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National Park Service, Outer Banks Group
1401 National Park Drive
Manteo, NC 27954

**Re: Supplemental Comments on the Draft Environmental Impact Statement for
the Cape Hatteras National Seashore Off-road Vehicle Management Plan**

Dear Mr. Murray:

These comments supplement the comments previously submitted by National Audubon Society, Defenders of Wildlife, and the Southern Environmental Law Center on the Draft Environmental Impact Statement on the Cape Hatteras National Seashore Off-road Vehicle Management Plan ("DEIS"). We previously wrote in favor of adoption by NPS of an ORV plan and special regulation based on a modified version of Alternative D. Our supplemental comments are largely based on new information and ideas not available at the time of the original deadline for comments on the DEIS.

1. Buffers and Other Wildlife Protections Must Be Included in the Final ORV Regulation.

First, we believe that the final Cape Hatteras ORV regulation should include and enforce, not only the routes and areas available for possible off-road travel, but also the buffers and other wildlife protections prescribed in the USGS protocols and the Consent Decree, and described at pages 73 and 121-127 of the DEIS. In other words, those protections should be memorialized in the final regulation itself and not in another document, such as the Seashore's superintendent's compendium. Inclusion in the actual final ORV regulation will make the buffers less susceptible to collateral attack, for instance by those who might try to pressure Seashore personnel to alter or eliminate the buffers without formal rulemaking procedures.

A National Park Service ("NPS") superintendent's compendium generally contains the limits and restrictions that a superintendent has discretion to set under various statutes and regulations. The Cape Hatteras superintendent's compendium is no exception; its introduction even states that it comprises "designated closures, permit requirements, and other restrictions imposed under the discretionary authority of the Superintendent of the Outer Banks Group." (Emphasis added.) Thus, the limits contained in the compendium have not been instituted as the result of a formal rulemaking process and can be changed as easily.

Provisions contained in compendia are, by their nature, discretionary, and, when they conflict with a regulation or statute, the regulation or statute governs. Compendia generally cite to 36 C.F.R. §§ 1.5 and 1.7 as their authority. Section 1.5 specifically states that superintendents “may” establish schedules of visiting hours, closures, and other such limits on public use of park system units, “consistent with applicable legislation and Federal administrative policies.” 36 C.F.R. § 1.5(a). Section 1.7 provides that all such discretionary restrictions should be compiled in a publicly available compendium. 36 C.F.R. § 1.7(b). Section 1.5 further provides that “the public” need only be “informed of” the discretionary closures and other public use limits that appear in compendia, in contrast to formal regulations, which require publication in the Federal Register, notice and comment periods, and are otherwise the product of formal rulemaking procedures. 36 C.F.R. § 1.5 (e).

Because of the discretionary nature of compendia, the buffers and other wildlife protections contemplated by the DEIS cannot merely be informally included in the Seashore’s superintendent’s compendium, but, instead, should be included in the final ORV regulation. This would bring the ORV regulation into compliance with 36 C.F.R. § 1.5 (b), which requires that:

a closure, designation, use or activity restriction or condition, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the park area, adversely affect the park's natural, aesthetic, scenic or cultural values, require a long-term or significant modification in the resource management objectives of the unit, or is of a highly controversial nature, shall be published as rulemaking in the Federal Register.

36 C.F.R. § 1.5 (b) (emphasis added). Surely the ORV routes and areas, and the buffers that will modify them, invoke this section: the routes and areas, and any future relaxation of the buffers, will “adversely affect the park’s natural, aesthetic, scenic or cultural values” and are “of a highly controversial nature.”

Executive Order 11644 also mandates that the regulations in which routes and areas are designated for off-road driving must include provisions to “minimize harassment of wildlife or significant disruption of wildlife habitats,” “minimize conflicts between off-road vehicle use and other” uses of the land, and close such routes and areas when “the use of off-road vehicles will cause or is causing considerable adverse effects on . . . wildlife [and] wildlife habitat.” In turn, 36 C.F.R. § 4.10 states that the “designation of routes and areas” “shall be promulgated as special regulations” and “shall comply with [36 C.F.R § 1.5] and E.O. 11644.” Thus, the Executive Order and the applicable regulations all require that the wildlife buffers and other protections that will constrain the Hatteras ORV routes and areas must be included in the actual final Hatteras ORV regulation.

In addition, including the buffers and other protections in the final ORV regulation will have numerous benefits: inclusion will increase the public’s awareness of the buffers, clearly connect them to the ORV routes and areas that they are designed to modify, render them

undeniably enforceable, and insulate future Seashore staff from pressure to change or relax them without formal rulemaking procedures. The last three years of management under the Consent Decree have confirmed that responsible species management at the Seashore and a strong tourism industry can coexist if management of resources is consistent. The only way to provide that consistency is to incorporate scientifically based resource protections into the final ORV regulation.

2. The North Carolina Wildlife Resources Commission's Comments on Buffers and Wildlife Protections Are Not Based in Science.

Second, we have now reviewed the final comments on the DEIS from the North Carolina Wildlife Resources Commission ("WRC"), as well as draft versions of the comments and other public records produced by the WRC related to the comments. There are several points made in the version of the comments signed by WRC Director Gordon Myers (hereinafter "Myers' Comments") that we dispute and believe to be the result of intense political pressure rather than based on sound science. Myers' Comments contain these quotations:

The treatment of state-listed species of special concern as if those species were federally listed is inconsistent with the letter and intent of the statutes that authorize the state-listing process. Therefore we request the NPS not use state listing of species of special concern as justification for recommending actions required by federal listing, or in lieu of federal listing.

Observed behavior in a recent study conducted within CHNS and Cape Lookout National Seashore indicated little or no association between ORV traffic and the rate at which incubating American Oystercatchers made trips to and from their nests (McGowan and Simons 2006). ... We believe these findings provide a basis to implement drive-through corridors past oystercatcher nests during the incubation phase.

The shorebird/waterbird protection buffers associated with Management Level 1 (ML1) specified on page 127 of the DEIS are based on upon results or research appropriate for determining buffer distances . . . ; however, the additional buffer distances associated with Management Level 2 (ML2) exceed the empirically derived distances associated with ML1. Given the competing demands for the seashore and the importance of balancing human and wildlife uses of CHNS, we recommend using only the buffer distances listed under ML1.

These comments directly contradict the recommendations of WRC scientists, yet they comport with local legislators' forecasts of WRC's views regarding the management of wildlife on the Seashore. In a letter of May 4, 2010, State Senator Marc Basnight and State Representative Tim Spear predicted positions they expected WRC to take in its not-yet-submitted comments on the DEIS. In the letter, the legislators stated:

Birds listed as North Carolina species of concern should not be given protected status under the Endangered Species Act. We have spoken with both the Chairman and Executive Director of the North Carolina Wildlife Resources Commission regarding this matter. Both have informed us that these unnecessary protections were never the intent of the Commission's participation in this process, nor a requested outcome. ... Pre-nesting closures should be exclusively for the piping plover, the only federally listed threatened bird species. Also, non-ESA listed birds should not have buffers of 300 meters. The county feels a more appropriate buffer would be 30 meters.

It is telling that Senator Basnight and Representative Spear knew the substance of the comments to be signed by Mr. Myers and submitted on behalf of the WRC, an executive branch agency, at least six days before those comments were submitted, and that these views mirrored the legislators' own comments.

Further evidence that legislators applied pressure to influence Myers' comments include the fact that Senator Basnight's office shared strongly worded draft comments – his own and Dare County's – with senior staff at the WRC in late April. (See emails attached at Tab A.) Indeed, Senator Basnight's draft comments argue for:

- smaller buffers for nesting birds,
- removal of protection for state-listed birds,
- relocation of sea turtle nests, and
- the use of vehicle corridors through resource protection areas.

These concepts were not included in early drafts of WRC's comments (dated April 12, April 16, and April 19), but were included in the final comments that were signed by Mr. Myers and submitted on behalf of WRC after receiving Senator Basnight's messages. Likewise, WRC's early drafts included concerns that were later removed. For instance, early drafts described WRC scientists' concerns about the effect on nesting sea turtles of night driving being allowed an hour after sunset and after September 15, while those concerns were eliminated from the final version of the comments, in conformity with Senator Basnight's comments. (See drafts attached to emails at Tab B.)

By sharing their draft comments and talking with WRC officials, Senator Basnight and Representative Spears appear to have unduly influenced WRC to revise its comments to include those concepts. (For instance, a bracketed comment inserted into the draft Basnight comments circulated at WRC shows that at least one WRC staff member recognized that Basnight's suggestions regarding smaller shorebird buffers are not scientifically supported. See attachment to Myers email dated April 30, 2010, attached at Tab A.) Moreover, after making the additions of the politicians' concerns and deleting the scientists' concerns regarding sea turtles, Director Myers then sent the revised WRC comments to Senator Basnight's office for his review shortly before signing and submitting them. (See Myers email dated May 6, 2010, attached at Tab C.)

In addition, early on, Ray White, a WRC Commissioner and Manteo businessman, sent an email to Mr. Myers expressing his “hope” that WRC would “address[] reasonable buffer zones for these birds,” insinuating that the buffer distances prescribed by the USGS and implemented by the NPS, especially for American oystercatchers, are “unreasonable” and that WRC should advocate for smaller buffers. (See White email dated March 5, 2010, also attached at Tab C.)

A review of internal communications obtained from WRC shows that Director Myers implemented Senator Basnight’s suggestions over the recommendations and objections of numerous wildlife biology specialists on the staff of the WRC and related agencies and committees. As Chris McGrath, WRC Wildlife Diversity Program Coordinator, explained:

Overall, this final comment letter contained little that was recommended by staff. Items that were recommended by staff that were deleted from the final letter included:

- [prohibition of] night/evening driving during the sea turtle nesting season
- [lower limits on] vehicle numbers on the beach
- non-breeding season closures
- night driving impacts on beach nesting birds.
- removal of bird closures (when do they get removed)
- nighttime beach fires during the turtle nesting season and kite flying.

While we understand the role of the agency’s political leadership in shaping agency comments upon contentious issues, we contend that in large part, the final letter deviates significantly from staff recommendations on conservation measures of natural resources, focuses upon relaxing both our staff recommendations as well as those of the Park Service, ignores issues with the DEIS that the staff recommended changes upon, and may reflect a shift in state policy to protect listed species that may impact a much broader range of agency positions.

(McGrath email dated May 25, 2010, attached at Tab D.) A host of other current and former staff biologists also criticized Mr. Myers and the final comment letter for, essentially, ignoring science in favor of political expediency. (See additional emails attached at Tab D.)

By submitting its comments in their final form, therefore, the WRC has violated its mission “to manage, restore, develop, cultivate, conserve, protect, and regulate the wildlife resources of the State of North Carolina . . .” N.C. Gen. Stat. § 143-239 (emphasis added). The comments should therefore be discounted accordingly or even disregarded.

In addition to noting the impropriety of Myers’ Comments being based on political considerations and not sound science, we offer the following information to refute the three excerpts from those comments listed above.

a. The recommendation to eliminate protections for state-listed species of special concern contradicts law and science.

As we explained in our original comments submitted May 11, 2010, the NPS is obliged to protect and restore wildlife at Cape Hatteras National Seashore under Executive Order 11644, the Organic Act (16 U.S.C. § 1 *et seq.*), the Cape Hatteras National Seashore enabling legislation (16 U.S.C. §§ 459 *et seq.*), and NPS regulations and policies (including 36 C.F.R. § 4.10 and NPS Management Policies 2006).

These obligations are not limited to species listed under the federal Endangered Species Act, but also extend to species listed by states as species of special concern. For instance, the Executive Order mandates that the NPS must “protect the resources of” its public lands, including the “vegetation, wildlife, [and] wildlife habitat,” without reference to the status of the wildlife as federally “endangered” or “threatened” or otherwise. Likewise, the Organic Act requires the NPS to manage national parks in such a way as to “conserve . . . the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations,” again without regard to whether the wildlife is federally listed as endangered or threatened. 16 U.S.C. § 1.

Even the state law governing the activities of the WRC requires that it “manage, restore, develop, cultivate, conserve, protect, and regulate the wildlife resources of the State of North Carolina . . .” N.C. Gen. Stat. § 143-239. This duty to restore, conserve and protect wildlife resources is not limited to threatened or endangered species. To fulfill this duty, the WRC must base its recommendations for management of all of North Carolina’s wildlife on science and sound wildlife management principles.

The best available science regarding the management of wildlife at Cape Hatteras is embodied in the recommendations of federal scientists in the “Review and Synthesis of the Scientific Information Related to the Biology and Management of Species of Special Concern at Cape Hatteras National Seashore, North Carolina,” published by the USGS. NPS requested the studies from USGS, and the USGS prepared and transmitted them to the NPS, all for use by the NPS in satisfying its obligation to protect and restore the wildlife at the Seashore, with a focus on those species most in need of protection. The USGS report contains specific recommendations for the management of beach driving for the protection of several state-listed species of special concern, including American oystercatchers, black skimmers, and several tern species. The USGS report includes specific recommended buffers for nesting shorebirds and unfledged chicks, and those recommendations have not been refuted by any scientific study, much less one focused on Cape Hatteras. The DEIS properly meets or exceeds the USGS’s scientifically determined buffer distances, and where it exceeds them, it does so in order to allow for less intensive monitoring and management.

The biologists on the staff of the WRC recognized these facts and supported protections for all declining species, including those that are not federally listed but are designated as state species of special concern, including the American oystercatcher, black skimmer, least tern, common tern, and Wilson’s plover. WRC biologists expressed their support for protection of

these species, both during the negotiated rulemaking process and in internal communications during the WRC's review of the DEIS. (See emails collected at Tab E.)

The chronology of the revisions to the paragraph of the comments discussing state species of concern demonstrate that the WRC scientists advocated for legally and scientifically supported protections for these species, only to be overridden by WRC Director Gordon Myers, who advocated eliminating such protections at the behest of politicians. The timeline is as follows:

1. The DEIS recommended 300-meter buffers for nesting oystercatchers and unfledged chicks. (DEIS at 127.)
2. Gordon Myers sent an email on March 5, flagging the DEIS's buffer distance for American oystercatchers as excessive. Commissioner Ray White replied that he hoped the WRC would "make a difference" by "addressing reasonable buffer zones for" oystercatchers. (See Myers and White emails from March 2010 at Tab C.)
3. The first draft of WRC's comments, circulated on April 12, did not address these buffers. (Tab B.)
4. A second draft, circulated on April 15, included several sentences inserted at the direction of Gordon Myers' deputy, Mallory Martin, that began to hint that state species of special concern should be afforded less protection than listed species. (Deaton email dated April 15, 2010, and Cox email dated April 16, both at Tab B.)
5. WRC biologist David Allen wrote an email on April 19, expressing concern with that passage, stating, "I still have concerns about the paragraph [about the new paragraph]. The NPS has not said that we have asked them to manage state listed species similar to federally listed species. They simply make the statement that it is their policy to do so. Our statement at the bottom of the first page makes it sound like we don't want them to manage for these species to the degree that they are. I do not think the NPS is providing too much protection for American oystercatchers or any other state listed species, and I would not like them to get the wrong idea." (Allen email dated April 19, 2010, at Tab E.)
6. WRC scientist Chris McGrath wrote an email on April 19, essentially agreeing with Mr. Allen, stating "... We do, in fact, WANT entities to manage for and enhance populations of protected species. . . . WRC should be promoting the conserving and limited taking of all listed species." (McGrath Email dated April 19, 2010, at Tab E.)
7. WRC scientist David Cox wrote an email on April 21, agreeing with Mr. Allen and Mr. McGrath, but noting that "... that sentence is the essence of what Gordon [Myers] wants to say about this issue. I am not sure how to respond to [Allen and McGrath's] concerns." (Cox email dated April 21, 2010, at Tab E.)
8. WRC director Gordon Myers received emails from Mr. Basnight's office on April 26 and 30 with suggested comments, and conferred with Mr. Basnight during that time period. (Emails at Tab A.)

9. The WRC scientists' concerns were ignored, and the version of the comments signed by Mr. Myers was submitted on May 10, still containing the refuted comment that NPS should reduce protections for state-listed birds. (Tab. D.)

We hope that this additional evidence sheds light on the motivation behind the WRC's otherwise inexplicable request for NPS to disregard state listed species, and indicates the appropriate weight to be given to that request.

Indeed, an ORV management plan must meet statutory and regulatory requirements to protect wildlife, including not only threatened and endangered species but also state-listed species of concern and other rare or sensitive species, on the Seashore. The Executive Order only allows ORV use if it minimizes harm to wildlife and destruction of wildlife habitat. The Organic Act puts priority on natural resource protection. The enabling legislation for the Seashore allows recreational uses only if compatible with preservation of the flora and fauna. Under NPS policies, natural resource protection predominates over recreation. NPS Management Policies 2006, 4.1. Those policies also reiterate the obligation to protect all native species and in particular species that are rare, declining or of special concern. *Id.* at 4.4.1, 4.4.2. The same policies specifically state:

The National Park Service will inventory, monitor, and manage state and locally listed species in a manner similar to its treatment of federally listed species to the greatest extent possible. In addition, the Service will inventory other native species that are of special management concern to parks (such as rare, declining, sensitive, or unique species and their habitats) and will manage them to maintain their natural distribution and abundance.

Id. at 4.4.2.3 (emphasis added). North Carolina law also requires that efforts be made to increase numbers of state-listed species. N.C. Gen. Stat. § 113-332. Moreover, management for the protection of all state-listed species, including native colonial waterbird and shorebird species, also supports the conservation goals of the "Cooperative Agreement" among the WRC, the NPS, the National Audubon Society, and other government agencies and NGOs, entered into in December 1988.

Thus, the final Seashore ORV management regulation must include science-based wildlife protections, not only for federally listed species such as piping plover and loggerhead, green and leatherback sea turtles, but also state-listed species including gull-billed tern, American oystercatcher, common tern, least tern, black skimmer, and Wilson's plover, and all other rare, declining, sensitive, or unique species. *Id.* We appreciate the fact that the DEIS acknowledges this obligation (DEIS 89), and recommend that all comments to the contrary be discounted appropriately.

b. The Statement that ML2 Buffer Distances Are Not Empirically Supported Is False.

Similarly, the criticism of certain buffer distances in Myers' Comments also appears to have been politically motivated. The final version of the Myers Comments included this false statement: "the additional buffer distances associated with Management Level 2 (ML2) exceed the empirically derived distances associated with ML1."

While it is true that ML1 buffer distances closely mirror the buffer recommendations under the USGS "moderate degree of protection" protocols, and that they are smaller than the ML2 buffers, it is important to note that the USGS/ML1 buffer distances rely upon frequent monitoring and adjustment of buffers and intensive management. Where the NPS seeks to reduce the intensity and frequency of buffer monitoring and adjusting, scientific evidence supports moving toward the larger buffers recommended by the USGS "highest degree of protection" protocols.

The USGS "highest degree of protection" protocols are also "empirically derived," and, depending upon the species, they call for even more stringent buffers than the ML1 buffers. For instance, the piping plover "highest degree of protection" protocol calls for year-round, 24-hour-per-day closures in all potential "nesting, roosting, and foraging habitat," which is surely larger than the 75-meter nesting buffer and 1000-meter unfledged chick buffer of the DEIS's ML1, which in turn happen to be identical to the ML2 buffer distances. Likewise, the colonial waterbird "highest degree of protection" protocol calls for full closures of all potential "nesting, foraging, and roosting habitat," which is larger than the 300-meter nesting buffer and 300-meter unfledged chick buffer of the DEIS's ML1. Thus, there is no basis to claim that the ML1 buffer distances are not empirically derived, because they are either equal to the ML2 distances for some species or, for other species, somewhere between the USGS moderate and highest levels of protection.

Several WRC scientists pointed this out during the development of the agency's comments. (See emails attached at Tab F.) For instance, WRC biologist David Allen pointed out that:

The USGS protocol . . . were developed specifically for Cape Hatteras National Seashore, thus are the best source for [buffer distances]. These protocols use the best available information known at this time.

These protocols states that 180-200 m. is the preferred distance to avoid disturbance to oystercatchers and that 137 m. is the minimum (p. 43). This matches pretty close to the 150 m. distance suggested by Cape Hatteras for most of the primary areas of concern in Management Level 2 locations The Hatteras Inlet area is designated as Management Level 1, and since monitoring will be less in this area, they chose a larger buffer of 300 m. Monitoring is a key aspect of setting buffer distances, and the USGS protocols state that it is needed in order to use these lower buffer distances.

(Allen Email dated April 30, 2010, at Tab F. See also McGrath Email dated May 3, 2010, at Tab F, stating, "I think we could find numerous other references, too, but agree that the info developed by USGS specifically for CAHA is the best to focus on.")

Yet, after receiving the draft comments and other communications from Senator Basnight (see emails at Tab A), the final version of the comments signed by Mr. Myers disregarded the input of the WRC scientists and included the contrary sentiment, which echoes the materials provided by Senator Basnight's office. Thus, this portion of Myers' Comments should also be discounted accordingly.

c. The Recommendation to Allow Drive-Through Corridors Contradicts the Very Article on Which It Relies.

In a paragraph advocating for drive-through corridors in areas where wildlife nesting has otherwise required closure of a segment of beach, the Myers' Comments state:

Observed behavior in a recent study conducted within CHNS and Cape Lookout National Seashore indicated little or no association between ORV traffic and the rate at which incubating American Oystercatchers made trips to and from their nests. (McGowan and Simons 2006). ... We believe these findings provide a basis to implement drive-through corridors past oystercatcher nests during the incubation phase.

These statements contradict the very article on which they purport to rely, as well as other articles by the same authors¹ and the well-documented discussion contained in chapter 3 of the DEIS regarding the deleterious effects of off-road vehicles on shorebirds generally.

In the article cited by WRC, "Effects of human recreation on the incubation behavior of American oystercatchers," authors Conor McGowan and Theodore Simons explained that, while "undisturbed" American oystercatchers will remain on their nests incubating 90 – 100% of the time, they are "easily flushed" from their nests by disturbances. They further explained that higher rates of parental activity (i.e., leaving the nest) are correlated with greater rates of predation (as eggs are left unattended), and that "human recreation is often associated with lower oystercatcher reproductive success." The study involved filming oystercatchers incubating their nests for approximately four hours and noting the times that the parents left their nests and how close in time each such trip² occurred in relation to the passing of a pedestrian, ORV, or ATV, if at all.

¹ See, for instance, the discussion in our original comments submitted May 11, 2010, of Theodore Simons and Shiloh Schulte, American Oystercatcher (*Haematopus palliatus*) research and monitoring North Carolina, 2008 Annual Report 29 (2009).

² A trip was defined as "a bird leaving or returning to its nest," and, where a trip (or nest departure) occurred within several minutes of a disturbance such as a vehicle or person passing by, it was treated as a reaction to a disturbance.

Mr. Myers' citation to the article seizes on – and overstates or even mischaracterizes – the authors' findings about one portion of the reproductive process. It ignores the bigger picture explained by the article, that American oystercatcher populations are dwindling due, at least in part, to the fact that their reproductive success is diminished by disturbances caused by human recreation.

Myers' Comments also ignore the contrary conclusions of the article, as well as the many qualifications and limitations of the study identified by the authors. For instance, the authors observed that the number of trips per hour at nests that remained completely undisturbed “was significantly lower . . . than at all other nests,” including those that were disturbed by ORVs, pedestrians, and ATVs alike. The authors concluded that nests had a lower chance of survival when the parents departed the nest more often. They also explained that, of the 539 instances in which birds departed from their nests, 17% of those occurred within three minutes of an ORV passing by and 25% within three minutes of an ATV passing by. Thus, it is disingenuous to cite the article for the proposition that drive-through corridors for ORVs will not affect breeding and nesting oystercatchers and their chicks.

The authors also identified features of their study that may have led to deceptively low correlation between passing ORVs and incubation disruption; these include: (1) each bird was studied for only approximately four hours; (2) many of the ORVs observed during the short duration of the filming appeared to be driving on the firmer sand farther from the nests than the ATVs; (3) the birds being studied may have become habituated to the presence of ORVs (but would still be less disturbed with no ORVs at all); and (4) the regression models used to analyze the data were not well accepted. The authors recommended that future studies be conducted that “entail measuring distances to sources of disturbance” and “[r]ecording nests for longer periods of time” to “alleviate a great deal of uncertainty” in their current study. They also recommended that future studies “compare the behavior of birds on beaches [entirely] closed to vehicle and pedestrian traffic” with the behavior of birds exposed to different types and intensities of human activity.”

In the end, the authors concluded that “human recreational disturbance” does, in fact, “reduce the nesting success of American oystercatchers by altering incubation behavior,” which in turn, encourages predation. They also pointed out that ORVs negatively affect other necessary bird activities, including foraging, and kill chicks directly (with at least five chicks being run over on the Outer Banks in 2003 alone). In later studies, articles, and presentations to the Cape Hatteras negotiated rulemaking committee (based on research subsequent to the 2006 article cited in the Myers' Comments), the same authors did, in fact, report higher correlations between the presence of ORVs and oystercatcher mortality and breeding failure.³

³ E.g., Theodore Simons and Shiloh Schulte, American Oystercatcher (*Haematopus palliatus*) research and monitoring North Carolina, 2008 Annual Report 29 (2009); Presentation to Cape Hatteras Negotiated Rulemaking Committee in June 2008.

In light of all the foregoing, the McGowan and Simons article does not, as the Myers' Comments claim, support the installation of drive-through corridors for ORVs to pass through areas being used by oystercatchers and other shorebirds for nesting and rearing unfledged chicks. It should not be relied on to support such corridors, especially in light of the quantity of articles that support the opposite conclusion, that shorebirds need ample buffers from human disturbances to successfully nest.⁴

d. Myers' Comments Failed to Address WRC Scientists' Views on Proper Protections for Sea Turtles and Their Nests.

In addition to the problems with the three sections of affirmative comments described above, Myers' Comments also entirely omitted serious concerns that WRC's wildlife biologists had with the sea turtle provisions of the DEIS. As evidenced by the emails collected at Tab G, several of the biologists raised serious concerns about the adequacy of sea turtle protections. In an email dated March 29, 2010, WRC scientist David Allen explained that his biggest concern with the DEIS is the fact that it allows beach driving for the first half hour after dark during most of the summer and all night long after September 15, thereby exposing endangered and threatened sea turtles and their nests to harassment and destruction. He explained that the DEIS sea turtle provisions were not consistent with the federal Loggerhead Sea Turtle Recovery Plan. His concerns were not included in the final version of the comments signed by Mr. Myers, and he later noted that he had "been overruled on this issue" by Mr. Myers. He reiterated his concern over the DEIS's treatment of night driving and its likely effect on sea turtles in an email dated April 2, 2010, also at Tab G. In an email dated April 6, 2010 (also at Tab G), WRC sea turtle biologist Matthew Godfrey expressed similar concerns.

These concerns were included in their entirety in the initial April 12 draft of the WRC comments. They had begun to be whittled down in the April 19 draft. The concerns were eliminated entirely in the final version signed by Director Myers, after his communications with local politicians. (See drafts at Tab B.)

Although absent from the final version of the comments signed by Mr. Myers, the concerns of WRC scientists David Allen and Matthew Godfrey regarding the effects of night driving on sea turtles should be heeded. As we mentioned in our original May 11 comments, we share those concerns. We support the provision in the DEIS that "From May 1 through September 15, all potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) would be closed to non-essential ORV use at night until NPS turtle patrol has checked the beach in the morning (by approximately one-half hour after sunrise) to provide for sea turtle protection and allow enforcement staff to concentrate their resources during the daytime hours," DEIS at 82, with one important modification: the beginning of the closure time should be changed to sunset. A recent incident on Ocracoke Island, in which a female loggerhead sea turtle was dragged and killed by an ORV while attempting to nest sometime between the evening of June 23, 2010, and the early morning of June 24, 2010, only serves to reinforce the need for adequate night driving restrictions.

⁴ See literature review attached to our comments of May 11, 2010.

3. Record-Setting 2010 Season Supports Buffers and Wildlife Protections

Next, as explained in more detail in my letter to NPS Director Jon Jarvis of September 24, 2010, data collected by NPS during the summer of 2010 support the implementation of the buffers and other wildlife protections prescribed in the USGS protocols and the Consent Decree, and described at pages 73 and 121-127 of the DEIS. Under these protections, three species set records during the 2010 breeding season: both piping plovers and American oystercatchers produced more fledged chicks during the 2010 breeding season than have ever been recorded at the Seashore, while sea turtles laid a record 153 nests, exceeding the previous Seashore record by more than 40 nests. At the same time, Dare County experienced an all-time high in vacation rental revenue in July 2010. The Outer Banks Visitors Bureau recently reported that Hatteras Island visitors spent \$27.8 million on lodging during the month of July, which was an 18.5% increase over July 2009 and exceeded all preceding years, including those years before the Consent Decree protections went into effect.⁵ These data demonstrate that protections based on the USGS protocols can and do benefit wildlife without sacrificing the local economy.

4. The Potential for Alternative Transportation Systems Should Be Explored More Thoroughly.

Finally, we note that, of the action alternatives explored in the DEIS, only a few, including the preferred alternative, included any consideration of alternative transit systems in the Seashore. Even those merely mentioned it in passing, as in: "alternative F would include . . . the consideration by the Seashore of applications for commercial use authorizations for a beach access shuttle service." (DEIS 556.) The DEIS contains little to no discussion of either the benefits or the potential hazards and environmental effects of alternative transit systems. The final EIS should contain a more extensive discussion of these issues.

In 2005, federal legislation created a program to provide funding for the development of alternative transportation systems in national parks and public lands. Renamed the Paul S. Sarbanes Transit in Parks Program in 2008, the program is designed to promote alternatives to the use of private automobiles, in order to reduce traffic congestion, noise, air pollution, and other effects associated with traffic that detract from the experience of visitors to national parks such as Cape Hatteras and other public lands. Materials on the transit program, including guidance for grant applications, are available on the Federal Transit Administration's website, http://www.fta.dot.gov/funding/grants/grants_financing_6106.html, and were distributed as recently as September 2010 in an online seminar open to the federal employees and the public. Millions of dollars are distributed each year for planning and capital expenses for alternate transit systems in national parks. The deadline for 2010 grant applications was June 28, 2010 (75 Fed. Reg. 27,109 (May 13, 2010)), but there will be future grant cycles in 2011 and beyond.

⁵ See Rob Morris, *Dare Occupancy Receipts Reach an All-Time High*, The Outer Banks Voice, Sept. 16, 2010, available at <http://outerbanksvoice.com/2010/09/16/occupancy-dollars-hit-an-all-time-high/>. See also charts published on the Outer Banks Visitors Bureau website: http://www.outerbanks.org/about_us/visitors_bureau/.

Michael B. Murray

October 8, 2010

Page 14

In light of the availability of funding, as well as the legislation's implicit goal of reducing traffic congestion and its ill effects on national park resources, the final EIS should include a comprehensive analysis of alternatives to private ORVs for transporting visitors to the more remote portions of the Seashore. In particular, the final EIS should examine the feasibility and environmental effects of both motorized transit (beach shuttles, trams, boats, etc.) and non-motorized transit (pedestrian and bicycle trails, etc.). Such systems are likely to vastly reduce the congestion, noise, and pollution that are currently plaguing the Seashore's beaches. In addition to easing those aesthetic impacts of beach driving, an alternative transit system could benefit many kinds of visitors, from the very youngest and oldest visitors and those with physical disabilities, to those with fishing gear and other heavy loads. It could also conserve energy and create transit-related jobs for local residents.

Conclusion

We appreciate the opportunity to supplement our comments on the DEIS for an ORV management plan for Cape Hatteras National Seashore. We provide the additional information contained in these supplemental comments in further support of our earlier recommendation that NPS adopt and implement an ORV plan and special regulation based on a modified Alternative D that maintains breeding species protections based on science, allocates more of the Seashore to pedestrian-only use and less-disturbed areas for wildlife, improves facilities for public access, and provides ORV access to key areas consistent with resource protection. Such a plan will restore a balance to the Seashore consistent with NPS's stewardship obligations to restore and protect the natural resources and leave them unimpaired for future generations.

Sincerely,



Julie Youngman

Derb S. Carter, Jr.

Southern Environmental Law Center

Walker Golder
Audubon NC

Jason Rylander
Defenders of Wildlife

Enclosures

cc: Mr. David Vela, Southeast Regional Director, NPS (with enclosures)

Julie Youngman

From: Chris Dillon (Pres. Pro Tem's Office) [Christopher.Dillon@ncleg.net]
Sent: Friday, April 30, 2010 10:47 AM
To: Myers, Gordon S.
Subject: Fw: Undeliverable: Fw: ORVDEISCOMMENTS_.doc
Attachments: Fw: ORVDEISCOMMENTS_.doc

----- Original Message -----

From: System Administrator
To: gordon.meyers@ncwildlife.org <gordon.meyers@ncwildlife.org>
Sent: Fri Apr 30 10:44:10 2010
Subject: Undeliverable: Fw: ORVDEISCOMMENTS_.doc

Julie Youngman

From: Chris Dillon (Pres. Pro Tem's Office) [Christopher.Dillon@ncleg.net]
Sent: Friday, April 30, 2010 10:44 AM
To: gordon.meyers@ncwildlife.org
Subject: Fw: ORVDEISCOMMENTS_.doc
Attachments: ORVDEISCOMMENTS_.doc

From: Amy Fulk (Pres Pro Tem's Office)
To: Chris Dillon (Pres. Pro Tem's Office)
Cc: Schorr Johnson (Pres Pro Tem's Office)
Sent: Thu Apr 29 10:36:29 2010
Subject: ORVDEISCOMMENTS_.doc

Chris - great job on this (I did change one full-ride private-school vocab word to something more "lowbrow") - I marked a couple edits and had a question on one of the buffer issues.

Spear called this morning and asked if Marc would want to do a joint comment letter from both of them on this issue. I told him I would pass that request along to you since you were running point on this. Let me know if you want to circle back with Spear or if you want me to.

Thanks!

<<ORVDEISCOMMENTS_.doc>>



NORTH CAROLINA GENERAL ASSEMBLY
PRESIDENT PRO TEMPORE
SENATOR MARC BASNIGHT
RALEIGH 27601-2808

April 27, 2010

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

Superintendent Murray:

I am writing you today to make formal comments on the Cape Hatteras National Seashore Recreational Area Off-Road Vehicle Management Plan Draft Environmental Impact Statement, specifically Alternative F, created by the National Park Service with input from the negotiated rulemaking advisory committee.

Before commenting on the contents of the document, I would like to call attention to the shocking exclusion of useful data to determine the potential economic impact of Alternative F. The DEIS suggests "F" will have revenue impacts on small businesses "at the low end of the estimated range rather than the high end." From my conversations with small business owners on Hatteras Island, any restriction in access will have severe economic impacts to their families, as the closures in the past years have. In an already disastrous economy, the actions taken by the Court and the Service have proved pernicious-devastating to all businesses and residents on Hatteras Island. For anyone to claim differently would be either a misguided statement of ignorance or just a pure falsification of the truth. The last names of the original settlers of Hatteras Island can be found in the phone-book to this day. These families have been rooted in this community since-even before the founding of our nation. ~~It would seem~~ today, their livelihoods are being threatened by that government.

After consulting with the elected leaders of Dare County, I would like to comment on the four critical aspects of the DEIS, the first being the critically important management tool of corridors. In the past during a closure, my office was able to work with you and your staff to create corridors around resource closures. These alternative paths are indispensable to the continued movement of pedestrians and vehicles. Also, the corridors allow visitors to access an open area that may be sandwiched between two closed areas. These corridors have no negative impacts to the protected species, but they are crucial to providing access during closure periods. I stand with Dare County in requesting that corridors be maintained for pedestrians and vehicles in all areas of the Cape Hatteras National Seashore Recreational Area throughout the entire breeding and nesting season.

When reviewing the management of any wildlife species by the state of North Carolina, anyone can see our management plans are based on reliable and reputable science and data. Political whims are not entered into the formula for the management of species by our State. I am concerned that political inclination is the reason for and basis of the management buffers within the DEIS. A 1,000-meter buffer in all directions of an unfledged piping plover chick represents 771 acres of closed beach. This seems a bit arbitrary and capricious when managing a species. I have yet to read any scientific reasoning behind this management strategy. I would argue a buffer of 200 meters would be just as effective for the survival of a piping plover chick without the extreme penalization of the residents and visitors of Hatteras Island, (why would he argue this? Does he have any data to support? Otherwise are we doing the same thing NPS is? Should we challenge NPS to show us why a smaller buffer would not suffice?

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Another confusing issue in the buffers listed in the DEIS is the equal and even more protective status given to species not on the endangered species list. Birds listed as North Carolina species of concern should not be given protected status under the Endangered Species Act. I have spoken with both the Chairman and Executive Director of the North Carolina Wildlife Resources Commission regarding this matter. Both have informed me that these unnecessary protections were ~~was~~ never the intent of the Commission's participation in this process, nor a requested outcome. They have also informed me that other species of concern are not given ESA status on other federal lands. Pre-nesting closures should be exclusively for the piping plover, the only federally listed threatened bird species. Also, non-ESA listed birds should not have buffers of 300 meters. The county feels a more appropriate buffer would be 30 meters. I also spoke with NCWRC regarding the inclusion of all birds in the ecosystem being counted when doing any type of management plan. Currently, birds on dredge spoil islands located adjacent to the Park are not being included in the population figures. They agree these islands have no predation and are ideal locations for nesting. To not include the populations of these islands is disingenuous to the intent of this process.

The last technical portion of my comments centers on the treatment of the nests of endangered sea turtles within the Seashore. I would urge the Park Service to allow for the relocation of nests to higher beach elevations. The United States Fish and Wildlife Service practices this management tool in Pea Island National Wildlife Refuge, as well as do other management agencies on state and federal lands. The Seashore has lost over 46% of the nests laid in the last 11 years, while South Carolina relocated 40.1% of their nests during 2009, finishing the year with only a 7.7% loss of nests. To not allow for the relocation of nests puts both the users of the parks and the turtle hatchlings at competitive disadvantages.

The key to any management plan is flexibility. Without the ability to change user patterns, while keeping access open, the Cape Hatteras National Seashore Recreational Area will become but a memory to generations of users from across the globe. I would say that no-where in our great nation can individuals enjoy the beauty and serenity of our coast as in the Seashore. For decades, families have been coming to Hatteras and Ocracoke Islands to utilize this area as President Roosevelt envisioned. As you move forward with your plan, you must remember the promises made by previous directors and superintendents and protect the access for residents and visitors alike.

Julie Youngman

From: Myers, Gordon S.
Sent: Tuesday, April 27, 2010 1:03 AM
To: Martin, Mallory G.
Subject: FW: Dare County Position on the DEIS
Attachments: FW: Dare County Position on the DEIS

fyi

Julie Youngman

From: Chris Dillon (Pres. Pro Tem's Office) [Christopher.Dillon@ncleg.net]
Sent: Monday, April 26, 2010 4:06 PM
To: Myers, Gordon S.
Subject: FW: Dare County Position on the DEIS
Attachments: Dare County, DEIS Position Statement.pdf; Dare County, DEIS Position Statement, Summary.pdf

From: Gary Gross [mailto:garyg@darenc.com]
Sent: Monday, April 26, 2010 04:04 PM
To: Warren Judge
Subject: Dare County Position on the DEIS

Warren Judge asked me to forward to you copies of Dare County's position on the Draft Environmental Impact Statement (DEIS) for the Cape Hatteras National Seashore Recreational Area. Attached is the following –

- Dare County Position Statement
- Summary of Key Position Points

If you have any questions, please let me know. Thank you – Gary



Gary Gross
Project Coordinator
Dare County Public Relations
www.PreserveBeachAccess.org

252-475-5902 office
252-216-7029 cell



Dare County DEIS Position Statement Summary



Issue	DEIS Page #	Alternative F Park Service Preferred	Dare County Position
Corridors	xii xviii 468	Corridors are only allowed in ML-2 portions of SMA's and are subject to resource closures at any time	<p>Corridors are a vital tool in providing access while managing resources. They provide a small path around temporary resource closures in order to provide access to open area that would otherwise be blocked.</p> <p>Corridors should be permitted throughout the seashore during the entire breeding and nesting season including ML-1 portions of SMA's.</p> <p>These corridors would provide valuable access without impairment or damage to protected resources</p>
Management Buffers	121-127	<p>Buffers (closures) are larger than required by species recovery plans.</p> <p>For example, Piping Plover unfledged chicks, are given a protective buffer of a minimum of 1,000 meters in all directions.</p>	<p>Buffers, or closures, are important management practices for species recovery. However, to have long term benefit for the wildlife and the visiting public, buffers must be based on peer-reviewed science</p> <p>For example, the Piping Plover, a species classified as threatened and not endangered, is given a level of unprecedented protection in Alternative F.</p> <p>A 1,000 meter buffer in all directions represents over 771 acres. The DEIS does not cite any peer-reviewed science in supporting such closure. A more appropriate & effective buffer would be 200 meters</p>
Non-Endangered Birds	121-127	Non-endangered species, such as American Oystercatchers, Least Terns and Colonial Waterbirds are given Pre-Nesting closures and buffers up to 300 meters	<p>Birds that are not listed as endangered should not be afforded the level of protection given to ESA (Endangered Species Act) protected species. Instead of 300 meter buffers for these birds, a more appropriate buffer would be 30 meters</p> <p>Also, all birds in the same ecosystem of the seashore should be counted. This includes all the many birds on the dredge and spoil islands located just yards away and within sight of the seashore.</p>
Turtle Management	125 392-396	DEIS claims North Carolina Wildlife Resources Commission turtle guidelines will be followed.	<p>The National Park Service should consider turtle management practices successfully used in other federal and state areas to achieve nesting success.</p> <p>More proactive measures include relocating nests to more desirable locations, which is routinely and successfully done in other areas.</p>



Dare County DEIS Position Statement



SUMMARY

The Dare County Board of Commissioners strongly supports open and accessible beaches for the Cape Hatteras National Seashore Recreational Area. We believe in open access for everyone consistent with the enabling legislation that created America's first National Seashore.

Our residents and visitors have always been faithful stewards of wildlife. Following in the sacred tradition of the Native Americans, they have consistently demonstrated a reverence for nature and have labored diligently to preserve it for future generations.

We support resource protection for shorebirds and sea turtles based on peer reviewed science. Who better to advocate preservation of area wildlife than the people whose lives and futures are intertwined to the success of each species. For this reason, Dare County is committed to balancing resource protection and providing reasonable access for recreation.

Dare County has identified four (4) major themes which represent the core of our beliefs on the Draft Environmental Impact Statement (DEIS) for the Cape Hatteras National Seashore Recreational Area. By no means are these the only issues worthy of comment, but represent the fundamental principles on which Dare County will comment during the NEPA process. Our remarks will focus primarily on DEIS Alternative F, the one considered by the National Park Service as their preferred alternative.

Finally, Dare County encourages people everywhere to get involved and make public comments on the DEIS. In summarizing our position, we urge you to research the DEIS for yourself, form your own conclusions and then make your own public comments.

Following are the four major themes representing our core beliefs on the DEIS –

- **CORRIDORS** are a vital tool in providing access while managing resources
- **MANAGEMENT BUFFERS** must be based on peer-reviewed science
- **NON-ENDANGERED BIRDS** should not have same protection as if endangered
- **TURTLE MANAGEMENT** would benefit from nest relocation and other practices

The remainder of

DARE COUNTY

DEIS POSITION STATEMENT

was attached to Mr. Dillon's email
but omitted from these comments
for the sake of brevity.

B

MEMORANDUM

TO: Melba McGee,
Office of Legislative and Intergovernmental Affairs

FROM:

DATE: April 12, 2010

SUBJECT: Draft Environmental Impact Statement for the proposed Off-Road Vehicle Management Plan for the Cape Hatteras National Seashore, Dare and Hyde counties, North Carolina

The US Department of the Interior National Park Service (NPS) is proposing an off-road vehicle (ORV) management plan for the Cape Hatteras National Seashore (CHNS) located in Dare and Hyde counties, North Carolina. Comments on the Draft Environmental Impact Statement (DEIS) from the North Carolina Wildlife Resources Commission (Commission) are provided under provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661-667d) and the National Environmental Policy Act (42 U.S.C. 4332(2)(c)).

Beach driving on the CHNS has been managed since the 1970s through various draft or proposed plans, though none of these plans were ever finalized or published as special regulations. The NPS issues the Interim Protected Species Management Strategy in 2006 to provide resource protection guidance until the long-term ORV management plan and regulation could be completed. A Finding of No Significant Impact for the Interim Strategy was issued in July of 2007. Subsequent lawsuits filed on the Interim Strategy resulted in a consent decree in April 2008. This consent decree set court ordered deadlines for completion of an ORV management plan EIS and special regulation.

The CHNS provided numerous recreational opportunities some of which have long been associated with ORV use. In addition to recreational opportunities, the CHNS contains several important and unique habitats formed and maintained by the dynamic environmental processes found along this portion of North Carolina's outer banks. These habitats support numerous listed species including the federally listed piping plover and three species of federally listed sea turtles as well as many other important wildlife species. The NPS is required to protect all of these species as well as the other resources and values of the CHNS.

The NPS is considering six alternatives including two no-action alternatives and four ORV management alternatives that provide varying degrees of ORV access and natural resource protection. The action alternatives include the designation of ORV routes, some year-round, some seasonal, and some areas permanently closed to ORV use. Night driving restrictions are proposed and correspond with the sea turtle nesting season, May 1 through November 15. ORV permits would be required and would include a fee and educational requirements. New ORV access points and parking areas would be established and overcrowding will be addressed.

The Commission has reviewed the proposed alternatives and could agree with the NPS preferred alternative (Alternative F) provided the following items are included in the alternative or are addressed in the Final EIS:

1. We are concerned that Alternative F allows daytime beach driving during the sea turtle nesting season up until one hour after sunset. This means ORVs could be driving on the beach for 1/2 hr. after dark when sea turtles are trying to nest. Night driving is also allowed all night after Sept. 15th if a night driving permit is acquired. Nearly half of turtle nests have not hatched by this date, and since some nests (~8%) go undetected altogether, there is significant opportunity for ORVs to run over hatchlings or even late-season nesting adults. The CHNS has agreed to only allow this fall season night driving in areas of low occurrence of sea turtle nesting.
2. The ORV densities proposed for CHNS may be too high. There will be no limit on the number of driving permits issued in any given year. We realize that it is impossible to predict the number of vehicles that will show-up on any given day. However, the maximum density at any one time is set at one vehicle for every 20 ft. of open beach and could be even higher at Cape Point (400 vehicles/mi.). This density would allow little foraging opportunity for birds in the surf zone throughout the area of beach driving. More information should be provided regarding available bird foraging habitat at these densities and should be compared to available habitat at lower vehicle densities.
3. Alternative F prohibits kite flying within or above all bird closures. We recommend kites be prohibited within 300 yards of bird closures.
4. There are 3 "floating" non-breeding season beach closures planned for the seashore. One is 1.5 mi. between ramp 23 and ramp 34. One is 1.0 mi. between ramp 72 and Ocracoke Inlet and one is 1.5 mi. on South beach between ramp 45 and 49. We recommend that the South beach non-breeding season closure be 3.0 mi. instead of 1.5. This will allow additional foraging area in an important foraging location on CHNS. Vehicles could still drive the new proposed inter-dune road. Pedestrians would still be allowed in these areas.
5. The reaction of beach nesting birds to headlights and other disturbances that might be caused by ORV access should be studied. This is primarily a concern in mid to late April after the birds have started nesting but before night driving is halted for the sea turtle nesting season but is also a concern during the 1/2 hour of darkness in the evening when driving occurs through May, June, July and August. We recommend either a) a research project to determine how beach nesting birds react to headlights or other human related activities at night and if these supposed disturbances have negative effect on the birds or b) additional monitoring at night with a plan to expand buffers if nesting birds are being flushed in the darkness due to beach driving activities.
6. The intent of when bird nesting closures outside pre-nesting areas will be removed if birds do not initially nest is unclear. The DEIS states "closures will be removed if no

breeding activity is observed for a 2-week period, or when associated breeding activity has concluded". We recommend replacing the phrase "breeding activity" with "breeding behavior", to make it clear that nesting area closures will not be removed while the birds are still courting and scraping. Some birds will court and scrape for weeks before egg laying begins.

7. Species to be surveyed during the non-breeding season are piping plovers, Wilson's plovers, American oystercatchers, red knots and some colonial nesting birds. Since colonial nesting birds do not depend on the land portion of the seashore for foraging, we recommend deleting these from the list of surveyed birds during the non-breeding season. However, there are many shorebirds that do depend on the seashore during this time period for foraging, so if bird surveyors have the expertise to differentiate shorebirds, we suggest they count all shorebirds using the International Shorebird Survey (ISS) protocol.
8. For consistency, we recommend making the start dates of ORV driving restrictions in the villages consistent with the rest of the beaches (i.e. ORV restrictions start 01 May everywhere).
9. Alternative F states that sea turtle patrols will be completed in the morning by approximately 30 minutes after sunrise. This will only be possible if sufficient personnel are dedicated to the daily morning patrols so that the monitoring can be successfully completed by the time stated. A discussion of the staff resources necessary to complete this task within the stated 30 minutes should be included in the Final EIS.
10. We recommend no beach fires be allowed at night from 01 May through 15 November. Nesting sea turtles or hatchlings may be attracted to fires and could be injured or killed.
11. WRC biologists have worked with CHNS biologists to verify the sea turtle data in their database vs. the Commission sea turtle database. As a result, we were able to correct the annual values for 4 years that were presented in Figure 13 on page 214. We recommend that the following corrected values be incorporated into the Final EIS:
 - 2002 = 94 loggerhead nests total
 - 2005 = 63 loggerhead nests total
 - 2007 = 73 loggerhead nests total
 - 2009 = 101 loggerhead nests total

The Commission supports the NPS in its attempt to implement an ORV management plan that balances the protection of the diverse wildlife and habitats on the CHNS with the recreational use of this popular destination. We appreciate the opportunity to provide input on the DEIS for this project. If you have questions or need additional information please contact XXXX at (XXX) XXX-XXXX.

cc: David Allen, NCWRC
Dr. Matthew Godfrey, NCWRC
Kevin Hart, NCDMF

, USFWS
, NOAA Fisheries



Julie Youngman

From: Deaton, Shannon L.
Sent: Thursday, April 15, 2010 3:11 PM
To: Godfrey, Matthew H; Cox, David R.; Allen, David H; Martin, Mallory G.; Curry, Robert L.; Cobb, David T.
Cc: McGrath, Chris; Sumner, Perry W.
Subject: RE: Draft Cape Hatteras ORV DEIS comments
Attachments: Draft CHNS ORV DEIS_4-12-10-MHG.DOC; Statute 113-334 to 336_NWAC.doc

David Cox -

Mallory has requested a conference call before finalizing this letter.

Please organize a conference call with Mallory, you, me, Godfrey, Allen, and whoever else is available for Monday morning to have this discussion. I looked at Mal, Bob, Cobb and Perry's calendar. Cobb is the only one that looks to have something scheduled in the morning.

Attached you will find the letter that Godfrey added comments to along with #1 and #2 being highlighted. Most of the discussions on this conference call will be centered on these two bullets. I added my comments and edits to this letter as well.

Additionally, Mallory has requested that we include a statement regarding state listed versus federally listed species, especially the responsible agency and WRC mandate for state listed species (see attached GS113-334 language). This statement could reference American oystercatchers and the advantages of talking to WRC regarding the appropriate management techniques for state listed species.

Thanks,
Shannon

From: Godfrey, Matthew H
Sent: Tuesday, April 13, 2010 9:47 AM
To: Cox, David R.; Allen, David H; Martin, Mallory G.; Curry, Robert L.; Cobb, David T.; Deaton, Shannon L.
Cc: McGrath, Chris; Sumner, Perry W.
Subject: RE: Draft Cape Hatteras ORV DEIS comments

Hi David,

I have two comments/suggestions that I have marked directly on the .doc:

Five (not three) species of federally listed species of sea turtle occur in CHNS, although only three have been documented to nest there.

After discussions with David Allen, I agree with him that Comment 8 can be deleted because it is not relevant to nighttime driving.

Thanks,
Matthew

From: Cox, David R.
Sent: Monday, April 12, 2010 2:43 PM
To: Allen, David H; Godfrey, Matthew H; Martin, Mallory G.; Curry, Robert L.; Cobb, David T.; Deaton, Shannon L.
Cc: McGrath, Chris; Sumner, Perry W.
Subject: Draft Cape Hatteras ORV DEIS comments
Importance: High

Here is the first shot at this. Please review ASAP and send me the changes. - David

David R. Cox, Technical Guidance Supervisor
NC Wildlife Resources Commission
1142 Interstate 85 Service Rd.
Creedmoor, NC 27522
Phone: 919-528-9886 ex.1
Fax: 919-528-9839
david.cox@ncwildlife.org

Get NC Wildlife Update -- news including season dates, bag limits, legislative updates and more -- delivered to your
Inbox from the N.C. Wildlife Resources Commission.

Email correspondence to and from this sender is subject to the N.C. Public Records Law and may be disclosed to third parties.

MEMORANDUM

TO: Melba McGee,
Office of Legislative and Intergovernmental Affairs

FROM:

DATE: April 12, 2010

SUBJECT: Draft Environmental Impact Statement for the proposed Off-Road Vehicle Management Plan for the Cape Hatteras National Seashore, Dare and Hyde counties, North Carolina

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Beach driving on the CHNS has been managed since the 1970s through various draft or proposed plans, though none of these plans were ever finalized or published as special regulations. The NPS issued the Interim Protected Species Management Strategy in 2006 to provide resource protection guidance until the long-term ORV management plan and regulation could be completed. A Finding of No Significant Impact for the Interim Strategy was issued in July of 2007. Subsequent lawsuits filed on the Interim Strategy resulted in a consent decree in April 2008. This consent decree set court ordered deadlines for completion of an ORV management plan EIS and special regulation.

The CHNS provided numerous recreational opportunities some of which have long been associated with ORV use. In addition to recreational opportunities, the CHNS contains several important and unique habitats formed and maintained by the dynamic environmental processes found along this portion of North Carolina's outer banks. These habitats support numerous listed species including the federally listed piping plover and three five species of federally listed sea turtles, three of which nest on the beaches within CHNS, as well as many other important wildlife species. The NPS is required to protect all of these species as well as the other resources and values of the CHNS.

The NPS is considering six alternatives including two no-action alternatives and four ORV management alternatives that provide varying degrees of ORV access and natural resource protection. The action alternatives include the designation of ORV routes, including some year-round, some seasonal, and some areas permanently closed to ORV use. Night driving restrictions are proposed and correspond with the sea turtle nesting season, May 1 through November 15. ORV permits would be required and would include a fee and educational

Comment [MSOffice1]: Two more (hawksbill and Kemp's ridley sea turtles) occur in the waters of Cape Hatteras and have been documented as stranded turtles on seashore beaches

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Comment [d2]: Not clear to me

requirements. New ORV access points and parking areas will be established and overcrowding will be addressed which will address overcrowding.

The Commission has reviewed the proposed alternatives and could agree with the NPS preferred alternative (Alternative F) provided the following items are included in the alternative or are addressed in the Final EIS:

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1. We are concerned that Alternative F allows daytime beach driving during the sea turtle nesting season up until one hour after sunset. This allowance means ORVs could be driving on the beach for 1/2 hr. after dark when sea turtles are trying to nest. Night driving is also allowed all night after Sept. 15th if a night driving permit is acquired. Nearly half of turtle nests have not hatched by this date, and since some nests (~8%) go undetected altogether, there is significant opportunity for ORVs to run over hatchlings or even late-season nesting adults. The CHNS has agreed to only allow this fall season night driving in areas of low occurrence of sea turtle nesting.

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Comment [d3]: When?

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2. The ORV densities proposed for CHNS may be too high. There will be no limit on the number of driving permits issued in any given year. We realize that it is impossible to predict the number of vehicles that will show-up on any given day. However, the maximum density at any one time is set at one vehicle for every 20 ft. of open beach and could be even higher at Cape Point (400 vehicles/mi.). This density would allow little foraging opportunity for birds in the surf zone throughout the area of beach driving. More information should be provided regarding available bird foraging habitat at these densities and should be compared to available habitat at lower vehicle densities.

Comment [d4]: Is there any contact procedure that could be in place if a hatchling is discovered dead/alive by a driver so that the nest could be located to ensure that it has been accounted for? This may ensure that this undiscovered number remains at 8% and does not continue to increase.

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3. Alternative F prohibits kite flying within or above all bird closures. We recommend kites be prohibited within 300 yards of bird closures.

Comment [d5]: Do we have any recommendations for them instead of asking for more information? Pick a time period where we prefer that this carrying capacity be lower like a high foraging time period? Or a peak season for forage to deposit?

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4. There are 3 "floating" non-breeding season beach closures planned for the seashore. One is 1.5 mi. between ramp 23 and ramp 34. One is 1.0 mi. between ramp 72 and Ocracoke Inlet and one is 1.5 mi. on South beach between ramp 45 and 49. We recommend that the South beach non-breeding season closure be 3.0 mi. instead of 1.5. This change will allow additional foraging area in an important foraging location on CHNS. Vehicles could still drive the new proposed inter-dune road. Pedestrians would still be allowed in these areas.

5. The reaction of beach nesting birds to headlights and other disturbances that might be caused by ORV access should be studied. This activity is primarily a concern for birds in mid to late April after the birds have started nesting but before night driving is halted for the sea turtle nesting season but is also a concern during the 1/2 hour of darkness in the evening when driving occurs through May, June, July and August. We recommend either a) a research project to determine how beach nesting birds react to headlights or other human related activities at night and if these supposed disturbances have a negative effect on the birds or b) additional monitoring at night with a plan to expand buffers if nesting birds are being flushed in the darkness due to beach driving activities.

6. ~~The intent of The DEIS notes that if a bird does not initially nest outside the pre-nesting area then the closure will be removed. The intent of this management plan is unclear when bird nesting closures outside pre-nesting areas will be removed if birds do not initially nest is unclear. The DEIS specifically states "closures will be removed if no breeding activity is observed for a 2-week period, or when associated breeding activity has concluded". We recommend replacing the phrase with "breeding activity" with "breeding behavior", to make it clear that nesting area closures will not be removed while the birds are still courting and scraping. Some birds will court and scrape for weeks before egg laying begins.~~
7. Species to be surveyed during the non-breeding season are piping plovers, Wilson's plovers, American oystercatchers, red knots and some colonial nesting birds. Since colonial nesting birds do not depend on the land portion of the seashore for foraging, we recommend deleting these from the list of surveyed birds during the non-breeding season. However, there are many shorebirds that do depend on the seashore during this time period for foraging, so if bird surveyors have the expertise to differentiate shorebirds, we suggest they count all shorebirds using the International Shorebird Survey (ISS) protocol.
8. ~~For consistency, we recommend making the start dates of ORV driving restrictions in the villages consistent with the rest of the beaches (i.e. ORV restrictions start 01 May everywhere).~~
- 9.8. Alternative F states that sea turtle patrols will be completed in the morning by approximately 30 minutes after sunrise. This plan will only be possible if sufficient personnel are dedicated to the daily morning patrols so that the monitoring can be successfully completed by the time stated. A discussion of the staff resources necessary to complete this task within the stated 30 minutes should be included in the Final EIS.
- 10.9. We recommend no beach fires be allowed at night from 01 May through 15 November. Nesting sea turtles or hatchlings may be attracted to fires and could be injured or killed.
- 11.10. WRC biologists have worked with CHNS biologists to verify the sea turtle data in their database vs. the Commission sea turtle database. As a result, we were able to correct the annual values for 4 years that were presented in Figure 13 on page 214. We recommend that the following corrected values be incorporated into the Final EIS:
- 2002 = 94 loggerhead nests total
 - 2005 = 63 loggerhead nests total
 - 2007 = 73 loggerhead nests total
 - 2009 = 101 loggerhead nests total
- 12.11. The DEIS indicates that the NPS will conduct a systematic review of the ORV and species management measures every 5 years. WRC requests that this review allow for agency input.

Comment [MSOffice6]: Based on discussions with David Allen, I agree that this comment is not relevant and should be deleted

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The Commission supports the NPS in its attempt to implement an ORV management plan that balances the protection of the diverse wildlife and habitats on the CHNS with the recreational use of this popular destination. We appreciate the opportunity to provide input on the DEIS for this project. If you have questions or need additional information please contact XXXX at (XXX) XXX-XXXX.

cc: David Allen, NCWRC
Dr. Matthew Godfrey, NCWRC
Kevin Hart, NCDMF
, USFWS
, NOAA Fisheries

DRAFT

Julie Youngman

From: Cox, David R.
Sent: Friday, April 16, 2010 10:52 AM
To: Martin, Mallory G.; Allen, David H; Godfrey, Matthew H; Curry, Robert L.; Deaton, Shannon L.; Cobb, David T.
Cc: Sumner, Perry W.; McGrath, Chris
Subject: RE: CHNS Conference call Monday at 9am
Attachments: Draft CHNS ORV DEIS_4-15-10.DOC

Importance: High

Sorry, here is the attachment.

From: Cox, David R.
Sent: Friday, April 16, 2010 10:51 AM
To: Martin, Mallory G.; Allen, David H; Godfrey, Matthew H; Curry, Robert L.; Deaton, Shannon L.; Cobb, David T.
Cc: Sumner, Perry W.; McGrath, Chris
Subject: CHNS Conference call Monday at 9am
Importance: High

Folks,

I have heard from several of you and Monday morning works best. I propose we start at 9am. Below is the conference call instructions:

Conference line:

1. Dial the toll free number

1 866 311 1127
2. Enter the Meeting Number: *3065177*
(Be sure to enter the * star key before and after the Meeting Number)
3. If you are the Moderator, enter your *PIN*
(Be sure to enter the * star key before and after your PIN)

If you are not the Moderation, listen to music until the moderator joins.

Also David and Matt please look at this draft of the comments with your changes incorporated. There are some questions/comments I left because I need your help to answer. Thanks - David

David R. Cox, Technical Guidance Supervisor
NC Wildlife Resources Commission
1142 Interstate 85 Service Rd.
Creedmoor, NC 27522
Phone: 919-528-9886 ex.1
Fax: 919-528-9839
david.cox@ncwildlife.org

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MEMORANDUM

TO: Melba McGee,
Office of Legislative and Intergovernmental Affairs

FROM:

DATE: April 12, 2010

SUBJECT: Draft Environmental Impact Statement for the proposed Off-Road Vehicle Management Plan for the Cape Hatteras National Seashore, Dare and Hyde counties, North Carolina

The US Department of the Interior National Park Service (NPS) is proposing an off-road vehicle (ORV) management plan for the Cape Hatteras National Seashore (CHNS) located in Dare and Hyde counties, North Carolina. Comments on the Draft Environmental Impact Statement (DEIS) from the North Carolina Wildlife Resources Commission (Commission) are provided under provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661-667d) and the National Environmental Policy Act (42 U.S.C. 4332(2)(c)).

Beach driving on the CHNS has been managed since the 1970s through various draft or proposed plans, though none of these plans were ever finalized or published as special regulations. The NPS issued the Interim Protected Species Management Strategy in 2006 to provide resource protection guidance until the long-term ORV management plan and regulation could be completed. A Finding of No Significant Impact for the Interim Strategy was issued in July of 2007. Subsequent lawsuits filed on the Interim Strategy resulted in a consent decree in April 2008. This consent decree set court ordered deadlines for completion of an ORV management plan EIS and special regulation.

The CHNS provided numerous recreational opportunities some of which have long been associated with ORV use. In addition to recreational opportunities, the CHNS contains several important and unique habitats formed and maintained by the dynamic environmental processes found along this portion of North Carolina's outer banks. These habitats support numerous listed species including the federally listed piping plover and five species of federally listed sea turtles, three of which nest on the beaches within CHNS. State listed species such as the American oystercatcher also nest and forage on CHNS. The Commission has statutory responsibility for listing and the protection of state listed animals (G.S. 113-334). Conservation measures to protect state listed animals should be in coordination with Commission biologists. The NPS is required to protect all of these species as well as the cultural, recreational and aesthetic values of the CHNS.

The NPS is considering six alternatives including two no-action alternatives and four ORV management alternatives that provide varying degrees of ORV access and natural resource protection. The action alternatives include the designation of ORV routes, including some year-

round, some seasonal, and some areas permanently closed to ORV use. Night driving restrictions are proposed and correspond with the sea turtle nesting season, May 1 through November 15. ORV permits would be required and would include a fee and educational requirements. New ORV access points and parking areas would be established and vehicle densities will be restricted to address overcrowding.

The Commission has reviewed the proposed alternatives and could agree with the NPS preferred alternative (Alternative F) provided the following items are included in the alternative or are addressed in the Final EIS:

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1. We are concerned that Alternative F allows daytime beach driving during the sea turtle nesting season up until one hour after sunset. This allowance means ORVs could be driving on the beach for 1/2 hr. after dark when sea turtles are trying to nest. Night driving is also allowed all night after Sept. 15th if a night driving permit is acquired. Nearly half of turtle nests have not hatched by this date, and since some nests (~8%) go undetected altogether, there is significant opportunity for ORVs to run over hatchlings or even late-season nesting adults. The CHNS has agreed to only allow this fall season night driving in areas of low occurrence of sea turtle nesting.

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Comment [d1]: When?

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2. The ORV densities proposed for CHNS may be too high. There will be no limit on the number of driving permits issued in any given year. We realize that it is impossible to predict the number of vehicles that will show-up on any given day. However, the maximum density at any one time is set at one vehicle for every 20 ft. of open beach and could be even higher at Cape Point (400 vehicles/mi.). This density would allow little foraging opportunity for birds in the surf zone throughout the area of beach driving. More information should be provided regarding available bird foraging habitat at these densities and should be compared to available habitat at lower vehicle densities.

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Comment [d2]: Is there any contact procedure that could be in place if a hatchling is discovered dead/alive by a driver so that the nest could be located to ensure that it has been accounted for? This may ensure that this undiscovered number remains at 8% and does not continue to increase.

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3. Alternative F prohibits kite flying within or above all bird closures. We recommend kites be prohibited within 300 yards of bird closures.

Comment [d3]: Do we have any recommendations for them instead of asking for more information? Pick a time period where we prefer that this carrying capacity be lower like a high foraging time period? Or a peak season for forage to deposit?

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4. There are 3 "floating" non-breeding season beach closures planned for the seashore. One is 1.5 mi. between ramp 23 and ramp 34. One is 1.0 mi. between ramp 72 and Ocracoke Inlet and one is 1.5 mi. on South beach between ramp 45 and 49. We recommend that the South beach non-breeding season closure be 3.0 mi. instead of 1.5. This change will allow additional foraging area in an important foraging location on CHNS. Vehicles could still drive the new proposed inter-dune road. Pedestrians would still be allowed in these areas.

5. The reaction of beach nesting birds to headlights and other disturbances that might be caused by ORV access should be studied. This activity is primarily a concern for birds in mid to late April after the birds have started nesting but before night driving is halted for the sea turtle nesting season but is also a concern during the 1/2 hour of darkness in the evening when driving occurs through May, June, July and August. We recommend either a) a research project to determine how beach nesting birds react to headlights or other human related activities at night and if these supposed disturbances have a negative effect

on the birds or b) additional monitoring at night with a plan to expand buffers if nesting birds are being flushed in the darkness due to beach driving activities.

6. ~~The intent of The DEIS notes that if a bird does not initially nest outside the pre-nesting area then the closure will be removed. The intent of this management plan is unclear when bird nesting closures outside pre-nesting areas will be removed if birds do not initially nest is unclear.~~ The DEIS specifically states "closures will be removed if no breeding activity is observed for a 2-week period, or when associated breeding activity has concluded". We recommend replacing the phrase with "breeding activity" with "breeding behavior", to make it clear that nesting area closures will not be removed while the birds are still courting and scraping. Some birds will court and scrape for weeks before egg laying begins.
7. Species to be surveyed during the non-breeding season are piping plovers, Wilson's plovers, American oystercatchers, red knots and some colonial nesting birds. Since colonial nesting birds do not depend on the land portion of the seashore for foraging, we recommend deleting these from the list of surveyed birds during the non-breeding season. However, there are many shorebirds that do depend on the seashore during this time period for foraging, so if bird surveyors have the expertise to differentiate shorebirds, we suggest they count all shorebirds using the International Shorebird Survey (ISS) protocol.
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2007 = 73 loggerhead nests total
2009 = 101 loggerhead nests total
10. The DEIS indicates that the NPS will conduct a systematic review of the ORV and species management measures every 5 years. WRC requests that this review allow for agency input.

The Commission supports the NPS in its attempt to implement an ORV management plan that balances the protection of the diverse wildlife and habitats on the CHNS with the recreational use of this popular destination. We appreciate the opportunity to provide input on the DEIS for this project. If you have questions or need additional information please contact XXXX at (XXX) XXX-XXXX.

cc: David Allen, NCWRC
Dr. Matthew Godfrey, NCWRC

Kevin Hart, NCDMF
, USFWS
, NOAA Fisheries



Julie Youngman

From: Cox, David R.
Sent: Monday, April 19, 2010 11:24 AM
To: Martin, Mallory G.; Curry, Robert L.; Deaton, Shannon L.; Cobb, David T.; Allen, David H; Godfrey, Matthew H
Cc: McGrath, Chris; Sumner, Perry W.
Subject: Revised CHNS DEIS comments
Attachments: Draft CHNS ORV DEIS_4-19-10.DOC

Importance: High

Here is a draft with the changes we discussed during the conference call. I made an attempt to clarify the species of concern issue. Feel free to edit as necessary. - David

David R. Cox, Technical Guidance Supervisor
NC Wildlife Resources Commission
1142 Interstate 85 Service Rd.
Creedmoor, NC 27522
Phone: 919-528-9886 ex.1
Fax: 919-528-9839
david.cox@ncwildlife.org

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MEMORANDUM

TO: Melba McGee,
Office of Legislative and Intergovernmental Affairs

FROM:

DATE: April 21, 2010

SUBJECT: Draft Environmental Impact Statement for the proposed Off-Road Vehicle Management Plan for the Cape Hatteras National Seashore, Dare and Hyde counties, North Carolina

The US Department of the Interior National Park Service (NPS) is proposing an off-road vehicle (ORV) management plan for the Cape Hatteras National Seashore (CHNS) located in Dare and Hyde counties, North Carolina. Comments on the Draft Environmental Impact Statement (DEIS) from the North Carolina Wildlife Resources Commission (Commission) are provided under provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661-667d) and the National Environmental Policy Act (42 U.S.C. 4332(2)(c)).

Beach driving on the CHNS has been managed since the 1970s through various draft or proposed plans, though none of these plans were ever finalized or published as special regulations. The NPS issued the Interim Protected Species Management Strategy in 2006 to provide resource protection guidance until the long-term ORV management plan and regulation could be completed. A Finding of No Significant Impact for the Interim Strategy was issued in July of 2007. Subsequent lawsuits filed on the Interim Strategy resulted in a consent decree in April 2008. This consent decree set court ordered deadlines for completion of an ORV management plan EIS and special regulation.

The CHNS provided provides numerous recreational opportunities some of which have long been associated with ORV use. In addition to recreational opportunities, the CHNS contains features several important and unique habitats formed and maintained by the dynamic environmental processes found along this portion of North Carolina's outer banks. These habitats support numerous listed species including the federally listed piping plover and five species of federally listed sea turtles, three of which nest on the beaches within CHNS. Several state listed species also nest and forage on CHNS. The Commission has statutory responsibility for listing and the protection of state listed animals (G.S. 113-334). On pages 419 of the DEIS it is stated "The NPS Management Policies 2006 state that NPS will inventory, monitor, and manage state and locally listed species in a manner similar to its treatment of federally listed species to the greatest extent possible." The Commission would like to note that state listing under G.S. 113-334 does not offer species of concern any specific protection under state or federal law and should not be confused with federal listing under the Endangered Species Act. Furthermore, NPS should discuss this distinction in the Final EIS. Conservation measures to

Comment [WRC1]: I added "species of concern" here but it could just be species if we want to be sure to exclude state endangered and treated.

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protect state listed animals should be in coordination with Commission biologists. The NPS is required to protect all of these species as well CHNS.

The NPS is considering six alternatives including two no-action alternatives and four ORV management alternatives that provide varying degrees of ORV access and natural resource protection. The action alternatives include the designation of ORV routes, including some year-round, some seasonal, and some areas permanently closed to ORV use. Night driving restrictions are proposed and correspond with the sea turtle nesting season, May 1 through November 15. ORV permits would be required and would include a fee and educational requirements. New ORV access points and parking areas would be established and vehicle densities will be restricted to address overcrowding.

The Commission has reviewed the proposed alternatives and supports the NPS preferred alternative (Alternative F). We request the following be addressed in the provided the following items are included in the alternative or are addressed in the Final EIS:

1. We are concerned that Alternative F allows daytime beach driving during the sea turtle nesting season up until one hour after sunset. This allowance means ORVs could be driving on the beach for 1/2 hr. after dark when sea turtles are trying to nest. Night driving is also allowed all night after Sept. 15th if a night driving permit is acquired. Nearly half of turtle nests have not hatched by this date, and since some nests (~8%) go undetected altogether, there is significant opportunity for ORVs to run over hatchlings or even late season nesting adults. The CHNS has agreed to only allow this fall season night driving in areas of low occurrence of sea turtle nesting.
2. The ORV densities proposed for CHNS may be too high. There will be no limit on the number of driving permits issued in any given year. We realize that it is impossible to predict the number of vehicles that will show-up on any given day. However, the maximum density at any one time is set at one vehicle for every 20 ft. of open beach and could be even higher at Cape Point (400 vehicles/mi.). This density would allow little foraging opportunity for birds in the surf zone throughout the area of beach driving. More information should be provided regarding available bird foraging habitat at these densities and should be compared to available habitat at lower vehicle densities.
3. Alternative F prohibits kite flying within or above all bird closures. We recommend kites be prohibited within 300 yards of bird closures.
4. There are 3 "floating" non-breeding season beach closures planned for the seashore. One is 1.5 mi. between ramp 23 and ramp 34. One is 1.0 mi. between ramp 72 and Ocracoke Inlet and one is 1.5 mi. on South beach between ramp 45 and 49. We recommend that the South beach non-breeding season closure be 3.0 mi. instead of 1.5. This change will allow additional foraging area in an important foraging location on CHNS. Vehicles could still drive the new proposed inter-dune road. Pedestrians would still be allowed in these areas.

5. The reaction of beach nesting birds to headlights and other disturbances that might be caused by ORV access should be studied. This activity is primarily a concern for birds in mid to late April after the birds have started nesting but before night driving is halted for the sea turtle nesting season but is also a concern during the 1/2 hour of darkness in the evening when driving occurs through May, June, July and August. We recommend either a) a research project to determine how beach nesting birds react to headlights or other human related activities at night and if these supposed disturbances have a negative effect on the birds or b) additional monitoring at night with a plan to expand buffers if nesting birds are being flushed in the darkness due to beach driving activities.
6. ~~The intent of the DEIS notes that if a bird does not initially nest outside the pre-nesting area then the closure will be removed. The intent of this management plan is unclear when bird nesting closures outside pre-nesting areas will be removed if birds do not initially nest is unclear.~~ The DEIS specifically states "closures will be removed if no breeding activity is observed for a 2-week period, or when associated breeding activity has concluded". We recommend replacing the phrase with "breeding activity" with "breeding behavior", to make it clear that any nesting area closures will not be removed while the birds are still courting and scraping. Some birds will court and scrape for weeks before egg laying begins.
7. Species to be surveyed during the non-breeding season are piping plovers, Wilson's plovers, American oystercatchers, red knots and some colonial nesting birds. Since colonial nesting birds do not depend on the land portion of the seashore for foraging, we recommend deleting these from the list of surveyed birds during the non-breeding season. However, there are many shorebirds that do depend on the seashore during this time period for foraging, so if bird surveyors have the expertise to differentiate shorebirds, we suggest they count all shorebirds using the International Shorebird Survey (ISS) protocol.
8. We recommend no beach fires be allowed ~~at night~~ between sunset and sunrise from 01 May through 15 November. Nesting sea turtles or hatchlings may be attracted to fires and could be injured or killed.
9. WRC biologists have worked with CHNS biologists to verify the sea turtle data in their database vs. the Commission sea turtle database. As a result, we were able to correct the annual values for 4 years that were presented in Figure 13 on page 214. We recommend that the following corrected values be incorporated into the Final EIS:
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2007 = 73 loggerhead nests total
2009 = 101 loggerhead nests total
10. The DEIS indicates that the NPS will conduct a systematic review of the ORV and species management measures every 5 years. WRC requests that this review allow for agency input.

The Commission supports the NPS in its attempt to implement an ORV management plan that balances the protection of the diverse wildlife and habitats on the CHNS with the recreational use of this popular destination. We appreciate the opportunity to provide input on the DEIS for this project. If you have questions or need additional information please contact XXXX at (XXX) XXX-XXXX.

cc: David Allen, NCWRC
Dr. Matthew Godfrey, NCWRC
Kevin Hart, NCDMF
, USFWS
, NOAA Fisheries

Julie Youngman

From: Myers, Gordon S.
Sent: Thursday, May 06, 2010 3:50 PM
To: 'Chris Dillon (Pres. Pro Tem's Office)'
Subject: CHNS DEIS
Attachments: CHNS DEIS WRC Comments gsm FINAL.pdf

FYI- I am seeking one more round of staff input, but I think this will be very close to the final document.

gsm

Julie Youngman

From: rwhite@mindspring.com
Sent: Friday, March 05, 2010 8:17 PM
To: Myers, Gordon S.
Subject: RE: Cape Hatteras Off-Road Vehicle Mgmt Plan EIS is out for review

Gordon, thanks for sharing. I hope where we can make a difference is addressing reasonable buffer zones for these birds.

----- Original Message -----

From: Myers, Gordon S.
To: Martin, Mallory G.; Cobb, David T.; Clapp, Sarah; Deaton, Shannon L.; Curry, Robert L.
Cc: White, Ray; stephenwindham@aol.com; Bennett, Chuck
Sent: 3/5/2010 6:59:02 PM
Subject: RE: Cape Hatteras Off-Road Vehicle Mgmt Plan EIS is out for review

Here is a link to the EIS documents (very large document 600+ pages): One immediate issue that we will hear more about: American Oystercatcher nesting activity buffers... 300 meters in some cases...

<http://parkplanning.nps.gov/document.cfm?parkID=358&projectId=10641&documentID=32596>

Mallory,

We need to set up a review team comprised of Technical Guidance staff and Raleigh Office management.

Thanks,
gsm

Gordon Myers
Executive Director
North Carolina Wildlife Resources Commission
1701 Mail Service Center
Raleigh, NC 27699-1701
Ph: 919.707.0151
Fax: 919.707.0020
gordon.myers@ncwildlife.org
www.ncwildlife.org

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From: Martin, Mallory G.
Sent: Friday, March 05, 2010 5:27 PM
To: Myers, Gordon S.
Subject: FW: Cape Hatteras Off-Road Vehicle Mgmt Plan EIS is out for review
Importance: High

FYI.

Mallory G. Martin
Chief Deputy Director
North Carolina Wildlife Resources Commission
1701 Mail Service Center
Raleigh, NC 27699-1701
Ph: 919.707.0016
Fax: 919.707.0020

Get [N.C. Wildlife Update](#) -- news including season dates, bag limits, legislative updates and more -- delivered to your Inbox from the N.C. Wildlife Resources Commission.

From: Deaton, Shannon L.

Sent: Friday, March 05, 2010 10:43 AM

To: Curry, Robert L.; Martin, Mallory G.

Cc: Sumner, Perry W.; Cox, David R.

Subject: Cape Hatteras Off-Road Vehicle Mgmt Plan EIS is out for review

Importance: High

Just letting you know that the Cape Hatteras EIS for Off-Road Vehicle Mgmt Plan is out for agency review now. Please advise if there is anything Technical Guidance needs to know before preparing staff comments.

Looks like written comments are due early April and then public hearings will be held.

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Julie Youngman

From: McGrath, Chris
Sent: Tuesday, May 25, 2010 8:10 AM
To: Cobb, David T.; Sumner, Perry W.
Cc: Allen, David H; Godfrey, Matthew H
Subject: Comments on WRC comments on CAHA DEIS

Regarding the Cape Hatteras DEIS letter sent by Director Myers, I do feel compelled to comment upon a few things. The implications of some of the statements made in the letter, and the omission of numerous issues raised by staff could reach far beyond Cape Hatteras and affect the way this agency both responds to development projects, and the way that other agencies/organizations view the input of WRC.

#1 in the letter:

I would reiterate what I said previously in regards to protection of state listed species:

- 1) NPS has not confused their role, nor the role of state listing. It is their policy that they are following, just as it is the policy of numerous other entities whom we have encouraged to "protect and conserve" state listed species (i.e. USFS, NCDOT, DWQ, etc.).
- 2) We do, in fact, WANT entities to manage for and enhance populations of protected species. Why, because G.S. 113-332 and 333 direct the STATE and specifically the WRC to do so. GS 113-332 says: "...the **best interests of the state REQUIRE that endangered and threatened species of wild animals and wild animals of SPECIAL CONCERN BE PROTECTED and conserved, that their numbers should be enhanced and that conservation techniques be developed for them...**" We are then limited in our ability to affect that on landowners, but it does not change the statutory INTENT. And in GS113-333 Powers and Duties of the Commission, (a) 4 specifically states "**to adopt and implement conservation programs for endangered, threatened, and special concern species and to limit, regulate, or PREVENT THE TAKING, collection, or sale of protected animals.**"

So yes, we cannot force anybody to do anything outside of rulemaking, however, the intent and policy of the statutes is better clarified in 113. 332-333 than in 113-334, and WRC should be promoting the conservation and limiting take of all listed species.

This is very important, because on numerous occasions and through a wide variety of ways, we do make recommendations grounded upon the state law which directs us to conserve and protect all state listed species. Where possible, we push for other organizations to undertake measures for ALL state listed species, including special concern species. If this item is interpreted by other entities as a policy statement that special concern species need not be protected, then we may have difficulty advancing both measures we recommend to conserve them, and larger conservation initiatives for priority habitats. Secondly, this could affect future listing status decisions recommended to WRC. If everybody (including the scientific community) knows that WRC doesn't intend to abide by 113-332 in promoting protection for special concern species, scientific councils and the advisory committee could react by recommending endangered or threatened status for species, because special concern status is meaningless.

Ironically, as I was typing this, I got a phone call from a person (a Mr. Phil Witherspoon, whom I do not know) who asked me specifically if special concern species receive the same protections as endangered and threatened species. For a minute, I froze and thought this was some kind of test. I then told him that they are all "protected" by statute, however the conditions under which take can be authorized may differ by category. Would this be the answer that the director gives? How many different answers might he get from different staff because of what has transpired on the CAHA EIS?

#2 in the letter:

Staff did not advocate this provision, but does think that it could be a management tool to address access issues. However, given uncertainty surrounding the use of pass-through corridors impacts, staff recommended at least a 75 m buffer during incubation and that it be combined with monitoring, neither of which was included in the final letter. It is

important to note that while the references referred to in both this item and item #3 may be technically correct, they refer to specific situations and contexts and the conclusions reached may not be those of either the authors or our staff with the benefit of other literature and/or experience.

#3 in the letter:

This was not an issue proposed or developed by staff. Further, we suspect that the author may have juxtaposed ML1 and ML2. We think that they meant to be arguing for smaller buffers, but in fact they recommend the larger.

#4 in the letter:

We do not necessarily agree that Pea Island National Wildlife Refuge actually has quantified geomorphologic criteria for relocating sea turtle nests, although the Refuge maintains that they comply with the guidance that WRC staff provide on nest relocation. Staff and volunteers working on other beaches in the state, including Cape Hatteras, also follow our guidelines when using relocation as a management tool.

#5 in the letter:

This item and the clarification of number of sea turtle nests in the latter part of #4 are the only parts of earlier staff drafts that were retained in the final letter.

Overall, this final comment letter contained little that was recommended by staff. Items that were recommended by staff that were deleted from the final letter included:

- night/evening driving during the sea turtle nesting season
- vehicle numbers on the beach
- non-breeding season closures
- night driving impacts on beach nesting birds
- removal of bird closures (when do they get removed)
- nighttime beach fires during the turtle nesting season and
- kite flying

While we understand the role of the agency's political leadership in shaping agency comments upon contentious issues, we contend that in large part, the final letter deviates significantly from staff recommendations on conservation measures for natural resources, focuses upon relaxing both our staff recommendations as well as those of the Park Service, ignores issues with the DEIS that the staff recommended changes upon, and may reflect a shift in state policy to protect listed species that may impact a much broader range of agency positions.

We suggest that it will be important for the staff and the leadership of the agency to work towards a mutual understanding of the principles of our statutory responsibility codified in G.S. 113-332.

Chris McGrath, Wildlife Diversity Program Coordinator
Division of Wildlife Management
315 Morgan Branch Road
Leicester, NC 28748
(828) 688-0671
chris.mcgrath@ncwildlife.org

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Julie Youngman

From: Deaton, Shannon L.
Sent: Wednesday, May 12, 2010 12:13 PM
To: Ewing, Todd D.; Sumner, Perry W.
Subject: FYI: Director's public comments on beach management issue

For your reading enjoyment.

From: SCOTT VAN HORN [mailto:vanhornsc@verizon.net]
Sent: Wednesday, May 12, 2010 11:56 AM
To: Bob Curry; Deaton, Shannon L.
Cc: Martin, Mallory G.
Subject: Director's public comments on beach management issue

Hi guys,

The last thing you need is some ex-agency guy passing along comments on the current Director and Commission leadership but my last 6 years as a conservation biologist with the WRC inspired me to care about how the Commission does its business on this and related topics. Gordon's public comments on beach management really got my attention. It wasn't so much about whether the WRC should or should not support existing proposals, it was the tone and substance of his comments that worry me.

When the State Wildlife Grant money was turned over to the NCWRC and similar state agencies around the country, I thought the chance for us to repair our often undeserved reputations as merely hook and bullet agencies had just been handed to us. We had a chance to build and strengthen meaningful bridges to an influential new constituency that would prove useful allies as we tackled systems level natural resource management issues. Many of these same organizations and individuals were the ones that were skeptical when we were handed the SWG dollars; thinking the fox had just been put in charge of the henhouse. I understand that state species of concern is not the same as federally endangered, but while recognizing that fact Gordon had a chance to talk about what it does mean to be state special concern. I'll put aside the agency's obligation to address "protected species" which by WRC definition includes state special concern. The whole point of SWG is to be proactive now to keep things off of the federal lists. He dismissed that obligation out of hand. I understand that the beach access thing is hard for the WRC and the science is probably squishy. It may be that the Commission can't legitimately support the proposed beach management plan but that is supposed to motivate the agency to roll up its sleeves and get to work identifying real solutions and credible compromises. Gordon's language and actions appear to reject his own agency's defined responsibility and it looks like he just threw the philosophical commitment that SWG implies under the bus. Add that to the agency's abdication of any meaningful conversation on the proposed listing of Atlantic sturgeon and a growing number of other "fumbles" and one might conclude the WRC is trying its damndest to prove it isn't a willing advocate for any broad new conservation ethic. Continue to demonstrate that in comment and deed and watch the promise of SWG erode along with the opportunity to reach out and partner with non-traditional conservation groups.

I'm wise enough to realize that Gordon is just one player in formulating WRC policy and his position reflects the influence of others on the Commission or in the state legislature. The WRC's staff understands the stakes and has made really good progress in the last decade embracing a broader role in natural resource conservation in NC. The state's leadership needs to catch up!

Hope you are all well and keep up the good work.

Scott VH

From: [Deaton, Shannon L.](#)
To: [Martin, Mallory G.](#)
Subject: FYI: May 18 EXE meeting notice and draft agenda
Date: Thursday, May 13, 2010 11:57:18 AM
Attachments: [CHNS DEIS FINAL COMMENTS WITH SIGNATURE\[051010\].pdf](#)

From: O'Kane, Kevin [Kevin.O'Kane@weyerhaeuser.com]
Sent: Thursday, May 13, 2010 10:56 AM
To: Ann B Somers ABSOMERS
Cc: Deaton, Shannon L.
Subject: RE: May 18 EXE meeting notice and draft agenda

Ann,

Although I have not talked to Gordon, I have read the attached document. Wow! It could easily take up the whole 3 hours of our meeting to open this up for discussion. We have a full agenda and I already feel that we are behind on items that should be closed at this point. I am going to recommend that we not add it the agenda for next Tuesday. I appreciate your concerns and will make sure that we get them on the table to be addressed as soon as we can after this meeting.

Thank you again for your continued support and energy.

From: Ann B Somers ABSOMERS [<mailto:absomers@uncg.edu>]
Sent: Wednesday, May 12, 2010 10:36 AM
To: Deaton, Shannon L.
Cc: Braswell, Alvin; Bennett, Chuck; McGrath, Chris; Vaughan, Gene E; 'John Connors (john.connors@ncmail.net)'; john.crutchfield@pgnmail.com; O'Kane, Kevin; Sumner, Perry W.; Ewing, Todd D.; Massie, Tom; 'Wm. David Webster (webste@uncw.edu)'; Wilson_Laney@fws.gov
Subject: Re: May 18 EXE meeting notice and draft agenda

Dear Kevin,

This is a request that you invite Gordon Myers to the EXE meeting next Tuesday to discuss the ORV management plan for Hatteras and the news this week about the WRC position on state listed species. If possible, I would also be interested in seeing any documents produced by our nongame biologists related to the discussion such as the recommended buffers for oystercatchers and other species of state concern.

I have a procedural question regarding official positions of the WRC regarding listed species. What is the process by which official positions on such matters are established? Vote of the Commissioners?

We spend much of our time on developing the state lists, so these matters are of concern to the committee.

Thanks very much,

Ann

Ann Berry Somers
310 Science Bldg.
Biology Department, P.O. Box 26170
University of North Carolina at Greensboro
Greensboro, NC 27402-6170
Phone: 336-334-4978

"Deaton, Shannon L."
<shannon.deaton@ncwildlife.org>
04/29/2010 11:23 AM

To "O'Kane, Kevin" <Kevin.O'Kane@weyerhaeuser.com>, "Ann Berry Somers (absomers@uncg.edu)" <absomers@uncg.edu>, "John Crutchfield@pgnmail.com" <john.crutchfield@pgnmail.com>, "John Connors (john.connors@ncmail.net)" <john.connors@ncmail.net>, "Wm. David Webster (webste@uncw.edu)" <webste@uncw.edu>, "Braswell, Alvin" <alvin.braswell@ncdenr.gov>, "Massie, Tom" <tom.massie@ncdenr.gov>, "Vaughan, Gene E" <Gene.Vaughan@duke-energy.com>
cc "Sumner, Perry W." <perry.sumner@ncwildlife.org>, "Ewing, Todd D." <todd.ewing@ncwildlife.org>, "McGrath, Chris" <chris.mcgrath@ncwildlife.org>, "Bennett, Chuck" <cbennett@wbbatly.com>

Subject May 18 EXE meeting notice and draft agenda

NWAC EXE and WRC staff -

I am sending out a meeting notice for the May 18 EXE meeting. This seemed to be the best day for everyone. See attached draft agenda.

There are four items that are very important for us to at least have a plan/discussion on.

1. 2010 Quay Award resolution, framed photo, notification of recipient, inviting friends for July 7 Commission meeting. I need someone to coordinate with to write the resolution sooner than later.
2. Cardinal Foundation recommendations to give Claudette some guidance and timeline
3. Scientific Council reports and how coincide with new regulation schedule
4. NWAC Vacancy and possible posting of position or not

Thanks.

Shannon Deaton

From: Deaton, Shannon L.

Sent: Friday, April 23, 2010 11:50 AM

To: 'Ann Berry Somers (absomers@uncg.edu)'; 'Alvin Braswell (alvin.braswell@ncdenr.gov)'; 'R. Wilson Laney (wilson_laney@fws.gov)'; 'Gene Vaughn (gevaugha@duke-energy.com)'; 'Kevin O'Kane (kevin.okane@weyerhaeuser.com)'; 'Kenneth A. Bridle (kbridle@mindspring.com)'; 'John Connors (john.connors@ncmail.net)'; 'Harry LeGrand (harry.legrand@ncmail.net)'; 'Theodore R. Simons (tsimons@ncsu.edu)'; 'Williams, Logan'; 'Wm. David Webster (webste@uncw.edu)'; 'Claudette B. Weston (cweston@westoninc.com)'; 'Andrew R. Wood (awood@audubon.org)'; 'scott.fletcher@devinetarbell.com'; 'Tom.Massie@ncmail.net'; 'Fred Harris (fahadh92@hotmail.com)'; 'john.crutchfield@pgnmail.com'; 'Hardee, Dewitt'

Cc: Sumner, Perry W.

Subject: Pending agenda items: Nongame Wildlife Advisory Committee meeting (April 22, Raleigh, 10am)

NWAC members-

Kevin has asked that I ensure that each of you know that although the NWAC meeting was cancelled yesterday, there are several items from that agenda that can not wait until the August 2010 business meeting. As a result Kevin is working with WRC staff to plan a mid-May EXE meeting to discuss several items. Some of the membership beyond the EXE will be invited to to this meeting as they will be critical for discussions. One of the items on this agenda will definitely include the Scientific Council reports.

Thank you and make sure you **MARK YOUR CALENDAR FOR AUGUST 19.**

Shannon Deaton

From: Deaton, Shannon L.

Sent: Friday, April 23, 2010 11:12 AM

To: Fred Harris (fahadh92@hotmail.com)

Cc: 'O'Kane, Kevin'

Subject: FW: Attendance?: Nongame Wildlife Advisory Committee meeting (April 22, Raleigh, 10am)

Actually we are planning on having an extra EXE meeting in mid-May to talk specifically about the Scientific Council reports. We are just confirming when David Webster can make it.

From: fred harris [mailto:fahadh92@hotmail.com]

Sent: Friday, April 23, 2010 9:41 AM

To: Deaton, Shannon L.

Subject: FW: Attendance?: Nongame Wildlife Advisory Committee meeting (April 22, Raleigh, 10am)

Hey Shannon

Harry makes a pretty good point here. Any chance of scheduling a special meeting of the committee to get the council reports approved & moving. It sends a bad message to council members if these sit around for any length of time.

Just a thought.

fred

-----Original Message-----

From: Legrand, Harry

Sent: Wednesday, April 21, 2010 7:46 PM

To: Legrand, Harry; Deaton, Shannon L.; 'R. Wilson Laney (wilson_laney@fws.gov)';

'John Connors (john.connors@ncmail.net)'; 'Harry LeGrand

(harry.legrand@ncmail.net)'; Williams, Logan; 'Wm. David Webster (webste@uncw.edu)';

'scott.fletcher@devinetarbell.com'; Massie, Tom; Fred Harris (fahadh92@hotmail.com)

Cc: O'Kane, Kevin; Ken Bridle; Sumner, Perry W.

Subject: RE: Attendance?: Nongame Wildlife Advisory Committee meeting (April 22, Raleigh, 10am)

Well -- I guess I should read all my inbox e-mails before I respond! I responded "yes" after Shannon had already canceled the meeting. I was in the field today and

didn't get to my e-mails until around 7 pm.

One important issue simply cannot wait until August: the status of the Scientific Council reports. We cannot hold the 3 already done (fishes, reptiles and amphibians, and birds), or 5 (mammals and crustaceans), reports another year while the mollusk report moves at a snail's pace (pun intended). If the mollusk list has to wait 5 years until the next round of reports, then so be it. The Scientific Council on Birds, of which I am a member, missed the January 2009 meeting of all councils completely, when many other councils had a first meeting. We didn't meet until around August 2009, when I thought we were going to be woefully late. But, give credit to John Gerwin and Curtis Smalling for getting folks together, and to the gang who wrote species accounts within 1-2 months. We were done by October 2009 -- a two month span.

So -- Shannon, Dave, Kevin, Gene, and others -- keep the NWAC updated with the progress of the reports. The reports may need to be circulated to the Committee members ASAP, so that we can get things moving in the next few weeks.

From: Legrand, Harry [harry.legrand@ncdenr.gov]
Sent: Wednesday, April 21, 2010 7:07 PM
Subject: RE: Attendance?: Nongame Wildlife Advisory Committee meeting (April 22, Raleigh, 10am)

Yes, I'll be there.

From: Deaton, Shannon L. [shannon.deaton@ncwildlife.org]
Sent: Wednesday, April 21, 2010 11:15 AM
To: 'R. Wilson Laney (wilson_laney@fws.gov)'; 'John Connors (john.connors@ncmail.net)'; 'Harry LeGrand (harry.legrand@ncmail.net)'; Williams, Logan; 'Wm. David Webster (webste@uncw.edu)'; 'scott.fletcher@devinetarbell.com'; Massie, Tom; Fred Harris (fahadh92@hotmail.com)
Cc: O'Kane, Kevin; Ken Bridle; Sumner, Perry W.
Subject: Attendance?: Nongame Wildlife Advisory Committee meeting (April 22, Raleigh, 10am)

Wilson, John, Harry, Logan, David, Scott, Tom, and Fred -

To date we have had 7 regrets from Advisory members of inability to attend the meeting tomorrow. So far we have not heard either way from you and wanted to ensure that we would have adequate attendance to have a quorum. Please RSVP either way.

Thank you.

From: Deaton, Shannon L.
Sent: Friday, April 16, 2010 4:55 PM
Subject: Agenda: Nongame Wildlife Advisory Committee meeting (April 22, Raleigh, 10am)

Please find attached the April 22, 2010 agenda and appropriate exhibits for the Nongame Wildlife Advisory Committee business meeting. Please review the cover letter and agenda topics closely before the meeting. Make special note of the following information that is different for this meeting.

• This meeting will be held in the Wildlife Commission room on the 5th floor of our centennial campus office beginning at 10:00am until 2pm. PLEASE NOTE THE TIME CHANGE.

• Lunch will be provided courtesy of Ken Bridle.

Thank you.

Shannon Deaton
Habitat Conservation Program
Division of Inland Fisheries
919/707-0222

From: Deaton, Shannon L.

Sent: Wednesday, April 21, 2010 2:44 PM

To: 'Ann Berry Somers (absomers@uncg.edu)'; 'Alvin Braswell (alvin.braswell@ncdenr.gov)'; 'R. Wilson Laney (wilson_laney@fws.gov)'; 'Gene Vaughn (gevaugha@duke-energy.com)'; 'Kevin O'Kane (kevin.okane@weyerhaeuser.com)'; 'Kenneth A. Bridle (kbridle@mindspring.com)'; 'John Connors (john.connors@ncmail.net)'; 'Harry LeGrand (harry.legrand@ncmail.net)'; 'Theodore R. Simons (tsimons@ncsu.edu)'; 'Williams, Logan'; 'Wm. David Webster (webste@uncw.edu)'; 'Claudette B. Weston (cweston@westoninc.com)'; 'Andrew R. Wood (awood@audubon.org)'; 'scott.fletcher@devinetarbell.com'; 'Tom.Massie@ncmail.net'; 'Fred Harris (fahadh92@hotmail.com)'; 'john.crutchfield@pgnmail.com'

Cc: 'Linda Pearsall'; 'betsy.m.bennett@ncdenr.gov'; 'chuck.manooch@ncdenr.gov'; 'John.Gerwin@ncdenr.gov'; 'jclamp@nccu.edu'; 'wayne.starnes@ncdenr.gov'; 'brian_cole@fws.gov'; 'Pete_Benjamin@fws.gov'; 'jarnell@ec.rr.com'; 'reid@ctnc.org'; 'ncwf_charlotte@mindspring.com'; 'Sumner, Peiry W.'; 'Renzi, Diane K.'; 'Price, Carol S.'; 'Hardee, Dewitt'; 'Bunn, Susan A.'; 'Christopher North'

Subject: Cancelled: Nongame Wildlife Advisory Committee meeting (April 22, Raleigh, 10am)

Please be advised that Nongame Wildlife Advisory Committee business meeting for tomorrow has been cancelled. I am very sorry for the late notice. Please note that this is the first time NWAC has ever cancelled a meeting due to lack of intended attendance. On all accounts, NWAC members have been taxed with additional job responsibilities due to vacancies and economic hardships.

We look forward to meeting you at the **next business meeting on August 19** in WRC headquarters in Raleigh, NC. **Please mark your calendars.**

If you have questions about the Committee, please feel free to contact me to discuss.

Shannon Deaton
919-707-0222

From: Deaton, Shannon L.

Sent: Friday, April 16, 2010 4:54 PM

To: 'Ann Berry Somers (absomers@uncg.edu)'; 'Alvin Braswell (alvin.braswell@ncdenr.gov)'; 'R. Wilson Laney (wilson_laney@fws.gov)'; 'Gene Vaughn (gevaugha@duke-energy.com)'; 'Kevin O'Kane (kevin.okane@weyerhaeuser.com)'; 'Kenneth A. Bridle (kbridle@mindspring.com)'; 'John Connors'

(john.connors@ncmail.net); 'Harry LeGrand (harry.legrand@ncmail.net)'; 'Theodore R. Simons (tsimons@ncsu.edu)'; Williams, Logan; 'Wm. David Webster (webste@uncw.edu)'; 'Claudette B. Weston (cweston@westoninc.com)'; 'Andrew R. Wood (awood@audubon.org)'; 'scott.fletcher@devinetarbell.com'; 'Tom.Massie@ncmail.net'; Fred.Harris (fahadh92@hotmail.com); john.crutchfield@pgnmail.com

Cc: 'Linda.Pearsall'; 'betsy.m.bennett@ncdenr.gov'; 'chuck.manooch@ncdenr.gov'; 'John.Gerwin@ncdenr.gov'; 'jclamp@ncsu.edu'; 'wayne.starnes@ncdenr.gov'; 'brian_cole@fws.gov'; 'Pete_Benjamin@fws.gov'; 'jparnell@ec.rr.com'; reid@ctnc.org; ncwf_charlotte@mindspring.com; chuck.manooch@ncdenr.gov; (north_chris@hotmail.com); Sumner, Perry W.; Renzi, Diane K.; Price, Carol S; Hardee, Dewitt; Bunn, Susan A.

Subject: Agenda: Nongame Wildlife Advisory Committee meeting (April 22, Raleigh, 10am)
Please find attached the April 22, 2010 agenda and appropriate exhibits for the Nongame Wildlife Advisory Committee business meeting. Please review the cover letter and agenda topics closely before the meeting. Make special note of the following information that is different for this meeting.

This meeting will be held in the Wildlife Commission room on the 5th floor of our centennial campus office beginning at 10:00am until 2pm. **PLEASE NOTE THE TIME CHANGE.**

Lunch will be provided courtesy of Ken Bridle.

Thank you.

Shannon Deaton
Habitat Conservation Program
Division of Inland Fisheries
919/707-0222

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E

Julie Youngman

From: Cox, David R.
Sent: Friday, April 16, 2010 10:52 AM
To: Martin, Mallory G.; Allen, David H; Godfrey, Matthew H; Curry, Robert L.; Deaton, Shannon L.; Cobb, David T.
Cc: Sumner, Perry W.; McGrath, Chris
Subject: RE: CHNS Conference call Monday at 9am
Attachments: Draft CHNS ORV DEIS_4-15-10.DOC

Importance: High

Sorry, here is the attachment.

From: Cox, David R.
Sent: Friday, April 16, 2010 10:51 AM
To: Martin, Mallory G.; Allen, David H; Godfrey, Matthew H; Curry, Robert L.; Deaton, Shannon L.; Cobb, David T.
Cc: Sumner, Perry W.; McGrath, Chris
Subject: CHNS Conference call Monday at 9am
Importance: High

Folks,

I have heard from several of you and Monday morning works best. I propose we start at 9am. Below is the conference call instructions:

Conference line:

1. Dial the toll free number
1 866 311 1127
2. Enter the Meeting Number: *3065177*
*(Be sure to enter the * star key before and after the Meeting Number)*
3. If you are the Moderator, enter your *PIN*
*(Be sure to enter the * star key before and after your PIN)*

If you are not the Moderation, listen to music until the moderator joins.

Also David and Matt please look at this draft of the comments with your changes incorporated. There are some questions/comments I left because I need your help to answer. Thanks - David

David R. Cox, Technical Guidance Supervisor
NC Wildlife Resources Commission
1142 Interstate 85 Service Rd.
Creedmoor, NC 27522
Phone: 919-528-9886 ex.1
Fax: 919-528-9839
david.cox@ncwildlife.org

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MEMORANDUM

TO: Melba McGee,
Office of Legislative and Intergovernmental Affairs

FROM:

DATE: April 12, 2010

SUBJECT: Draft Environmental Impact Statement for the proposed Off-Road Vehicle Management Plan for the Cape Hatteras National Seashore, Dare and Hyde counties, North Carolina

The US Department of the Interior National Park Service (NPS) is proposing an off-road vehicle (ORV) management plan for the Cape Hatteras National Seashore (CHNS) located in Dare and Hyde counties, North Carolina. Comments on the Draft Environmental Impact Statement (DEIS) from the North Carolina Wildlife Resources Commission (Commission) are provided under provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661-667d) and the National Environmental Policy Act (42 U.S.C. 4332(2)(c)).

Beach driving on the CHNS has been managed since the 1970s through various draft or proposed plans, though none of these plans were ever finalized or published as special regulations. The NPS issued the Interim Protected Species Management Strategy in 2006 to provide resource protection guidance until the long-term ORV management plan and regulation could be completed. A Finding of No Significant Impact for the Interim Strategy was issued in July of 2007. Subsequent lawsuits filed on the Interim Strategy resulted in a consent decree in April 2008. This consent decree set court ordered deadlines for completion of an ORV management plan EIS and special regulation.

The CHNS provided numerous recreational opportunities some of which have long been associated with ORV use. In addition to recreational opportunities, the CHNS contains several important and unique habitats formed and maintained by the dynamic environmental processes found along this portion of North Carolina's outer banks. These habitats support numerous listed species including the federally listed piping plover and five species of federally listed sea turtles, three of which nest on the beaches within CHNS. State listed species such as the American oystercatcher also nest and forage on CHNS. The Commission has statutory responsibility for listing and the protection of state listed animals (G.S. 113-334). Conservation measures to protect state listed animals should be in coordination with Commission biologists. The NPS is required to protect all of these species as well as the cultural, recreational and aesthetic values of the CHNS.

The NPS is considering six alternatives including two no-action alternatives and four ORV management alternatives that provide varying degrees of ORV access and natural resource protection. The action alternatives include the designation of ORV routes, including some year-

round, some seasonal, and some areas permanently closed to ORV use. Night driving restrictions are proposed and correspond with the sea turtle nesting season, May 1 through November 15. ORV permits would be required and would include a fee and educational requirements. New ORV access points and parking areas would be established and vehicle densities will be restricted to address overcrowding.

The Commission has reviewed the proposed alternatives and could agree with the NPS preferred alternative (Alternative F) provided the following items are included in the alternative or are addressed in the Final EIS:

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1. We are concerned that Alternative F allows daytime beach driving during the sea turtle nesting season up until one hour after sunset. This allowance means ORVs could be driving on the beach for 1/2 hr. after dark when sea turtles are trying to nest. Night driving is also allowed all night after Sept. 15th if a night driving permit is acquired. Nearly half of turtle nests have not hatched by this date, and since some nests (~8%) go undetected altogether, there is significant opportunity for ORVs to run over hatchlings or even late-season nesting adults. The CHNS has agreed to only allow this fall season night driving in areas of low occurrence of sea turtle nesting.

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Comment [d1]: When?

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2. The ORV densities proposed for CHNS may be too high. There will be no limit on the number of driving permits issued in any given year. We realize that it is impossible to predict the number of vehicles that will show-up on any given day. However, the maximum density at any one time is set at one vehicle for every 20 ft. of open beach and could be even higher at Cape Point (400 vehicles/mi.). This density would allow little foraging opportunity for birds in the surf zone throughout the area of beach driving. More information should be provided regarding available bird foraging habitat at these densities and should be compared to available habitat at lower vehicle densities.

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Comment [d2]: Is there any contact procedure that could be in place if a hatchling is discovered dead/alive by a driver so that the nest could be located to ensure that it has been accounted for? This may ensure that this undiscovered number remains at 8% and does not continue to increase.

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3. Alternative F prohibits kite flying within or above all bird closures. We recommend kites be prohibited within 300 yards of bird closures.

Comment [d3]: Do we have any recommendations for them instead of asking for more information? Pick a time period where we prefer that this carrying capacity be lower like a high foraging time period? Or a peak season for forage to deposit?

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4. There are 3 "floating" non-breeding season beach closures planned for the seashore. One is 1.5 mi. between ramp 23 and ramp 34. One is 1.0 mi. between ramp 72 and Ocracoke Inlet and one is 1.5 mi. on South beach between ramp 45 and 49. We recommend that the South beach non-breeding season closure be 3.0 mi. instead of 1.5. This change will allow additional foraging area in an important foraging location on CHNS. Vehicles could still drive the new proposed inter-dune road. Pedestrians would still be allowed in these areas.

5. The reaction of beach nesting birds to headlights and other disturbances that might be caused by ORV access should be studied. This activity is primarily a concern for birds in mid to late April after the birds have started nesting but before night driving is halted for the sea turtle nesting season but is also a concern during the 1/2 hour of darkness in the evening when driving occurs through May, June, July and August. We recommend either a) a research project to determine how beach nesting birds react to headlights or other human related activities at night and if these supposed disturbances have a negative effect

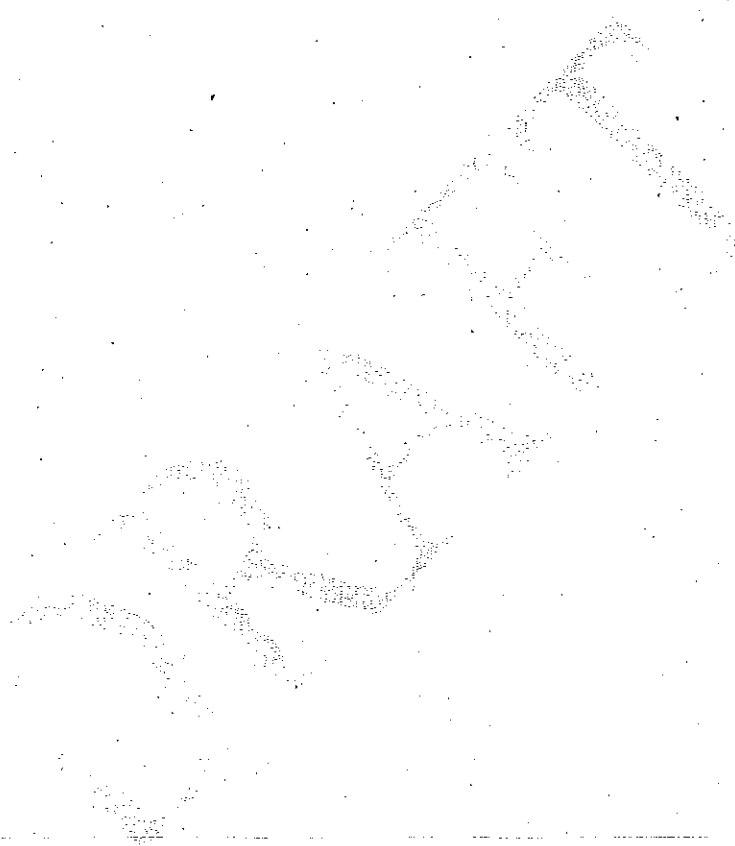
on the birds or b) additional monitoring at night with a plan to expand buffers if nesting birds are being flushed in the darkness due to beach driving activities.

6. ~~The intent of The DEIS notes that if a bird does not initially nest outside the pre-nesting area then the closure will be removed. The intent of this management plan is unclear. when bird nesting closures outside pre-nesting areas will be removed if birds do not initially nest is unclear.~~ The DEIS specifically states "closures will be removed if no breeding activity is observed for a 2-week period, or when associated breeding activity has concluded". We recommend replacing the phrase with "breeding activity" with "breeding behavior", to make it clear that nesting area closures will not be removed while the birds are still courting and scraping. Some birds will court and scrape for weeks before egg laying begins.
7. Species to be surveyed during the non-breeding season are piping plovers, Wilson's plovers, American oystercatchers, red knots and some colonial nesting birds. Since colonial nesting birds do not depend on the land portion of the seashore for foraging, we recommend deleting these from the list of surveyed birds during the non-breeding season. However, there are many shorebirds that do depend on the seashore during this time period for foraging, so if bird surveyors have the expertise to differentiate shorebirds, we suggest they count all shorebirds using the International Shorebird Survey (ISS) protocol.
8. We recommend no beach fires be allowed at night from 01 May through 15 November. Nesting sea turtles or hatchlings may be attracted to fires and could be injured or killed.
9. WRC biologists have worked with CHNS biologists to verify the sea turtle data in their database vs. the Commission sea turtle database. As a result, we were able to correct the annual values for 4 years that were presented in Figure 13 on page 214. We recommend that the following corrected values be incorporated into the Final EIS:
2002 = 94 loggerhead nests total
2005 = 63 loggerhead nests total
2007 = 73 loggerhead nests total
2009 = 101 loggerhead nests total
10. The DEIS indicates that the NPS will conduct a systematic review of the ORV and species management measures every 5 years. WRC requests that this review allow for agency input.

The Commission supports the NPS in its attempt to implement an ORV management plan that balances the protection of the diverse wildlife and habitats on the CHNS with the recreational use of this popular destination. We appreciate the opportunity to provide input on the DEIS for this project. If you have questions or need additional information please contact XXXX at (XXX) XXX-XXXX.

cc: David Allen, NCWRC
Dr. Matthew Godfrey, NCWRC

Kevin Hart, NCDMF
, USFWS
, NOAA Fisheries



Julie Youngman

From: McGrath, Chris
Sent: Monday, April 19, 2010 3:25 PM
To: Allen, David H; Cox, David R.; Martin, Mallory G.; Curry, Robert L.; Deaton, Shannon L.; Cobb, David T.; Godfrey, Matthew H
Cc: Sumner, Perry W.
Subject: RE: Revised CHNS DEIS comments

I trust the input that David and Matthew have offered. I understand the issues and don't want to bog down the process, so if the powers that be want to send these comments, so be it.

For future reference though, in regards to the statement:

"The Commission would like to note that state listing under G.S. 113-334 does not offer species of concern any specific protection under state or federal law and should not be confused with federal listing under the Endangered Species Act.

", I'd like to point out a couple of things.

1) NPS has not confused their role, nor the role of state listing. It is their policy that they are following, just as it is the policy of numerous other entities whom we have encouraged to "protect and conserve" state listed species (i.e. USFS, NCDOT, DWQ, etc.).

2) We do, in fact, WANT entities to manage for and enhance populations of protected species. Why, because G.S. 113-332 and 333 direct the STATE and specifically the WRC to do so. GS 113-332 says: "...the best interests of the state require that endangered and threatened species of wild animals and wild animals of special concern be protected and conserved, that their numbers should be enhanced and that conservation techniques be developed for them..." We are then limited in our ability to affect that on landowners, but it does not change the statutory INTENT. And in GS113-333 Powers and Duties of the Commission, (a) 4 specifically states "to adopt and implement conservation programs for endangered, threatened, and special concern species and to limit, regulate, or prevent the taking, collection, or sale of protected animals."

So yes, we cannot force anybody to do anything outside of rulemaking, however, the intent and policy of the statutes is better clarified in 113. 332-333 than in 113-334, and WRC should be promoting the conserving and limiting take of all listed species.

From: Allen, David H
Sent: Monday, April 19, 2010 2:04 PM
To: Cox, David R.; Martin, Mallory G.; Curry, Robert L.; Deaton, Shannon L.; Cobb, David T.; Godfrey, Matthew H
Cc: McGrath, Chris; Sumner, Perry W.
Subject: RE: Revised CHNS DEIS comments

Please note the minor clarification to comment #6. It shows up in green on my copy.

I still have concerns about the paragraph in red at the end of the first page. The NPS has not said that we have asked them to manage state listed species similar to federally listed species. They simply make the statement that it is their policy to do so. Our statement at the bottom of the first page makes it sound like we don't want them to manage for these species to the degree that they are. I do not think the NPS is providing too much protection for American oystercatchers or any other state listed species, and I would not like them to get the wrong idea.

From: Cox, David R.
Sent: Monday, April 19, 2010 11:24 AM
To: Martin, Mallory G.; Curry, Robert L.; Deaton, Shannon L.; Cobb, David T.; Allen, David H; Godfrey, Matthew H
Cc: McGrath, Chris; Sumner, Perry W.
Subject: Revised CHNS DEIS comments
Importance: High

Here is a draft with the changes we discussed during the conference call. I made an attempt to clarify the species of concern issue. Feel free to edit as necessary. - David

David R. Cox, Technical Guidance Supervisor
NC Wildlife Resources Commission
1142 Interstate 85 Service Rd.
Creedmoor, NC 27522
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Julie Youngman

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Cc: McGrath, Chris; Sumner, Perry W.
Subject: RE: Revised CHNS DEIS comments
Attachments: Draft CHNS ORV DEIS_4-19-10.DOC

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MEMORANDUM

TO: Melba McGee,
Office of Legislative and Intergovernmental Affairs

FROM:

DATE: April 21, 2010

SUBJECT: Draft Environmental Impact Statement for the proposed Off-Road Vehicle Management Plan for the Cape Hatteras National Seashore, Dare and Hyde counties, North Carolina

The US Department of the Interior National Park Service (NPS) is proposing an off-road vehicle (ORV) management plan for the Cape Hatteras National Seashore (CHNS) located in Dare and Hyde counties, North Carolina. Comments on the Draft Environmental Impact Statement (DEIS) from the North Carolina Wildlife Resources Commission (Commission) are provided under provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661-667d) and the National Environmental Policy Act (42 U.S.C. 4332(2)(c)).

Beach driving on the CHNS has been managed since the 1970s through various draft or proposed plans, though none of these plans were ever finalized or published as special regulations. The NPS issued the Interim Protected Species Management Strategy in 2006 to provide resource protection guidance until the long-term ORV management plan and regulation could be completed. A Finding of No Significant Impact for the Interim Strategy was issued in July of 2007. Subsequent lawsuits filed on the Interim Strategy resulted in a consent decree in April 2008. This consent decree set court ordered deadlines for completion of an ORV management plan EIS and special regulation.

The CHNS ~~provided~~ provides numerous recreational opportunities some of which have long been associated with ORV use. In addition to recreational opportunities, the CHNS contains features several important and unique habitats formed and maintained by the dynamic environmental processes found along this portion of North Carolina's outer banks. These habitats support numerous listed species including the federally listed piping plover and five species of federally listed sea turtles, three of which nest on the beaches within CHNS. Several state listed species also nest and forage on CHNS. The Commission has statutory responsibility for listing and the protection of state listed animals (G.S. 113-334). On pages 419 of the DEIS it is stated "The NPS Management Policies 2006 state that NPS will inventory, Monitor, and manage state and locally listed species in a manner similar to its treatment of federally listed species to the greatest extent possible." The Commission would like to note that state listing under G.S. 113-334 does not offer species of concern any specific protection under state or federal law and should not be confused with federal listing under the Endangered Species Act. Furthermore, NPS should discuss this distinction in the Final EIS. Conservation measures to

Comment [WRC1]: I added "species of concern" here but it could just be species if we want to be sure to exclude state endangered and treated.

Formatted: Highlight

protect state listed animals should be in coordination with Commission biologists. The NPS is required to protect all of these species as well CHNS.

The NPS is considering six alternatives including two no-action alternatives and four ORV management alternatives that provide varying degrees of ORV access and natural resource protection. The action alternatives include the designation of ORV routes, including some year-round, some seasonal, and some areas permanently closed to ORV use. Night driving restrictions are proposed and correspond with the sea turtle nesting season, May 1 through November 15. ORV permits would be required and would include a fee and educational requirements. New ORV access points and parking areas would be established and vehicle densities will be restricted to address overcrowding.

The Commission has reviewed the proposed alternatives and supports the NPS preferred alternative (Alternative F). We request the following be addressed in the provided the following items are included in the alternative or are addressed in the Final EIS:

1. We are concerned that Alternative F allows daytime beach driving during the sea turtle nesting season up until one hour after sunset. This allowance means ORVs could be driving on the beach for 1/2 hr. after dark when sea turtles are trying to nest. Night driving is also allowed all night after Sept. 15th if a night driving permit is acquired. Nearly half of turtle nests have not hatched by this date, and since some nests (~8%) go undetected altogether, there is significant opportunity for ORVs to run over hatchlings or even late season nesting adults. The CHNS has agreed to only allow this fall season night driving in areas of low occurrence of sea turtle nesting.
2. The ORV densities proposed for CHNS may be too high. There will be no limit on the number of driving permits issued in any given year. We realize that it is impossible to predict the number of vehicles that will show-up on any given day. However, the maximum density at any one time is set at one vehicle for every 20 ft. of open beach and could be even higher at Cape Point (400 vehicles/mi.). This density would allow little foraging opportunity for birds in the surf zone throughout the area of beach driving. More information should be provided regarding available bird foraging habitat at these densities and should be compared to available habitat at lower vehicle densities.
3. Alternative F prohibits kite flying within or above all bird closures. We recommend kites be prohibited within 300 yards of bird closures.
4. There are 3 "floating" non-breeding season beach closures planned for the seashore. One is 1.5 mi. between ramp 23 and ramp 34. One is 1.0 mi. between ramp 72 and Ocracoke Inlet and one is 1.5 mi. on South beach between ramp 45 and 49. We recommend that the South beach non-breeding season closure be 3.0 mi. instead of 1.5. This change will allow additional foraging area in an important foraging location on CHNS. Vehicles could still drive the new proposed inter-dune road. Pedestrians would still be allowed in these areas.

5. The reaction of beach nesting birds to headlights and other disturbances that might be caused by ORV access should be studied. This activity is primarily a concern for birds in mid to late April after the birds have started nesting but before night driving is halted for the sea turtle nesting season but is also a concern during the 1/2 hour of darkness in the evening when driving occurs through May, June, July and August. We recommend either a) a research project to determine how beach nesting birds react to headlights or other human related activities at night and if these supposed disturbances have a negative effect on the birds or b) additional monitoring at night with a plan to expand buffers if nesting birds are being flushed in the darkness due to beach driving activities.
6. ~~With regard to bird closures outside of prenesting areas. The intent of The DEIS notes that if a bird does not initially nest outside the pre-nesting area then the closure will be removed. The intent of this management plan is unclear when bird nesting closures outside pre-nesting areas will be removed if birds do not initially nest is unclear. The DEIS specifically states "closures will be removed if no breeding activity is observed for a 2-week period, or when associated breeding activity has concluded". We recommend replacing the phrase with "breeding activity" with "breeding behavior", to make it clear that any nesting area closures will not be removed while the birds are still courting and or scraping. Some birds will court and scrape for weeks before egg laying begins.~~
7. Species to be surveyed during the non-breeding season are piping plovers, Wilson's plovers, American oystercatchers, red knots and some colonial nesting birds. Since colonial nesting birds do not depend on the land portion of the seashore for foraging, we recommend deleting these from the list of surveyed birds during the non-breeding season. However, there are many shorebirds that do depend on the seashore during this time period for foraging, so if bird surveyors have the expertise to differentiate shorebirds, we suggest they count all shorebirds using the International Shorebird Survey (ISS) protocol.
8. We recommend no beach fires be allowed at night between sunset and sunrise from 01 May through 15 November. Nesting sea turtles or hatchlings may be attracted to fires and could be injured or killed.
9. WRC biologists have worked with CHNS biologists to verify the sea turtle data in their database vs. the Commission sea turtle database. As a result, we were able to correct the annual values for 4 years that were presented in Figure 13 on page 214. We recommend that the following corrected values be incorporated into the Final EIS:
2002 = 94 loggerhead nests total
2005 = 63 loggerhead nests total
2007 = 73 loggerhead nests total
2009 = 101 loggerhead nests total
10. The DEIS indicates that the NPS will conduct a systematic review of the ORV and species management measures every 5 years. WRC requests that this review allow for agency input.

The Commission supports the NPS in its attempt to implement an ORV management plan that balances the protection of the diverse wildlife and habitats on the CHNS with the recreational use of this popular destination. We appreciate the opportunity to provide input on the DEIS for this project. If you have questions or need additional information please contact XXXX at (XXX) XXX-XXXX.

cc: David Allen, NCWRC
Dr. Matthew Godfrey, NCWRC
Kevin Hart, NCDMF
 , USFWS
 , NOAA Fisheries

DRAFT

Julie Youngman

From: Deaton, Shannon L.
Sent: Wednesday, April 21, 2010 1:15 PM
To: Cox, David R.
Subject: RE: State listed sentence change: Revised CHNS DEIS comments

I actually talked to Bob about my recommended changes to that sentence and he thought it would fly. At this time he noted that Mallory would sign and you would be the contact. Mal will not be back in the office until tomorrow.

From: Cox, David R.
Sent: Wednesday, April 21, 2010 12:48 PM
To: Deaton, Shannon L.
Subject: RE: State listed sentence change: Revised CHNS DEIS comments

I agree with the comments provided by David Allen and Chris McGrath, but that sentence is the essence of what Gordon wanted to say about this issue. I am not sure how to respond to their concerns. Do we even know who will sign these?

From: Deaton, Shannon L.
Sent: Wednesday, April 21, 2010 12:26 PM
To: Curry, Robert L.; Cox, David R.
Cc: Sumner, Perry W.
Subject: State listed sentence change: Revised CHNS DEIS comments

Here are my recommended changes. I highlighted the sentence I would like to change and made a comment on. We could talk about this if needed.
Shannon

From: Allen, David H
Sent: Monday, April 19, 2010 2:04 PM
To: Cox, David R.; Martin, Mallory G.; Curry, Robert L.; Deaton, Shannon L.; Cobb, David T.; Godfrey, Matthew H
Cc: McGrath, Chris; Sumner, Perry W.
Subject: RE: Revised CHNS DEIS comments

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Cc: McGrath, Chris; Sumner, Perry W.
Subject: Revised CHNS DEIS comments
Importance: High

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Julie Youngman

From: Allen, David H
Sent: Friday, April 30, 2010 1:45 PM
To: Martin, Mallory G.
Cc: McGrath, Chris; Cluse, Wendy M; Cox, David R.; Godfrey, Matthew H
Subject: Buffer distances and turtle nest relocation info
Attachments: loggerhead recovery plan FWS NMFS sect. 6 action.pdf; NCWRC_2006_SeaTurtleGuidelines.pdf; Review of species of concern on CHNS.pdf; Erwin disturbance pub.pdf

Mallory,

The following is my attempt to answer your questions from our phone conversation on Wednesday.

Our current State Sea Turtle Handbook (second attachment above) is the result of many years worth of consultations and research. To the best of my knowledge it was not offered to the Wildlife Commissioners for review. I do recall that The Division of Wildlife Management office did review the handbook. With regard specifically to the nest relocation issue (p. 14), our recommendation in the Handbook was made through consulting the Recovery Plan and after conversations with the FWS. Below, Wendy Cluse, our Assistant Sea Turtle Biologist has included some information showing that the Loggerhead Sea Turtle Recovery Plan recommends only moving sea turtle nests if the nest is regularly overwashed or in an area of high erosion. The particular section (6113) in the Recovery Plan is attached above, or you can see the entire Recovery Plan at the link below. It's also clear that our guidelines for moving nests are not more restrictive than our neighboring states, as shown by the additional links Wendy has also included.

You also asked about buffer distances for oystercatchers and other non-federally listed birds. The USGS protocol attached were developed specifically for Cape Hatteras National Seashore, thus are the best source for such information. These protocols use the best available information known at this time. They outline 3 possible management levels (high, moderate, and minimum) on page 46 for oystercatchers, and Cape Hatteras has chosen (under the preferred alternative) to follow management close to the moderate level of protection.

These protocols state that 180-200 m. is the preferred distance to avoid disturbance to oystercatchers and that 137 m. is the minimum (P. 43). This matches pretty close to the 150 m. distance suggested by Cape Hatteras for most of the primary areas of concern in Management Level 2 locations such as Bodie Island Spit, Cape Point and Ocracoke Inlet. The Hatteras Inlet areas is designated as Management Level 1, and since monitoring will be less in this area, they chose a larger buffer of 300 m. Monitoring is a key aspect of setting buffer distances, and the USGS protocols state that it is needed in order to use these lower buffer distances.

USGS recommends the following under the moderate level of management with regard to colonial nesting waterbirds (terns and skimmers) on page 61:

"At each colony where nests are initiated (including nest scrapes), resource closure signs with string should be erected. For least terns, signs should be placed 100 m from the perimeter of the colony. For other species of terns and black skimmers, the buffer distance should be 200 m (Erwin, 1989). Should a colony become established along a beach outside of a focal site, ORV access to the beach zone should be closed after young begin hatching, with the length of the beach closure depending on the dimensions of the colony."

Once again Cape Hatteras has used this compilation of research to make recommendations under the moderate level of management. Their preferred alternative uses buffer distances of 100 m. for least terns and 200 m. for other colonial nesters in all the Management Level 2 locations. Three hundred meter buffers are only used in areas where monitoring cannot be conducted to check for disturbance in Management Area 1 locations, and these are not the highest desired recreation locations of Cape Point, Ocracoke Inlet and Bodie Island Spit. I've also included an attachment of the Erwin publication that defines these buffers.

All these bird chicks are precocial and they can and usually do move away from their nests soon after hatching. Thus, the slightly larger buffers listed by the preferred alternative for the Management Level 2 locations reflect the probable movement of these chicks. All the Management Level 1 locations will maintain the same size buffers once chicks hatch.

It doesn't look to me as if the buffer distances are unreasonable. Cape Hatteras could have taken a much more restrictive approach. I hope this information helps. If you need anything else, please don't hesitate to ask.

From: Cluse, Wendy M
Sent: Wednesday, April 28, 2010 2:25 PM
To: Allen, David H
Subject: relocation guidelines

Hi Dave,

I pulled out 2 pages from the Loggerhead Recovery Plan that were relevant. This is also the link to the whole document:

http://www.nmfs.noaa.gov/pr/pdfs/recovery/turtle_loggerhead_atlantic.pdf

I also found links to other states with similar guidelines.

<http://www.dnr.sc.gov/seaturtle/ht/nestguide.pdf> (SC)

<http://www.scistp.org/conservation/relocation.php> (GA)

Hope this helps, and I'll pass along anything else if I come across it.

Wendy

Wendy M. Cluse
Assistant Sea Turtle Biologist
NC Wildlife Resources Commission
211 Virginia Avenue
Morehead City, NC 28557
Ph: 252-725-5328
Cell: 252-241-7367
Pager: 252-247-8117 (emergencies)
wendy.cluse@ncwildlife.org

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Julie Youngman

From: McGrath, Chris
Sent: Monday, May 03, 2010 8:41 AM
To: Sumner, Perry W.; Allen, David H
Subject: FW: Buffer distances and turtle nest relocation info.
Attachments: loggerhead recovery plan FWS NMFS sect. 6 action.pdf; NCWRC_2006_SeaTurtleGuidelines.pdf; Review of species of concern on CHNS.pdf; Erwin disturbance pub.pdf

David, good job. I think we could find numerous other references too, but agree that the info developed by USGS specifically for CAHA is the best to focus upon.

Perry, fyi and to let you and David Cobb know, Mallory called David Allen on 5/26 to ask about our sea turtle nest relocation policy and the buffer distances for non federally listed waterbirds that were in the CAHA preferred alternative. Suggesting that they might be too restrictive. Our position all along has been that the moderate recommendations of USGS should be pursued.

From: Allen, David H
Sent: Friday, April 30, 2010 1:45 PM
To: Martin, Mallory G.
Cc: McGrath, Chris; Cluse, Wendy M; Cox, David R.; Godfrey, Matthew H
Subject: Buffer distances and turtle nest relocation info

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You also asked about buffer distances for oystercatchers and other non-federally listed birds. The USGS protocol attached were developed specifically for Cape Hatteras National Seashore, thus are the best source for such information. These protocols use the best available information known at this time. They outline 3 possible management levels (high, moderate, and minimum) on page 46 for oystercatchers, and Cape Hatteras has chosen (under the preferred alternative) to follow management close to the moderate level of protection.

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From: Allen, David H
Sent: Monday, March 29, 2010 8:20 AM
To: Cobb, David T.
Cc: Godfrey, Matthew H; McGrath, Chris; Sumner, Perry W.
Subject: RE: CAHA EIS review

Categories: Red Category

Hey David, thanks for your continued interest in this project. It's good to have the backing of you, Chris and Perry as we go forward. Fortunately I don't expect our (at least my) comments will be too controversial at this point. The preferred alternative is very close to the guidance we gave during the Regulated Negotiated Rulemaking process (Reg. Neg.), and is very close to the final alternative that was voted on the last day of the Reg. Neg process. Of course that vote was not passed since it had to be unanimous, but I voted for it as did most other groups. Of course our Director's office was heavily involved by that time and he (Gordon) accepted it as well. Below are my preliminary thoughts in red to the questions you and Mallory have asked.

"1. Consider the question "Can WRC support the preferred alternative?" Yes. There are some minor suggestions for alterations, and some of those will be controversial if we suggest them, but overall, the preferred alternative gives good protection to listed and priority wildlife species while still allowing significant access to the beaches by ORV users.

2. Identify issues of concern. The biggest one to me is that the Preferred Alternative allows daytime beach driving during the sea turtle nesting season up until one hour after sunset. This essentially means that people will be driving on the beach for 1/2 hr. after dark when sea turtles are trying to nest. Not the end of the world, but certainly not ideal for listed turtles and I don't consider it consistent with the Loggerhead Sea Turtle Recovery Plan, although the Plan could state it clearer. Keep in mind that this issue has been discussed at length with Gordon and I have been overruled on this issue, which I understand. Nighttime driving is also allowed all night long after Sept. 15th if a night driving permit is acquired. About half of the turtle nests have still not hatched by this time, and since some nests (~8%) go undetected altogether, there is significant opportunity for vehicles to run over hatchlings or even late-season nesting adults. We agreed to this point in the Reg. Neg. process since Cape Hatteras said they would only issue permits for areas of low turtle occurrence. I need to read further into the DEIS to find if this is still the case.

Another issue is the number of overall vehicles they intent to allow on the beach at any one time. The maximum density is set at one vehicle for every 20 ft. of open beach. It's even higher at Cape Point (400 vehicles/mi.). This seems high to me with little opportunity for foraging birds in the surf zone, but there are other areas for birds to forage, so we probably need to discuss this.

There are several other relatively minor issues but most have to do with monitoring rather than access issues. I still need to do more reading, but don't anticipate any large problems.

3. Assess additional data needs. It would be good to know how beach nesting birds react at night to headlights and other disturbances that might be caused by ORV access. This is primarily a concern in mid to late April after the birds have started nesting but before night driving is halted for the sea turtle nesting season. It's also a bit of a concern during the 1/2 hour of darkness in the evening when driving occurs through May, June, July and Aug.

4. Develop strategy for final comments and recommendations by deadline.

5. Schedule follow up meeting."

"of the alternatives listed which alternative do we think is best?" There are alternatives that allow more access

and there are alternatives that allow less, but I think the preferred alternative is the best to accomplish access for our fishermen and protection of significant resources, especially if they can make some minor changes to accommodate some issues they may have overlooked.

"My second question is whether there is an option not listed as an alternative in the EIS that we think would be best." Not really. But I'm sure other folks will have different opinions.

From: Cobb, David T.
Sent: Thursday, March 18, 2010 1:22 PM
To: Godfrey, Matthew H; Allen, David H
Cc: McGrath, Chris; Sumner, Perry W.; Cobb, David T.
Subject: CAHA EIS review
Importance: High

Matthew and David,

As David and I discussed on Tuesday, there has been some e-mail problems on my end, but I think both of you got an Outlook meeting request from Mallory for March 31 to discuss the CAHA EIS review. I am sending this e-mail to make sure all five of us are on the same page.

First, can both of you make that meeting on the 31st?

Second, in his e-mail, Mallory indicated that there are five areas to be addressed:

- "1. Consider the question "Can WRC support the preferred alternative?"
2. Identify issues of concern.
3. Assess additional data needs.
4. Develop strategy for final comments and recommendations by deadline.
5. Schedule follow up meeting."

As I understand it, the "review team" will be coordinated by Mallory and will include the two of you plus David Cox, Shannon Deaton, Bob Curry, and me. In addition to Mallory's five points of consideration, I have two more questions that I want us (i.e., DWM staff) to answer. Having a division position on these answers will allow me to advocate as strongly as possible for our position. Relative to Mallory's "Can WRC support the preferred alternative?" question, I have two others. My first question in this regard is, of the alternatives listed which alternative do we think is best? My second question is whether there is an option not listed as an alternative in the EIS that we think would be best.

Also, does anyone know the official deadline for comments? I have looked in all the documents I have and online and haven't found it yet.

Honestly, I have not read the EIS yet, but I do have it and plan to take it with me in my travels next week.

David

David T. Cobb, Ph.D.
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National Conservation Leadership Institute Fellow

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Julie Youngman

From: Allen, David H
Sent: Friday, April 02, 2010 12:07 PM
To: Cox, David R.; Martin, Mallory G.; Deaton, Shannon L.; Godfrey, Matthew H; Curry, Robert L.; Cobb, David T.
Cc: McGrath, Chris; Sumner, Perry W.
Subject: Summary of my comments on the CHNS DEIS

David Cox, Thank you for volunteering to compile our comments. As I said yesterday, I feel we can support the preferred alternative. I think the Cape Hatteras National Seashore has made a very good effort to allow significant beach driving opportunities, while still protecting the important wildlife species that depend on that dwindling habitat. I think the Staff at CHNS and their NEPA support writers should be commended. All my concerns are fairly minor. Still, there are some opportunities for improvement in the preferred alternative. Below is a summary of the concerns I brought-up in the meeting yesterday. Matthew had a couple in addition to these.

1. The Preferred Alternative allows daytime beach driving during the sea turtle nesting season up until one hour after sunset. This essentially means that people will be driving on the beach for 1/2 hr. after dark when sea turtles are trying to nest. Not the end of the world, but certainly not ideal for listed turtles and I don't consider it consistent with the Loggerhead Sea Turtle Recovery Plan, although the Plan could state it clearer. Keep in mind that this issue has been discussed at length with Gordon and I was overruled on this issue. Perhaps Gordon was willing to allow these nighttime impacts in order to come to consensus in the Reg. Neg process which of course did not work out. So perhaps he has changed his mind now, so I'll leave it up to you if you want to bring it up again. Nighttime driving is also allowed all night-long after Sept. 15th if a night driving permit is acquired. About half of the turtle nests have still not hatched by this time, and since some nests (~8%) go undetected altogether, there is significant opportunity for vehicles to run over hatchlings or even late-season nesting adults. I think I can still agree with this as long as Matthew is okay with it. The CHNS has agreed to only allow this Fall season night driving in areas of low occurrence of sea turtle nesting.

2. Another issue is the number of overall vehicles they intent to allow on the beach at any one time. There will be no maximum number of driving permits issued in any given year. This is fine since it's difficult to know how many vehicles will show-up in any given day. But the maximum density at any one time is set at one vehicle for every 20 ft. of open beach. It's even higher at Cape Point (400 vehicles/mi.). This seems high to me with little opportunity for foraging birds in the surf zone throughout the area of beach driving. I don't know what an acceptable density of vehicles is, but I'd like to suggest that this is too high.

3. Kite flying would be prohibited within or above all bird closures. I'd like to suggest that it should not occur within 300 yards of bird closures.

4. There are 3 "floating" non-breeding season beach closures planned for the seashore. One is 1.5 mi. between ramp 23 and ramp 34. One is 1.0 mi. between ramp 72 and Ocracoke Inlet and one is 1.5 mi. on South beach between ramp 45 and 49. I suggest that this last non-breeding season closure is 3.0 mi. instead of 1.5. This will allow some additional foraging area in an important foraging location on the seashore. Vehicles could still drive a new interdunal road that is planned or perhaps drive at the edge of the dunes away from the water's edge. Pedestrians would still be allowed in these areas as always.

Three comments that pertain to monitoring follow:

1) It is important to know how beach nesting birds react at night to headlights and other disturbances that might be caused by ORV access. This is primarily a concern in mid to late April after the birds have started nesting but before night driving is halted for the sea turtle nesting season. It's also a bit of a concern during the 1/2 hour of darkness in the evening when driving occurs through May, June, July and August. I suggest either a) a research project to determine how beach nesting birds react to headlights or other human related activities at night and if these supposed

disturbances have negative effect on the birds or b) additional monitoring at night with a plan to expand buffers if nesting birds are being flushed in the darkness due to beach driving activities.

2) It's a little difficult to understand the intent on when bird nesting closures outside pre-nesting areas will be removed if birds do not initially nest. The DEIS states "closures will be removed if no breeding activity is observed for a 2-week period, or when associated breeding activity has concluded". I suggest they replace the phrases "breeding activity" with "breeding behavior", to make it clear that nesting area closures will not be removed while the birds are still courting and scraping. Some birds will court and scrape for weeks before egg laying begins.

3) Species to be surveys during the non-breeding season are piping plovers, Wilson's plovers, American oystercatchers, red knots and some colonial nesting birds. Since colonial nesting birds do not depend on the land portion of the seashore for foraging, I suggest they delete these from the list of surveyed birds during the non-breeding season. However, there are many shorebirds that do depend on the seashore during this time period for foraging, so If they have the expertise to differentiate shorebirds, I suggest they count all shorebirds using the International Shorebird Survey (ISS) protocol.

I think that is all the comments I have. I still have a little bit of the plan to read, and if I find anything else, I'll let you know. Have a good day.

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Sent: Thursday, April 01, 2010 10:13 AM
To: Martin, Mallory G.; Deaton, Shannon L.; Allen, David H; Godfrey, Matthew H
Cc: Curry, Robert L.; Cobb, David T.
Subject: CHNS due dates
Importance: High

Folks,

I spoke to Melba McGee and Stephen Rynas today. The due date for the consistency determination to Stephen is April 9th but he said he will could give us until April 20th before his timeline gets tight. Melba's due date for comments on the DEIS is May 5th. Just an FYI. Thanks - David

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From: Godfrey, Matthew H
Sent: Tuesday, April 06, 2010 11:46 AM
To: Allen, David H; Cox, David R.; Martin, Mallory G.; Deaton, Shannon L.; Curry, Robert L.; Cobb, David T.
Cc: McGrath, Chris; Sumner, Perry W.
Subject: RE: Summary of my comments on the CHNS DEIS

Categories: Red Category

Here are my comments on the CHNS DEIS, as related to sea turtle management under Alternative F:

1. It would be good to make start dates of ORV driving restrictions in the villages consistent with the rest of the beaches (i.e. ORV restrictions start 01 May everywhere). See page xix, top field in Alternative F.

2. On page xx, Alternative F states that sea turtle patrols will be completed in the morning by ~30 minutes after sunrise. I think this is possible only if they have enough personnel to do the patrols, so it would be good if we could state something along the lines of "we hope there will be sufficient personnel dedicated to the daily morning patrols so that the monitoring can be successfully completed by the time stated"

3. On page xxviii, for Beach Fires, it would be preferable if no beach fires were allowed at night from 01 May through 15 November, to avoid possibly injury to nesting females or hatchlings that are attracted to fires.

4. Last Thursday, I spent the day with CHNS biologists to verify the sea turtle data in their database vs. WRC sea turtle database. As a result, we were able to correct annual values for 4 years that presented in Figure 13 on page 214. It would be good if we would recommend that these corrected values be incorporated into the EIS:

2002 = 94 loggerhead nests total
 2005 = 63 loggerhead nests total
 2007 = 73 loggerhead nests total
 2009 = 101 loggerhead nests total

Thanks,
 Matthew

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