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US SENATOR KAY R. HAGAN

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From:

Jennifer Johnson

jennifer_johnson@hagan.senate.gov

701 Green Valley Road, Suite 201

Greensboro, NC 27408

Phone: (336) 333-5311 x17

Fax: (336) 333-5331

TO: Elaine Hackett

Company: NPS

Fax: (202) 208-5683

COMMENTS: Please see following letter from Senator Hagan regarding her constituent Mr. Bob Davis as well as accompanying correspondence from Mr. Davis.

Thank you for your attention and have a great day.

0031028

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US SENATOR KAY R. HAGAN

P.002

KAY R. HAGAN
NORTH CAROLINA

SUITE 5D-421
DIRKSEN BUILDING
WASHINGTON, DC 20510
(202) 224 6342

United States Senate

WASHINGTON, DC 20510

August 3, 2011

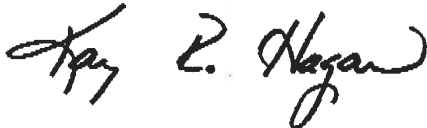
Ms. Elaine Hackett
Congressional Liaison
National Park Service
U.S. Department of Interior
1849 C Street, NW, Room 7256
Washington, DC 20240

Dear Ms. Hackett:

I am writing on behalf of my constituent, Mr. Bob Davis. Mr. Davis has requested that my office forward his comments and concerns regarding Off Road Vehicles on the beaches of the Cape Hatteras National Seashore to the National Park Service for review and reply.

Please find the enclosed correspondence from Mr. Davis. If you need further information or have questions please contact Jennifer Johnson in my Greensboro, NC office at (336) 333-5311 ext. 17 or jennifer_johnson@hagan.senate.gov.

Sincerely,



Kay R. Hagan

OMB

This commentary on the National Park Service (NPS) EIS/ORV Regulation is given in the spirit of Independence Day 2011.

Department Of Interior
Transgressions

The list of transgressions perpetrated by the Department of Interior (DOI) upon the citizens of the Outer Banks is mindful of the list of 27 wrongs by King George that were cited in our "Declaration of Independence":

1. They failed to publish an Off Road Vehicle (ORV) Plan to comply with the Executive Orders.
2. They provided no legal defense against Southern Environmental Law Center (SELC) demands for excessive wildlife protection.
3. They accepted the SELC ploy that led to a Consent Decree. This suit was not about bird or turtle protection. The Defenders of Wildlife (DOW) egalitarian view is to have all public lands free of ORV operation. The concern of Audubon for birdlife was seized by DOW to further this agenda. Such efforts apparently were readily acceptable by a sympathetic DOI.
4. They treat the beaches of Cape Hatteras National Seashore Recreational Area (CHNSRA) as bird and turtle habitat instead of a human recreational area. Priority is placed on wildlife instead of recreation. This is the priority practiced throughout other park units which do not share the special enabling legislation of CHNSRA. The Interior Department appears determined to bring CHNSRA into conformity with the other parks regardless of Congressional Law.
5. They altered the Acts of Congress to suit the National Park Service (NPS) agenda of preference for wildlife usage regardless of the original language that established human use. In both the Draft Environmental Impact Statement (DEIS) and the Final Environmental Impact Statement (FEIS) a portion of the Enabling Legislation (USC459) is cited. The original paragraph is one long sentence containing several clauses separated by "comma" punctuation.

The first clause is quoted by NPS but with a period substituted for the legal comma. By this simple artifact a short stand alone statement was created by

NPS which allowed their claim that CHNSRA would be administered by the Organic Act of 1918. This opened the door for NPS internal policies, plans and guidelines that are claimed to be derived from that Organic Act.

In contrast a reading of the remaining Enabling Legislation clauses shows numerous provisions placed upon the Organic Act in order that CHNSRA be developed for the recreation of the public. This assumes great importance whenever the application of these internal documents conflict with the Enabling Legislation.

Another example is found in Appendix E (never reviewed by the public) of the FEIS where a portion of the Legislation is paraphrased with the addition of the word "facilities". With this alteration the future access for recreation can be

severely reduced at the will of NPS. Another slick alteration is found in their conclusions that they are "mandated to preserve" a long list of non-mammalian resources citing their interpretation of the enabling legislation. There is no such mandate. Actually that legislation used the word "reserve" to allow portions of the wilderness to be later converted to recreational purposes as the public need required. This alteration is such a quantum leap as to be rightfully declared another lie.

The NPS internal policies, plans and guides are utilized as having the effect of law in the administration of CHNSRA. Any conflict with real law is ignored. In practice the NPS makes its own law in defiance of Congress.

6. They apply junk science to advance their agenda. In these efforts the NPS was aided by lawyers from environmental organizations and the sister agency of Fish and Wildlife Service (FWS). Unable to establish valid causal relationships these groups fill their justifications with verbiage of "may, could, can, or might." Those writing the statements and plans persistently ignore the data gathered at the Seashore which is the foundation for the best available science. Instead, they follow outside recommendations and plans that remove beach from the recreational domain.
7. They use false claims to support the agenda of recreational restrictions. Claims are made that human activities force the female sea turtle to seek less optimal nesting sites. This ascribes an innate ability of the turtle to determine the best site regardless of future storm activity. CHNSRA data shows that this natural ability would have caused the loss of 60% to 70% of the nests had not the NPS relocated at least 20% of those nests. These losses are worse than a 50% random choice and forecasts difficulties in species survival.

They dismiss major nest relocation and any relocation that might benefit recreational access citing that the natural sex ratio of the hatchlings would be disturbed. Of course the ratio will change and that is exactly why relocation should be preferred. By moving nests away from the hazardous water edge to the safer but warmer sands near the dunes the sex ratio will likely be 60% female. This will yield a greater number of mature females to return for nesting in this area. The FWS goal for recovery of the loggerhead is thus enhanced. False claims were used by NPS to prohibit night driving in spite of Negotiated Rulemaking testimony by Dr. McPherson of FWS that moving lights did not bother nesting turtles. The NPS even claimed that turtles swimming off shore would be deterred by ORV presence. This particular claim was offered without one shred of evidence. Again most claims are presented as subjective may, might, can, could in spite of any real life data from the Hatteras beaches that are contrary to their representations. These false positions are used to restrict recreation in violation of CHNSRA law and adversely impact public use of the area along with island economics.

8. They have caused the night time closure of the beaches to vehicular use. This is excused as a protective measure for sea turtles under the Consent Decree and the FEIS. Over the 50 years of the existence of this park no adult turtle had ever been killed by an ORV until this night closure was enacted. The one death in 2010 with attendant publicity has remained suspicious to the public. The CHNSRA historical data and its best available science have never supported a night closure.

9. They violate the objectives of the Endangered Species Act (ESA). The FWS developed the Sea Turtle Recovery Plan based on the experience in Florida where 90% of the loggerheads nest. Much of this Plan is not readily adaptable to CHNSRA which contributes to only 0.3% of the nesting. The Recovery Plan which is based on "natural nesting" has not worked in CHNSRA due to the dynamic beaches of the Outer Banks.

Each year CHNSRA loses turtle nests due to weather and wave action.

Over the past 10 years this nest loss has averaged 40%. The NPS has been repeatedly informed that there are better procedures proven to protect turtle survival but they refuse to take such corrective action. This consistent loss must be considered an intentional "Take" under the ESA. As an added insult the CAHA resource group has begun relocating nests against the dune, instead of safer areas, which closes the beach to recreational access as the nest nears its hatch date.

10. They acquiesce to the influence of bird activists to selectively exterminate mammals as predators of birdlife. Birds are treated as native to the islands whereas the mammals are deemed to be exotic or invasive and warrant control by trapping and killing. The activists fail to recognize that these islands first emerged as barren sand spits thousands of years ago. Archeological excavations near Buxton have shown the presence of fox, raccoon and opossum thousands of years prior to the invasion of piping plovers. The first seed that sprouted and the first bird that landed were "invasive". The definition for "invasive" is time dependent. For CHNSRA the starting time must be 1937-1941 when the enabling legislations were written. The companion document of the NPS 1938 Prospectus described the wildlife species present at that time. Although shore birds and waterfowl are generally mentioned the following species are individually named: deer, rabbit, foxes, raccoon, opossum, mink and river otter. These explicit mammals are to be protected by the NPS instead of exterminated at the whim of bird enthusiasts. Certainly any "explicit" such as human recreation and mammalian wildlife must take precedence over the NPS "implicit" derived in FEIS Appendix E.
11. They practice hypocrisy against the natural predator/prey relationship in CHNSRA. In Appendix E the NPS develops a series of convoluted reasonings to establish that all birdlife is mandated to be preserved in CHNSRA. Invertebrates are also mandated for preservation except that the ghost crabs, sand fleas and coquina clam invertebrates are to serve as food for the birds. Thus NPS established the predator bird and invertebrate prey relationship to be protected. Contrast this to the handling of mammals which is the other major form of fauna present on the Outer Banks. Mammals are not mandated to be protected in the Appendix. Obviously these would be difficult to protect since NPS has an active program to trap and kill coyote, foxes, raccoon, opossum, mink and otter. Unlike in real nature, the CAHA practices that birds are at the top of the food chain.
12. They made an arbitrary reduction in the speed limit from 25 to 15 mph on the beaches. For over 40 years the higher limit had proven satisfactory. Deep sand has always been self limiting on vehicle speed whereas harder sand at low tide allowed convenient access to the more remote areas. These were family beaches

with the majority of drivers operating in a safe responsible manner. The presence of NPS rangers was once a welcome addition to the beach until the NPS became preoccupied with sanctuaries for wildlife.

13. They practiced a subterfuge to establish 13 miles of Vehicle Free Area (VFA) bird sanctuaries under the excuse that they will be used for pedestrian recreation. Most of these areas can only be accessed by vehicles. Of course anyone who is a strapping candidate for a Green Beret program can hike anywhere but the vast majority of visitors do not fall into such a category. The absurdity of driving over miles of sand trails to provide an ORV free experience at an inlet is quite apparent. Clearly this is a subterfuge to create bird sanctuaries that are an unwarranted addition to the prevailing 13 miles at Pea Island. If there were sufficient numbers of visitors to demand areas for wilderness experience they would already be evident as frequenting the Pea Island Refuge. This large visitation has never been observed.
14. They arbitrarily expanded the seasonal village closures. For generations the village beaches would open and close to coincide with the changes in North Carolina State Highway 12 speed limits in the villages. Such limits recognized the tourist activities on the islands. The change from May 15 – September 15 tradition to the FEIS April 1 – November 1 is unwarranted.
15. They promised free and open beaches in perpetuity which represented a verbal contract with the public in order for the land acquisition to form this park unit. They promised that the Park development would lead to economic prosperity for the villages. They also promised not to interfere with the island economies. These promises have been broken; beaches have been closed causing economic and personal suffering. Vehicle permit fees will now be required to use the beaches. It is interesting that the NPS has found a mandate for vehicle, but not pedestrian, users to be a source of revenue. The land acquisition was not even completed in 1954 when the NPS removed the words “Recreational Area” from the title by the clever subterfuge that the full title be retained for formal documents. Except for the 1958 dedication this title has disappeared. Is the EIS/Orv Regulation not a “formal document” that will impact millions of citizens? Our youth who come to work for the Park Service have no idea they are treading on a recreational beach but only to perform and be responsible for a wildlife habitat. The mindset of both public and its servants should be corrected by restoration of the proper title on Park signage and documents.
16. They violated the National Environmental Policy Act (NEPA) by intimidating the public with encyclopedic 1000 page documents in both the DEIS and FEIS. The truth was quickly lost or distorted within these pages at a cost of over \$1,200,000 to the American Taxpayers. This figure doesn't include the NPS staff hour costs or the cost of the doomed Negotiated Rule Making Committee (Neg/Reg).
17. They requested public commentary during the stages of workbooks, Neg/Reg, and DEIS to arrive at the FEIS. Commentary not supportive of the NPS position has been consistently denied, dismissed, or ignored. The required response document fails to address many public comments or consider the validity of the opposing scientific documents or CAHA Resource Report facts. These are more violations of NEPA. In retrospect the long process has been a charade that has caused lack

nesting due to beach erosion. Piping plover is the only bird species that is Federally Listed.

24. They destroyed and removed the former "One way road" north of Buxton to form natural habitat behind the primary dune. The road previously had been a parking area for over 50 vehicles. This was used primarily by those who did not have ORVs, especially families with young children. Claims of a law enforcement problem were denied by the County Sheriff. Now beach users must dash across Highway 12 which has a 55 mph speed limit to access this preferred beach.
25. The safest ocean bathing beaches for parents to take young children are at the shallow pools that develop near inlets and points. In disregard to human safety these same portions of beach have been declared VFAs and bird habitat. Historically, these areas have not been hospitable to birdlife. In 2010, for instance, the large areas of both Oregon and Ocracoke Inlets were closed the entire summer season, opening only toward the end of August due to American Oyster Catcher chicks. These birds are not Federally Listed nor designated for special protection by the North Carolina Wildlife Resource Commission.
26. In their zeal to restrict public access they refuse to acknowledge the successful nesting of thousands of birds on dredge spoil islands and Pea Island Wildlife Refuge. The dredge spoil islands are within sight of the main islands and are part of the Outer Banks. Pea Island lies completely within CHNSRA. Bird activist claim that those islands fall outside CAHA jurisdiction, that birds must be given beaches within CAHA regardless of the lack of productivity of such nest sites.
27. Their decisions have been detrimental to wildlife :
 - By establishing large closures around turtle nests they encourage the growth of ghost crabs to become the chief predator of turtle hatchlings.
 - By creating pre-nesting closures they attract birds to nest in poor productive areas that diminish species survival.
 - To reduce bird predation they select mammals to be exterminated while ignoring the effect of snakes, ghost crabs, crows, gulls and other avian species. Opossums are a chief predator of snakes yet they are trapped and killed.
 - They advocate natural turtle nesting then when forced to relocate choose sites of poor safety.
 - All these actions may have once been excused on the basis of good intentioned ignorance but they have been informed of the consequences and continue their transgressions. They are determined to reconstruct CHNRSRA like a child pounding square pegs into round holes.

These transgressions portray a huge arrogant agency that rides roughshod over the inhabitants of the Outer Banks. The economic effects may produce little influence on the nations GNP but the stress and damage to individuals, families and small businesses are very real , unlawful and must be stopped. Groups such as NCBBA, OBPA and the Cape Hatteras Anglers Club seek both beach access and real wildlife protection. From their actions and words the D.O.I. wants neither.

In the end we are a nation of laws. The EIS has broken too many laws. Any ORV Regulation based upon this EIS needs to be rejected.

Respectfully : Robert B Davis