am suggesting is,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 contrary to what some of these eloquent spokesmen for
2 the environmentalist groups, paid spokesmen I might
3 add, would have you believe, not all these species are
4 being overrun, destroyed, eradicated by me and my four
5 wheel drive vehicle. I think that there might be
6 other issues at work that is worth studying. Thank
7 you.

8 MODERATOR COMMERFORD: Thank you, sir.
9 Carol Forthman and Jim Lyons after that.

10 MS. FORTHMAN: Good evening. My name is
11 Carol Forthman. I am the Director of Ocean Resource
12 Policy for the American Sport Fishing Association. We
13 are an association with over 700 members of companies,
14 associations, non-Governmental and Governmental, who
15 work toward a mission of both conservation and
16 providing long-term ability and restoration of our
17 fishing resources.

18 We have become very interested in this
19 whole access issue at Cape Hatteras due to the fact
20 that we have a number of members there, and also
21 people from outside the area have contacted us and
22 asked us to get involved in the issue since it seems
23 to have reached kind of a fever pitch down there.

24 The meeting tonight and other meetings are
25 designed to further the development of an Interim

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Protected Species Management Plan for Cape Hatteras,
2 and you could view that as a relatively isolated
3 enterprise, but I would like to put that into some
4 sort of context and I think there are three contexts
5 we need to look at.

6 First is the geographic context. Where is
7 Cape Hatteras in relationship to the range of the bird
8 that we focus on most, the piping plover? Where is it
9 in relationship to the towns that are wholly contained
10 within the seashore and where is it in relationship to
11 other close-by areas that are also home to piping
12 plover breeding and foraging grounds?

13 The second context is historical, which
14 relates to the way the national seashore was
15 established and how it has been managed in the past,
16 and how representations were made at the time of
17 establishment to the local towns.

18 The third context that I want to address,
19 it has been kind of partially addressed in the earlier
20 contexts tonight, is the relationship context. This
21 issue concerns the atmosphere of hostility that has
22 built up between the local community and the Park
23 Service in that area.

24 Starting with the geographic context, Cape
25 Hatteras is near the southern end of the breeding

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 range for the piping plover and near the northern part
2 of its wintering range. There are much more important
3 areas up the east Atlantic coast and inland that
4 support the vast majority of piping plover nesting
5 sites. While this does not mean that piping plover
6 issues should be disregarded at Cape Hatteras, it does
7 indicate that the level of regulation maybe should
8 reflect the value of such regulation to the resource.

9 The second aspect of the geography is that
10 the towns and, therefore, the local population and all
11 of the visitor accommodations are totally within the
12 boundaries of the seashore. Those towns cannot expand
13 their boundaries and are tightly limited in their
14 ability to bring in any new means of economic
15 production. They rely on tourism, because they have
16 to rely on tourism. The regulation of tourist
17 activity, therefore, has a much higher impact on these
18 communities than it would have in other locations.

19 The third aspect of geography that is
20 never discussed is that there are several additional
21 federally protected areas near Cape Hatteras Seashore
22 that are also important piping plover habitats.
23 Immediately to the south is Cape Lookout National
24 Seashore. To the north is the Chincoteague National
25 Wildlife Refuge, which is bounded on its northern

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 border by Assateague National Seashore. In the middle
2 of Cape Hatteras is the Pea Island National Wildlife
3 Refuge.

4 The importance of these areas is that
5 every one of them has significantly more nesting
6 activities by piping plovers than Cape Hatteras even
7 though at least two of them also allow ORV access.
8 The likely explanation for this is that these areas
9 are more appropriate habitat for plover nesting than
10 Cape Hatteras. Considered regionally, that is from
11 the Barrier Coast from Maryland through North
12 Carolina, Cape Hatteras may be the least relevant area
13 for piping plover protection.

14 The historical development. The seashore
15 was consciously created around the existing towns with
16 full knowledge of the recreational uses and the
17 dependence of the local population.

18 Finally, I would like to address the
19 critical subject of the relationship between the
20 National Park Service. The Park Service's heavy-
21 handed closures without warning over extensive
22 portions of the most valuable sport fishing areas for
23 long periods of time are at the heart of this dispute.

24 Its abrupt and secretive actions, the lack
25 of communication, the failure to honor verbal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 commitments, the failure to respond to information
2 provided to it or to requests for information and the
3 rude actions of certain Park personnel, all of these
4 have added to a strained relationship. If we want to
5 go forward, you need to change this and the agencies
6 have the opportunity now to take that and really look
7 at the two opposing viewpoints in this and try to find
8 a middle ground between them.

9 We have just received those protocols and
10 I will just have to say that we haven't had a chance
11 to look at them in-depth, but we find a cursory
12 reading of them very disturbing and we feel that if
13 they are not tempered with consideration or access,
14 they will likely result in unprecedented resistance
15 from the effective communities. We will go ahead and
16 submit additional comments in writing. Thank you.

17 MODERATOR COMMERFORD: Thank you. Jim
18 Lyons and Brian Turnbaugh after that.

19 MR. LYONS: Hi. My name is Jim Lyons and
20 I have probably done every recreational activity you
21 can do in Hatteras Island in the last 35, 40 years,
22 and I have done them all without an ORV. I own an ORV
23 and I use it sometimes. I have no problem with access
24 without an ORV in Cape Hatteras.

25 So I see the special interest group of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ORVs as just that, a special interest group, and I see
2 it as an unregulated special interest, an unmanaged
3 special interest and a special interest that was never
4 officially acknowledged for this part. And I also
5 find that ORVs, although like I said I use them at
6 times, I also find that ORVs also hinder my
7 recreational activities.

8 I can give you an example. I'm going down
9 a beach. I have got my fishing rod. I come across
10 16, 18 inch tire ruts in the top beach. I go on the
11 lower beach. There's four vehicles parked
12 perpendicular to the vehicles. They have got maybe 15
13 rods and spikes unattended. I have got to duck under
14 fishing lines. I got to go behind the truck that has
15 a rottweiler tied to it. There's music playing. It's
16 not the recreational experience I want in a national
17 park.

18 So it's a much bigger issue than just ORVs
19 and access. That's a separate issue. This is a
20 special interest group, ORVs. I find that ORVs have
21 thrown as many rocks as they claim the parks have
22 thrown. The directors of these groups, they don't
23 throw the rocks. They bring the rocks. They set them
24 out and they tell other people where to aim, and they
25 are not always accurate in their information about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what they said. I have seen this firsthand in a
2 personal way.

3 One of the reasons why I'm here speaking
4 to you all is that I don't feel comfortable speaking
5 about this in my community. I have friends that have
6 businesses that have had private letters sent to them
7 from ORV advocates saying they won't attend or go to
8 their establishment, because they don't have an OBPA
9 sticker out on their thing. There is a lot of
10 intimidation going along with this group.

11 I also think of the whole recreational
12 experience at Cape Hatteras in this very holistic
13 manner. I don't want to think of it as this special
14 interest group and this special interest group. I
15 don't think that you're going to be able to manage
16 this park without looking at people and the resource
17 as one and that if I want a beach, I might not be able
18 to identify every seabird I see, but I want to know
19 that all the unique flora and fauna that's supposed to
20 be in that park is there, not just the stuff that's
21 protected by the Endangered Species Act, the unique
22 flora and fauna to this park.

23 It's written in enabling legislation the
24 word unique. I think everything that is in that park
25 should be found in that park and you can't find it in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Smokey Mountains is unique. A piping plover, a
2 ghost crab, whatever it may be, sea beach amaranth,
3 it's all unique and it needs to be protected and it
4 needs to be looked at in a manner that encompasses it
5 in a really holistic way.

6 I just hope that that park can manage
7 these resources in a way that they all preserve for a
8 long time. The resource in the park has been
9 diminished not just because of the increased visitor
10 use, but just since I have been a child coming there,
11 the beaches were 300 or 400 yards wide and they are
12 less than 100 yards wide in most places. So you have
13 got more people fighting over a smaller piece of pie
14 and it has a cumulative effect on the whole entire
15 seashore. Thank you very much.

16 MODERATOR COMMERFORD: Thanks. Brian
17 Turnbaugh and Larry Liebesman after that.

18 MR. TURNBAUGH: Good evening. My name is
19 Brian Turnbaugh and I am a resident of the District of
20 Columbia. Thank you for allowing me to present my
21 comments tonight.

22 I strongly support actions by the National
23 Park Service to limit the access of off-road vehicles
24 to the beaches of Cape Hatteras National Seashore if
25 the presence of the ORVs is considered detrimental to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the health and well-being of the wildlife in the park,
2 especially the endangered and threatened species.

3 I have spent time during almost every
4 summer of the last 30 years on the Outer Banks. My
5 love and respect for the Barrier Islands is great.
6 However, over the years I have watched as what were
7 once pristine, quiet, beautiful, natural areas have
8 been developed with oversized rental homes and
9 shopping malls and parking lots and the accompanying
10 traffic congestion.

11 Humans have granted themselves tremendous
12 access to the beaches of the Outer Banks already,
13 mostly at the expense of the local and migratory
14 wildlife that depend on the shoreline not for pleasant
15 summer vacations, but for their very existence.

16 Science is only beginning to understand
17 the interdependencies and interconnectedness of the
18 great variety of species. We do not know what the
19 effect will be on the ecosystems that we depend on if
20 we allow more species to become extinct. I would
21 guess that the result could not be beneficial.

22 When working out the details of the
23 strategy, please, err on the side of caution. We do
24 not know what the stakes are. We could lose a lot
25 more than just six endangered species. Please, let

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 science, biology, ecology guide the formulation of the
2 Park Service's policy.

3 Cape Hatteras National Seashore offers
4 many recreational activities that do not require
5 endangering the very survival of entire species or
6 destroying habitat to enjoy those activities. The
7 park will continue to attract tourists like myself and
8 the dollars that we bring to the local economy if ORV
9 access is restricted. Besides, how long can a local
10 economy that is dependent on the natural wealth of the
11 Outer Banks survive if the natural wealth of the Outer
12 Banks is depleted?

13 Coexistence means that humans will most
14 likely have to curtail their most destructive
15 activities, for example, driving ORVs on the beaches.

16 The beaches and the park should still remain
17 available for the numerous other activities, including
18 fishing, swimming, boating, hiking, etcetera.

19 However, this most destructive activity,
20 driving off-road vehicles on the beaches, if it is
21 endangering the very wildlife that tourists are coming
22 to enjoy, it must be restricted so that we all can
23 enjoy the abundant wildlife of the seashore for
24 generations to come. Thank you very much.

25 MODERATOR COMMERFORD: Thank you. Larry

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Liebesman and then Nimesh Patel.

2 MR. LIEBESMAN: Good evening. My name is
3 Larry Liebesman. I am with the Law Firm of Holland &
4 Knight here in Washington and I want to thank you and
5 appreciate the opportunity to present some thoughts
6 today.

7 We represent the Cape Hatteras Access
8 Preservation Alliance, which is a project of the Outer
9 Banks Preservation Association, OBPA, which is
10 basically a coalition of user groups, business groups
11 concerned about preserving the historic right of
12 access to the Cape Hatteras National Seashore. We
13 regularly operate off-road vehicles as the primary
14 means of accessing the seashore for both recreational
15 and commercial purposes.

16 Indeed, when the seashore was created in
17 1952, the Park Service Director made clear that the
18 basic legislation authorizing the formation of the
19 seashore reserved fishing rights to the people and
20 access to the beach as fundamental in protecting those
21 rights. The seashore was created around these
22 communities and, indeed, contrary to some of the
23 comments that we have heard, Congress did not intend
24 to reserve this as a primitive wilderness area.

25 There is a statute, the Wilderness Act,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and, indeed, a portion of Fire Island National
2 Seashore has been reserved as a wilderness area
3 through Congressional action. That has not occurred
4 here. Congress, in turn, wanted to protect the right
5 of access consistent with balance and preservation of
6 the resources out there and, indeed, our clients have
7 worked very diligently in that regard.

8 We have submitted extensive correspondence
9 and analysis into the record for you to consider and
10 we'll be submitting more detailed comments on the
11 alternatives that are being presented today. But I
12 would like to discuss just a couple of key thoughts
13 and points that are very important to my clients.

14 First of all, we have been very, very
15 frustrated over this sort of fever pitch over the past
16 summer, closures and restrictions that seem to change
17 from day to day protecting potential habitat from
18 overuse, a real frustrating situation, a lack of
19 trust. That has got to stop.

20 We don't favor uncontrolled ORV access to
21 the detriment of park resources, contrary to certain
22 opinions. Rather, we seek a balanced solution that
23 respects the historic Congressionally recognized right
24 of access consistent with preserving the park's
25 important natural resources. Those are important to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 our clients as well. That balance has been upset by
2 the arbitrary closure decisions that led to a
3 breakdown in trust and, indeed, I would submit that
4 don't reflect sound science.

5 Economics, this is very important. We
6 have submitted a survey report from our consultant
7 concluding that if you denied beach access to licensed
8 off-road vehicles, that could result in a net present
9 loss of \$418 million over a 10 year period, a very
10 extensive loss. It was an extensive survey put
11 together by our clients. You cannot minimize the
12 economic engine to which the seashore drives.

13 Indeed, Dare County has recognized that by
14 passing a resolution that says "Demanding that the
15 Fish and Wildlife Service and the Park Service
16 formulate a resource protection policy, which strictly
17 limits and minimizing beach closures within the
18 seashore and ensures open and free access," the
19 justification of these closures seems to revolve
20 around protecting the breeding habitat of the plover,
21 the piping plover, and a non-ESA listed species, the
22 American oystercatcher.

23 We're concerned, however, that these
24 restrictions have gone beyond what the law requires.
25 We believe that any Interim Management Plan must

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 proceed from a fundamentally different premise than
2 has occurred in the past.

3 We don't believe that ORV recreational
4 usage is a primary contributing factor to the small
5 number of breeding pairs that have historically
6 occurred out in the seashore. Rather, the analysis
7 conducted by well-respected biologists, Biological
8 Resource Associates of Florida, notes that North
9 Carolina beaches are at the southern end of the
10 Atlantic breeding habitat, as mentioned, and, indeed,
11 that there is a significant increase in plover
12 population as you go up the Atlantic coast to the more
13 traditional breeding areas to which recovery is well
14 underway.

15 And, indeed, if you look at Cape Lookout,
16 35 piping plovers were identified most recently and,
17 yet, there is extensive ORV activity going out there
18 and there have been no documented cases of ORVs
19 crushing plover eggs within the Cape Hatteras National
20 Seashore. Indeed, there is clear evidence that ORV
21 usage is not detrimental to plover breeding success.
22 And the USGS protocols, and I will just wrap up with a
23 few concluding points, state that predation is a
24 primary factor in limiting the reproductive success of
25 piping plovers.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 On the legal front, we're very concerned,
2 however, that these broad closures really go against
3 the idea of what does it take under the Endangered
4 Species Act in trying to engraft sort of a recovery
5 goal to create habitat beyond what the take
6 obligations and the take law is under Section 9 of the
7 Endangered Species Act.

8 And, indeed, again, if you look at the
9 recovery trends of the plover going up the Atlantic
10 coast, they are making progress and those kinds of
11 restrictions we think simply go beyond what the ESA
12 requires. The oystercatcher can't apply the Migratory
13 Bird Treaty Act criteria in protecting habitat to
14 oystercatcher and, indeed, no evidence, you know, that
15 the kind of criteria and closures are necessary for
16 the oystercatcher.

17 We have suggested very important ways to
18 deal with these issues, common sense, scientifically-
19 based approaches on the ground and, unfortunately, we
20 think they have been sort of ignored at times over the
21 last, you know, six, seven months.

22 In closing, we're hopeful that the serious
23 problems with the Park Service's administration of the
24 seashore is a thing of the past and that a level of
25 trust can be restored between user groups and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 park. However, we're very concerned that the Interim
2 Protected Species Management Strategy will simply
3 continue to pass problems that have led to the lack of
4 trust.

5 We remain committed to working
6 constructively with the Service on a balanced solution
7 that will protect the seashore's resources consistent
8 with sound common sense, scientific principles and
9 preserving the fundamental rights of access so
10 critical to the tourist-based economy. Thank you.

11 MODERATOR COMMERFORD: Thanks. Nimesh
12 Patel?

13 PARTICIPANT: He's out.

14 MODERATOR COMMERFORD: Okay. Stewart Mann
15 and Denise Ryan after that.

16 MR. MANN: Good evening. My name is
17 Stewart Mann. I live in Falls Church, Virginia, just
18 across the river here. I was raised on the coast of
19 North Carolina pretty much up and down that coast. I
20 have heard some interesting comments here this
21 evening. No doubt the issues are quite complex.

22 In deference to Joe's comments, which were
23 great, I'm going to go ahead and preface this and tell
24 you I started fishing at Cape Hatteras when I was 3
25 years-old. That was 1954. In 1957 my cousin who was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 then a resident of Buxton, they called it Buxton-on-
2 Hatteras, wrote a very interesting book called The
3 Hatterasmen. Some of you may or may not have had the
4 opportunity to read that.

5 I would like to go on record as
6 recommending that the National Park Service, in
7 formulating any plans going forward, make that book
8 required reading. I think it would be very beneficial
9 for both sides.

10 My thoughts on this and my comments are
11 very brief. I will tell you that the off-road vehicle
12 portion of this contributes very, very, very little
13 that is detrimental to that environment. It has, as
14 long as I can remember, been illegal to operate a
15 vehicle either intoxicated or in an unsafe manner and
16 that has always been the case.

17 If the plovers were to populate the front
18 lawn of the White House this afternoon, I don't think
19 we would stop the Easter egg hunts. We would educate
20 the children when they came to hunt the Easter eggs.
21 I believe any solution to this is education.

22 Keeping people off the beaches does
23 something that I haven't heard mentioned here tonight
24 and, you know, these beaches are very unique. I don't
25 care how much parking you create away from that beach.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I don't see anybody here that is up to walking the
2 length of that beach. You need to be able to drive on
3 those beaches. Driving on those beaches is also
4 critical to the experience.

5 So what happens when you eliminate access
6 to the beach on a vehicle is you destroy a culture and
7 that is more than economic. That is more than
8 wildlife. You are destroying a culture. I don't
9 think any of the ORV advocates would for a minute
10 suggest that they have any right not to appreciate and
11 support the environmental side of this.

12 Moreover, all of us as children who were
13 raised fishing out there were taught to give the right
14 of way to the turtles and to give the right of way to
15 the birds, and we were raised with those values and
16 only through education can you accomplish what you
17 want to accomplish here if the goal is really
18 environmental.

19 If what you want to do is truly protect
20 the environment, truly protect the species, you're
21 going to do that by supporting the culture and the
22 people are the culture. If you don't support those
23 people, you can have plovers from Oregon inlet to the
24 ferry headed to Ocracoke and it's really not going to
25 matter. Now, sure, people will build huge homes and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 people will come windsurf, but that's not what Cape
2 Hatteras is about. Thank you very much.

3 MODERATOR COMMERFORD: Thank you, sir.
4 Denise Ryan and Frank Watrous after that.

5 MS. RYAN: Good evening. I am Denise
6 Ryan. I am here tonight representing the District of
7 Columbia Audubon Society, which is a volunteer board
8 and I am a volunteer. We'll be submitting formal
9 comments tonight, but I wanted to let you know that we
10 represent bird watchers who visit the national
11 seashore for its natural beauty and resources, and
12 bird watchers are the largest growing segment of the
13 recreation community.

14 Your own reports, the National Park
15 reports, they will decline year after year of these
16 protected bird species. The only solution that we see
17 is to eliminate ORV use entirely during the bird
18 nesting season.

19 Enjoyment of the national parks does not
20 mean that all activities are appropriate at all times.

21 ORV use can happen during the winter when the birds
22 are not nesting. Once endangered species are
23 eliminated, they are gone. If these species are
24 recovered, we can consider the return of ORVs to the
25 beach. You can certainly walk to the beach with a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 fishing rod.

2 Regarding the economic impacts of birders,
3 I can testify having spent many, many thousands of
4 dollars to go to the beach just to look for piping
5 plovers, least terns and gull billed terns. And
6 that's the end of my comments. Thanks.

7 MODERATOR COMMERFORD: Thank you. Frank
8 Watrous.

9 MR. WATROUS: Good evening. My name is
10 Frank Watrous. I live in Herndon, Virginia. I have
11 been visiting Cape Hatteras for some number of
12 decades. I own property down there. It's an area
13 that has always intrigued me. It is a fascinating
14 area in all seasons and I have been there winter and
15 summer.

16 What I think we have to recognize or maybe
17 ask ourselves for a moment, what is Cape Hatteras?
18 And, of course, the simple answer is that it's a
19 National Park Service area and as such, of course, is
20 supposed to be preserved for the present as well as
21 for the future.

22 Now, there are obvious conflicts here and
23 in any National Park Service area, Cape Hatteras
24 included. How do we protect the area? How do we
25 utilize the area, because Americans, the taxpayers and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 so forth, have to have access to the area. They have
2 to be able to participate in the enjoyment of the area
3 and that they are supporting it.

4 But I think we also have to recognize
5 that, like all Park Service areas, Cape Hatteras is a
6 collection of habitats and, certainly, the beach
7 habitat is very important down there, in fact maybe
8 even the predominant one in terms of acreage.
9 Although, obviously, the marshes and so forth are also
10 of significance. It has always struck me as a bit
11 strange that the beach there does not seem to have the
12 same degree of protection or respect as do habitats
13 generally in most National Park Service areas.

14 So I think that we, in managing the beach
15 area, and I realize the orientation here is towards
16 the endangered species, but it has to be looked at as
17 a habitat in and of itself and not predominantly as a
18 highway. And I have been out there many a time when I
19 wondered really is the beach for the vehicles or is it
20 for the people that have gone there on foot?

21 Now, although the focus here is just on a
22 small number of endangered species, the fact of the
23 matter is that there are many species, of course,
24 living on the beach, some endangered, some not, and of
25 course in the future some of those that are fairly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 common may become less common or even threatened and
2 so forth.

3 So I think that we have to view the beach
4 as a habitat that is worthy of a certain degree of
5 protection and consideration and in that regard there,
6 I think it's appropriate that some parts of the beach,
7 I realize Pea Island is closed, the beaches there are
8 closed to vehicle usage, but I believe that some
9 portions of Hatteras Island, as well as Ocracoke
10 Island, should be preserved as, essentially, control
11 areas where there will be, for all practical purpose,
12 no vehicle usage. And what I'm suggesting, that those
13 areas would be closed at all seasons as a comparison
14 to those areas that are open.

15 I realize we cannot totally terminate off-
16 road vehicle usage. I would also suggest that we have
17 a flexible standard where during critical times,
18 probably during certain periods, during the warmer
19 weather, that more extensive areas of the beach be
20 closed and then potentially, of course, can be opened
21 to a greater degree during the winter. And I realize
22 there are also some areas that are heavily utilized by
23 fishermen and so forth. They probably have to remain
24 open to vehicles all year.

25 But I have been dismayed on many an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 occasion down there at the ruts and so forth that are
2 created by the off-road vehicles, to say nothing of
3 what their potential and probably, in some respects,
4 unknown impact is on the animal life there.

5 With all habitats, with all ecoregions and
6 National Park Service areas, there are also aesthetic
7 considerations that have to be given some regard and,
8 certainly, it's not an aesthetic experience to go to
9 the beach at Hatteras and have it look like a
10 construction zone.

11 So I think that what we need to do is we
12 need to be conservative in our approach here to the
13 usage of vehicles. I know it's not going to
14 completely terminate, but what we can do, it's always
15 easier to relax regulations later on than it is to
16 tighten them up, especially after a certain
17 constituency develops, which we have already in place
18 at Hatteras.

19 But I believe the most conservative
20 approaches here to beach usage is the direction we
21 should go in. I realize that many off-road vehicle
22 users have no harmful intent, of course, but there are
23 also practical issues that how can they really see at
24 night and so forth. That rounds up my discussion
25 here. Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MODERATOR COMMERFORD: Thank you. With
2 that, we have gone through everyone who signed up to
3 speak when they came in. Is there anyone who has not
4 spoken who wishes to do so at this time?

5 Okay. With that again, I thank everyone
6 for taking time out of their schedule to be here this
7 evening. We appreciate the input. I appreciate
8 everyone's being respectful of one another. We have
9 folks on both sides of the issue here, clearly, and I
10 appreciate everyone giving others a chance to speak.

11 With that, we'll go ahead and conclude the
12 formal part of the meeting this evening but, as
13 advertised, we'll be here for another hour during an
14 open house format to take more comments in writing if
15 you would like us to do that. Thank you very much.

16 (Whereupon, the Public Hearing was
17 concluded at 7:52 p.m.)

18
19
20
21
22
23
24

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701