

INTERIM PROTECTED SPECIES MANAGEMENT PLAN

KILL DEVIL HILLS WRIGHT BROTHERS

NATIONAL MEMORIAL PAVILION

KILL DEVIL HILLS, NORTH CAROLINA

NPS CAPE HATTERAS PUBLIC MEETINGS

FEBRUARY 9, 2006

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MR. MIKE MURRAY: I'm going to give a brief presentation and we'll open it up for public comment. The purpose of the meeting tonight is to give an update on the Interim Protected Species Management Strategy that's recently been released. Tonight, we'll briefly explain the purpose of the Environmental Assessment and provide an update on the public comment period. We'll describe key points of the proposed Alternative D. We'll provide an update on the status of related processes. And we primarily are here to hear public comments and questions.

What is the Interim Protected Species Management Strategy? Its intention is to guide management practices to provide protection for the species over the next three- or four-year period while the Park Service is in the process of developing an off-road vehicle management plan and a set of regulations. And so it's an interim plan. It's intended -- it's focused on species protection while the long-term ORV plan is being developed.

The Interim Strategy and Environmental Assessment were released on January the 25 for public review. Copies of the EA were mailed to an extensive mailing list of people. And then we also made copies available at the libraries in Dare County, also visitor centers. And it's even available online at [parkplanning.nps.gov/caha](http://parkplanning.nps.gov/caha) website. C-A-H-A is the Park Service acronym for Cape Hatteras. The public comment period closes on March 1. And comments may be submitted online at the same website. And I'll show the website again in a minute if you want to copy it.

Now the purpose of an environmental assessment is to consider alternatives and to assess potential impacts of those alternatives. And this EA considers four different alternatives for management options. Alternative A would be a continuation of the 2004 management practices. And it's considered the no-action alternative, meaning there would be no change from the past practice.

Alternative B is titled the Undisturbed Area Focus. And this alternative is based closely on protocols and recommendations made by the U.S. Geological Survey, which had been contacted by the Park Service to do a scientific review of literature, make recommendations on the best ways to protect the species that we have here. It's considered the environmentally preferred alternative, based on the situation that it is the most protective of the environment.

Alternative C is titled the Tailored Management Focus, which is kind of an ambiguous term. It proposes a combination of measures that probably fall somewhere between Alternative B and Alternative D.

Alternative D is titled The Access and Research Component Focus. And this alternative has been selected by the Park Service as the preferred alternative. And so I'm going to spend most of the time talking about Alternative D and key points in Alternative D. Of the alternatives, it's the most flexible and least restrictive. It relies on increased surveying of the species and other measures to allow for fewer, later and shorter closures where possible. And where closures occur, it provides for alternate routes or bypasses if and when the resource closure would shut off

access to key areas such as the spits and the points.

Under Alternative D, we would survey for birds in breeding areas used in the past ten years. We would establish pre-nesting closures in breeding areas used in the past three years. This is generally at the spits. We would designate a 100-foot-wide off-road vehicle corridor in these recent breeding areas to provide access around the pre-nesting closures both on the ocean shoreline and the sound shoreline. The corridor would be posted above the wrack line where there is a well-defined wrack line. The wrack line is the organic debris that's washed up by the tides, often compiled of the seaweed and other kind of marine plant life. And it ends up being a very important food source for birds. We currently don't protect it here. And there is some resource value of keeping it intact if there is a well-defined wrack line.

Alternative D, as the season progresses and bird breeding behavior progresses during the season, we would adjust buffer zones around the activity based on parameters identified in the interim strategy. Buffer zones prescribed for piping plover are consistent with the Recovery Plan guidance. Buffer distances for other bird species such as colonial waterbirds and the American oystercatcher is less than that recommended by USGS as being the most protective. And again, Alternative D would use alternate routes or bypasses around closures to maintain ORV access to spits and points, to the extent possible. And there would be no escort service such as occurred last year.

Alternative D would also establish parameters for reopening areas. For example, pre-nesting closures would be removed if no bird activity is seen by July 15 or the area has been abandoned for a two-week period, whichever comes later. There's a variety of other parameters for reopening areas as well.

In Alternative D, the section on sea turtles, we would follow the North Carolina Wildlife Resource Commission handbook guidance on sea turtle management. From mid-May through the summer, we would survey daily for nests. We would relocate turtle nests that are subject to overwash. We would use alternate routes or bypasses if the nest would close access. And in the rare case that a nest might close access to a key spit or point, we would consider, as the last resort, relocating the nest to provide access. And that is subject to being permitted to do so by the Wildlife Resource Commission. USGS had recommended prohibition or restrictions on night driving. There is the belief that in studies that -- in some places showed that artificial lighting can affect the success of turtle crawls and also the hatchlings finding the water. Under Alternative D, there would be no restriction on night driving. We would seek funds to study the level of night driving and the effects of night driving and other artificial light sources on the turtles, so that we would have better information on which to base habitat actions in the future. And again, we would use the alternate routes or bypasses where possible.

There is one threatened plant species called seabeach amaranth. And under Alternative D, there is no

plans for pre-season closures specific to seabeach amaranth. The plant would benefit from existing bird closures. If any of the plants are found outside of the existing closures, we'd create a thirty-foot buffer zone around the plant. Typically, this does not affect access. Before we reopen bird closures, we would survey them for seabeach amaranth before reopening them so that, if there were plants present, we could put the smaller buffer zone around the plants. We would conduct a park-wide annual survey in August of each year, which is kind of the prime time to locate and find the plants, and areas would be reopened by September 1 if no plants are found.

Alternative D, compared with B and C, would have smaller, more flexible closures. If you'll look at the buffer zone distances, you'll see that point. And this is contingent upon achieving improved compliance with posted restrictions and closures. In order to do that, we will have -- we are working on having an improved information and education program. We're in the process of developing a new brochure to provide information. We're going to work with local community organizations to be sure that we get a wide distribution of it; for example, through real estate offices so that the people renting homes on Hatteras or the Outer Banks will have that included in their information packets. And we'll also have regular Park Service law enforcement patrols in the key areas. We have been a little bit short of a full staffing level the last few years. I know last year the Park called in some additional law enforcement staff. We're not going to do that this year. However, we will have the full staffing level, or our regular-sized staff this year.

We will continue targeted predator control near nest sites using humane trapping techniques. We have funding to develop a comprehensive predator management plan. And that will be through a public process with opportunity to comment and review.

We'll prohibit pets, kite flying, ball or Frisbee tossing near nesting areas. This is a standard practice. And all it does is simply reduce the chances of disturbance from these activities in which studies have shown it can disturb nesting birds.

And partly as public service and also as a means of making it easier for people to keep trash off the beach, which will attract predators, we will provide dumpsters and porta-potties at the major access ramps at the key spits and point.

There a number of related documents and processes. In January, the Park Service sent the Fish and Wildlife Service a Biological Assessment or BA. And basically, it's a synopsis of Alternative D, our preferred alternative or proposed action. The Fish and Wildlife has a time period to review it. They're the agency with the authority for reviewing potential impacts to threatened and endangered species. And they'll render an opinion; it's called a Biological Opinion addressed to whether our plan will cause jeopardy or not to the threatened and endangered species in the area. And so implementing the plan is

contingent upon that opinion. A copy of the BA is available if you're interested in seeing it at the same website. It's [parkplanning.nps.gov/caha](http://parkplanning.nps.gov/caha).

Superintendent's Order Number 7 is a local Park policy. It's from April of 2004. It simulated components of the 1978 interim ORV plan such as corridor width and those kinds of things. In order to make this plan work effectively, we'll have to revise Superintendent's Order 7. For example, it identifies the corridor width should be at least 100 feet wide or it would be closed for safety reasons. Obviously, if you have a 100-foot corridor in a nesting -- the pre-nesting areas, that's -- we would keep it open at a lesser width if necessary, providing there is not a safety concern. And so we're going to redefine some of these things by revising Superintendent's Order 7.

This spring, we hope to begin scoping on the Long-Term ORV Management Plan. And there will be public meetings to get input on what should be included in that, what issues and concerns should be addressed.

And this month, the Park Service will make a decision about whether to proceed or not with negotiated rulemaking. Most of you are aware that there was a study done by a consulting firm called Consensus Building Institute. They solicited applicants to participate in negotiated rulemaking. There was a comment period which closed January 30. And we're waiting to get that report and see the comments. So, once we do that, we'll get a better feel for whether it's feasible and whether the chances of success with negotiated rulemaking make it a reasonable idea to proceed with that. If we decided not to proceed with negotiated rulemaking, I think it would be the Park Service's responsibility to proceed with regular rulemaking which is a public process as well. And so one way or the other, we need to do the rulemaking to develop a regulation.

Other related activities, we are studying the Spur Road at Hatteras Spit. We are aware it's been closed for several years, and it's created some access concerns. We've been talking with the state recently on that. Ron Clark is our acting chief of resource management. He's been working on that issue for us. I can't tell you what we can do here at the moment. There is some compliance and, possibly, permitting issues. And that -- I would encourage any of -- those of you who are interested in that to stick around after the meeting and talk with Ron about it, because your input could be helpful.

The situation of high water or flooding near Cape Point campground has affected campground use and some of the access routes to Cape Point. We're also looking at that issue. It's very complicated. There's basically a floodwater impoundment there that the Park Service has in the past been releasing the floodwater. The State asked us to stop, or ordered us to stop. So we basically need to come up with an organized plan for how we would manage that situation. We don't know what the answer is at the moment. And again, Ron has been working on that, so stick around and talk to him afterwards. Your area knowledge might help us figure that one out.

In the environmental assessment, the big, thick book that was distributed, there are some errors. The Park Service is in the process of issuing an errata sheet, or list of those errors. And the feedback I'm getting from some of the readers think there's more errors than perhaps the Park Service may identify. And so I would ask you to be sure to submit those as part of your written comments, so they can be considered and looked at.

Okay, again, the public comment period will close March 1. Comments may be submitted online at [parkplanning.nps.gov/caha](http://parkplanning.nps.gov/caha). I want to thank you again for your time in coming out tonight. And now what I want to do is give you an opportunity to speak and give me an opportunity to listen.

I want to establish a few basic ground rules for discussion. First of all, I'm here to listen. And I want to give everybody here a chance to speak if you're interested. I'm not here, and I don't think any of us are here, to debate or argue with each other. I would ask you to direct your comments to me and not the other audience members and refrain from any kind of personal attacks, if you can.

The discussion is being recorded, so anything you say here tonight will be considered a comment that can be evaluated for the comment review process. So when I recognize you to speak, it would be very helpful if you could identify your name. It will help Travis relay who said what later on when he's listening to the transcripts. And I -- we have the related issues, the BA, the negotiated rulemaking, the long-term plan; try to make an effort to focus your comments on the interim strategy. And I realize these other issues relate, and so, if you will -- I'll work with you on it, but to the extent that we can stay focused, that would be good.

And then a couple of other things; I would really encourage you to submit written comments even if you speak tonight. And it will be recorded. It will be transcribed and submitted as written comments. You know, I -- speaking for myself, I know sometimes I feel like I communicate more effectively in writing. And so you have that opportunity. It's your choice. But I encourage you to consider that.

And finally, we have a fairly small crowd and we have time; I want to give everybody a chance to say what's on your mind or ask the questions on your mind. And so what I would like to do is have a little time limit so that we give everybody a chance to speak at least once. And then, if we have time at the end, people can ask follow-up questions or we can come back to people. And so just -- to kind of manage this, I want to have a five-minute time limit. And I'm going to be gentle with that. But, Nora, if you will help us keep time and then, you know, perhaps give people a one-minute warning. And we will be gentle with that. But if you could help us or sort of help us keep within our time constraints, if you would, please. Okay, so I'm going to turn the mike off. And anybody that wants to speak or to ask a question, I welcome you to speak up. Yes, sir.

MR. PERRY WHITE: With the --

MR. MIKE MURRAY: Let me remind you to say your name.

MR. PERRY WHITE: Perry White of Nags Head; on the beaches north of Oregon Inlet, there are daily controls for turtle nesting season by MEST, the Members for Endangered Sea Turtles. They also provide safety areas around the turtle nests and keep watch when they expect the hatch or boil to take place. Are you becoming involved or are they involved in your sea turtle watching and so forth further south, you know, in any of the Park plans?

MR. MIKE MURRAY: Let me ask you again; where are they located?

MR. PERRY WHITE: They patrol from Corolla down through Nags Head, because Nags Head has given them -- the Town of Nags Head has given them ATVs. I think on the northern beaches they have ATVs. And they are out at dawn every day looking for -- during the nesting season, they patrol the entire beach, noting any tracks of nesting turtles. And then their crew comes out, and they mark off an area with flags, plastic and poles and traffic tape and this type of thing, you know, and keep watch on each of these nests all summer long until they hatch and starting with whatever -- the fifty-five days or something it takes roughly. And then probably -- but they actually will have a crew --

MR. MIKE MURRAY: Uh-huh.

MR. PERRY WHITE: -- out there out at night watching for the boil to take place. When it does, they actually have trenches dug out on the beach and encourage the hatchlings to actually get into the water.

MR. MIKE MURRAY: Uh-huh.

MR. PERRY WHITE: And they have been quite successful in making sure that well over ninety percent of every boil gets into the water. And you can see the -- there are signs that -- they have signs and everything. I'm wondering are you're using that resource for your sea turtle efforts further south?

MR. MIKE MURRAY: I'm not aware that we are. I haven't been here in a previous season, so I might refer to other Park staff to advise me on that. It sounds like it's a group worth checking out, though.

MR. PERRY WHITE: There's probably fifty to hundred volunteers --

MR. MIKE MURRAY: Okay.

MR. PERRY WHITE: -- that work with MEST and I've got the phone numbers --

MR. MIKE MURRAY: Okay.

MR. PERRY WHITE: -- of everything I can get for you.

MR. MIKE MURRAY: I appreciate that information. Anybody on the Park staff able to respond to that?

MR. LARRY HARDHAM: It sounds a lot like what we do with our own Park staff. But you've got a volunteer outfit that are all organized to do it.

MR. MIKE MURRAY: If I could -- let's remember to identify names, please.

MR. LARRY HARDHAM: I'm Larry Hardham. Tracey



and I have worked with the volunteer program at Pea Island at the U.S. Fish and Wildlife. They are very similar to what has been described as MEST. I've been with them some ten years now. The Park had patrolled the beaches in the morning. There is no -- and I have volunteered to help with the watch program at night and called and asked one time, I think, to do that. But there is really no formal program for the Park to watch the nests at night.

MR. MIKE MURRAY: Uh-huh.

MR. LARRY HARDHAM: It would be a great thing to do. Quite frankly, the relations between the Park and the residents within is such, it would be a while until there would be a volunteer-type attitude, I think.

MR. MIKE MURRAY: Uh-huh.

MR. LARRY HARDHAM: It has been very strained. The Park has had the turtle program. The Park has had it in the past.

MR. MIKE MURRAY: Well, I appreciate the comments. It sounds like something that --

MR. LARRY HARDHAM: I am not a park employee. You asked for an employee to do that.

MR. MIKE MURRAY: No, that's okay. I know you're familiar with the issue. Thanks, Larry. Good suggestion, too, thank you. Anybody else want to say something, any questions, any comments?

MR. JIM KEENE: Mike, I'm Jim Keene of the Beach Buggy Association. I have a couple of questions in reading the assessment. The point in -- in this Program D, of course, in the financial analysis, it calls for approximately \$290,000 of additional monies to do Plan D. And, of course, to be funded by annual operating budget, but mostly from other funds, namely, the Federal Land Recreation Enhancement.

MR. MIKE MURRAY: Uh-huh.

MR. JIM KEENE: And that, of course, is the fee program --

MR. MIKE MURRAY: Uh-huh.

MR. JIM KEENE: -- such as being charged here, which I see we've had an increase, and at the lighthouse and so on and so forth. Does that mean that you are proposing to fund this by putting a fee on beach access, or is all these funds that are being raised in the areas that they're currently being raised in?

MR. MIKE MURRAY: The -- at the moment, those are not connected. In the short-term -- in this interim plan, in order to supplement our field staff to man this successfully, we basically have to use whatever alternatives we have available. And we are allowed to use our general fee revenues for enhancement of visitor services and things like that. And so, at the moment, there is no discussion or no intention to connect a beach fee with the program.

MR. JIM KEENE: Thank you.

MR. MIKE MURRAY: Any other questions?

MR. JIM HARRIS: I'm Jim Harris. That doesn't sound quite right, because you're not going to put the collected fees now towards management. Is it going to happen in the future? Is it something that's going to come up where

we're going to start registering, all of us that come here, tags and permits to get on the beach like happens up north in New Jersey, New York, I mention Massachusetts --

MR. MIKE MURRAY: Uh-huh.

MR. JIM HARRIS: -- because they're so limited, especially at Cape Cod?

MR. MIKE MURRAY: Uh-huh.

MR. JIM HARRIS: Is that going to happen here? Is that in the plan?

MR. MIKE MURRAY: It's not in this plan. And I think it's a legitimate question for negotiated rulemaking to consider. I don't have any agenda. And I would defer to that process to determine whether a permit system makes sense or not. And, if there were a permit system, should there be a fee. You know, that's something I think has its pluses and minuses. And I'm not going to commit one way or the other to that, because that -- typically, it could be negotiated rulemaking. I think the group has to make those kind of decisions.

MR. JIM HARRIS: Because I see a fear there that you have a certain number of tickets to give out for a year, and some off-the-wall group from who knows where comes here and gets them all and they never come here, but there will be none available. They're all used up.

MR. MIKE MURRAY: Yeah, I can speak from experience from my last job up at Cape Cod. And I'm getting off track. It's not negotiated rulemaking that's relevant to your question. When they did negotiate a rulemaking up there, one issue that they thought seemed like a good idea at the time was put a limit on the number of permits. I understand the environmental organization wanted some kind of limit. And the ORV and fishing organizations felt like it was safe to have a limit that was ten percent higher than the record number of permits. And what the limit did was create an impression of scarcity. So the first year the permit went into the effect, they sold out by Labor Day, so all fishermen had problems; the next year, the Fourth of July; the next year, Memorial Day; the next year, May. And then they typically put permits on sale April 10 of the year. April 10, 2004, the perfect storm; Saturday of Easter weekend, good weather, just warming up, and on the first day of permit sales, 2,000 vehicles showed up. It was a disaster for users, for the Park Service. And what had occurred, we were able to fix it by going back and using creative thinking to proportion out -- all the permits were annual -- we proportioned out a good percentage to be weekly permits, so if somebody that wanted to come in August for a week could get -- reserve a weekly permit and not feel like they have to show up on April 10. And so I'm very wary of any kind of limits on permits, because I don't think we have the data or knowledge to know how to manage that well. So the risk in negotiated rulemaking is unintended consequences like that. And so I think if we could get into that process, it's good to let the group take it wherever they want to take it and be sure there's a lot of devil's advocacy discussion of, you know, what could go wrong if we do that. And so, personally, I have no agenda. I would prefer to defer that whole issue

if we do the negotiated rulemaking and let them decide to do it or not to do it. Any other questions or --

MR. JIM HARRIS: In reading this, I was struck by some of the words used that, of the cultural resources on the island, the biggest one is surf fishing. And I want -- water oriented active recreational activities, that's one of your core principles to have --

MR. MIKE MURRAY: Uh-huh.

MR. JIM HARRIS: -- establishment of the National Seashore for the benefit and enjoyment of the public.

MR. MIKE MURRAY: Uh-huh.

MR. JIM HARRIS: There's not a lot of feathers in the public, but I know we've got to get along with the birds. And we feed them -- or they feed at our feet all summer long.

MR. MIKE MURRAY: Uh-huh.

MR. JIM HARRIS: Be the piping plovers or some of the other terns and whatnot, they benefit from having fishermen on the beach. And another word is take; take is going to have -- three or four years ago, there was like thirty-three turtles between Avon and Rodanthe that had already been spray painted. They were marked. And the story was that they got in the nets offshore. If something like that was corrected and so many turtles did not get hung up in the nets and killed, this place would be like a glory hole for turtles, because those turtles would make it to the beach. And so I don't know where that fits into the equations of what comes up is take. But somebody took it away so that we don't even get a chance to see it. And it's a bargaining tool that, Well, we had 1,000 turtles to leave and none of them ever came back.

MR. MIKE MURRAY: Uh-huh.

MR. JIM HARRIS: They could have tried, they got hung up in the net. And so that's something I don't understand. Let's see; on the closed areas now

when you go

down to -- specifically at the point, there's a whole bunch of closed-off areas --

MR. MIKE MURRAY: Uh-huh.

MR. JIM HARRIS: -- that's for winter feeding.

MR. MIKE MURRAY: Uh-huh.

MR. JIM HARRIS: And I thought the Outer Banks Preservation Association, among others, won a lawsuit against the Park Service about the critical winter habitat -- that Cape Hatteras is not. And so, when you put the symbolic fencing and they closed off vast areas and there's no beach left to drive on because of the -- the way the beach is washed out, we get stuck.

MR. MIKE MURRAY: Uh-huh.

MR. JIM HARRIS: And you're supporting something that was taken away.

MR. MIKE MURRAY: The lawsuit was by CHAPA against the Fish and Wildlife Service. The Fish and Wildlife Service makes the determination of critical wintering habitat. And the court overturned that designation. And so there is no critical wintering habitat at Cape Hatteras

National Seashore. And the current closures are kind of under the existing policies and procedures. Under the new plan, if we implement it, there would be some smaller, interior closures to provide a variety of bird species areas for foraging and nesting that would be outside the ORV corridor. Under the Park Service policy and also Park Service regulations, there is the mission of providing recreational access or allowing people to enjoy the parks. And at the same time, we need to protect the resources, to leave them unimpaired for future generations. If you look at the enabling legislation for Cape Hatteras National Seashore, and I can't quote word for word, but it -- for the benefit and enjoyment of people as a recreational area, but it's also balanced by -- to protect the unique flora and fauna of the area, leave them in a wilderness-like condition or something to that effect.

MR. JIM HARRIS: Well, when you read in there the order in which they're set --

MR. MIKE MURRAY: Uh-huh.

MR. JIM HARRIS: -- it's for the public before it's said for the wildlife --

MR. MIKE MURRAY: Uh-huh.

MR. JIM HARRIS: -- several -- farther down the page.

MR. MIKE MURRAY: Yeah.

MR. JIM HARRIS: And when most rules are written, the higher it is on the list, the more important it is. You don't put the important things at the back of the list, you put them in the front of the list.

MR. MIKE MURRAY: Uh-huh.

MR. JIM HARRIS: And let's see what else do I have here. Oh, the herding, is that going to -- are we going to observe the birds and keep pushing them up the beaches like they were rumored to happen for the last year?

MR. MIKE MURRAY: I've heard the rumors. I don't know the facts.

MR. JIM HARRIS: Who does?

MR. MIKE MURRAY: I don't know. I mean, I can look into it and see what --

MR. JIM HARRIS: That needs to be answered --

MR. MIKE MURRAY: Uh-huh.

MR. JIM HARRIS: -- and whatever it is, put to bed.

MR. MIKE MURRAY: Uh-huh, under the current -- under the proposed plan, surveying bird species inevitably causes a little bit of a disturbance. It's done in a calculated way. As a technique, we would not use herding -- it's also referred to as hazing -- to move wildlife from one point to another.

MR. JIM HARRIS: If it was watching from one side and they went to point, it would seem wise to watch from the other side?

MR. MIKE MURRAY: I agree with you.

MR. JIM HARRIS: And that's easy. You were raising your hand, sir, I --

UNIDENTIFIED PERSON: I was just trying to get his attention.

MR. JIM HARRIS: Okay, thank you.

MR. MIKE MURRAY: Okay, thank you, sir, anybody else want to speak?

MR. JIM KEENE: I have just one question. I spoke a moment ago. I'd like to cut in front of somebody else and ask a question. But you referred to the Biological Assessment?

MR. MIKE MURRAY: Yes, sir.

MR. JIM KEENE: And on the NPS website, it says there -- you-all are about to wear my printer out by the way with these 100-page documents. But does -- that document does override anything that's in this document, correct?

MR. MIKE MURRAY: It -- no, it should be consistent with -- it's an extraction of Alternative D, the proposed action or preferred alternate. There is -- what it analyzes is that -- the purpose is the formal consultation with the Fish and Wildlife Service so they can evaluate the impacts and give us the biological opinion. You know, if there is an inconsistency between the BA and the EA, then that's an error. Sir?

MR. PATRICK PAYMETTE: One, two, three different questions; one is a follow-up to what he just said. The Biological Assessment, is that the document that was submitted under the NEPA process already?

MR. MIKE MURRAY: The Biological Assessment wasn't formulated under the NEPA process. It's a formal correspondence or consultation between the Park Service to the Fish and Wildlife Service. The Interim Protected Species Management Strategy and Environmental Assessment is the NEPA document. Normally -- if I understand the process correctly, normally, the plan and the EA is done first. In this case, because of timing, they were done at the same time or approximately at the same time. Ultimately, the BA is principal and finalized first by a few weeks.

MR. PATRICK PAYMETTE: My name is Pat Paymette. I know -- I'm not fully convinced yet of the -- of how much difference -- but I've seen one difference between the two documents already. And there is a certain -- there is a piece of land that I know that at one point in time -- the NEPA document, it is different than -- what was put out to the public is different than the document that was submitted in the NEPA process. And that's the stand I'm going to use.

MR. MIKE MURRAY: Uh-huh.

MR. PATRICK PAYMETTE: -- and validate that it has to be restarted. I've already heard a couple of public comments from members of our rulemaking that were confused by the conflicts --

MR. MIKE MURRAY: Uh-huh.

MR. PATRICK PAYMETTE: -- between the biological assessment and interim strategy. And so I guess I don't want to see what has been reported over the years. And research seems to think the rushed statement by the Park Service that, because, okay, we're going to bring in a new superintendent, we're going to be -- like -- the process has to be right. And a lot of us believe the negotiated rulemaking are what I would --

MR. MIKE MURRAY: Uh-huh.

MR. PATRICK PAYMETTE: -- say the absolute certainty of multiple lawsuits in federal court. But this is what's going to be done, make one of those two things happen. So I guess that was a comment that I wanted to make is that there's already inconsistencies between these two documents to come out. And as these two documents are more widely compared, we ought to take time to actually dissect them.

MR. MIKE MURRAY: Uh-huh.

MR. PATRICK PAYMETTE: But I already -- I think there's already a concern that the public got something different than what was submitted. I have questions about what that's going to do the NEPA process.

MR. MIKE MURRAY: Yeah, I'm not a process expert. Let me take a stab at it here. I don't know if Mary can help with that as well. But I think the NEPA process, in my opinion, it supersedes --

MR. PATRICK PAYMETTE: I guess that was my point

--

MR. MIKE MURRAY: -- the Biological Assessment. And so if we -- in the process of reviewing this document and the public comments, if we change the strategy in any way, we need to go back and make corrections or revisions in the Biological Assessment submitted to Fish and Wildlife Service, so that they can review what we're actually going to do. If you do see inconsistencies, I'd appreciate it if you'd submit --

MR. PATRICK PAYMETTE: I guess that was what --

MR. MIKE MURRAY: -- those as comments.

MR. PATRICK PAYMETTE: Let me ask this as clearly as possible.

MR. MIKE MURRAY: Yeah.

MR. PATRICK PAYMETTE: But this document is the document that supersedes the Biological Assessment, correct?

MR. MIKE MURRAY: That's my impression. I'm not a lawyer or process expert.

MR. PATRICK PAYMETTE: That's -- I wanted to have an answer on the record.

MR. MIKE MURRAY: Yeah, but ultimately, we need to reconcile the inconsistencies. We can expect Fish and Wildlife Service to render a biological opinion. If there's -- Mary?

MS. MARY DOLE: We haven't -- there's something that we didn't realize before, because the process, the way it would work, overlapped; we had discussion with the Fish and Wildlife Service early on that, when we finished the public meetings -- the process that we're in right now -- and we went back and analyzed public comment, if we did have change in the EA document, that we would immediately get with Fish and Wildlife Service to make those corrections in the Biological Assessment before they finished that.

MR. PATRICK PAYMETTE: Okay, a second question is you mentioned a different system or updating system of actual marking and signage more pleasing, and I want to make comment that in at least thirty different letters that come to our organization -- and we have over 3,000 members in North Carolina -- the white sticks have got to go.

MR. MIKE MURRAY: Uh-huh.

MR. PATRICK PAYMETTE: They are seen by recreational fishermen as incredibly insulting, overburdened way of marking. And I've been to four of the national parks with ORV access and none of them are marked in such a way that sticks or marks them that close together, that signage seems to be consistent from one ramp to another. And my comment would be that I would like to see the Park Service sort of do in this park what they've done in other parks, in which would be much more user friendly, kinder way to mark things and not be as aggressive with it. And maybe that will also be contributory towards a better relationship with the actual lodgers or all users in the park. But the way it's marked here would never be allowed in some of the other parks that I have been to. And it just -- it's not really it's ugly, it's visually disturbing --

MR. MIKE MURRAY: Uh-huh.

MR. PATRICK PAYMETTE: And it's mentally disturbing. And it seems to be terribly aggressive.

MR. MIKE MURRAY: I'm familiar with how one other --

MR. PATRICK PAYMETTE: Yeah.

MR. MIKE MURRAY: -- park --

MR. PATRICK PAYMETTE: I know that.

MR. MIKE MURRAY: -- does that. Can you give us a specific suggestion of how you've seen that?

MR. PATRICK PAYMETTE: Well, I don't think you need a white stick every six feet --

MR. MIKE MURRAY: Uh-huh.

MR. PATRICK PAYMETTE: -- or eight feet. I would refer to -- Fire Island is actually one --

MR. MIKE MURRAY: Uh-huh.

MR. PATRICK PAYMETTE: -- of the markings that I liked best. And they seemed to have it up every fifty feet when it's straight around. And the signage is done -- it's clearly worded so the public can see what a sign means. And it's not -- I was in different places here and you want to know what that sign means, you know what I mean. People more familiar with it are like, Oh, that's what that is; that's what that is. If the public can understand what the closure they're looking at is --

MR. MIKE MURRAY: Uh-huh.

MR. PATRICK PAYMETTE: -- sometimes they can swallow it and not make an incorrect assumption. I mean, it's sort of -- like they said, all communication statements are obvious in this park. Especially in this park, it's spurring resentment.

MR. MIKE MURRAY: Uh-huh.

MR. PATRICK PAYMETTE: It seems to be and has been for many, many years. I just think that is just something simple as putting better or more user friendly system of marking closures would go a lot more -- taking a lot more distance than they ever did before.

MR. MIKE MURRAY: All right, thank you.

MR. SIDNEY MADDOCK: Good evening, Superintendent. I'm Sidney Maddock with Audubon North Carolina. Thank you for holding these informational meetings and providing the ability to have public input. While the

plan in certain aspects is a step forward -- for instance, the Seashore will return to following the April 1 posting date suggested in the piping plover Recovery Plan and suggested by the State of North Carolina for colonial waterbirds -- in other aspects, we are very, very concerned the plan proposed, Alternative D, is not adequate to provide for protection for nesting shore birds, colonial waterbirds as well as migrating shore birds and wintering shore birds of the Seashore.

There also are key points in the plan that are vague or contradictory. And several of the points are very, very important in terms of basic management questions, which will influence the day-to-day field operations of the Seashore personnel. For instance, on page 59 of the document, they give certain buffer distances that are suggested for nesting shore birds and colonial waterbirds. These buffer distances indicated for the oystercatchers and colonial waterbirds are less than the recommendations of scientists and experts in the field. And then they say all of these buffers could be adjusted based on observed bird behavior. What does that mean?

MR. MIKE MURRAY: What it means is we start with these parameters and then study them and observe what happens to see if it's effective or not. If there's too much disturbance, then we'd have to increase the parameters. Part of this is to give us some flexibility. There's some information out there that suggests that vehicles passing closer than these recommended buffer distances to the nest can be less disturbing than pedestrians or dogs. And so this is an effort to have a balance so that we have some opportunity for access. It is subjective. It's adaptive management. It's making adjustments based on what we're observing on the ground, because --

MR. SIDNEY MADDOCK: How will the field person know?

MR. MIKE MURRAY: Well, we're going to have training to talk about that. There is going to be some judgment by the field staff on these situations. We're going to hire a wildlife biologist to oversee the program.

MR. SIDNEY MADDOCK: But if a disturbance is observed, will there be an expansion of the closures --

MR. MIKE MURRAY: Well, if necessary and appropriate.

MR. SIDNEY MADDOCK: -- so the disturbance is no longer a problem?

MR. MIKE MURRAY: If necessary and appropriate.

MR. SIDNEY MADDOCK: In another place, same page of the document, I think it says, "Staff would observe species activities and potentially close areas outside of pre-defined nesting closures being used by other protected bird species." And on page 210, under that, it says, "Because fencing is at the discretion of the Superintendent, it is not known how many oystercatchers would benefit from the protection afforded by fencing." Does this mean that, if a nest is located outside of the one of the five areas that you identified, that protection by symbolic fencing would be discretionary?



MR. MIKE MURRAY: I'm not following those points. I'll just respond based on my recollection. If there's a nest outside of an existing area, fencing to protect the nest would be adjusted to incorporate the nest area.

MR. SIDNEY MADDOCK: Thank you.

MR. MIKE MURRAY: Okay, anybody else? Sir?

MR. PETER DOHERTY: Peter Doherty is my name. I have questions about the gulls. The gentleman down in the far corner described gull feeding. It's my understanding -- and, of course, I could be wrong, but in the existing National Park Service regulations, there is an absolute prohibition against the feeding of gulls at any National Park or National Seashore. I can cite a specific reference that I'm personally familiar with. And it has to do with the Dry Tortugas National Park. It's been within the past eighteen months. As you probably know, they have a ferry service and it was drawing the attention to the Park Service that there was a great deal of gull feeding going on on the ferry by the people -- by passengers on the ferry service. And the biologist who -- the Natural Resources person at the Everglades, which also sees over the Dry Tortugas, is aware of this national regulation, advised the ferry service, and citations were issued to anyone feeding the gulls in Dry Tortugas National Park and for very good reason. But gulls are, of course, big predators of many of the species that nest in the park. And this regulation, as I understand it, is being now enforced with some voracity by the National Park Service. And so I would like to ask the question, why is there not any discussion anywhere that I could find in the interim plan, the -- a will and a stated will to enforce this existing national regulation which would benefit all of the colonial species or all of your beach nesters and would control the expansion of gulls along the Atlantic Coast, which a field ornithologist or American ornithologist currently agree upon that has caused at least in part the decline of many of these species. And so my question is will -- if there is this regulation, will it be enforced at Hatteras?

MR. MIKE MURRAY: There's a general regulation that applies to all National Park areas that prohibits feeding wildlife. There's no specific regulation prohibiting feeding gulls. And so I have to assume that these other parks are over-applying this regulation. I don't remember where it is, but to me I'm sure it's part of the plan to reduce things that attract predators to the beach, like trash removal, prohibition on feeding wildlife. I don't remember how it's worded or where. The way we approach that is through the education program first. I worked seventeen years in law enforcement enforcing these kinds of regulations. And I can tell you the most effective tool is information and education to let people know the environmental impacts on wildlife of feeding them. It has to be followed up with enforcement. But, in our brochure that we would give to users, we would have information about not feeding wildlife. And then we would be using the lowest level of effective law enforcement out on the beach.

MR. PETER DOHERTY: Well, I've spent much of the winter --

MR. MIKE MURRAY: Uh-huh.

MR. PETER DOHERTY: -- on the beaches, primarily in Oregon, but also down in Ocracoke and Hatteras, and I can say without exception that I have seen exactly one person on the beach walking their dog on a leash --

MR. MIKE MURRAY: UH-huh.

MR. PETER DOHERTY: -- that is six feet in length.

MR. MIKE MURRAY: Uh-huh.

MR. PETER DOHERTY: I've seen no one at, you know, either Pea Island or on the Hatteras Seashore with a dog on a leash when the dogs have been on the beach.

MR. MIKE MURRAY: Uh-huh.

MR. PETER DOHERTY: That is a clear violation of the policies.

MR. MIKE MURRAY: Uh-huh.

MR. PETER DOHERTY: And if there's a stray dog to go to the birds that use the beach -- I'm not talking just about the piping plover or the least tern or the oystercatcher, I'm talking about the gulls. When I say, "gulls," I mean --

MR. MIKE MURRAY: Uh-huh.

MR. PETER DOHERTY: -- there are lots of gulls that survive the winter here. They're unable to fly. And I know the fishermen -- some fishermen think it's because of their catches; it surely is. But I see dogs take these birds. And I think education is a fine fit, but a citation or two or three or four is very effective as word travels very quickly.

MR. MIKE MURRAY: Uh-huh.

MR. PETER DOHERTY: And as I understand it, you have to go before a federal magistrate and a federal district judge if you get a ticket on a government installation such as the Seashore. And that is a little bit more -- probably more persuasive than if you go to a local magistrate or a local justice.

MR. MIKE MURRAY: Uh-huh.

MR. PETER DOHERTY: And so I would encourage you -- I would encourage us to ticket as well as to educate because, from what I see, the education doesn't seem to work. And these are the folks that live here a good portion of the year -- people that are residents -- because I don't think that lots of people that bring their dogs -- there are many people here. I think these are local people you deal with. Perhaps, because it's not in season, the rules don't apply. I think the rules do apply and should apply. And we have them year-round.

MR. MIKE MURRAY: Uh-huh.

MR. PETER DOHERTY: They're not being enforced. They should be if they're being seen. I know of at least several people that have had dogs running loose on the beach and seemed to be relatively trivial by some law enforcement. And so I would encourage you -- in order for these rules to be effective -- I'm not -- I've seen piles of it left on the beach, piles of it left for the seagulls. This doesn't do

the gulls any good and it certainly doesn't do the animals here day to day any good. And it's not only here, but elsewhere on the Atlantic Coast. Thank you.

MR. MIKE MURRAY: If I could respond briefly, I know we do enforce dogs on the leash. We do issue citations and warnings. I don't know what the statistics are coming from another seashore area; it's a challenging situation to patrol a large area with a relatively small staff. Nora, do you have anything you can add to that?

MS. NORA MARTINEZ: No, we just do enforce it and try to educate, try first warnings, but -- and I know, in some of the districts, we keep logs of repeat offenders and they do get tickets.

MR. MIKE MURRAY: Thank you. Any other questions or comments? Mr. Hardham.

MR. LARRY HARDHAM: You mentioned the errata sheet. Will that listing of errors that are found on your own be pulled out and made public?

MR. MIKE MURRAY: It should be. I'm checking on the status of that.

MR. LARRY HARDHAM: Would that be posted on your website and you-all update it as you add to it so that the people can become aware of the things that have already been -- you -- they're aware as you become aware of them?

MR. MIKE MURRAY: Here's what I anticipate will happen with that. We're in the process of putting together a list that will be made available. I think we will announce that it's available. And then any subsequent comments that indicate errors will be considered through a comment review process. And I just -- we get new comments every day. It's kind of hard to keep updating things. And so there's been a two-phase process that will enable us to consider those kind of errors report.

MR. LARRY HARDHAM: Okay, on your slide, one of them, there was a piece in there talking about smaller, more flexible closures are contingent upon achieving improved compliance with appropriate closures and restrictions. Has guidelines for how the closure might be adjusted based on biology been developed yet?

MR. MIKE MURRAY: No, and my experience has been that that's a difficult thing to have a prescription for, specific guidance. First of all, the first thing we need to do is be very systematic about detecting and evaluating apparent encroachments -- tire tracks in a closed area, footprints in a closed area. And, you know, I'm not sure -- we have data from past observations. And I'm not sure the basis on which that data was defined or collected. My experience elsewhere has been that well-informed users generally comply with posted restrictions or closures. And so our focus initially really is on education, information. If we have intentional violations -- let me put it this way; if we have an encroachment or a violation of a closed area, we need to evaluate that instance; is there adequate signing; was there an intention to go in and violate the closure; was it a Park Service vehicle that went in the area on authorized entry that the person detecting the tracks didn't know about. So we need to have really good communication, coordination

and documentation before we make judgments about that. I do come from experience with occasional intentional vandalism of nests. And in those types of serious encroachments, the only effective management tool I have is to make a larger buffer zone around it if that's necessary. And so, Larry, it's hard for me to give you a real precise definition of when that would occur. I would like to think that we'd systematically document and evaluate perceived encroachments on a case-by-case basis and see whether we need to make adjustments either in size or signing or some other thing to prevent the encroachment. I can tell you in the USGS protocols and other kinds of information from the biologists, a big concern is that even infrequent serious encroachments in the nesting area can disturb it for the season. And so our attempt to get at that is education and the possibility of larger buffers if we haven't solved the problem through other measures.

MR. LARRY HARDHAM: And I think you said a key word there, "serious encroachments" --

MR. MIKE MARLOWE: Yeah.

MR. LARRY HARDHAM: -- and now my concern is frequently in the annual reports done by resource management people here in the park are most specifically on turtles. And I'm sure that the bird --

MR. MIKE MURRAY: Uh-huh.

MR. LARRY HARDHAM: I don't watch the birds as close as I do the turtles, but many of things with turtles happen at low tide. A prime example was yesterday, I was at Ocracoke driving along the beach and the car in front of me was going along and the stakes were five feet higher with a low tide right in the wet sand down there; if you weren't really familiar with the area, you may not even notice the stake that says, This is the end of the ORV driving areas.

MR. MIKE MURRAY: Uh-huh.

MR. LARRY HARDHAM: And this fellow just kept going and parked in a place where there were already tracks there.

MR. MIKE MURRAY: Uh-huh.

MR. LARRY HARDHAM: And unfortunately, you drive the beach and you leave the tracks, not just the park enforcement, but marine fishermen.

MR. MIKE MURRAY: Uh-huh.

MR. LARRY HARDHAM: I've seen marine fishermen drive in closed-off areas all this winter.

MR. MIKE MURRAY: Uh-huh.

MR. LARRY HARDHAM: Apparently, they have carte blanche. I don't know, but they do it all the time. And that sets a precedence. When someone who is not familiar with the area --

MR. MIKE MURRAY: Uh-huh.

MR. LARRY HARDHAM: -- these tracks going along in an area where they see no signs, but the tracks right in front of them, they're watching the birds at sea or looking for fish or shells, they don't notice the signs that just happen to be a little higher on the beach. I realize you can't put signs in your wetlands, but my point is that I think the visiting public would certainly appreciate some

latitude. We had real problems last year, especially up at Hatteras Inlet, where an encroachment by the ocean onto the corridor stakes made it impossible to pass -- to get off of Hatteras Spit at a high tide with maybe a full moon without going inside one or two stakes. That to me is kind of an incidental violation. It's not -- it is intentional, no question about it, but I'm not sure that it really impacts on the purpose of the closure.

MR. MIKE MURRAY: Uh-huh.

MR. LARRY HARDHAM: And I hate to see something like that cause a complete closure. I don't know how you deal with that.

MR. MIKE MURRAY: Here's the way I would like --

MR. LARRY HARDHAM: It might be difficult.

MR. MIKE MURRAY: Here's the way I would like it to be handled is those circumstances to be evaluated on the ground and interpreted based on the circumstances that are observed. In the one you just described, it sounds like a situation in which we should evaluate where the stakes are. And presuming it's like a winter closure or pre-nesting closures, something where a little bit of adjustment in the stakes is not a serious issue, that may be different --

MR. LARRY HARDHAM: It's not a nesting closure.

MR. MIKE MURRAY: -- than in that nesting closure. And so the goal is that we have staff trained, not only for the biological technicians, but also for law enforcement so that we have reasonable, consistent, most effective law enforcement on the ground. And we can consider those kinds of circumstances with the signing, with the posting that's confusing to the public. And I think we need to be a little more understanding of that and learn from it, correct the situation, educate the person, those kinds of things. And so, you know, I -- to make expansive closures based on encroachment, in my opinion, would have to require a serious transgression. But, you know, it's hard to define that.

MR. LARRY HARDHAM: And, lastly, are you sure errata doesn't really mean eradication?

MR. MIKE MURRAY: I never took Latin, so I'd have to defer that to someone else.

MR. PATRICK PAYMETTE: I can tell you, you've worn my printer out. There's just one more -- a follow-up of the question he asked you about the buffer zones. And I think you answered the question. Is it safe to assume that the Park Service believes that every buffer zone enclosure area is defined by size in this document, in all the alternatives, complies with existing laws?

MR. MIKE MURRAY: Yes.

MR. PATRICK PAYMETTE: Thank you.

MR. MIKE MURRAY: As far as I know.

MS. JUDY SWARTWOOD: Judy Swartwood; what -- can you tell me what the U.S. Shorebird Conservation Plan is? Is the Park Service mandated to follow it? Is it enforceable and by what authority?

MR. MIKE MURRAY: I'll take a stab at it. And I need help on it. It's -- the U.S. Shorebird Conservation Plan is developed by the Fish and Wildlife Service. And I

know they do it on a regional basis. My understanding, the current one that applies here is the Southeast/Caribbean Conservation Plan. And that's about the extent of my knowledge on that. I don't know if -- Ron Clark, do you know anything more about it than I do?

MR. RON CLARK: I guess I should -- I didn't hear the question good. Is the question what's the status of the conservation plan and authorities?

MR. MIKE MURRAY: What's the Shorebird Conservation Plan? Who issues it? Is it enforceable? Under what authority? Are we compelled to comply with it?

MR. RON CLARK: I'm not going to pretend to be an expert on it, so. I stumble on it at times. I'd have to research and get back to you. But it's my understanding that these conservation plans are either used by the Fish and Wildlife Service or conducted by the Fish and Wildlife Service. And typically, they're done for species of concern and the species that are threatened, the species that are endangered. And so if there is a TE species -- threatened or endangered species -- it would fall under the authority that provides for the Endangered Species Act.

MS. JUDY SWARTWOOD: Well --

MR. RON CLARK: Did that get close to what you were looking for?

MS. JUDY SWARTWOOD: From what I was reading about it, it seems that the people -- the people decide which species. I mean it's like it's at their discretion.

MR. RON CLARK: The Fish and Wildlife Service?

MS. JUDY SWARTWOOD: No, whoever these people are who on these committees and who all come up with these birds that are listed on this plan.

MR. RON CLARK: The Fish --

MR. JUDY SWARTWOOD: I don't know. I can't figure out who they are.

MR. RON CLARK: Yeah, there's a big lengthy process. Virtually, anyone can petition the Secretary of Interior to request a particular species to be listed under the Endangered Species Act. There needs to be some proposed reason to it. And frequently, species are proposed for listing that are denied by the Secretary of Interior. And so the -- it's not like there's a bird committee that's decided, Well, let's go after this one, let's go after this one. It's more that there's some formal reasoning and some evidence that supports the reasoning to make the Fish -- the Secretary of Interior to have the Fish and Wildlife Service investigate whether or not it's warranted the species some level of attention.

MS. JUDY SWARTWOOD: Okay.

MR. RON CLARK: And that's basically --

MR. MIKE MURRAY: That's maybe the best we can do with that. Anybody else?

MR. RON CLARK: -- just talking to you.

MR. MIKE MURRAY: I would defer to anybody in the audience.

MS. JUDY SWARTWOOD: You're saying sheep in wolf's clothing.

MR. MIKE MURRAY: Yeah, are there any other

questions, Judy?

MS. JUDY SWARTWOOD: I'll agree with what Patrick is saying. The white stakes are ugly. Everybody that wants to see a natural, beautiful, pristine beach and have all these white stakes all over the places and they're just plain ugly.

MR. MIKE MURRAY: Could you suggest an alternative?

MS. JUDY SWARTWOOD: We used to have the little wooden stakes with string between with the little signs on them. I don't know what the problem was with those. There were a lot -- they blended into the scenery a lot better than what we have now.

MR. MIKE MURRAY: Okay, thank you.

MR. PATRICK PAYMETTE: I -- earlier, you made a comment about that -- earlier you were asked for the meaning of the Park and a balance between protecting resources and after resources, then use. And I guess this is a two-part question. One is -- there is the marine -- beautiful, marine forest. I believe there is only seven of them on the East Coast and their dying. There's one in the Park. It's the inability of the Park Service in this state to sort of get together and drain them. Isn't that -- I believe that falls under the protection, but it's not in the body of the Park, so I guess the question is why not? Is this something that's going to get dropped later on? And I'm very suspicious of, you know, in a year or after rulemaking or after or all of a sudden, Well, here's another reason for -- under the guise of protecting the natural resources is actually an anti-access petition. And I'm very -- I'm curious as to why that forest thing is happening and that the forest isn't in the document. That's the first part of the question.

MR. MIKE MURRAY: Okay, this particular -- this document focuses on protecting species that at the moment are sort of in conflict with ORV access. Sort of by definition, the forest is not a species. And I think the scope of this document is to focus on the bird nests in the areas, control nesting, ORV beach corridor. And as far as I know, there is no long-term plan to deal one way or another with the maritime forest. We're looking at flooding issues that certainly could affect the area. And so that would have to be some sort of environmental analysis NEPA document because it's a wetland; it's a wildlife habitat and those type of things.

MR. PATRICK PAYMETTE: I guess whatever -- I guess that's -- and I'm asking these questions because we are going to submit written comments.

MR. MIKE MURRAY: Uh-huh.

MR. PATRICK PAYMETTE: And I guess I'm sort -- I believe the title you read in this document has been misleading just by the title. You see, this isn't truly about protected species management, it's truly about ORV -- an interim ORV plan. And so I guess ORV from -- I don't know. I think it's sort of titled, you know, what we want to have is what somebody has decided needs to be here, you know. I'm assuming to defend against more legal action pending. I just sort of -- I look at it and I think that there are other

-- once again, it's -- I hear lots of things under the guise of environmental concerns while other things that are at least that kind of -- that level of concern in the Park are not included in it.

MR. MIKE MURRAY: Uh-huh.

MR. PATRICK PAYMETTE: And so it's sort of -- once again, watching this happening and concern that this federal lawsuit is going to stop ORV access completely --

MR. MIKE MURRAY: Uh-huh.

MR. PATRICK PAYMETTE: -- would not be absolutely suspicious of the things that are left out of this and why this isn't a comprehensive document. I guess it's almost a superintendent's comment on it. It seems to me that this is just a work that wasn't completed --

MR. MIKE MURRAY: Uh-huh.

MR. PATRICK PAYMETTE: -- or it wasn't thorough in a couple of different ways. And I guess -- you know, I -- earlier you had made the comment that this was in process when you got here. And I guess I -- once again, I want to express a very serious concern about an incomplete process now that later opens doors for legal action --

MR. MIKE MURRAY: Uh-huh.

MR. PATRICK PAYMETTE: -- questions against NEPA or other things that will come and change what is being proposed here. You know, and it will be truly changed. Assuming we go to rulemaking, rulemaking is a two- or three-year process sometimes that, you know, a year into this, now we're going to have another challenge for somebody that doesn't like -- or some organization that doesn't like what's going on. Well, the concern should have been in this document right there. Do you follow me, and sort of --

MR. MIKE MURRAY: I do and I'd like to respond. It's a good question. It's, I think, one of those difficult, complicated issues to sort out how much of the plan do we need at the moment until we do a bigger, more comprehensive long-term plan. In my opinion, this plan is clearly focused on protection of the species. And it inevitably has some off-road vehicle implications in those areas where there's nesting involved. It's not a comprehensive ORV management plan. It's now intended as an interim plan. That's one reason we need to revise Superintendent's Order 7 because this doesn't focus on a lot of things related to ORV use. Yet other means -- I'm going to ask the question, If this is the Interim Protected Species Management Strategy and then the other one is the long-term ORV plan, how do they inter-relate and what is your long-term protected species strategy. It's one of those processes that to get started, we needed the interim plan because of concern about the species. And there's legal pressure on that issue as well and in order to have something in place to give us time to develop the more comprehensive plan. So as we go through the rulemaking -- if it's negotiated rulemaking -- in the long-term planning process, if items come out of that process that affects something in this plan, I'd like to consider the options are open. We would go back to Fish and Wildlife Service and consult on whether that -- those changes would impact things. But defining the ORV corridors, speed limits, a variety of



issues are appropriately addressed in the long-term plan. And I don't see the interim plan as totally nailing down all the options. I think a long-term planning process gives us the chance to look at it from the off-road vehicle side of the issue and try to come up with something that will work in managing off-road vehicle use. And, if that changes or potentially impacts the species different from this, then we would have to make some revisions. Does that answer your question?

MR. PATRICK PAYMETTE: Sort of.

MR. MIKE MURRAY: Sort of, okay.

MR. PATRICK PAYMETTE: It's more than I expected, though.

MR. MIKE MURRAY: Okay, well, I tried anyway. Sir?

MR. JIM HARRIS: We're on something and I was misquoted. I didn't say anything about feeding gulls. It was plovers and terns feed at my feet, not that I feed them. I think the fishermen walking the sand, they churn the sand more than a plover or a tern could possibly do.

MR. MIKE MURRAY: Uh-huh.

MR. JIM HARRIS: And just a side note, if I cast out in the water and I catch some seaweed and I reel that in and put that in on the beach and add to the wrack line, am I now feeding a bird?

MR. MIKE MURRAY: I don't think so.

MR. JIM HARRIS: Okay, that's what it sounds like, that anything at all is feeding, would you fault them for that? I think that's what I understood was somebody's interpretation. I agree with you.

MR. MIKE MURRAY: Yeah, it's a judgment issue. Law enforcement is discretionary. The rule says something very specific which are the elements of the offense. And then there's latitude for interpretation. And Nora is our chief ranger, and I don't know if she can add anything to what I just said, but.

MS. NORA MARTINEZ: No, I agree with you. I would consider that with discretion.

MR. MIKE MURRAY: Okay, Jim?

MR. JIM KEENE: May I ask another question?

MR. MIKE MURRAY: Sure.

MR. JIM KEENE: Jim Keene. We have discussed bypasses where enclosures or turtles crawl or various what-have-you go all the way to the water line that you want protection to provide alternate routes. And, in each one of these where you say alternate routes, you also include Route 12. Is that your primary focus on alternate routes is the track goes around and brings it back up to Route 12 and around, or are we talking about going interdunal roads or, you know, areas around it -- a closure, without having to go -- for instance, there's Ramp 27 and your interpretation of Route 12 being in there and it means you go back to 27 and go out to 12 and go down to 34 and you come back on the beach? Or are you looking more in terms of interdunal areas as far as bypasses?

MR. MIKE MURRAY: That's a good question. It sort of depends on this interim plan. An alternate route is

using an established route which could include Route 12. But, for example, at Cape Point where there is an interdunal section access, it could include using that. We've talked about looking at the Spur Road at Hatteras Spit. The bypass is defined in this as sort of short detour that we can create within certain criteria that are articulated in the plan. It is subject for approval and permitted by CAMA. In the long-term ORV management plan, I think that's where we would want to look at comprehensively the access ramp and route system and consider those kind of options. So this plan, the alternate route is using the existing alternatives. And it may be 12 and it may not, and then a bypass, a very short ride around. And that's as far as we got with this.

MR. JIM KEENE: Your primary focus would be bypass before Route 12 or --

MR. MIKE MURRAY: You know, it depends -- we need to -- anything in this plan needs to be looked at with common sense and reasonableness. If sending somebody out to Route 12, you know, adds thirty miles to the trip versus there's a legitimate bypass that can be constructed around it, it would be an on-site judgment of what the two alternatives offer and what's reasonable.

MR. JIM KEENE: Okay, thank you; common sense and reasonableness fit very well. And thank you very much.

MR. MIKE MURRAY: Okay, I'm starting to lose my voice. I'd like to give everybody a last opportunity for comments or questions. And then invite you --

MR. WARREN JUDGE: I'm Warren Judge. I represent the Dare County Board of Commissioners. Thank you, Mike, for having this. This past fall, both by Larry and by my comments, the Board of Commissioners made it clear that we felt that access to both our residents and visitors was a critical issue for the enjoyment of the Park and to sustain our economy. That certainly is still our position today. We feel good about Alternative D on the surface. We sense a good, fresh breath of air with your arrival. We appreciate the time that you've put into this. And we hope that we're beginning a process whereby we all work together, that we as users of the beach are understanding and tolerant of the things that you have to do by mandate and by law. And that the Park Service personnel understand that we want to use the beach. And that all we Americans have rights to these accesses. And while the birds and animals are most certainly precious to us and important, so are the humans. And that this first year with Alternative D, that hopefully we will -- both sides will use a great deal of patience and common sense. And that we can meet again at the end of the season, and maybe we have to tweak some things, but have good things to say about each other and feel about each other. And so I thank you for your efforts on this. I look forward to a most successful season. And we're prepared to do whatever we can to help. And hopefully we can all enjoy the beach and get along together.

MR. MIKE MURRAY: Thank you, Warren. Well, I'd like to close with a comment that -- but I do invite you, if anyone felt very uncomfortable in front of the group, you're welcome to go have your comment recorded. I appreciate your

help, Travis, again. He's been reliable -- until that elevator hung him up at the hotel, I guess. We'll turn off the recording unless you want to speak to Travis. And then the Park staff will be around. I appreciate it if several of you that know that Hatteras Spit Spur route to get with Ron Clark and look at the map with him, so he has your input on that issue. Thank you very much.

(The proceedings concluded at 7:50 P.M)