

## SOUTHERN ENVIRONMENTAL LAW CENTER

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CHAPEL HILL, NC 27516-2559

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October 9, 2009

Michael B. Murray  
Superintendent, Cape Hatteras National Seashore  
National Park Service, Outer Banks Group  
1401 National Park Drive  
Manteo, NC 27954

**Re: Cape Hatteras National Seashore Off-Road Vehicle Management Plan**

Dear Superintendent Murray:

I read with interest the enclosed letter from Gordon Myers of the North Carolina Wildlife Resources Commission ("NCWRC") to you. I was as astonished as you likely were, in light of the many negotiated rulemaking meetings at which NCWRC scientists consistently provided information and recommendations on the measures necessary to protect breeding birds and sea turtles on the Seashore. I would not have expected NCWRC to advocate for the Option A routes and areas alternative as the "sustainable balance," when it violates many of the principles consistently advocated by NCWRC scientists during the majority of the negotiated rulemaking process.

We now understand that NCWRC's change of heart is not scientifically grounded, but is the result of intense political pressure. We recently received documents from Dare County in response to a public records request that show NCWRC being urged to support positions its scientists did not support. I have enclosed a small sample for your consideration, but would be glad to send additional documents at your request. It appears that proponents of increased beach driving have been lobbying the leadership of NCWRC to change its position. They have also been lobbying Governor Perdue, Senator Marc Basnight, and others to pressure the NCWRC to change its position with regard to the level of protection needed for various species, specifically with an eye toward influencing the NEPA process for the final ORV management regulation.

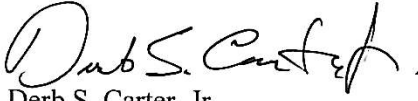
In its recent letter, NCWRC specifically disavows its recommendations on night driving and sea turtles submitted as Addendum 2 to the Final Report of the Negotiated Rulemaking Advisory Committee. The letter provides no explanation or basis for its revised position; the attached emails suggest the reasons. It is also important to note that the U.S. Fish & Wildlife Service and NCWRC could not concur in recommendations on night driving. Since all sea turtles nesting on Cape Hatteras National Seashore beaches are listed under the Endangered Species Act, the U.S. Fish & Wildlife Service has the last word on management measures necessary to protect these listed species. The Service's comments are in Addendum 3 to the Final Report.

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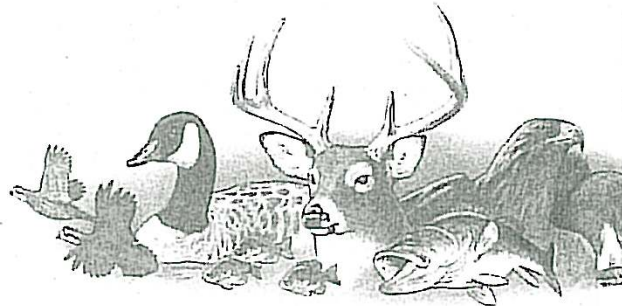
I thought you would want to be aware of these matters as development of the draft ORV management plan proceeds. In light of President Obama's directive to federal agencies to ensure that their actions are guided by scientific integrity, we urge you to take the best available science into account during the development of an ORV management regulation for Cape Hatteras National Seashore.

Thank you for your attention to this matter.

Sincerely yours,

  
Derb S. Carter, Jr.

Enclosures



<input checked="" type="checkbox"/>	SUPERINTENDENT	MM 9/11/09
<input checked="" type="checkbox"/>	DEPUTY SUPL.	
<input type="checkbox"/>	PIO PLANNING	
<input checked="" type="checkbox"/>	RESOURCE MGMT.	
<input checked="" type="checkbox"/>	INTERPRETATION	
<input checked="" type="checkbox"/>	ADMINISTRATION	
<input checked="" type="checkbox"/>	PERSONNEL	
<input type="checkbox"/>	VISITOR SERVICES	
<input type="checkbox"/>	SAFETY OFFICER	
<input type="checkbox"/>	ISS	
<input type="checkbox"/>	MAINTENANCE	
<input checked="" type="checkbox"/>	FILE	

North Carolina Wildlife Resources Commission

Gordon S. Myers, Executive Director

September 8, 2009

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

Dear <sup>Mike</sup> Mr. Murray,

This letter is to follow-up on previous discussions and comments regarding public access to Cape Hatteras National Seashore (CAHA), including position statements by the Wildlife Resources Commission (WRC). I appreciate and support your position in trying to balance natural resource conservation and sustainable human use of CAHA. The WRC recognizes your important mandates relative to the federal listing of individual wildlife species; however, unless all mortality factors impacting sea turtles can be addressed, options for regulating beach access that are theoretically designed to result in zero take of turtles on the beach are not viable.

Relative to terrestrial elements of sea turtle mortality issues, we continue to accept that lighting is of dominant importance; however, additional investigation and consideration has led us to conclude that at this point, it is not a practical or realistic expectation to use significant reductions in levels of lighting along Dare County beaches during turtle nesting season as a metric to allow additional beach access in CAHA. This concept was recommended in our addendum to the final report dated March 27, 2009 and thus it is necessary to submit this letter to clarify the current position of the WRC.

The WRC endorses development of public awareness campaigns to encourage voluntary community supported reductions of lighting impacts and we recommend continued collaboration with stakeholders to examine turtle friendly lighting ordinances that could incentivize reduction measures associated with new construction or renovations of existing buildings. We also recommend that the NPS continue to work with state and federal agencies to fully implement turtle friendly lighting within CAHA.



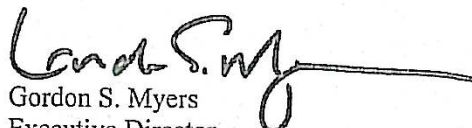
The WRC supports allowing daytime ORV driving during turtle nesting season until one hour after sunset and reopening as early as possible but not later than one hour after sunrise. We further believe there is high probability of success that collaborative development of an adaptive management nighttime driving plan could lead to reduction of nighttime driving restrictions including additional nighttime driving opportunities during portions of the months of May and September. This effort should be coordinated with the NPS, U.S. Fish and Wildlife Service (USFWS) and other stakeholders very soon to ensure timely integration with the federal rulemaking process. I offer the assistance and cooperation of the WRC in these efforts.

An important component of a beach access management plan that appeared to have consensus potential near the end of the REGNEG process was routes and areas. Routes and areas were intensively discussed among the Integration Workgroup members; however, they were unable to develop a single recommendation to test consensus. It is the WRC position that Option A developed by the ORV access caucus represents a sustainable balance of human and wildlife needs. The WRC endorses the routes and areas specified in Option A.

Finally, much discussion relative to these issues has been based on extrapolated data from other locations. The WRC recommends that the NPS implement long-term monitoring efforts to specifically evaluate impacts to critical natural resources resulting naturally changing conditions as well as competing uses within the CAHA. Long-term monitoring will provide site specific baseline information that will equip the NPS with information necessary to implement adaptive modifications on an ongoing basis. The WRC is interested in collaborating with the NPS to accomplish research and monitoring necessary to expand the current knowledge base applicable to specific conditions that exist within CAHA.

I look forward to our continued cooperation on these important resource conservation and utilization issues.

Sincerely,

  
Gordon S. Myers  
Executive Director

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**From:** Rep. Tim Spear [Tim.Spear@ncleg.net]  
**Sent:** Wednesday, April 01, 2009 4:19 PM  
**To:** Warren Judge; Myers, Gordon S.; Ray White  
**Cc:** Sen. Marc Basnight (President Pro Tempore); allenb@darenc.com; RichardJ@co.dare.nc.us; vtillett@co.dare.nc.us; Mike Johnson; Max Dutton; Jack Shea; Terry Wheeler; Terry Wheeler; Bobby Outten; dorothy@darenc.com; Gary Gross; Katie Smith; Amy Fulk (Pres Pro Tem's Office); Chris Dillon (Pres. Pro Tem's Office)  
**Subject:** RE: North Carolina Wildlife Resource Commission Recommendations Pertaining to Night Driving on CAHA

Gordon,

I would appreciate a copy of any reply you may send to Chairman Judge.

Rep. Tim Spear

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**From:** Warren Judge [mailto:warrenj@darenc.com]  
**Sent:** Wednesday, April 01, 2009 04:05 PM  
**To:** 'Myers, Gordon S.'; Ray White  
**Cc:** Sen. Marc Basnight (President Pro Tempore); Rep. Tim Spear; allenb@darenc.com; RichardJ@co.dare.nc.us; vtillett@co.dare.nc.us; 'Mike Johnson'; 'Max Dutton'; 'Jack Shea'; 'Terry Wheeler'; 'Terry Wheeler'; 'Bobby Outten'; dorothy@darenc.com; 'Gary Gross'; 'Katie Smith'; Amy Fulk (Pres Pro Tem's Office); Chris Dillon (Pres. Pro Tem's Office)  
**Subject:** North Carolina Wildlife Resource Commission Recommendations Pertaining to Night Driving on CAHA

Gordon,

I can not express strongly enough my disappointment when I read your recommendations submitted as an addendum to the CAHA REG NEG Final Report 3-30-09. Actually disappointment is too mild; I am very upset with your final report. I had asked you months ago that if you could not negotiate with the County and the Access stake holders, to tell me that, so I would not have the hope that the State of North Carolina would look out for the best interest of her people. Your final report is much more restrictive than where we were in February while in discussions. I feel betrayed and used. Again, this more than a year long process has been one in which the State of North Carolina aided and abetted the Southern Environmental Law Center, Audubon and Defenders of Wildlife in an attack against the people who live, visit and recreate in Dare County, North Carolina.

The fact that your recommendation is for all beaches to be cleared in the morning by NPS personnel is draconian. In January of 2008, the NPS Turtle Patrol staff member told the Committee that it can take all day sometimes until 5 PM to clear all beaches. Gordon do you realize what you have just done; you have given the ammunition to SELC, Audubon and Defenders who have the goal to close the beaches to all use to now say the State of North Carolina says that you can not drive on the Beach until all beaches have been cleared by NPS personnel. So some beaches you can drive on from 5 PM until 1 hour after sunset. Sir, when we look back upon this you may have just started the final chapter in the demise of Dare County.

How can the State of North Carolina even think to make a proposal such as this? Are you aware of the economic problems facing Dare County and the State of North Carolina? Are you aware of the employment picture in Dare County? Do you know where the State of North Carolina is ranked in the Nation as far as job losses? Gordon I am outraged at this recommendation.

In year 3 and year 5 recommendations I have never felt anymore betrayed than I do now. I went to Pete Benjamin (USFWS) in November and began a conversation with him. Within a month you were involved in that conversation. Gordon I quietly put an idea on the table. That idea was if the County would begin with a change in

9/29/2009

our Land Use Plan to include turtle friendly lighting, which would lead to an 'turtle friendly lighting' ordinance for new construction and we would work with USFWS, NCWRC, Civic and Business groups to achieve voluntary compliance of existing structures to the turtle friendly lighting ordinance, then would USFWS and NCWRC support a shorter season of prohibiting night time driving, short overnight hours of restriction and allow Park and Stay with escort service. In your proposal you are requiring turtle friendly lighting, The State of North Carolina is going to dictate to Dare County what it must do! An idea to achieve a goal with negotiation has been thrown in the face of the people of Dare County. This has not been negotiation this has been strong arm tactics by our own Government. I am ashamed of my State. In the face of these economic times, if we spend more of our money which we do not have, then you will give us some crumbs on the table.

I have a lot more to say and I will say it. I had a great respect for your Gordon, you heard our cries for help as David Allen was taking the life out of Dare County and now you write a report that goes further than anything I ever heard David Allen propose. I am so very disappointed in my State of North Carolina. If I can say one more thing it would be to scream from the highest sand dune, why? Why turn your back on the people of Dare County and North Carolina?

Warren



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**From:** Myers, Gordon S. [gordon.myers@ncwildlife.org]  
**Sent:** Wednesday, April 01, 2009 5:56 PM  
**To:** Warren Judge; White, Ray  
**Cc:** Marcb@ncleg.net; Tims@ncleg.net; allenb@darenc.com; RichardJ@co.dare.nc.us; vtillett@co.dare.nc.us; 'Mike Johnson'; 'Max Dutton'; 'Jack Shea'; 'Terry Wheeler'; 'Terry Wheeler'; 'Bobby Outten'; dorothy@darenc.com; 'Gary Gross'; 'Katie Smith'; 'Amy Fulk (Pres Pro Tem's Office)'; 'Chris Dillon'; Clapp, Sarah; Martin, Mallory G.; Seegars, Wes  
**Subject:** RE: North Carolina Wildlife Resource Commission Recommendations Pertaining to Night Driving on CAHA

Dear Warren,

Thank you for talking with me on the telephone about the Night Driving proposal that the WRC submitted to the National Park Service last Friday. As I told you on the telephone, we were unable to reach agreement on a joint proposal with the USFWS by Friday morning. As a result, we broke away from the joint approach and modified the document in effort to more accurately reflect where we were in February. We simply did not consider the importance of setting a specific time for opening the beaches. In the meetings that I attended in which we discussed beach opening time, it was always the objective to open them as early as possible which is why we discussed providing assistance to the NPS to ensure that the beaches would be cleared and opened as early as possible (I think the general idea in February was one hour after sunrise). We will certainly clarify this.

It is extremely disappointing that the our proposal has caused such deep concern and that you believe it will work against a fair solution. It is especially disheartening because it is completely counter to our objective to balance the complicated set of biological, social and economic factors.

Frankly, I was appalled by what appeared to be a tactical move taken by Defenders of Wildlife and the National Audubon Society at the final REGNEG meeting. The final route maps that they presented seemed extremely regressive and incongruent with the concerted effort among stakeholders to build consensus. On the other hand, the maps presented by the group that included access advocates and Dare County reflected a tremendous amount work, compromise, consideration of ALL objectives and what I believe was the true good faith required to achieve a sustainable solution.

I pledge my support to reaching a fair and balanced solution and we will work with you to continue to develop and refine recommendations to submit to the National Park Service as they develop rules. I have also called Mike Murray to discuss options to clarify the WRC recommendations with respect to specific proposal elements. I should know more about the process tomorrow.

Sincerely,  
Gordon Myers

**Gordon Myers**

9/29/2009

**Executive Director**  
**North Carolina Wildlife Resources Commission**  
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Raleigh, NC 27699-1701  
Ph: 919.707.0151  
Fax: 919.707.0020  
[gordon.myers@ncwildlife.org](mailto:gordon.myers@ncwildlife.org)  
[www.ncwildlife.org](http://www.ncwildlife.org)

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**From:** Warren Judge [mailto:warrenj@darenc.com]  
**Sent:** Wednesday, April 01, 2009 4:05 PM  
**To:** Myers, Gordon S.; White, Ray  
**Cc:** Marcb@ncleg.net; Tims@ncleg.net; allenb@darenc.com; RichardJ@co.dare.nc.us; vtillett@co.dare.nc.us; 'Mike Johnson'; 'Max Dutton'; 'Jack Shea'; 'Terry Wheeler'; 'Terry Wheeler'; 'Bobby Outten'; dorothy@darenc.com; 'Gary Gross'; 'Katie Smith'; 'Amy Fulk (Pres Pro Tem's Office)'; 'Chris Dillon'  
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The fact that your recommendation is for **all** beaches to be cleared in the morning by NPS personnel is draconian. In January of 2008, the NPS Turtle Patrol staff member told the Committee that it can take all day sometimes until 5 PM to clear **all** beaches. Gordon do you realize what you have just done; you have given the ammunition to SELC, Audubon and Defenders who have the goal to close the beaches to all use to now say the State of North Carolina says that you can not drive on the Beach until **all** beaches have been cleared by NPS personnel. So some beaches you can drive on from 5 PM until 1 hour after sunset. Sir, when we look back upon this you may have just started the final chapter in the demise of Dare County.

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9/29/2009



Warren

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**From:** warrenj@darenc.com  
**Sent:** Saturday, April 04, 2009 10:11 AM  
**To:** Myers, Gordon S.  
**Cc:** allenb@darenc.com; outten@darenc.com; warrenj@darenc.com  
**Subject:** RE: North Carolina Wildlife Resource Commission Recommendations Pertaining to Night Driving on CAHA

Gordon,

I would appreciate the opportunity to have discussions with you. I would also like to include at least one of our Hatteras Island people and I do want to have Allen Burrus in the meeting. I know you know Bob Eakes and I would like to have Larry Hardham included. I want you to be comfortable with me inviting either or both Bob and Larry.

I think it would be extremely valuable to know what you are going to say in your recommendations. If we disagree then all parties know about it up front. I would suggest an in person meeting. The next two weeks would be difficult and if time allows us to get past the impact of Easter it would help Allen and I. If you would propose several meeting days, times and locations from your schedule I will coordinate on my end. I would probably also like to include our County Manager (as of July 1), Bobby Outten as he has been very involved with consent decree negotiations and our testimony before Congress in his capacity as our County Attorney.

Thank you for this opportunity and I look forward to hearing from you.

Warren

> Warren,  
>  
> I am planning to send a letter to the NPS to clarify the WRC recommendations  
> (ie. Beach opening hours, etc.); however, before I send anything, I would like  
> to completely understand the Dare County concerns. What would be the best way to  
> get input? Email?  
>  
> Thanks,  
> Gordon  
>  
> Gordon Myers  
> Executive Director  
> North Carolina Wildlife Resources Commission  
> 1701 Mail Service Center  
> Raleigh, NC 27699-1701

9/29/2009

- > Ph: 919.707.0151
- > Fax: 919.707.0020
- > [gordon.myers@ncwildlife.org](mailto:gordon.myers@ncwildlife.org)<mailto:gordon.myers@ncwildlife.org>
- > [www.ncwildlife.org](http://www.ncwildlife.org)<http://www.ncwildlife.org>
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**From:** Warren Judge [warrenj@darenc.com]  
**Sent:** Tuesday, July 21, 2009 12:01 PM  
**To:** 'Tate Johnson'  
**Cc:** 'Bobby Outten'; 'Allen Burrus'  
**Subject:** RE: meeting

Tate,

Again I want to thank you for the opportunity to meet with you and Marion. I appreciate your willingness to schedule a meeting for us with the Governor when she is in the Eastern Office. Tate, we will be working in DC next week and I feel it is extremely important to follow our meeting with the members of the North Carolina Delegation with a meeting with the Governor. What is the possibility of being able to meet with Governor Perdue next Thursday? Our expectation is to leave DC with a very good game plan and would appreciate the opportunity to brief the Governor and ask her for her help and support.

Thank you,

Warren

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**From:** Tate Johnson [mailto:tatejohnson@gmail.com]  
**Sent:** Monday, July 20, 2009 2:59 PM  
**To:** Warren Judge  
**Cc:** Bobby Outten; Allen Burrus  
**Subject:** Re: meeting

Warren, I appreciate you taking the time to drive from Dare County to my office.

If you could send a contact number for Gordon Meyers as well as the name of this list the NC Wildlife keeps that we discussed that would be great.

I still have you on the list to meet with Governor Perdue when she works out of the eastern office.

Marion can be reached at [marion.sullivan@nc.gov](mailto:marion.sullivan@nc.gov)

Thanks again,

Tate

On Sat, Jul 18, 2009 at 10:39 AM, Warren Judge <[warrenj@darenc.com](mailto:warrenj@darenc.com)> wrote:

Tate,

Thank you for meeting with Bobby and I on Thursday. It was a pleasure meeting Marion Sullivan and we do appreciate her time as well. Please send me Marion's email as I would like to thank her for taking the time to meet with us. Tate please send me a follow up as to any information you need Bobby and I to furnish to you and Marion. Access is a critical issue for Hatteras Island, Dare County and all of our visitors from across the State and Nation. We hope for and look forward to help from you and the Governor on this issue. As you and I have discussed we would appreciate the opportunity to meet with the Governor. You had mentioned on her next trip to

10/9/2009

the East that you would arrange for us to have some time with Governor Perdue on this very important issue. I will be looking forward to this opportunity.

Again thank you for all you have done for us.

Sincerely,

Warren

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Tate C. Johnson  
mobile (919) 308-2089

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**From:** Warren Judge [warrenj@darenc.com]  
**Sent:** Saturday, July 25, 2009 10:49 PM  
**To:** 'Allen Burrus'; 'Richard Johnson'; 'Virgina Tillett'; 'Mike Johnson'; 'Max Dutton'; 'Jack Shea '  
**Cc:** 'Robert L. Outten'; 'Dorothy Toolan'; katies@darenc.com; Warren Judge  
**Subject:** updates  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed

### **Coast Guard Base & Housing**

On Wednesday afternoon Allen, Bobby and I met with Daniel Basta, Director, NOAA Office of National Marine Sanctuary, and David Alberg, Superintendent, *Monitor* National Marine Sanctuary at their request concerning the Coast Guard Housing and Base in Buxton. NOAA is going to move an office into Dare County and is in need of office and residential space. Their presence here is a result of the National Mariner Sanctuary and preservation of all the shipwrecks which apparently are being looted according to them on a very frequent basis. And this of course is the tie in to our other guest for the day. Daniel Basta's comment's to us were very positive and gave a commitment to use his influence to make a transfer of the Coast Guard assets to Dare County a reality. While we all have been down the road of broken promises before we have nothing to lose waiting to see what he can accomplish. Also attending that meeting was The Secretary of the North Carolina Department of Cultural Resources, Linda Carlisle. Secretary Carlisle was on a tour in Dare County visiting our Library's, she toured the Graveyard of the Atlantic Museum and met us at the Coast Guard Housing. On Wednesday Morning Secretary Carlisle visited the Library on Roanoke Island, read to children and was greeted by Virginia, who represented the County. Thank you Virginia! Mike, I specifically asked Daniel Basta and David Alberg if this Sanctuary they are creating for the shipwrecks would impede our Commercial or Recreational Fishermen/women and they both told me that it would not. We need to keep a sharp eye on this Sanctuary.

### **Dredging**

The Army Corps is well funded for a major project at Oregon Inlet late this summer and early fall, work will include the outer bar, the widener, the spit and many of the interior channels leading to Wanchese and Manteo. The dredging at the Rodanthe Harbor and the Stumpy Point Ferry Dock will be a reality to clear those channels and Ferry Docks in the event of an emergency. Unfortunately due to the content of the bottom material in the Stumpy Point Harbor there will be no dredging at this time in the Boat Harbor in Stumpy Point. The County has public docks in the Stumpy Point Harbor and our fisherman work out of this location. Even with that bad news we are fortunate to have the funding for the projects that are going to happen.

### **Governor Perdue and North Carolina Wildlife**

Bobby and I met with Tate Johnson, Eastern State Representative for the Governor and Marion Sullivan Director of Intergovernmental Affairs for the Governor. The purpose of our meeting was to ask for the Governor's help with North Carolina Wildlife Commission. The NCWC has listed 'Terns' and 'American Oyster Catchers' as species of concern. Well that means very little the Department of Interior at the insistence of SELC, Audubon and Defenders of Wildlife have elevated the protection of these Birds to that of 'Endanger Species'. So while our beaches are stilled closed, the beaches are not closed for the Piping Plover or Turtles but because of 'Tern' nests and 'American Oyster Catcher nests' Terns by the way can be found nesting on the roofs of all of our Shopping Centers on the Beach. We had a good meeting and were promised that they would work on this and arrange for us to meet the Governor and ask her directly for her help. Our request for help from the Governor was to ask for her to intervene with the NCWC and follow the advice of the Director, Mr. Gordon Myers that these Birds do not need this level of protection. A retraction from the State of North Carolina while it will not change the damage done during REG NEG will be a tremendous help in the NEPA process which starts this fall.

### **Washington**

We must make a trip to Washington this week. Meetings are schedule with Congressman Jones and Senator



Hagan. Meetings are schedule with Legislative Staff members for Congressman Shuler, Congressman Watt, and Senator Burr. Senator Burr has promised to join us if his Committee work will allow. At 10 AM Tuesday morning the Senate Committee on National Parks will conduct a confirmation hearing for Jon Jarvis, the man chosen by the President to be the next National Park Director. This is an unfortunate choice for Dare County and any City, County or State in our Nation, who wants to have user friendly policies and access. Mr. Jarvis's brother Destry was a member of the REG NEG Committee and was a major obstacle in reaching consensus. Our friends at the American Sportfishing Association in Washington are meeting with Senator Burr's staff to write a series of questions for Senator Burr to ask in his examination of Jon Jarvis. I do not want to raise the level of expectation but going through channels and contacts we are trying to arrange a meeting with Congressman Hoyer and or his Chief of Staff. Congressman Hoyer is the Majority Leader of the House of Representatives.

Finally I regret the attack on Gary Gross by the Dawson family. Gary is an outstanding County staff person and has tackled his job assignment with passion and dedication. Gary has established himself as a go to guy with the people on Hatteras Island, with news outlets, agency staff as well as developing a rapport with Congressional Staff members. We all can be proud and confident in the job Gary has done is doing and will continue to do.

Please do not hesitate to call me with any questions or if you need more information.

Warren