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March 1, 2010

VIA FACSIMILE (252-473-2595), EMAIL, AND U.S. MAIL

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

Re: Comments on Proposed 2010 Pre-nesting Closures
Cape Hatteras National Seashore

Dear Superintendent Murray:

Thank you for forwarding the proposed pre-nesting closures for 2010. Pursuant to paragraph 20 of the Consent Decree, we are providing comments on the proposed closures on behalf of National Audubon Society, Defenders of Wildlife, and Southern Environmental Law Center.

We first review the requirements of the Consent Decree (cited as "CD") on pre-nesting closures. For the 2008 breeding season, the pre-nesting areas shall be as delineated on the maps attached as Exhibits 1-7 to the Consent Decree. (CD ¶ 3.) These areas shall not be reduced to accommodate an ORV corridor, including in the event of naturally occurring erosion or accretion of an area, except in emergency situations. (CD ¶ 3.) In the years following the 2008 breeding season, the National Park Service ("NPS") shall establish pre-nesting closure areas at Bodie Island Spit, Cape Point, South Beach, Hatteras Spit, North Ocracoke, and Ocracoke South Point that incorporate to the maximum extent possible the areas delineated in the 2008 pre-nesting closure maps. (CD ¶ 5.) If substantial changes occur to these areas, the NPS shall establish pre-nesting closure areas consistent to the maximum extent possible with the 2008 breeding season pre-nesting areas. (CD ¶ 6.) These pre-nesting areas shall include to the maximum extent possible the soundside intertidal zone, areas of moist soil habitat, ocean backshore, dunes, dry sand flats, overwashes, and blowouts. (CD ¶ 6.) The pre-nesting areas shall also include areas of the ocean tidal zone consistent to the maximum extent possible with the 2008 breeding season pre-nesting closures. (CD ¶ 6.) The pre-nesting areas shall remain in place until the later of July 15 or two weeks after the least tern, black skimmer, American oystercatcher, piping plover, or Wilson's plover chick within the area has fledged, as determined by two consecutive monitoring events. (CD ¶ 4.)

In addition, the Interim Protected Species Management Strategy (cited as "IPSMS") requires seasonal closures of areas used by all protected bird species during the past three breeding seasons. (IPSMS p. 59.) The Interim Strategy shall remain in full force and effect,

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except as modified by the Consent Decree. (CD ¶ 2.) Finally, the pre-nesting requirements of the Interim Strategy and Consent Decree are minimum measures, and nothing set forth therein prevents the NPS from exercising its discretion to provide additional protections as needed. (CD ¶ 17).

The pre-nesting areas are not specific to piping plover nesting. No piping plovers were nesting at North Ocracoke when the 2008 pre-nesting closure maps were adopted. In fact, the sections of the Interim Plan and the Consent Decree discussed above demonstrate that pre-nesting closures were designed to include the areas of recent nesting activities of all protected bird species, including least tern, black skimmer, American oystercatcher, piping plover, or Wilson's plover.

National Audubon Society, Defenders of Wildlife, and Southern Environmental Law Center make the following recommendations for expansion of the pre-nesting closures based on the provisions of the Interim Plan and the Consent Decree discussed above¹:

1. Based on the condition of the habitat and the amount of bird nesting activity during the last two years, especially by colonial waterbirds and American oystercatchers, a full beach closure would be justified at Bodie Island Spit. We request, however, that the pre-nesting closure for the Spit shown on Map 1 merely be modified to eliminate the 100-foot ORV corridor along the ocean from the area that is currently marked as a pedestrian-only area all the way around the Spit up to the point that is 0.2 mile north of the oceanside 2009 American oystercatcher nest. Instead, with appropriate monitoring, we recommend the ORV corridor be replaced with a pedestrian-only corridor that is 50 feet wide from the high tide line. For clarification, the area we are requesting you close to ORVs is marked in yellow on the attached copy of Map 1.
2. We request that the pre-nesting closure for Cape Point, as represented on Map 2, be expanded to the water line from the mid-point of Ramp 45 eastward (this area is marked "350 meters" on pre-nesting closure Map 2), because of the colonial waterbird colony and American oystercatcher nests there last year, and the numerous incidents of piping plover scrapes that occurred in recent years.
3. We request that the pre-nesting closure for South Beach, as represented on Maps 2 and 3, be extended 400 meters westward along the shore because of the many American oystercatchers and colonial waterbird nests that have occurred in that vicinity in recent years, so that it ends at the westward edge of the site where colonial waterbird colonies have occurred during the last three years, approximately 1.7 miles west of Ramp 45. We also request that the pre-nesting

¹ We stand by the recommendations made during the negotiated rulemaking process for the long-term management of natural resources at Cape Hatteras National Seashore. The recommendations made in this letter are intended to comport with the interim protections provided by the Interim Plan and Consent Decree.

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closure be extended down to the water line in the areas where there have been colonial waterbird colonies in all three of the last three years, as shown on Map 4 of the 2009 Colonial Waterbird Resource Maps, in other words, beginning 0.2 mile west of Ramp 45 and continuing to approximately 1.7 miles west of Ramp 45.

4. Pursuant to the requirements of the Interim Plan, which remain in effect unless superseded by the Consent Decree, we request that you implement pre-nesting closures in other areas that have been used by any protected bird species (including least tern, common tern, gull-billed tern, black skimmer, American oystercatcher, piping plover, or Wilson's plover) in any of the last three breeding seasons but are not subject to safety or other closures to ORV use, including as examples the following areas:
 - i. The area extending approximately 1.5 mile southward from Ramp 27, because of the large amount of recent American oystercatcher and colonial waterbird breeding activity in that area in the last three years.
 - ii. The areas around Ramp 34 and extending at least one mile northward from Ramp 34, because of the large amount of recent American oystercatcher and colonial waterbird breeding activity in that area in the last three years;
 - iii. The area between Ramp 68 and Ramp 70 that has been the site of a large amount of recent American oystercatcher activity in the last three years.

Thank you for your attention to these comments and suggestions. We would be glad to discuss any of them with you.

Very truly yours,



Julie Youngman

JFY/lap
Enclosure
Cc (via email):
Rudy Renfer
Bobby Outten
Jason Rylander
Chris Canfield



2010 Bodie Island Spit Pre-nesting Closure Recommendation

