



## 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 –

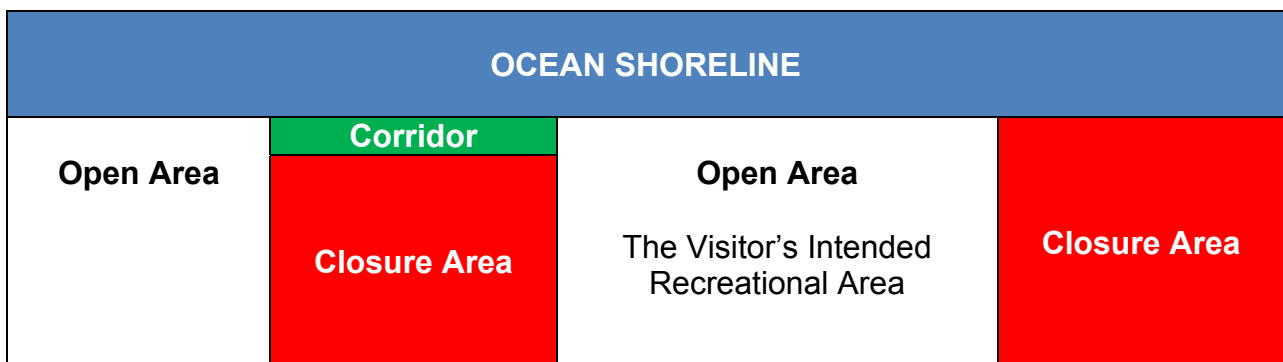
- **CORRIDORS** are a vital tool in providing access while managing resources
- **MANAGEMENT BUFFERS** must be based on peer-reviewed science
- **NON-ENDANGERED BIRDS** should not have same protection as if endangered
- **TURTLE MANAGEMENT** would benefit from nest relocation and other practices

## CORRIDORS

Corridors are a vital tool in providing access while managing resources. Corridors provide a small path around temporary resource closures in order to provide access to open areas that would otherwise be blocked.

In some instances, corridors can be made through or around closure areas. In other places corridors can be established below the high tide line. Since unfledged chicks are not found in nests between the ocean and the high tide line, this type of pass through corridor would have no negative effect on wildlife and should be established throughout the seashore.

In the example below, the visitor's intended recreational area would be accessible only through the small pass through corridor. Without this corridor, the area marked "Open" would, in actuality, be closed because it is impossible to get there without the corridor.



As outlined on pages xii, xvii, and 468 of the DEIS, corridors would only be permitted in Management Level 2 portions (ML2) of Species Management Areas (SMA). In more restrictive Management Level 1 portions (ML1) corridors would not be permitted at all.

Corridors are vital to providing access in a way that does not hinder resource protection. Therefore, Dare County believes pass through corridors should be maintained for pedestrians and ORVs in **all areas** of the Cape Hatteras National Seashore Recreational Area throughout the entire breeding and nesting season.

## **MANAGEMENT BUFFERS**

Buffers, or closures, are important management practices for species recovery. However, in order to have long term benefit for the protected species and the visiting public, the buffers must be based on peer-reviewed science. Once established, buffers must be routinely monitored throughout the breeding season to ensure that resources are effectively protected and public access is provided.

The extreme buffers outlined in DEIS pages 121 to 127 must be modified to substantially reduce the minimum 1,000 meter buffer in all directions required in Alternative F for unfledged Piping Plover chicks. Dare County believes a more appropriate and yet effective buffer is 200 meters. Ample scientific evidence and precedent exists to support a 200 meter buffer. As part of the NEPA process, Dare County formally requests the National Park Service to provide peer-reviewed science that justifies a 1,000 meter closure in all directions.

Buffers for other species, including American Oystercatchers, Least Terns and Colonial Waterbirds must also be changed. An effective 30 meter buffer should be established for these species rather than the 300 meter closure outlined in the DEIS.

## **NON-ENDANGERED BIRDS**

Under the Endangered Species Act (ESA), all endangered species must be protected. However, there is no requirement in the ESA to give non-endangered species the same level of protection.

Dare County believes the National Park Service should reevaluate its position of giving birds designated only as a North Carolina species of concern, the same protection as those truly endangered. This request is consistent with management practices in other federal parks. The purpose of individual states establishing lists of species of concern is to earmark those for special statewide monitoring and tracking.

The management buffers described in pages 121 to 127 of the DEIS should be modified to allow pre-nesting closures for only endangered or threatened species. This important modification would result in establishing pre-nesting closures exclusively for the Piping Plover, the only threatened bird species in the seashore.

Accordingly, pre-nesting closures are not warranted for the non-endangered and non-threatened American Oystercatchers. Because Colonial Waterbirds do not return to the exact same place for nesting each year, establishing pre-nesting closures for these birds is both unpredictable and unnecessary.

Additionally, in monitoring and tracking birds for purposes of determining resource viability, all birds in the same ecosystem of the seashore should be counted. When conducting a bird census of the Cape Hatteras National Seashore Recreational Area, it is imperative to count the many birds on the nearby dredge and spoil islands that are located just yards away and within sight of the seashore. These birds are part of the same ecosystem and should be included.

The following photo taken of Cora June Island, just off Hatteras Village, shows a huge population of birds in early June of 2009. The large birds with black backs are Black Skimmers. The smaller birds to the left are mostly Royal Terns. Cora June Island, a man-made dredge island just 500 meters west of Hatteras Village, is an ideal nesting site as a sheltered island with no predators.



Photo by Donny Bowers

## TURTLE MANAGEMENT

Dare County believes endangered sea turtles would benefit from management practices now in use at other federal seashores that are more proactive in efforts to achieve nesting success. This includes relocating nests to more desirable locations as is done in other state and federally controlled areas.

The Cape Hatteras National Seashore Recreational Area is on the northernmost fringe of turtle nesting locations for the southeast. In this area, weather and predators represent the greatest threat to sea turtles.



Nesting in the United States occurs primarily in four southeastern states as detailed in the USFWS & NMFS species "Recovery Plan"

|                       |               |   |
|-----------------------|---------------|---|
| <b>North Carolina</b> | <b>1.0 %</b>  | The northernmost area with the fewest nests |
| <b>South Carolina</b> | <b>6.5 %</b>  |   |
| <b>Georgia</b>        | <b>1.5 %</b>  |   |
| <b>Florida</b>        | <b>91.0 %</b> | Primary area where the most nesting occurs  |

The Loggerhead Recovery Plan recognizes that, "*Historically, relocation of sea turtle nests to higher beach elevations or into hatcheries was a regularly recommended conservation management activity throughout the southeast U.S.*" (2009, Second Revision, page 52) while the North Carolina Wildlife Resources Commission (NCWRC) sea turtle program currently recommends relocation only as "*as a last resort.*"

The National Park Service in page 125 of the DEIS relies upon the approach used by North Carolina Wildlife Resources Commissioner (NCWRC). This contradicts the U.S. Fish and Wildlife Service (USFWS) practice of relocating nests on the Pea Island Wildlife Refuge, located on the north end of Hatteras Island, North Carolina.

By not supporting nest relocation, the Cape Hatteras National Seashore Recreational Area has lost over 46% of the nests laid in the last 11 years. Meanwhile, South Carolina relocated 40.1% of its nests during 2009, resulting in an incredibly low lost nest rate of only 7.7% making a strong case for the relocation of nests.

The turtle management practices outlined on DEIS pages 125, and 392 to 396 should be modified to allow nest relocation as a tool for species recovery. See attached appendix B.

## **CONCLUSION**

Dare County urges the National Park Service to make changes in their preferred alternative F to incorporate the provisions outlined in this position statement. In doing so, we believe it will be beneficial to the long range success for wildlife, enhance the visitor experience and improve the lives of those living near the Cape Hatteras National Seashore Recreational Area. Without these changes, people will suffer harm.

On the subject of harm, we conclude this position statement with comments about the economic harm as outlined in the DEIS. On page xlvi, Alternative F is characterized as having a “negligible to moderate” adverse impact on small businesses.

We believe the negligible to moderate projection is inaccurate and relies on economic surveys that has not yet been published. Furthermore, this material is not expected to be added to the DEIS until after the public comment period has ended.

Based upon the economic harm we have already experienced under the consent decree, Dare County projects the economic impact of Alternative F to be substantial.

Family-owned businesses are the backbone of Dare County. Hard working, local families have for generations provided employment opportunities for the community, and offered outstanding service and hospitality to Outer Banks visitors. These small business owners do not ask for special favors or government handouts, just a fair opportunity to earn their part of the American dream.

Beach closures have already had a devastating and unfair impact on many Dare County businesses causing foreclosures, bankruptcies, lay-offs, cutbacks, expensive refinancing, and depleted college funds and savings accounts.

Even businesses whose revenue has stayed level or showed a modest increase have accomplished this at a costly price. Many have had to cut back employee hours, forego much-needed capital improvements, and sacrifice profits.

Attached as Appendix C, are notarized affidavits from a representative cross section of business owners. These hard-working people have already suffered greatly because of beach closures. It is unfair and inaccurate for the National Park Service to simply write off these people and describe their pain under Alternative F as “negligible to moderate.”

## Appendix A

## Summary Chart of Dare County Position

| Issue                       | DEIS Page #         | Alternative F<br>Park Service Preferred   | Dare County Position   |
|-----------------------------|---------------------|---|--|
| <b>Corridors</b>            | xii<br>xviii<br>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>  |
| <b>Management Buffers</b>   | 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 &amp; effective buffer would be 200 meters</p> |
| <b>Non-Endangered Birds</b> | 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>   |
| <b>Turtle Management</b>    | 125<br>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>  |

## Appendix B



### Sea Turtle Management Practices in the Southeast Coastal Region



All sea turtles are classified as threatened or endangered and protected by the Endangered Species Act. Two Federal agencies divide jurisdiction over sea turtles. U.S. Fish & Wildlife Service (USFWS) has authority when sea turtles are on the beach. The National Marine Fisheries Service (NMFS) has jurisdiction when sea turtles are in the water.



Section 6 of the Endangered Species Act requires states to show they have an “adequate and active” program for the conservation of endangered sea turtles. The most common sea turtle to nest on the beaches of the southeast coastal region is the threatened Loggerhead seaturtle (*Caretta caretta*).



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Throughout these southeastern states, there are regional differences in how sea turtles are protected. Some areas make an effort to identify and mark all nests. Others do not.

In the Cape Hatteras National Seashore Recreational Area, nests are marked with stakes and string. As the hatch date approaches, the buffer is expanded closing access between the nest and the ocean, and often prevents access behind the nest as well.

In Florida, where the most sea turtle nesting occurs, it is a different story. Some nests are marked only with a single stake. Others have a small triangular string enclosure, with or without a warning sign. And, some nests are not marked in any way. Most noticeable is the fact that people in Florida are permitted responsible recreational access in close proximity to sea turtle nests buried beneath the sand.





Unlike Florida, people in Cape Hatteras National Seashore Recreational Area are fined \$150.00 for even walking in the wet sand in front of a sea turtle nest like the one shown in the above photograph.

According to the Florida Fish & Wildlife Conservation Commission, “**Not every sea turtle nest needs to be marked**” and many are not. (Marine Turtle Conservation Guidelines, revised 2007) Each year, Florida has up to 1,000 sea turtle nests per mile compared to a peak level of 1.7 nests per mile in the Cape Hatteras National Seashore Recreational Area.



In this photo of a busy Florida beach, the two buried turtle nests shown are only marked with a small triangle of sticks, without a warning sign, while surrounded by nearby beachgoers.

October 23, 2009, the Island Free Press featured an in-depth report on sea turtle nests. The article (attached) contrasted differences in sea turtle management between Florida and North Carolina.

Florida beach photo showing people and umbrellas near nests

### Sea Turtle Nesting Facts –

Sea turtles live in the ocean and come ashore only for the female to lay eggs which are buried in the sand, at night, at a depth of 18 to 22 inches. One female will bury approximately 112 eggs the size of ping-pong balls. The eggs remain buried until hatching, at night, approximately 55 to 80 days later.

**Important** – It is not the number of nests laid, but whether they survive to hatch. Successful recovery depends on solutions to the real problems – Loss of nests due to high tides from weather events, failure to relocate nests, and predation

### Nest Relocation –

The Loggerhead Recovery Plan recognizes that, “**Historically, relocation of sea turtle nests to higher beach elevations or into hatcheries was a regularly recommended conservation management activity throughout the southeast U.S.**” (2009, Second Revision, page 52)

The sea turtle program of the North Carolina Wildlife Resources Commission (NCWRC) currently recommends relocation only as “**as a last resort.**” As outlined in their protocol, “**Nests in heavy foot traffic areas should not be relocated. These nests should be fenced off and marked, so that pedestrians will avoid them.**”

North Carolina's approach is contrary to the USFWS practice of relocating nests on the Pea Island Wildlife Refuge, located on the north end of Hatteras Island, North Carolina.

The nearby Cape Hatteras National Seashore Recreational Area does not support moving nests and has lost over 46% of the nests laid on Cape Hatteras beaches in the last 11 years.

Meanwhile, South Carolina relocated 40.1% of its nests during 2009 resulting in an incredibly low lost nest rate of only 7.7% making a strong case for the relocation of nests as a tool for species recovery.

### Unanswered Questions –

Sea turtle volunteer Larry Hardham who was also a participant in the negotiated rule making proceeding for the Cape Hatteras National Seashore Recreational Area, has repeatedly asked for science-based answers to a series of pertinent questions about sea turtle nests.

USFWS has been asked, in writing, the following questions –

- Do vibrations in the sand affect incubation or hatchlings?
- At what distance can emerging hatchlings hear a passing car?
- At what distance can emerging hatchlings feel a car pass at 15 mph?
- And, does either of these events alter their activity?
- How far away does a stationary light source have to be disorienting (We were told a moving light is not as disorienting as stationary light)

***None of these questions have yet been answered***



Appendix C

Notarized Affidavits from Business Owners

AFFIDAVIT

State of North Carolina  
County of Dare

BEFORE ME, the undersigned Notary, Janice E. Williams, on this 24th day of August, 2009, personally appeared Frank Folb, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

I am the owner of Frank & Fran's, The Fisherman's Best Friend, a fishing tackle retail business in Avon, North Carolina on Hatteras Island. I have served fishermen from this shop for the last 22 years.

Before the consent decree, in 2007, my business experienced its best year ever. Since the implementation of the consent decree, I have suffered a decline in business. In 2008, during the first year of consent decree closures, revenue had a 20% drop. So far, through July 2009, I have seen an additional 10% decrease from the previous year.

The decline in my business is directly related to closures and restricted beach access under the consent decree. Over the past 22 years, every economic downturn has resulted in an increase of business for me. I have witnessed first-hand that when the national economy suffers, people turn to inexpensive, short-distance vacations. That is why during bad economic times, my business has always prospered.

The impact of beach closures on my business is further verified by the fact that since access to Cape Point was re-opened on July 28, 2009, I have seen a dramatic, sudden increase in business because of the return of fishermen to the area.

The decline in my business because of the consent decree has also taken a toll on my employees and their families. I employ a staff of 5 people. For the first time in the 22 year history of my business, I have been unable for the past two years to give cost of living increases to my employees. Additionally, I have had to eliminate 8 hours from each employee's work-week, causing financial hardship for each one of their families.

*[Handwritten signature of Frank Folb]*  
[signature of affiant]

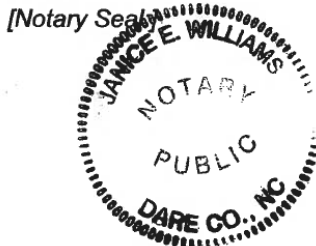
Frank Folb  
40210 Hwy 12  
Avon, NC 27915

*[Handwritten signature of Janice E. Williams]*  
[signature of Notary]

Janice E. Williams

Subscribed and sworn to before me  
this 24th day of August, 2009

NOTARY PUBLIC  
My commission expires: November 27, 2013



AFFIDAVIT

State of North Carolina  
County of Dare

**BEFORE ME**, the undersigned Notary, Janice E. Williams, on this 24th day of August, 2009, personally appeared **Hal Lester**, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

I own and operate Finnegan's Restaurant on Hatteras Island in Buxton, North Carolina. We are directly across the street from Lighthouse Road, which is the entrance to Cape Point and the Cape Hatteras Lighthouse. We moved to Hatteras Island 5½ years ago to fulfill our dream of operating a business here and becoming part of this wonderful community.

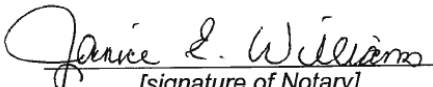
We have worked hard and built a good business. Our close proximity to Cape Point attracted those who came to here for world-class fishing and other recreational opportunities. The ambience of Finnegan's is such that everyone feels comfortable. Families with small children feel right at home, as well as anglers coming directly from the beach. These people were a significant portion of our business. Before the consent decree went into effect in May 2008, our business was healthy and strong.

Since the consent decree was implemented in 2008, it has been very hard for us. We experienced a devastating 25% decline in business for the year. This tragedy then repeated itself for 2009, resulting in a total loss of 50% for our business since the consent decree. The closures have also changed the way we operate. Previously I provided general supervision and had a staff of up to 12 people. Now our workforce is half that size and I labor in the kitchen every day as we struggle to survive.

We know our loss is directly related to beach closures because whenever access is restored and the barricades are removed, hungry fishermen and families return to our restaurant. When Cape Point is closed, my business pays the price. When Cape Point is open, we are able to earn a living. Sadly, the revenue lost while the beaches are closed is gone forever.

Because of our close proximity to the Cape Point entrance, we are on the front lines of hearing angry comments from frustrated visitors turned away from their favorite recreational area. Many have told us with Cape Point closed they "are not coming back." We need help.

  
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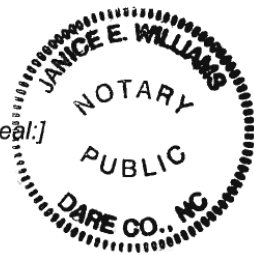
  
[signature of Notary]

Hal Lester  
46948 Highway 12  
Buxton, NC 27920

Janice E. Williams

Subscribed and sworn to before me  
this 24th day of August, 2009

[Notary Seal:]



NOTARY PUBLIC

My commission expires: November 27, 2013

AFFIDAVIT

State of North Carolina  
County of Dare

BEFORE ME, the undersigned Notary, Janice E. Williams, on this 24th day of August, 2009, personally appeared **Jaki Gray**, known to me to be a credible person and of lawful age, who being by me first duly sworn, on her oath, deposes and says:

For 53 years my family has owned and operated the Tower Circle Motel in Buxton, North Carolina on Hatteras Island. I am the owner and manager. My motel caters to fishermen and their families. Most of our business is from surf fishermen who are repeat customers. They select our motel, because of its close proximity to the famous Cape Point fishing location in the Cape Hatteras National Seashore Recreational Area.

My business has suffered greatly since the consent decree started in 2008. During the first year under the consent decree, we experienced a sudden 50% drop in business from the preceding year. This year, for 2009, my business is down an additional 65%.

I have witnessed this decline in business and can track it directly to the closures at Cape Point. We regularly hear from our long-time customers who call the motel to ask, "Is Cape Point Open?" When they learn it is closed, they say, "If I can't fish the Point, I am not coming."

Regardless of the national economic condition, we know that our customers are still taking their traditional fishing vacations. Unfortunately, since the consent decree has closed Cape Point for extensive periods, my customers are forced to go elsewhere.

In 2007, before the consent decree, my business employed 6 people. Because of the closures, we now have only 2 employees. I have sadly had to let go of 4 people because of the consent decree closures. Our 53-year-old business is now in jeopardy.

*Jaki Gray*  
[signature of affiant]

Jaki Gray  
46243 Old Lighthouse Road  
Buxton, NC 27920

*Janice E. Williams*  
[signature of Notary]

Janice E. Williams

Subscribed and sworn to before me  
this 24th day of August, 2009

[Notary Seal]



NOTARY PUBLIC  
My commission expires: November 27, 2013

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State of North Carolina  
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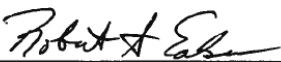
**BEFORE ME**, the undersigned Notary, Janice E. Williams, on this 24th day of August, 2009, personally appeared **Bob Eakes**, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

I am the owner of Red Drum Tackle, in Buxton, North Carolina on Hatteras Island. My business is located in close proximity to the entrance of Cape Point, one of the top surf fishing spot in the world. Since 1976, Red Drum Tackle has been a landmark to generations of surf fishermen.

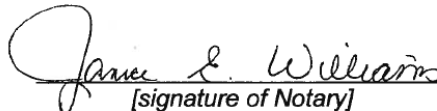
Since the implementation of the consent decree, my business has sustained a 35% loss for each of the last 2 years. I have seen a decline in weekly sales and witnessed a severe drop in business during weekends. I attribute this unparalleled loss of business directly to the closures of the consent decree. Immediately after the consent decree was implemented in May 2008, our business had an abrupt drop when people were unable to fish at Cape Point. We experienced this sudden revenue plunge long before the nationwide economic recession occurred later in the fall of 2008.

My business has weathered previous economic recessions because we cater to surf fishing, a sport with a relatively low cost of participation. However, for the past two years, whenever Cape Point was closed, business was down. On the other hand, when Cape Point was open, revenue immediately surged. I have witnessed first-hand this direct, cause and effect correlation between revenue and access to Cape Point.

My employees and my family have suffered because of the consent decree. I was forced to lay-off one third of my workforce. These were hard-working employees who depended on the success of Red Drum Tackle in order to feed their families. In order to survive, I have also had to use funds set aside for my son's education. Sadly, this year the decline in revenue caused by the consent decree will also consume the funds remaining in my 401k. We have had the rug pulled out from beneath us.

  
[signature of affiant]

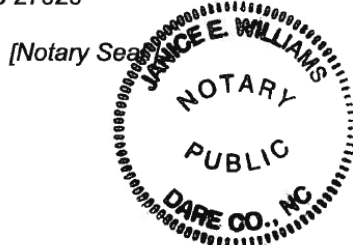
Bob Eakes  
P.O. Box 1354  
Buxton, NC 27920

  
[signature of Notary]

Janice E. Williams

Subscribed and sworn to before me  
this 24th day of August, 2009

NOTARY PUBLIC  
My commission expires: November 27, 2013



AFFIDAVIT

State of North Carolina  
County of Dare


**BEFORE ME**, the undersigned Notary, Janice E. Williams, on this 24th day of August, 2009, personally appeared **John Couch**, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

I am the President and Owner of Lighthouse Service Center, Inc. and Lighthouse Auto Parts, often referred to as Carquest Auto Parts. My businesses are located on Hatteras Island in Buxton, North Carolina near the entrance to the Cape Hatteras Lighthouse and the popular Cape Point fishing destination. We perform automobile and truck repairs and sell replacement parts.

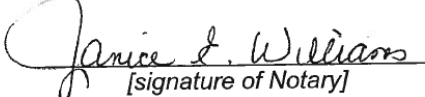
Prior to the consent decree, 2007 was the best year for my businesses. This was when the National Park Service Interim Management Strategy governed access to the beach. In contrast, since the implementation of the consent decree in May of 2008, I have suffered a decline in revenue in both of my business operations with a crushing loss of 30,000.00 in first 3 months of the consent decree. Since then we have tracked a decline in revenue that directly correlates to the times of closure periods at Cape Point. When access is denied, business goes down. After the beaches re-open, business goes back up.

I am confident the losses sustained by my businesses are due to the closures and not the general economy. Not only do we see the direct correlation to closure periods, but also my business has historically not been adversely affected by previous recessions. In fact, during economic downturns, automotive repair and parts businesses generally benefit from people retaining their cars longer and performing more of their own maintenance.

The impact of beach access restrictions has not only hurt me, it has also harmed others. Because of the consent decree, I was forced to eliminate 3 job positions. This involved a bookkeeper, a mechanic and a parts worker. These were all innocent people who did not deserve to lose their livelihoods because of unreasonable beach access restrictions.

  
[signature of affiant]

John Couch  
46813 Highway 12  
Buxton, NC 27920

  
[signature of Notary]

Janice E. Williams

Subscribed and sworn to before me  
this 24th day of August, 2009

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[Notary Seal:]



AFFIDAVIT

State of North Carolina  
County of Dare


**BEFORE ME**, the undersigned Notary, Janice E. Williams, on this 24th day of August, 2009, personally appeared **Earl Younce Jr**, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

Since 1954 our family has owned and operated the Avon Cottages and Avon Motel. Both businesses are located on Hatteras Island in Avon, North Carolina. For 55 years, we have provided lodging for generations of surf fishermen. Our regular customers depend on open and accessible beaches for recreational fishing.


Immediately following the implementation of the consent decree in 2008, our business abruptly declined. We experienced a 31 to 33% loss of revenue. Based upon direct feedback from our regular customers, we know that the loss we sustained was linked to beach closures.

During periods when Cape Point or large portions of the beach were closed, our business would drop-off. When access was restored, revenue would immediately start to pick-up. If our loss was caused by the economic recession, our revenue would not rebound as soon as beach access was restored for surf fishing.

The restrictive closures under the consent decree have put a stranglehold on our family business. We have had to undergo costly refinancing in order to survive. We have also had to reduce our employee workforce from 16 down to 8. This drastic cutback has hurt those who depended upon us for a job to provide for their families.

  
[signature of affiant]

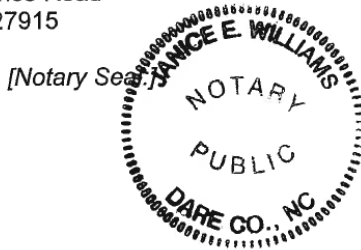
Earl Younce Jr.  
40279 Younce Road  
Avon, NC 27915

  
[signature of Notary]

Janice E. Williams

Subscribed and sworn to before me  
this 24th day of August, 2009

NOTARY PUBLIC  
My commission expires: November 27, 2013





AFFIDAVIT

State of North Carolina  
County of Dare

BEFORE ME, the undersigned Notary, NORMA J. DEFAGO  
[name of Notary before whom affidavit is sworn], on this 15 day of September, 2009,  
personally appeared **Fred Sawyer**, known to me to be a credible person and of lawful age,  
who being by me first duly sworn, on his oath, deposes and says:

My wife Denise and I have owned the Froggy Dog Restaurant for 14 years. We are located on Hatteras Island in Avon, North Carolina. The Froggy Dog is a family restaurant that has built a loyal following of regular customers for breakfast, lunch and dinner.

We depend on open and accessible beaches to attract fisherman, surfers and others to our area for recreation. Since implementation of the consent decree in 2008, I have witnessed a direct correlation in business revenue depending on whether beaches are opened or closed.

Our restaurant has struggled to survive whenever the Avon access ramp or Cape Point are closed. When these areas are shut down, revenue suffers. On the other hand, when these areas are re-opened for recreation, we see a sudden increase in business. This confirms for me the fact that regardless of the economy, people are willing to come to our area when the beaches are open. For us, and many other businesses, the beach is our industry.

In order to combat the negative impact of beach closures, we have had to work even longer hours and spend money on costly promotions and improvements. For example, we added a porch and offered music in an effort to help gain business. As the universe of potential customers dwindled because of the consent decree closures, we faced unprecedented competition in attracting each guest.

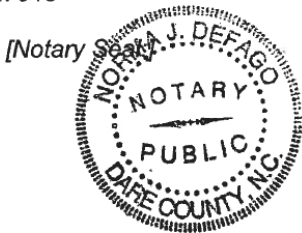
My wife and I have direct contact with our customers on a daily basis. We have listened to their frustration and anger about beach closures. Many tell us they are physically unable to hike over steep sand dunes in order to enjoy the ocean. I recall one older customer with bad knees saying, "If the beaches are closed, I'll never come back."

Fred Sawyer  
[signature of affiant]

Fred Sawyer  
40050 NC Highway 12  
Avon, NC 27915

Norma J. Defago  
[signature of Notary]

NORMA J. DEFAGO  
[printed name of Notary]



Subscribed and sworn to before me  
this 15 day of September, 2009

NOTARY PUBLIC  
My commission expires: 8-8, 2010

AFFIDAVIT

State of North Carolina  
County of Dare

BEFORE ME, the undersigned Notary, KAREN KELMER  
[name of Notary before whom affidavit is sworn], on this 24 day of September, 2009,  
personally appeared **Anne C. Bowers**, known to me to be a credible person and of lawful  
age, who being by me first duly sworn, on her oath, deposes and says:

I have owned and operated Indian Town Gallery on Hatteras Island in Frisco, North Carolina  
since April of 2000. We also lease retail space to 2 other businesses and rent 2 apartments.

2008 started out as a good year until the effect of the consent decree closures hit in early  
summer. For example, in June 2008 revenue declined 20%. The subsequent months of the  
year were even worse. June was followed with a decline of 27% in July, 25% in August 25%,  
38% in September, 24% in October, and 38% in November. December was the only month  
with an increase, a meager 200 dollars.

The decline in our business revenue was directly related to the restrictive closures of the  
consent decree. This was confirmed by the comments of many of our regular customers.  
They repeatedly said they would not be making their traditional trip to Hatteras Island,  
because the most popular recreational areas, including Cape Point, were closed.

The impact of the consent decree has changed the way my business operates. We have had  
to add the expense and effort of educational features and launch special promotions.  
Tragically, one of my key employees lost her home to foreclosure and had to leave the area  
to seek other opportunities. Since I was unable to immediately fund a replacement for her, I  
found myself having to work 70-hour weeks on a routine basis

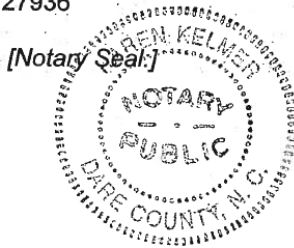
Not only did my gallery business drop, but my leasing income diminished as well. As area  
businesses experienced declines because of closures, many could not pay their rent. We  
who lease space were put into difficult dilemmas as property managers. When our tenants  
suffered, we suffered. In fact, I lost one of mine completely when they went out of business  
in September 2008. This caused a hardship on me and my family that created a do-or-die  
struggle to survive that has continued to exist since the consent decree was implemented.

*AC Bowers*  
[signature of affiant]

Anne C. Bowers  
50840 Highway 12  
Frisco, NC 27936

*Karen Kelmner*  
[signature of Notary]

KAREN KELMER  
[printed name of Notary]



Subscribed and sworn to before me  
this 24 day of September, 2009

NOTARY PUBLIC  
My commission expires: March 17, 2012

AFFIDAVIT

State of North Carolina  
County of Dare

BEFORE ME, the undersigned Notary, Janice E. Williams, on this 24th day of August, 2009, personally appeared **Steve Hissey**, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

I am the Co-Manager of Teach's Lair Marina. We are located in the village of Hatteras, North Carolina. We are a full service marina and carry a wide range of products and services for the many who travel to Hatteras Island for surf fishing. The bait and tackle portion of Teach's Lair Marina is known as "The Roost" which is named in honor of the "Pelican's Roost" our former tackle shop which closed in 2004 as the result of hurricane Isabel.

After the implementation of the consent decree in 2008, we experienced a significant decline because of restrictive closures. Our revenue is down 30 to 40% since 2007, the year before the consent decree. Each and every time access to Hatteras Inlet was closed for surf fishing, our business suffered. We lost 300 to 600 dollars for every day that access was restricted.

Our long-time customers are very frustrated by the beach closures and express their dissatisfaction to us on a regular basis. This has caused many to abandon the relatively inexpensive sport of surf fishing and invest in more costly boats in order to continue fishing. Even during a national recession, our regular customers are reporting to us that they are still fishing on a regular basis, just not here. As they complain, "Why travel to Hatteras if they won't let you fish?"

The aftermath of the consent decree has created a very fragile existence for Hatteras Island unlike anything I have ever seen before. It has made it extremely difficult for hard-working people to earn a living. During this time, our business has been forced to lay-off 2 people solely related to the closures.

*Steve Hissey*  
[signature of affiant]

Steve Hissey  
58646 Highway 12  
Hatteras, NC 27943

*Janice E. Williams*  
[signature of Notary]

Janice E. Williams

Subscribed and sworn to before me  
this 24th day of August, 2009

NOTARY PUBLIC  
My commission expires: November 27, 2013

[Notary Seal]



AFFIDAVIT

State of North Carolina  
County of Dare

BEFORE ME, the undersigned Notary, Jody L. Midgett  
[name of Notary before whom affidavit is sworn], on this 13 day of Oct, 2009,  
personally appeared **Kim Mosher**, known to me to be a credible person and of lawful age,  
who being by me first duly sworn, on her oath, deposes and says:

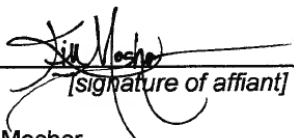
I am a professional artist and conduct business as Kim Mosher Designs on Hatteras Island in Buxton, North Carolina. My artwork encompasses several mediums featuring depictions of wildlife offering a unique view of nature available for discovery on Hatteras Island.

I am passionate about wildlife and enjoy helping others experience a special connection with nature through my art. There is nothing more gratifying than knowing that my artwork has inspired in someone an appreciation and respect for wildlife.

My business has been hit hard by the consent decree closures. After implementation of the consent decree in May 2008, my business was forced to scramble. Revenue declined from the sale of my fish drawings that are reproduced on t-shirts and distributed to tackle shops. Over the years, my depictions of in-shore fish species have been well received by the fishing community. However, as the consent decree closures forced away many fishermen, my income started a downward spiral culminating in 2009 with being down 30%.

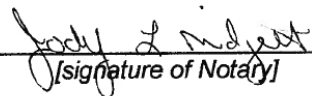
I am also active in the Hatteras Island Arts and Crafts Guild, which conducts public art shows to raise scholarship money for local students. Because this event occurs during the summer when many of the most popular portions of the beach are closed, attendance has suffered. This has caused a decrease in the amount of money we have been able to raise for student scholarships as compared to before the consent decree.

It is easy to get mad watching scholarship money decline and people suffer. Like many other businesses, the consent decree has forced me to work harder to make less.

  
[signature of affiant]

Kim Mosher  
46427 Flowers Ridge Road  
Buxton, NC 27920

[Notary Seal:]

  
[signature of Notary]

Jody L. Midgett  
[printed name of Notary]

Subscribed and sworn to before me  
this 13 day of Oct, 2009

NOTARY PUBLIC  
My commission expires: 6-15, 2013

AFFIDAVIT

State of North Carolina  
County of Dare

**BEFORE ME**, the undersigned Notary, Janice E. Williams, on this 24th day of August, 2009, personally appeared **Brian Jones**, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:


I own and operate "My Mechanic at the Beach," providing a mobile repair service for cars and trucks. Previously I operated a repair shop on Hatteras Island in Buxton, North Carolina known as "My Mechanic." After 2½ years, I was forced out of my repair shop because of the consent decree closures and now work as a mobile mechanic.

Prior to the consent decree implementation in 2008, my business was thriving. The majority of my customers were fisherman who frequented the Cape Point area in Buxton, North Carolina. Business was good and I invested a substantial sum in tools, equipment and a specialized four-wheel drive wrecker truck. I worked hard and made a good, honest living.

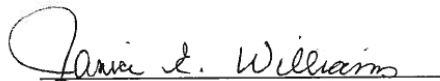
Things changed overnight after the consent decree. With Cape Point and other popular fishing areas closed during the most important times of the year, my regular customers stopped coming to Hatteras Island. I heard from many who told me they were going elsewhere to fish because of the closures. Without fishermen coming to Hatteras Island, the foundation of my business disappeared.

Revenue in my repair shop dropped over 50% after implementation of the consent decree. In order to survive, I had to liquidate for cash my four-wheel drive wrecker truck. It was sad to sacrifice one of the tools of my trade and suffer a tremendous financial loss in the transaction.

I held on to the repair shop for as long as possible, but eventually had to close the doors of the business for which I had worked so hard. Because of the consent decree I was forced out of my shop and now struggle to get by as a mobile mechanic. This has severely hampered my ability to earn a living and provide for my family.

  
[signature of affiant]

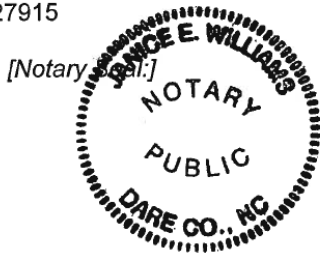
Brian Jones  
40083 Williams Road  
Avon, NC 27915

  
[signature of Notary]

Janice E. Williams

Subscribed and sworn to before me  
this 24th day of August, 2009

NOTARY PUBLIC  
My commission expires: November 27, 2013



**AFFIDAVIT**

**State of North Carolina  
County of Dare**

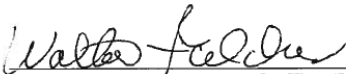
**BEFORE ME**, the undersigned Notary, Janice E. Williams, on this 24th day of August, 2009, personally appeared **Walton Fulcher**, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

I am the President of the Cape Hatteras United Methodist Men. We serve the community through the Cape Hatteras Emergency Assistance program and Food Pantry. We provide aid to individuals and families in need. We are located at the Buxton United Methodist Church in the village of Buxton, North Carolina on Hatteras Island.

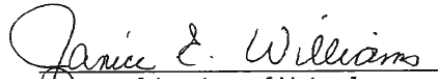
We have seen a tremendous increase in the number of families needing our assistance. In the past year, this number has more than doubled. These people, many of whom have been impacted by the closures of popular fishing areas on the Cape Hatteras National Seashore Recreational Area, rely on us for food and emergency assistance.

In the past year, we have paid out more than \$66,800 in assistance to 160 families. During the same time, our Food Pantry has been utilized 730 times. This has provided provisions to 2,475 people with enough food to feed 60,000 meals.

Volunteers run our program completely with 100% of our budget spent directly on services for people on Hatteras Island.

  
[signature of affiant]

Walton Fulcher  
P.O. Box 1591  
Buxton, NC 27920

  
[signature of Notary]

Janice E. Williams

Subscribed and sworn to before me  
this 24th day of August, 2009

[Notary Seal:]



NOTARY PUBLIC  
My commission expires: November 27, 2013

AFFIDAVIT

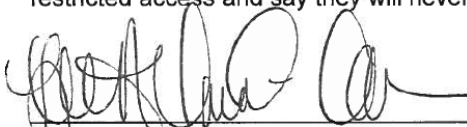
State of North Carolina  
County of Dare

**BEFORE ME**, the undersigned Notary, Janice E. Williams, on this 24th day of August, 2009, personally appeared **Lee Ann Quidley-Canning**, known to me to be a credible person and of lawful age, who being by me first duly sworn, on her oath, deposes and says:

My family has owned and operated Sonny's Waterfront Restaurant for 34 years. We are located in the village of Hatteras, North Carolina.

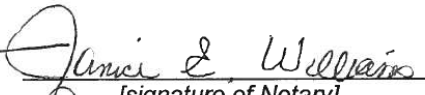
Since the implementation of the consent decree, our business has experienced a substantial loss of income. I have witnessed an overall reduction of 20% since 2007, the year prior to the consent decree.

As a small business owner, I have the opportunity to talk with our customers on a daily basis. I hear their frustrations about the beach closures. Many of them are discouraged about restricted access and say they will never return to Hatteras.

  
[signature of affiant]

Lee Ann Quidley-Canning  
57947 Highway 12  
Hatteras, NC 27943

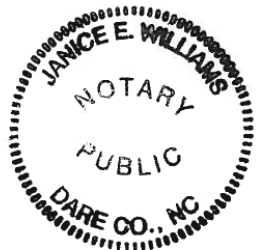
[Notary Seal:]

  
[signature of Notary]

Janice E. Williams

Subscribed and sworn to before me  
this 24th day of August, 2009

NOTARY PUBLIC  
My commission expires: November 27, 2013



AFFIDAVIT

State of North Carolina  
County of Dare

**BEFORE ME**, the undersigned Notary, Janice E. Williams, on this 24th day of August, 2009, personally appeared **Mike Harrell**, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

I have owned and operated Cape Woods Resorts since 1997. We are a campground with 70 sites located at 47646 Buxton Back Road in the village of Buxton on Hatteras Island, North Carolina. My campground is very close to the entrance of Cape Point.

Since implementation of the consent decree, I have witnessed a 10% drop-off in business. My customers have repeatedly told me that their cancellations are because of the consent decree closures, People express to me that they come here to fish on Cape Point and take their grand children to the beach. My business depends on access to the world class fishing of Cape Point.

Mike Harrell  
[signature of affiant]

Mike Harrell  
47646 Buxton Back Road  
Buxton, NC 27920

Janice E. Williams  
[signature of Notary]

Janice E. Williams

Subscribed and sworn to before me  
this 24th day of August, 2009

NOTARY PUBLIC  
My commission expires: November 27, 2013

[Notary Seal:]





AFFIDAVIT

State of North Carolina  
County of Dare

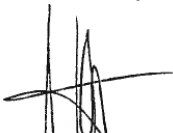
**BEFORE ME**, the undersigned Notary, Janice E. Williams, on this 24th day of August, 2009, personally appeared **John A. Mortensen**, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

I have worked in the recreational fishing industry since moving to Hatteras Island in 2003 following my career in the United States Air Force. I am a builder of custom fishing rods, and have been an employee of area bait and tackle shops.

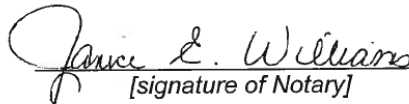
The consent decree closures have taken a severe toll on me. I have personally been victimized by the restrictive closures that have denied access to the most popular fishing locations in the Cape Hatteras National Seashore Recreational Area.

Ever since the 2008 consent decree, my ability to earn a living has been severely damaged. I have had to endure 40 difficult weeks of unemployment since the consent decree was implemented. During this time, employment opportunities have not been available because of the general decline in area business caused by the closures.

As a custom fishing rod builder, I have seen my income nearly vanish. Before the consent decree, I was building over 300 custom fishing rods each year for the many fishermen traveling to Hatteras Island. In the past year, I have only built 8 rods. This is how severely and dramatically the closures have crushed my business.

  
\_\_\_\_\_  
[signature of affiant]

John A. Mortensen  
46750 Buxton Back Road  
Buxton, NC 27920

  
\_\_\_\_\_  
[signature of Notary]

Janice E. Williams

Subscribed and sworn to before me  
this 24th day of August, 2009

NOTARY PUBLIC  
My commission expires: November 27, 2013

[Notary Seal:]



AFFIDAVIT

State of North Carolina  
County of Hyde

BEFORE ME, the undersigned Notary, Judith G. GARRISH  
[name of Notary before whom affidavit is sworn], on this 22 day of SEPTEMBER, 2009,  
personally appeared **David Esham**, known to me to be a credible person and of lawful age,  
who being by me first duly sworn, on his oath, deposes and says:

Since 1973 my family has owned and operated the Pony Island Motel on Ocracoke Island.  
This 50-room facility is popular with fishermen, families and others coming to the Cape  
Hatteras National Seashore Recreational Area.

Since the closures of the consent decree began in 2008, our business has suffered. We  
witnessed an abrupt decline in business as soon as the closures began. During 2008, we  
were off by an average of 14%. The impact of these closures has forced us to cut back  
employee hours causing a financial hardship for them. The drop in business we experienced  
parallels the periods of beach closures and occurred long before the national economic  
recession at the end of 2008.

The consent decree closures have made it harder for us, and other businesses, to plan for  
the future. Our customers depend upon recreational access to the beach. They frequently  
express their frustration to us that there is no way for them to effectively plan a family  
vacation to our area, because of the unpredictable way the closures are implemented under  
terms of the consent decree.

Our base of regular customers includes many fishermen and families. These frequent  
travelers have been the sustaining force for our family business over the years. Ever since  
the consent decree closures were implemented, they have told us over and over again, "if the  
beaches are closed, there is no reason to come back."

[Signature]  
[signature of affiant]

David Esham  
785 Irvin Garrish Highway  
Ocracoke, NC 27960

[Signature]  
[signature of Notary]  
Judith G. GARRISH  
[printed name of Notary]

Subscribed and sworn to before me  
this 22 day of SEPTEMBER, 2009

NOTARY PUBLIC  
My commission expires: 6/20/, 2013

