

*Testimony of  
Derb S. Carter, Jr.  
Southern Environmental Law Center  
on behalf of The National Audubon Society,  
Defenders of Wildlife, and The Wilderness Society  
before the*

*National Parks, Forests, and Public Lands Subcommittee  
of the  
House Natural Resources Committee  
on*

*House Bill 6233  
to reinstate the Interim Management Strategy governing off-road vehicle use in the  
Cape Hatteras National Seashore, North Carolina  
July 30, 2008*

My name is Derb S. Carter, Jr. I am an attorney with the Southern Environmental Law Center in Chapel Hill, North Carolina. We represented the National Audubon Society and Defenders of Wildlife in the litigation that resulted in the consent decree that is the subject of House Bill 6233. This testimony is submitted on behalf of the National Audubon Society, Defenders of Wildlife, The Wilderness Society, and the Southern Environmental Law Center. Because the consent decree provides overdue protection of the natural resources of Cape Hatteras National Seashore and allows for appropriately managed off-road vehicle (“ORV”) use, we oppose House Bill 6233, legislation that would mandate a return to management practices that were resulting in declines and disappearance of wildlife from the Seashore.

*Summary*

On April 30, 2008, Dare County, Hyde County, an alliance of off-road vehicle advocacy groups, the National Park Service, the National Audubon Society, and Defenders of Wildlife entered a consent decree in federal court requiring the National Park Service to implement certain wildlife protection measures on Cape Hatteras National Seashore (the “Seashore”) until it fulfills a more than thirty-year-old obligation under federal law to adopt a final ORV management regulation. That consent decree was the result of more than four months of negotiations during which each party had the opportunity to – and did – contribute to negotiations. House Bill 6233, if enacted, would nullify this consent decree, which was agreed to by all parties and approved by the court, and would instead reinstate previous management guidelines that resulted in declines and disappearance of wildlife on the Seashore. We urge this committee and the House of Representatives to oppose any effort to enact this legislation.

The consent decree implements the recommendations of Department of the Interior scientists to protect wildlife species on Cape Hatteras National Seashore until a final ORV plan and regulation is adopted. The species management measures include

temporary closures to prevent disturbance of birds during the critical nesting season and restrictions on night driving to protect nesting sea turtles. These measures are necessary to halt the precipitous declines of species on the Seashore. Preliminary monitoring results from the National Park Service are encouraging, and all species appear to be benefiting from the management measures required by the consent decree. In addition, the Department of the Interior and National Park Service are required to protect and preserve the Seashore and its wildlife. This consent decree is intended to bring the agency into compliance with its legal mandate regarding wildlife while it completes its work to comply with mandates to manage ORV use.

The species management requirements of the consent decree have not unreasonably restricted use of the Seashore. Residents and visitors are already familiar with seasonal ORV prohibitions for natural resource protection and in front of seven villages where ORV use is prohibited during the summer for families to enjoy sunbathing, swimming, and other non-vehicular activities.

Cape Hatteras National Seashore has approximately 67 miles of beaches. As of September 4, of the 67 miles of beaches on the Seashore, only one mile was temporarily closed to ORV and pedestrian use for natural resource protection. In contrast, over 65 miles of beach are open and available for families to enjoy on foot at the Seashore. Similarly, 36.5 miles of the Seashore are available for ORV use (with the remaining miles of ORV prohibitions being those in place for human protection, for instance to protect families in front of villages). At the peak of breeding season, 12.8 of the 67 miles were closed for resource protection, leaving more than 21 miles of Seashore open to ORV use and more than 46 miles of beach available for pedestrians. ORV users have taken advantage of these areas; on July 4, 2008, 2,557 vehicles used Seashore beaches.

The consent decree will remain in effect until the National Park Service adopts a final management plan and rule through a negotiated rulemaking process. It requires that the National Park Service publish the final ORV management regulation by April 2011. The consent decree makes clear that the final plan will replace the management requirements in the consent decree and the requirements in the consent decree are not binding on the negotiated rulemaking or the negotiated rulemaking committee.

### ***Background***

In 1972, President Nixon issued Executive Order 11644 requiring federal land management agencies to publish regulations for all federal lands designating ORV areas and trails and ensuring ORV use does not harm natural resources. Exec. Order No. 11644, 37 Fed. Reg. 2,877 (Feb. 8, 1972). National Park Service regulations prohibit ORV use in national parks and seashores unless and until park-specific ORV regulations are published in compliance with the Executive Order. 36 C.F.R. § 4.10(a). While other national seashores have complied with the requirement to issue plans and regulations for ORV use, Cape Hatteras has not. See 36 C.F.R. §§ 7.65, 7.67, 7.20, 7.12, and 7.75 (Cape Cod National Seashore, Assateague Island National Seashore, Gulf Islands National Seashore, Fire Island National Seashore, and Padre Island National Seashore regulations

managing ORV use). Cumberland Island National Seashore, Canaveral National Seashore, and Point Reyes National Seashore all prohibit off-road vehicles entirely. See <http://www.nps.gov/cuis/planyourvisit/hours.htm>; <http://www.nps.gov/cana/faqs.htm>; [http://www.nps.gov/pore/parkmgmt/upload/lawsandpolicies\\_compendium2005.pdf](http://www.nps.gov/pore/parkmgmt/upload/lawsandpolicies_compendium2005.pdf).

In 2007, the National Park Service issued an “interim plan” for species management on the Seashore which in most respects simply reduced previous management of species to writing. In the decade prior to the “interim plan,” protected colonially nesting waterbirds on Seashore beaches declined 86% and threatened piping plovers declined from 14 pairs in 1996 to 6 pairs in 2007. Declaration of Walker Golder ¶ 5, filed in Defenders of Wildlife, et al. v. National Park Service, et al., Feb. 20, 2008 (summarizing North Carolina Wildlife Resources Commission data on Cape Hatteras National Seashore bird populations). The first year of the “interim plan,” 2007, was one of the worst bird breeding seasons on record and two colonial waterbird species failed to successfully nest on the Seashore beaches at all. Id. Unsuccessful nesting attempts by threatened and endangered sea turtles exceeded successful nesting. NATIONAL PARK SERVICE, CAPE HATTERAS NATIONAL SEASHORE: 2007 ANNUAL TURTLE REPORT 5 (2007) (reporting 82 nests and 115 false crawls during the 2007 season). As a result, the Park Service exceeded the amount of incidental taking authorized under the Endangered Species Act for threatened piping plovers and threatened or endangered sea turtles on the Seashore. See Letter from Pete Benjamin, U.S. Fish & Wildlife Service, to Mike Murray, National Park Service (April 24, 2007) (amending the U.S. Fish & Wildlife Service’s biological opinion evaluating the interim plan and prescribing performance measures, including that the sea turtle nest to false crawl ratio be less than 1:1).

In October 2007, the National Audubon Society and Defenders of Wildlife filed a lawsuit against the National Park Service, challenging the “interim plan” for species management on the Seashore. Together, Defenders of Wildlife, The National Audubon Society, and SELC have over two million members and supporters total, with more than 60,000 members and supporters in North Carolina. The organizations were concerned about the continuing decline of species on the Seashore and the fact the “interim plan” failed to implement the science-based management recommendations from Department of the Interior scientists. Mike Murray, Superintendent of the Seashore, recently confirmed this weakness in the interim plan, stating that the National Park Service “had difficulty finding experts to back up the interim strategy.” Irene Nolan, *Catching up with seashore issues with park superintendent Mike Murray*, ISLAND FREE PRESS, August 18, 2008, <http://www.islandfreepress.org/2008Archives/08.18.2008-CatchingUpWithSeashoreIssuesWithTheParkSuperintendent.html>. Dare and Hyde Counties and an alliance of ORV advocacy groups intervened in the lawsuit on the basis that they represented “local governments, ORV enthusiasts, recreational anglers, and ORV service providers . . . the parties that will be most immediately and directly affected by the outcome of this case.” Mem. of P. & A. in Supp. of Dare County, et al. Motion to Intervene in Defenders of Wildlife, et al. v. National Park Service, et al. 1, Nov. 28, 2007.

On April 30, 2008, the U.S. District Court for the Eastern District of North Carolina approved a consent decree, which had been agreed to and recommended to the court by

all parties including the intervenors; it addressed driving on the beaches of Cape Hatteras National Seashore and the protection of wildlife there until a final ORV management plan is adopted.

### *Cape Hatteras National Seashore Consent Decree*

The consent decree requires the National Park Service to publish a plan and regulations designating areas or trails for ORV driving on the Seashore, as required by federal law. The regulations must be published no later than April 1, 2011. In addition, to address declining wildlife populations, the consent decree requires that the National Park Service implement measures to protect breeding birds and sea turtles from disturbance until a final ORV management plan is adopted.

The parties to the consent decree are Dare County, Hyde County, Cape Hatteras Access Preservation Alliance, the National Park Service, the Department of the Interior, the National Audubon Society, and Defenders of Wildlife. The Cape Hatteras Access Preservation Alliance is an umbrella organization that includes the Outer Banks Preservation Association, the Cape Hatteras Anglers Club, and the North Carolina Beach Buggy Association. See <http://capehatterasapa.org/>. All parties in the lawsuit supported the consent decree and recommended that the court approve it.

That unanimous support for the consent decree was the result of extensive negotiations among all parties and detailed consideration of all affected interests. When asked by the court whether the counties and ORV coalition supported the consent decree, their attorney responded, “There have been intense negotiations between the parties here. Our clients have participated in those negotiations in good faith. A settlement has been worked out that is, I think, in nobody’s mind a perfect solution. We believe that we participated in the process in good faith and we join in asking the court to enter the consent decree.” Consent Decree Hr’g Tr. 45:9-14, April 30, 2008. The commissioners of both counties held public meetings and voted to approve the settlement, and the ORV coalition similarly met and authorized their attorney to sign the consent decree. Similarly, the Park Service stated, “The agreement reached between the NPS and the other parties to the lawsuit is a creative solution that addressed a tough issue. This well thought out plan will serve as an example of how we fulfill our responsibilities and meet the needs of all parties involved.” National Park Service Press Release, *at* <http://www.nps.gov/caha/parknews/agreement-reached-to-preserve-wildlife-and-recreation-opportunities-on-cape-hatteras-national-seashore.htm>. The National Audubon Society and Defenders of Wildlife also recommended approval of the consent decree.

Yet, after agreeing to the consent decree and asking the court to approve it, the Intervenor have changed their position and lobbied for this legislation and its Senate counterpart in an effort to overturn the consent decree. Principally, Intervenor have claimed that they felt excluded from negotiations leading to the consent decree and pressured into signing it.

On July 31, 2008, Dare County Commissioner Warren Judge even testified to the National Parks Subcommittee of the Senate Committee on Energy and Natural Resources

that his county was “not a player at [the negotiating] table until a hearing on April 4 in U.S District Court,” and that “it was even later than that when they finally invited us to the table – not to negotiate, to tell us – to tell us what it was going to be.” He concluded his testimony by stating that “Yes, we signed the document. We signed it under great duress.” Hearing on S. 3113 Before the Senate Committee on Energy and Natural Resources, Subcommittee on National Parks, 110th Cong. (2008) (oral statement of Warren Judge, County Commissioner for Dare County, North Carolina).

The assertion that Intervenors were not included in negotiations is false. Although Dare County and the other Intervenors were asked to submit a settlement proposal and invited to actively join the negotiations on numerous occasions beginning when their motion to intervene was granted in December 2007, they, through their attorney, initially, repeatedly, consistently, and affirmatively refused to submit a proposal. The Intervenors, however, received written settlement proposals from the government and/or the environmental groups on or about December 20, 2007, February 28, 2008, April 2, 2008, and April 11, 2008. They commented on those settlement proposals in February, March, and April, and submitted their initial settlement proposal on March 31, 2008.

As this timeline and the statements of Intervenors’ attorney in court make clear, the consent decree was the product of extensive negotiations, was voluntarily agreed to by all parties, and should not be overturned by H.R. 6233.

#### ***What does the Consent Decree require?***

The consent decree requires that the National Park Service provide places for federally and state protected birds and sea turtles to nest on the Seashore during the breeding seasons—generally April to July or August for birds and May to November for sea turtles. ORV use is restricted at historic bird breeding sites in the spring to provide disturbance-free areas that allow the birds to set up territories or colonies and to nest. The pre-nesting areas still allow ORV use of the inlets and Cape Hatteras Point. During the months of the year before the establishment of pre-nesting closures on March 15 and after the completion of the bird and sea turtle breeding, resource management closures do not limit ORV use of the ocean beaches of the Seashore.

If birds do begin to nest in the pre-nesting closures or other areas outside these pre-nesting closures, buffers are established around the nesting areas to prevent disturbance. The species-specific disturbance buffers are based on the “moderate protection recommendations” from peer-reviewed reports prepared by scientists in the United States Geological Survey (a part of the Department of the Interior) at the request of the National Park Service and on the recovery plan for the Atlantic Coast population of the threatened piping plover developed and issued by the U.S. Fish and Wildlife Service. See e.g., UNITED STATES GEOLOGICAL SURVEY, MANAGEMENT, MONITORING, AND PROTECTION PROTOCOLS FOR COLONIALY NESTING WATERBIRDS AT CAPE HATTERAS NATIONAL SEASHORE, NORTH CAROLINA 13 (2005)(recommending 100m to 200m buffers for different colonial waterbirds); UNITED STATES FISH AND WILDLIFE SERVICE, PIPING PLOVER (*CHARADRIUS MELODUS*) ATLANTIC COAST POPULATION REVISED RECOVERY

PLAN 192-194 (1996)(recommending buffer distances for pedestrians and ORVs). Those reports were based on a thorough review of the best available science. Depending on where the nesting occurs, ORV corridors and/or pedestrian access may or may not be affected by the buffers. These scientifically determined disturbance buffers may limit ORV and/or pedestrian use of an area until breeding is completed.

Sea turtles, which primarily nest and hatch during the night, are protected under the consent decree by closure of the beaches to ORV use from 10 p.m. to 6 a.m. May 1 through September 15 and by a requirement for permits, driver education, and light restrictions from September 16 through November 15. These restrictions are also based on the best-available science, including the United States Geological Survey recommendations. UNITED STATES GEOLOGICAL SURVEY, MANAGEMENT AND PROTECTION PROTOCOLS FOR NESTING SEA TURTLES AT CAPE HATTERAS NATIONAL SEASHORE, NORTH CAROLINA (2005).

### *Effects of the Consent Decree on visitors to the Seashore*

Under the consent decree, only those areas used by breeding birds and areas immediately surrounding sea turtle nests are closed to ORV use during daylight hours. Breeding closures are removed when birds complete nesting and chicks fledge. Turtle nest closures are removed after the nest has hatched. As the breeding seasons for birds and turtles progresses and then winds down, the total area opened or closed to ORV use changes in response to breeding and nesting activity. This approach ensures that scientifically supported protections are put in place only when needed to protect wildlife. In addition, this approach requires extensive monitoring and management of resources in order to make beaches available to vehicles quickly after turtles hatch or chicks fledge. An alternative approach, also recommended by Department of Interior scientists, is to close to ORV access key nesting areas around the inlets and Cape Point year-round; this more restrictive recommendation was not implemented by the consent decree.

To date, resource closures under the consent decree have only affected small stretches of the Seashore's beaches. Cape Hatteras National Seashore has approximately 67 miles of beaches. On September 4, 2008, one mile was temporarily closed for natural resource protection; 65.9 miles of Seashore were open to pedestrians; and 36.5 miles were open to ORV traffic. OUTER BANKS GROUP, NATIONAL PARK SERVICE BEACH ACCESS REPORT FOR SEPTEMBER 4, 2008. Cape Point, though temporarily closed to protect piping plovers, was opened to pedestrian access on July 22, 2008. OUTER BANKS GROUP, NATIONAL PARK SERVICE BEACH ACCESS REPORT FOR JULY 24, 2008. At the peak of the breeding season in late May, 12.8 of the 67 miles were closed for resource protection, leaving more than 21 miles of Seashore open to ORV use and more than 46 miles of beach available for pedestrians. OUTER BANKS GROUP, NATIONAL PARK SERVICE BEACH ACCESS REPORT FOR MAY 29, 2008.

The size of some resource closures is, in part, a result of vandalism of buffer fencing and actual nests. The National Park Service has documented at least six incidents of vandalism of resource closures, spread throughout the Seashore. In each instance, the

first act of vandalism triggered a 50 meter buffer expansion and the second act of vandalism resulted in expansion a 100 meter buffer expansion. National Park Service Press Releases at <http://www.nps.gov/caha/parknews/vandalism-of-resource-protection-closure-signs-results-in-expansion-of-buffer.htm>; <http://www.nps.gov/caha/parknews/second-act-of-vandalism-of-shorebird-closure-fencing.htm>; <http://www.nps.gov/caha/parknews/a-deliberate-violation-of-resource-protection-area-for-least-tern-colony-with-chicks-and-nests.htm>; <http://www.nps.gov/caha/parknews/a-sixth-deliberate-violation-of-resource-protection-area.htm>.

Moreover, the three holiday weekends that have taken place under the consent decree appear to have been successful for tourism in the area. According to the local online newspaper, the Island Free Press, the usually busy Memorial Day weekend “was, well, like any other holiday weekend on Hatteras and Ocracoke” despite the “unprecedented beach closures.” Irene Nolan, *Dodging the bullet on Memorial Day Weekend*, ISLAND FREE PRESS, May 19, 2008, <http://www.islandfreepress.org/2008Archives/05.19.2008-DispatchesFromTheBeachfront.html>.

This trend continued through the Fourth of July weekend; the Park Service reported 2,557 vehicles were on Seashore beaches on July 4th. Irene Nolan, *New dispatches from the beachfront: Access update, getting smart about beach driving, manners and laws, and July 4 report*, ISLAND FREE PRESS, <http://www.islandfreepress.org/2008Archives/07.11.2008-ShootingTheBreezeNewDispatchesFromTheBeachfront.html>. This level of ORV activity indicates that there has been little to no effect on overall ORV use of the beach, with the busiest holiday weekends in previous years reportedly approaching only 2,200 vehicles. Notice of Intent To Prepare a Draft Environmental Impact Statement for an Off-Road Vehicle Management Plan for Cape Hatteras National Seashore, NC, 71 Fed. Reg. 71552 (Dec. 11, 2006). The Island Free Press stated, “There are beaches open to off-road vehicles on Hatteras and Ocracoke islands – despite the impression that some folks have that all beaches are closed down. Even through the July 4 holiday weekend, there was room on those open beaches for anyone who wanted to drive to the ocean’s edge.” *Id.* While Memorial Day and the Fourth of July were during the peak of breeding season, resource closures were almost entirely removed by Labor Day. In fact, over the Labor Day weekend, almost 66 of the 67 miles of beach on the Seashore were open to pedestrians and more than 35 miles of beach were open to ORV use.

### ***Effects of the Consent Decree on wildlife on the Seashore***

It is too soon since the entry of the consent decree to have a complete data set, but preliminary results from the National Park Service’s weekly Resource Management Reports are encouraging. By the last week in July, piping plovers had increased from 6 breeding pairs in 2007 to 11 pairs in 2008, an 83% increase for this threatened species. OUTER BANKS GROUP, NATIONAL PARK SERVICE RESOURCE MANAGEMENT WEEKLY FIELD SUMMARY REPORT FOR JULY 24, 2008. Fledged piping plover chicks nearly doubled from 4 to 7 during the same period, the highest number of fledged piping plover chicks on the Seashore since 1998. Declaration of Walker Golder Attachment 7, filed in Defenders of Wildlife, et al. v. National Park Service, et al., Feb. 20, 2008.

American oystercatchers, which declined 42% between 1999 and 2007, were down one pair this year to 21 breeding pairs on Seashore beaches, but at least 20 additional oystercatchers were present, some of which appeared to be paired. OUTER BANKS GROUP, NATIONAL PARK SERVICE RESOURCE MANAGEMENT WEEKLY FIELD SUMMARY REPORT FOR JUNE 18, 2008. Oystercatchers have fledged 15 chicks, exceeding last year's total of 10 fledged chicks, which raises the hope that the oystercatcher breeding population will continue to recover in coming years. OUTER BANKS GROUP, NATIONAL PARK SERVICE RESOURCE MANAGEMENT WEEKLY FIELD SUMMARY REPORT; AUGUST 7 – AUGUST 13, 2008. The overall number of nesting colonial waterbirds has increased, and black skimmers are nesting again on Seashore beaches, after failing to nest at all last year.

Additionally, the number of successful sea turtle nesting attempts has increased to 113 so far in 2008, up from 82 all of last year and surpassing the previous Cape Hatteras record of 101. As of August 20, there have been 101 unsuccessful nesting attempts, reversing last season's ratio under the "interim plan" when the number of unsuccessful nests, 115, far exceeded the number of successful nests, 82. OUTER BANKS GROUP, NATIONAL PARK SERVICE RESOURCE MANAGEMENT WEEKLY FIELD SUMMARY REPORT; AUGUST 14 – 20, 2008; NATIONAL PARK SERVICE, CAPE HATTERAS NATIONAL SEASHORE: 2007 ANNUAL TURTLE REPORT 5 (2007). Although sea turtles have nested at higher rates along the entire coast of North Carolina, this dramatic upswing at Cape Hatteras not only surpassed the previous record in the park, it doubled the increase observed statewide. Wade Rawlins, *Sea turtles are marching in record numbers: Some think Hatteras beach driving ban is responsible for surge*, THE NEWS & OBSERVER, Aug. 23, 2008, at 1A. Based on these preliminary indicators, all species appear to be benefiting from the management measures required by the consent decree. However, due to the steep population declines over the last decade, it will take more than one or two years of proper management for beach nesting birds to recover fully at the Seashore.

### ***Economic effects of the Consent Decree***

As with environmental effects, it is too early to assess the economic effects, if any, of the restrictions on beach driving. Approximately 2.5 million visitors come to the Seashore each year. A 2008 government-contracted study concluded that 2.7 to 4% of these visitors are ORV users. INDUSTRIAL ECONOMICS, INC., ECONOMIC ANALYSIS FOR CRITICAL HABITAT DESIGNATION OF THE WINTERING PIPING PLOVER 2-14 (2008). That study also estimated that 9% of the visitors to the Seashore would return more often if driving were restricted on the beaches. Id. 2-17.

The Dare County Visitors Bureau reports that visitation during May 2008 (the first month of the consent decree) as measured by occupancy of motels, cottages, and other accommodations, was 6.31% higher than May 2007. OUTER BANKS VISITORS BUREAU, GROSS OCCUPANCY SUMMARY 1994-2007, [www.outerbanks.org/pdf/Gross\\_Occupancy\\_Summary\\_receipts.pdf](http://www.outerbanks.org/pdf/Gross_Occupancy_Summary_receipts.pdf). Visitation in June was also up 7.32% over June 2007. Id. July visitation was down 5.4% over July 2007. Further, some small businesses report that they are doing well despite the sagging economy and high gas prices. Allen Burrus, Vice

Chair of the Dare County Board of Commissioners, reports that his “small mom-and-pop grocery store” is “doing well” and that “[b]usiness is up.” Ryan Hutchins, *Outer Banks’ tourism up in June despite economy*, VIRGINIAN-PILOT, Aug. 4, 2008, available at <http://hamptonroads.com/2008/08/outer-banks-tourism-june-despite-economy>.

The National Park Service reports a drop in visitation this year to Cape Hatteras National Seashore of 10.3% through July 2008 as compared to the same period last year. <http://www.nature.nps.gov/stats/>. This reflects an overall drop in visitation to the entire national park system this year. However, the drop in visitation to Cape Hatteras National Seashore this year prior to implementation of the consent decree (January-April) was 20.2% compared to a 5.7% drop after implementation of the consent decree. Visitation at nearby Cape Lookout National Seashore, unaffected by the consent decree, has dropped 14% through July 2008 compared to the same period last year. *Id.* Accordingly, the consent decree appears to have had little to no negative effects on tourism.

### ***Park Service negotiated rulemaking to adopt a final ORV management plan***

In January 2008, the Department of the Interior established an advisory committee representing diverse interests and charged with recommending a proposed final ORV management plan to the National Park Service. The consent decree does not restrict or undermine this process. The lawsuit that led to the consent decree challenged the ongoing management of wildlife on the Seashore under the interim plan and sought to halt the decline and disappearance of birds on the Seashore during the time it will take for a final ORV plan – the focus of the negotiated rulemaking – to be adopted. According to the Park Service, it will take three years to go through rulemaking to adopt a final ORV plan. At that time, as the consent decree states, the final plan will replace the management requirements in the consent decree. By its terms, the consent decree is not, nor could it be, binding on the negotiated ruling.

### ***Cape Hatteras is a National Park System unit.***

Cape Hatteras was established as the nation’s first national seashore to be managed by the National Park Service in 1937. The enabling legislation creating the Seashore states

Except for certain portions of the area, deemed to be especially adaptable for recreational uses, particularly swimming, boating, sailing, fishing, and other recreational activities of a similar nature, which shall be developed for such uses as needed, the said area shall be permanently reserved as a primitive wilderness and no development of the project or plan for the convenience of visitors shall be undertaken which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing in the area.

16 U.S.C § 459a-2.

Neither “off-road vehicles” nor driving on the Seashore beaches are mentioned in any legislation creating the Seashore. In 1940, Congress passed a bill that authorized hunting on the Seashore and added the words “Recreational Area” to the name of the Seashore, but did not change the basic mandates for the park and did not address the use of ORVs.

The obligation of the Park Service to protect the natural resources of the Seashore is unaffected by its designation as a “National Seashore” instead of a “National Park,” because under the General Authorities Act, Congress mandated all units of Park System be managed under a unified system. 16 U.S.C. §§ 1, 2-4. The Seashore is managed by the National Park Service under the congressional mandates of the National Park Service Organic Act. In that Act, Congress declared that the primary purpose of the Seashore is “to conserve the scenery and the natural and historic objects and wildlife therein and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations.” 16 U.S.C. § 1. Moreover, National Park Service management policies governing the Seashore recognize that “when there is a conflict between conserving resources and values and providing enjoyment of them, conservation is predominant.” National Park Service Management Policies 1.4.3 (2006).

Protection of the natural resources on national parks and seashores to leave them unimpaired for future generations is, and should be, paramount. The consent decree strikes the appropriate balance in addressing conservation and recreation interests and provides much needed protection to wildlife on The Seashore until a final ORV management plan is adopted.

### *Conclusion*

In sum, all parties and interests agreed in open court to the terms of the consent decree augmenting the terms of the “interim plan” until such time as the National Park Service adopts a final ORV management plan and a federal court approved it. Congress should not take the extraordinary step of intervening in, and interfering with, a consent decree negotiated and agreed to by all involved in a case. Further, as the statistics above show, the slight increase in the portions of the beach that have been closed to ORV use under the consent decree has had only a negligible impact, if any, on tourism and on the numbers of ORVs using the Seashore. At the same time, however, the closures have had a strikingly positive effect on the success of the endangered and threatened species that live and breed at Cape Hatteras. We ask, therefore, that this Committee oppose House Bill 6233 and leave the consent decree in place.