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VIA FACSIMILE AND US MAIL

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May 27, 2005

RECEIVED

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OUTER BANKS OF

Phillip Francis
Acting Superintendent
Cape Hatteras National Seashore
Park Headquarters
1401 National Park Drive
Manteo, NC 27954

Re: CHNS Congressional Intent

Dear Phillip:

It was a pleasure meeting you and discussing our issues of concern. As counsel for the Cape Hatteras Access Preservation Alliance, I am very pleased with the Park Service's willingness to work with user groups in an open manner. We look forward to continued open communication on these important issues.

I am writing to clear up a misinterpretation of the intent of Congress that appears in the 60-Day Notice of Intent to Sue by the Defenders of Wildlife. In that May 17 letter, Defenders alleges that Congress intended the Cape Hatteras National Seashore (CHNS) to be "permanently reserved as a primitive wilderness." (p. 2). We believe that Defenders takes the CHNS enabling legislation out of context and indeed fails to consider some key legislative history demonstrating that continued recreational access for the residents of Hatteras and the public alike was a promise made by the federal government when it established the CHNS.

In one respect, the CHNS is like all other National Parks. The National Park Service's (NPS) Organic Act makes clear that it was Congress's intent to create a National Park System for the common benefit of all people of the United States.¹ In creating the CHNS in particular, Congress said the area shall be "set apart as a national seashore for the benefit and enjoyment of the people...."² In other words, the CHNS is unique – but not in the manner suggested by Defenders. Significantly, section 3 of the CHNS enabling act specifically reserved the right of legal residents to earn a livelihood by fishing within the boundaries of the CHNS.³ Section 4 states that "certain portions of the area are especially adaptable for recreational uses, particularly

¹ See 16 U.S.C. § 1a-1.

² 16 U.S.C. § 459 (1946).

³ See 16 U.S.C. § 459a-1.

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the Seashore such as designated places for vehicles to get to the beach in order to reduce sand dune erosion to a minimum; to manage ocean fishing where large numbers of bathers are using the beach and to confine bathing to certain areas."¹² Director Wirth also acknowledged that the communities that lived in the area for generations would become responsible for caring for the tourists that would arrive at the newly-established Seashore¹³ and recognized that these communities have a right to enjoy the prosperity that would flow from the creation of the CHNS.¹⁴ Subsequently, former Director Wirth reaffirmed this position in a letter to then Interior Secretary Lujon. In commenting on lack of action in stabilizing the Oregon Inlet, former Director Wirth noted that, when the Seashore was created, he had made a promise of cooperation with the State of North Carolina and local government to work together as partners to "bring enjoyment to millions of visitors."¹⁵ He further stated that "this promise was made in response to local concerns as to how the park would affect local people, their businesses and their rights to continue fishing and in recognition that man is an integral part of nature and a very important consideration of designing solutions in dealing with nature."¹⁶

Finally, a federal district court has also acknowledged the unique historical and cultural character of the Outer Banks that Congress intended to preserve for the people. In Peele v. C.B. Morton, 396 F.Supp. 584 (E.D.N.C.1975), the court noted that Congress created the CHNS with an eye towards the recreational and commercial benefits historically enjoyed by the residents of the Outer Banks. In Peele, commercial fishermen from the Outer Banks brought suit against the Secretary of the Interior seeking to restrain enforcement of a NPS regulation restricting commercial fishermen from using seine nets on certain beaches within the CHNS. The District Court acknowledged that "the phrase 'right to earn a livelihood by fishing' in the enabling legislation must have some meaning, for it is unlikely that Congress intended to insert meaningless language in the statute."¹⁷ Further, the Court found it significant that legislation establishing other national seashores contains no provisions regarding fishing comparable to the one at issue.¹⁸ The court acknowledged that there must have been some special impetus for Congress to give recognition to the fisherman of North Carolina's Outer Banks.¹⁹ Ultimately, the court held that the regulations do not authorize the Secretary of the Interior to completely ban commercial fishing; rather, the Secretary must take account of residents' cultural heritage when deciding which regulations are necessary and proper for administration of the Seashore.²⁰

¹² See id. ORV access locations have been established at the CHNS and they comprise only a fraction of the total land area of the Seashore. Defenders now wants to close what few areas are left.

¹³ See id.

¹⁴ See Id.

¹⁵ Letter from Conrad L. Wirth, Former Director, National Park Service, Department of Interior, and Secretary of Interior Lujon (letter taken from the Coastland Times Sunday, May 18, 1993).

¹⁶ Id.

¹⁷ Peele, 396 F.Supp. at 587.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.