

## SOUTHERN ENVIRONMENTAL LAW CENTER

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February 11, 2010

**VIA U.S. MAIL AND ELECTRONIC MAIL**

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 wanted to be sure that you were aware of the position taken by Dare County, Hyde County, and the Cape Hatteras Access Preservation Alliance (CHAPA) in a recent federal court filing that supports wildlife protections from the Consent Decree entered in Defenders of Wildlife v. National Park Service, 2:07-CV-00045 (E.D.N.C.). After negotiating and approving the Consent Decree in a lawsuit pending in a federal court in North Carolina in April 2008, then spending the time since then openly opposing the Consent Decree by promoting federal legislation to overturn it<sup>1</sup> and publicly criticizing it, the Counties and CHAPA are now promoting the Consent Decree to a federal court in Washington, DC, as providing "important biological benefits and protections."

I have enclosed a copy of a pleading entitled, "Memorandum in Support of Plaintiffs' Motion for Summary Judgment," filed by the Counties and CHAPA last week in a lawsuit entitled, CHAPA et al. v. U.S. Department of Interior et al., 09-0236-RCL (D.D.C.). In that lawsuit, the Counties and CHAPA are challenging the designation of portions of Cape Hatteras National Seashore as critical habitat for the piping plover.

Although we do not agree with their contention that the Consent Decree is an adequate substitute for the designation of critical habitat for piping plovers, we note that the Counties and CHAPA praise provisions of the Consent Decree as providing significant protection for wildlife at Cape Hatteras National Seashore. Specifically:

- Page 22 highlights at least three terms found solely in the Consent Decree: "an ORV-free zone in the 'ocean backshore' between March 15 and November 30," "a 1,000 meter ORV buffer for unfledged chicks," and increases of the unfledged chick buffer "upon signs of disturbance."

<sup>1</sup> In 2008, companion bills H.R.6233 and S.3113 were introduced but neither bill received favorable committee action. In 2009, identical legislation (H.R.718 and S.1557) were introduced and remain pending.

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- Page 23 states that the Interim Plan as amended by the Consent Decree,<sup>2</sup> through the above protections, “provides assurances that the conservation management strategies will be implemented to accomplish the objectives” of protecting piping plover habitat on the Seashore.
- Page 43 states that the Interim Plan/Consent Decree provides “important biological benefits and protections.”

We ask that you take the statements by Dare and Hyde County and CHAPA in support of the Consent Decree’s wildlife protections into account as you continue development of the long-term off-road vehicle management plan for Cape Hatteras National Seashore.

Thank you for your attention to this matter.

Sincerely yours,



Julie Youngman

Enclosure

cc (with enclosure, via U.S. Mail and e-mail):

Sen. Richard Burr  
Sen. Kay Hagan  
Rep. G.K. Butterfield  
Rep. Howard Coble  
Rep. Bob Etheridge  
Rep. Virginia Foxx  
Rep. Walter B. Jones  
Rep. Larry Kissell  
Rep. Patrick McHenry  
Rep. Mike McIntyre  
Rep. Brad Miller  
Rep. Sue Myrick  
Rep. David Price  
Rep. Heath Shuler  
Rep. Melvin Watt  
Jane Lyder, Department of Interior  
William Shafroth, Department of Interior  
Jonathan Jarvis, National Park Service

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<sup>2</sup> References on page 19, lines 1-3, and page 22, lines 1-2, show that the term “Interim Plan” refers to the Cape Hatteras Interim Protected Species Management Plan finalized in July 2007 as it was amended by the Consent Decree entered in April 2008.

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Dan Wenk, National Park Service  
Dr. Bert Frost, National Park Service  
Dan Ashe, Fish & Wildlife Service  
Ethan Carson Eddy, Department of Justice