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February 16, 2011

VIA FACSIMILE AND U.S. MAIL

The Honorable Ken Salazar, Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240
Facsimile: (202) 208-5048

The Honorable Jacob Lew, Director
Office of Management and Budget
1650 Pennsylvania Ave., NW
Washington, DC 20503
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Re: Proposed Regulation for Off-Road Vehicle Use at Cape Hatteras National
Seashore

Dear Secretary Salazar and Director Lew:

You recently received a letter from Senators Richard Burr and Kay Hagan and Representative Walter Jones, dated February 1, 2011, regarding the pending federal regulation governing the management of Off-Road Vehicle (ORV) use at Cape Hatteras National Seashore. We write to respond to several points made in the letter.

1. The Majority of Commenters Favored Less Beach Driving, with More of the Beach Preserved for Pedestrians and Wildlife.

The recent letter implies that the National Park Service's proposed ORV management plan fails to reflect the public's comments on the draft ORV management plan. In fact, according to the Park Service, the solid majority of comments it received favored the alternatives that prohibited ORV driving on the most miles of beach. A local newspaper quoted the Park Service as follows:

Of the 15,000 comments submitted in response to the park's draft proposal in March, a majority of commenters favored more ORV restrictions.

But a "solid minority" wanted just the opposite, Park Superintendent Mike Murray said Thursday.¹

According to the National Park Service's summary of public comments, of the 15,490 comments received from the public, 9,575 supported Alternative D, which was identified in the EIS as the "environmentally preferable alternative" and reserved 40 of the Seashore's 65 miles as year-round vehicle-free. Meanwhile, far fewer comments supported the remaining alternatives, each of which reserved a greater number of miles of beach for ORV use: Of the 15,490 comments,

¹ Erin James, "Nobody's happy over off-road vehicle plan on shoreline," The Virginian-Pilot (Nov. 21, 2010) (available at: <http://hamptonroads.com/2010/11/nobodys-happy-over-offroad-vehicle-plan-shoreline>).

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128 supported the two no-action alternatives (A and B), 189 supported Alternative C, five supported Alternative E, and 38 supported Alternative F, the preferred alternative, without also suggesting substantive changes.

That disparity shows that the majority of the commenting public favored an alternative that provides access to ORV-free beaches for pedestrians, increased wildlife protections, and greater restrictions on beach driving. The Park Service's Record of Decision honored those preferences. We, too, ask that you honor the wishes of those interested persons who commented on the Draft EIS, and ensure that the final regulation provides the pedestrian access and wildlife protections valued by the public.

2. The Claims That the Local Economy Is Being Harmed by Beach Driving Restrictions Are Not Supported by Evidence.

The recent letter reiterates the unsubstantiated claims of some local businessmen that the National Park Service's management of beach driving is currently hurting the local economy, and that the proposed regulation "will further imperil the economic vitality of Dare County families and businesses." There is, however, only anecdotal support for such claims. Instead, by all objective measures, the Dare County economy and tourism industry are thriving under current Seashore management, which has restricted ORV use the past three years. Verifiable statistics published by North Carolina and Dare County itself show that:

- Dare County visitor occupancy from January to August 2010 exceeded occupancy in all prior years for the same period.²
- Hatteras Island visitors spent a record-setting \$27.8 million on lodging during the month of July 2010, which exceeded July 2009 by 18.5 percent and surpassed all preceding years, both before and after current ORV management practices went into effect.³
- Tourism spending increased in Dare County in 2008, with tourists spending 1.9% more in 2008 (during the first year under the current ORV management practices) than in 2007.⁴ Although tourism spending decreased slightly in Dare County in 2009 at the peak of the recession as compared to 2008 (down 2% to 2007 levels), Dare County fared far better than the state of North Carolina as a whole (where tourism declined by 7.4%). The County also fared better than all but 12 of North Carolina's 100 counties, with the remaining 87 counties

² http://www.outerbanks.org/pdf/Gross_Occupancy_Summary_receipts.pdf.

³ <http://outerbanksvoice.com/2010/09/16/occupancy-dollars-hit-an-all-time-high/>

⁴ http://www.outerbanks.org/visitor_services/press_room/press_releases/2008_Dare_County_Tourism_Figures.pdf

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suffering higher rates of declining tourism. Dare County consistently ranks fourth highest among the state's counties in tourism revenue.⁵

Dare County achieved these remarkable results despite the current nationwide recession, high gas prices, and a public relations campaign funded by Dare County to advertise its beaches as closed to the public.⁶

Looking to the future, the Park Service's environmental impact statement included a thorough evaluation of the economic impact of the various proposed alternatives and the potential for the local economy to continue to thrive and adapt. We ask that you carefully review the economic evidence and ensure that the final regulation is based on accurate, verifiable data and information, rather than anecdotes.

3. Beach Driving Is Not the Predominant Use of the Seashore Nor Is It Essential to Enjoyment of the Seashore.

The recent letter implies that the use of beach driving is necessary for the enjoyment of the Seashore and that beach driving may even be responsible for the preservation of the Seashore's natural landscape. In fact, a 2008 study by the US Fish and Wildlife Service concluded that only 2.7 to 4.0 percent of the approximately 2.5 million visitors to Cape Hatteras National Seashore each year are ORV users and that restrictions on beach driving would likely significantly increase visitation by other categories of visitors.⁷ Another study confirms that the vast majority of visitors to the Seashore are engaging in activities other than beach driving.⁸ Finally, as described above, the majority of people who commented on the DEIS wrote in favor of greater restrictions on beach driving and/or greater protections for wildlife.⁹ Rather than limiting access to the beach, the Park Service's preferred alternative will make it easier for the public to enjoy the Seashore by creating new parking areas and pedestrian walkovers.

⁵ FEIS at 314 and 316, Table 43; *see also* <http://www.nccommerce.com/NR/rdonlyres/6D8A2334-7794-4286-8690-0625B1F5EA8B/0/2009NCCountyPreliminaryEstimatesEXPENDITURES.pdf>.

⁶ Catherine Kozak, "Dare County Beach Access Campaign Goes Online," *Virginian Pilot*, Feb. 13, 2009, available at: <http://hamptonroads.com/2009/02/dare-county-nc-goes-online-beachaccess-campaign>; *see also*: <http://eyeondare.blogspot.com/2009/10/prudent-fiscal-policy.html>.

⁷ Industrial Economics, Inc., "Economic Analysis of Critical Habitat Designation for the Wintering Piping Plover," prepared for U.S. Fish & Wildlife Service (Sept. 23, 2008) at 2-12 – 2-13, 2-17.

⁸ FEIS at 281-284

⁹ Erin James, "Nobody's Happy Over Off-Road Vehicle Plan on Shoreline," *Virginian Pilot*, Nov. 21, 2010, available at: <http://hamptonroads.com/2010/11/nobodys-happy-over-offroad-vehicle-plan-shoreline>. *See also* statistics on DEIS comments, available from National Park Service.

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The recent letter also implies that a beach filled with vehicles is conducive to enjoyment of “a natural landscape largely untouched by human development.” In fact, as the statistics describe above and the public’s comments show, the majority of visitors to Cape Hatteras prefer to enjoy the natural landscape of the National Seashore without the noise, visual blight, smell, and danger inherent when vehicles are allowed on the same beaches with pedestrian visitors. In particular, the implementation of “ORV corridors” throughout the entire Seashore, as requested in the recent letter, would turn the entire length of the beach into a highway instead of the primitive wilderness national park it was created by statute to be. 16 U.S.C. § 459a-2.

In sum, the Record of Decision provides for increased safe access for the public and wildlife, especially to more remote areas of the beach, along with a reasonable amount of access for ORVs. That balance should be reflected in the final regulation.

4. The Number of Miles Set Aside for Beach Driving in the Record of Decision Is Reasonable.

Finally, the recent letter implies that the alternative selected by the Record of Decision unreasonably restricts the ability of people to drive on the beaches of the National Seashore. In fact, the alternative selected by the Record of Decision designates 41 of the Seashore’s 67 miles as year-round or seasonal ORV routes, with only 26 miles designated as year-round vehicle-free areas for wildlife, pedestrians, and families. In other words, the selected alternative ensures that nearly two-thirds of the Seashore is open for beach driving for much of the year. If anything, the selected alternative allows driving on a disproportionately high percentage of the Seashore’s beaches for a minority of visitors, in light of the evidence described above that a majority of visitors prefer the Seashore vehicle-free.

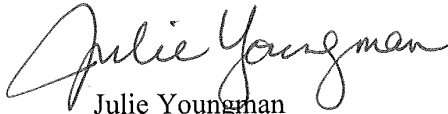
By comparison, a much smaller percentage of beach is available for driving at other national seashores, appropriately reflecting the balance of interests of visitors and the mission of the National Park Service. Most other national seashores either have regulations in place to manage and restrict ORV use to a smaller percentage of the beach or prohibit ORV use entirely. Similarly, according to National Park Service statistics, only approximately 13 of 393 units of the National Park System allow ORV use by visitors. If anything, the number of miles of Cape Hatteras’s beach set aside for ORV use in the FEIS preferred alternative is unreasonably large in contrast.

Accordingly, we ask that the final regulation not allow beach driving on any additional miles of Cape Hatteras, beyond what is provided by the Record of Decision. In addition, we ask that any limitations on the seasonal beach driving that are an integral part of the selected alternative’s protections for pedestrians and wildlife also be included in the regulation.


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Thank you for your attention to these issues, and for ensuring that the final regulation implements the careful balance of interests struck by the Record of Decision.

Very truly yours,



Julie Youngman
Derb Carter
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Walker Golder
Audubon North Carolina



Jason Rylander
Defenders of Wildlife