

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
No. 2:07-cv- 00045 BO

**DEFENDERS OF WILDLIFE and** )  
**THE NATIONAL AUDUBON SOCIETY** )

Plaintiffs, )

v. )

**NATIONAL PARK SERVICE, et al.** )

Defendants, )

**DARE COUNTY, NORTH CAROLINA** )  
P.O. Box 1000 )  
Manteo, NC 27954 )

and )

**HYDE COUNTY, NORTH CAROLINA** )  
P.O. Box 178 )  
Swan Quarter, NC 27885 )

and )

**THE CAPE HATTERAS ACCESS** )  
**PRESERVATION ALLIANCE** )  
P.O. Box 1355 )  
Buxton, NC 27920 )

Intervenor-Defendants. )

**DARE COUNTY, NORTH CAROLINA,**  
**HYDE COUNTY, NORTH CAROLINA,**  
**and THE CAPE HATTERAS ACCESS**  
**PRESERVATION ALLIANCE**  
**ANSWER TO COMPLAINT**

Intervenor-Defendants Dare County, North Carolina, Hyde County, North Carolina, and Cape Hatteras Access Preservation Alliance (collectively, "Intervenors"), respectfully submit this Answer to the Complaint filed on October 18, 2007 ("Complaint") by Plaintiffs Defenders of Wildlife and the National Audubon Society (collectively, "Plaintiffs"). This answer is submitted concurrently with Intervenors' Motion To Intervene in conformance with F.R. Civ. P Rule 24(c).

**Responses To Allegations Regarding The Nature Of The Case**

1. The first sentence of the Paragraph 1 of the Complaint characterizes Plaintiffs' Complaint and no response is required. The second sentence of Paragraph 1 states a conclusion of law and no response is required. The third sentence of Paragraph 1 purports to characterize the documents referenced, which speak for themselves, and no response is required.

2. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Complaint.

3. Intervenors deny the allegations of Paragraph 3 of the Complaint.

4. The first sentence of Paragraph 4 of the Complaint purports to characterize Executive Order 11644 and no response is required. The remainder of the paragraph sets forth legal conclusions to which no response is required.

**Response To Allegations Regarding Jurisdiction And Venue**

5. The allegations of Paragraph 5 of the Complaint set forth legal conclusions to which no response is required.

6. The allegations of Paragraph 6 of the Complaint set forth legal conclusions to which no response is required.

**Responses To Allegations Regarding Parties And Standing**

7. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Complaint.

8. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Complaint.

9. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the Complaint.

10. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Complaint.

11. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of the Complaint.

12. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Complaint.

13. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 of the Complaint.

14. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 of the Complaint.

15. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15 of the Complaint.

16. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 of the Complaint.

17. The allegations of Paragraph 17 of the Complaint purport to characterize the documents referenced, which speak for themselves, and no response is required.

18. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18 of the Complaint.

19. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 of the Complaint.

20. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 of the Complaint.

21. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 of the Complaint.

22. Intervenors deny the allegations of Paragraph 22 of the Complaint.

23. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23 of the Complaint. To the extent that it states conclusions of law as to Plaintiff's standing, it is hereby denied.

24. Intervenors admit the allegations of the first sentence of Paragraph 24 of the Complaint. The second sentence of the paragraph sets forth legal conclusions to which no response is required.

25. Intervenors admit the allegations of the first sentence of Paragraph 25 of the Complaint. The second sentence of the paragraph sets forth legal conclusions to which no response is required.

26. Intervenors admit that Dirk Kempthorne is the Secretary of the Interior, legally appointed. The allegations of Paragraph 26 of the Complaint regarding the capacity in which he is sued characterize the Complaint, and no response is required. The remaining allegations of the Paragraph set forth legal conclusions to which no response is required.

27. Intervenors admit that Mary A. Bomar is the Director of the National Park Service, legally appointed. The allegations of Paragraph 27 of the Complaint regarding the capacity in which she is sued characterize the Complaint, and no response is required. The remaining allegations of the Paragraph set forth legal conclusions to which no response is required.

28. Intervenors admit that Michael B. Murray is the Superintendent of the Cape Hatteras National Seashore. The allegations of Paragraph 28 of the Complaint regarding the

capacity in which he is sued characterize the Complaint, and no response is required.

Intervenors have insufficient knowledge and information to form a belief as to the allegations of the last sentence of the Paragraph.

**Responses to Factual Allegations**

29. With respect to Paragraph 29, Intervenors are without sufficient knowledge as to the number of visitors at CHNS last year, and admit that the seashore provides habitat for numerous wildlife species.

30. Intervenors admit the allegations of Paragraph 30 of the Complaint.

31. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 31 of the Complaint.

32. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 32 of the Complaint.

33. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33 of the Complaint.

34. Intervenors admit the allegations of the second and third sentences of Paragraph 34 of the Complaint. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of the paragraph.

35. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35 of the Complaint.

36. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36 of the Complaint.

37. The allegations of Paragraph 37 of the Complaint purport to characterize reports from the National Park Service, which speak for themselves, and no response is required.

38. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38 of the Complaint.

39. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 39 of the Complaint.

40. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40 of the Complaint.

41. Intervenors admit the allegations of the first sentence of Paragraph 41 of the Complaint. Intervenors are without knowledge or information sufficient to form a belief as to the remainder of the allegations in the paragraph.

42. Intervenors deny the allegations of Paragraph 42 of the Complaint.

**Response To Allegations Regarding Legal Background**

43. The first sentence of Paragraph 43 of the Complaint sets forth a legal conclusion and no response is required. The second sentence of Paragraph 43 of the Complaint characterizes the Complaint and no response is required.

44. The allegations of Paragraph 44 of the Complaint purport to characterize the documents referenced, which speak for the themselves, and no response is required. In the alternative, the allegations of Paragraph 44 of the Complaint set forth legal conclusions, to which no response is required.

45. The allegations of Paragraph 45 of the Complaint purport to characterize the documents referenced, which speak for the themselves, and no response is required. In the alternative, the allegations of Paragraph 45 of the Complaint set forth legal conclusions, to which no response is required.

46. The allegations of Paragraph 46 of the Complaint purport to characterize the documents referenced, which speak for the themselves, and no response is required. In the alternative, the allegations of Paragraph 46 of the Complaint set forth legal conclusions, to which no response is required.

47. The allegations of Paragraph 47 of the Complaint purport to characterize the documents referenced, which speak for the themselves, and no response is required. In the alternative, the allegations of Paragraph 47 of the Complaint set forth legal conclusions, to which no response is required.

48. The allegations of Paragraph 48 of the Complaint purport to characterize the documents referenced, which speak for the themselves, and no response is required. In the alternative, the allegations of Paragraph 48 of the Complaint set forth legal conclusions, to which no response is required.

49. The allegations of Paragraph 49 of the Complaint purport to characterize the documents referenced, which speak for the themselves, and no response is required. In the alternative, the allegations of Paragraph 49 of the Complaint set forth legal conclusions, to which no response is required.

50. The allegations of Paragraph 50 of the Complaint purport to characterize the documents referenced, which speak for the themselves, and no response is required. In the alternative, the allegations of Paragraph 50 of the Complaint set forth legal conclusions, to which no response is required.

51. The allegations of Paragraph 51 of the Complaint purport to characterize the documents referenced, which speak for the themselves, and no response is required. In the

alternative, the allegations of Paragraph 52 of the Complaint set forth legal conclusions, to which no response is required.

**Responses To Allegations Regarding  
Defendants' Protection Of Natural Resources**

52. The allegations of Paragraph 52 of the Complaint set forth legal conclusions and no response is required.

53. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 53 of the Complaint.

54. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 53 of the Complaint, except that Intervenors admit that the USGS conducted a set of studies known as "Management Protocols".

55. Intervenors admit that the "Management Protocols" were issued. The remainder of the allegations of Paragraph 55 of the Complaint purport to characterize the Management Protocols, which speak for themselves, and no response is required.

56. The allegations of Paragraph 56 of the Complaint purport to characterize the Management Protocols, which speak for themselves, and no response is required.

57. Intervenors admit that Defendants prepared "draft EA." The remaining allegations of Paragraph 57 of the Complaint purport to characterize the draft EA and no response is required.

58. Intervenors admit that Defenders of Wildlife and Audubon submitted comments on the EA, as alleged in Paragraph 58 of the Complaint but, state that the comments speak for themselves.



59. Intervenors admit that the final EA was issued on January 25, 2006. The remaining allegations of Paragraph 59 of the Complaint purport to characterize the final EA and no response is required.

60. The allegations of Paragraph 60 of the Complaint appear to purport to characterize the "environmentally preferred alternative" in the final EA and no response is required.

61. The allegations of Paragraph 61 of the Complaint appear to purport to characterize the final EA (no specific document is identified in Paragraph 61) and no response is required.

62. With respect to the first two sentences of paragraph 62, Intervenors admit that the USFWS conducted consultation under the ESA culminating in the issuance of a Biological Opinion on August 14, 2006. The remaining allegations in the last sentence of Paragraph 62 purport to characterize the Biological Opinion and no response is required.

63. The allegations of Paragraph 63 of the Complaint purport to characterize the Biological Opinion and no response is required.

64. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 64 of the Complaint.

65. Intervenors admit the allegations of Paragraph 65 of the Complaint.

66. Paragraph 66 describes comments submitted by Plaintiff Audubon on March 15, 2007. The comments speak for themselves and no response is required.

67. Intervenors admit the allegations of the first sentence of Paragraph 67 of the Complaint. The remaining allegations in the paragraph purport to characterize the document referenced and no response is required.

68. Intervenors admit the allegations of the first sentence of Paragraph 68 of the Complaint. The remaining allegations of the paragraph purport to characterize the document referenced, and no response is required.

69. The allegations of Paragraph 69 of the Complaint purport to characterize the document referenced and no response is required.

70. The allegations of Paragraph 70 of the Complaint purport to characterize the document referenced and no response is required.

71. The allegations of Paragraph 71 of the Complaint purport to characterize the document referenced and no response is required.

72. Intervenors admit the allegations of Paragraph 72 of the Complaint.

73. Intervenors admit that the referenced decision was issued on the date identified in Paragraph 73 of the Complaint. The remaining allegations of the paragraph purport to characterize that decision, which speaks for itself, and no response is required.

74. Intervenors admit that Defendants have continued to allow ORV use in the Seashore under the Interim Plan and have not yet developed a long-term plan for the management of ORV use. Intervenors further admit that on July 31, 2007, Seashore Superintendent Murray wrote a letter to the U.S. Attorney for the Eastern District of North Carolina. The remaining allegations of Paragraph 74 of the Complaint purport to characterize the documents referenced and no response is required.

75. The allegations of Paragraph 75 of the Complaint set forth legal conclusions and no response is required. In the alternative, the allegations of Paragraph 75 of the Complaint purport to characterize the Interim Plan and no response is required.

76. The allegations of the first sentence of Paragraph 76 of the Complaint set forth legal conclusions and no response is required. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 76.

77. The allegations of Paragraph 77 of the Complaint set forth legal conclusions and no response is required.

**Responses To The First Claim For Relief**

78. Intervenor repeats the responses in the preceding paragraphs as if fully set forth herein.

79. The allegations of the first sentence of Paragraph 79 of the Complaint purport to characterize the Administrative Procedure Act, which speaks for itself, and no response is required. The remaining allegations of the paragraph set forth legal conclusions and no response is required.

80. The allegations of Paragraph 80 of the Complaint purport to characterize the Organic Act, which speaks for itself, and no response is required.

81. The allegations of Paragraph 81 of the Complaint purport to characterize the Organic Act, which speaks for itself, and no response is required.

82. The allegations of Paragraph 82 of the Complaint purport to characterize the Organic Act, which speaks for itself, and no response is required.

83. The allegations of Paragraph 83 of the Complaint purport to characterize the Organic Act, which speaks for itself, and no response is required.

84. Intervenor admits that the National Park Service published Management Policies in 2006. The remaining allegations of Paragraph 84 of the Complaint purport to characterize the document referenced, which speaks for itself, and no response is required.

85. The allegations of Paragraph 85 of the Complaint purport to characterize the legislation referenced, which speaks for itself, and no response is required.
86. The allegations of Paragraph 86 of the Complaint purport to characterize the Executive Order referenced, which speaks for itself, and no response is required.
87. The allegations of Paragraph 87 of the Complaint purport to characterize the Executive Order referenced, which speaks for itself, and no response is required.
88. The allegations of Paragraph 88 of the Complaint set forth legal conclusions and no response is required.
89. The allegations of Paragraph 89 of the Complaint purport to characterize the regulations referenced, which speak for themselves, and no response is required.
90. The allegations of Paragraph 90 of the Complaint set forth legal conclusions and no response is required.
91. The allegations of Paragraph 91 of the Complaint set forth legal conclusions and no response is required.
92. The allegations of Paragraph 92 of the Complaint set forth legal conclusions and no response is required.
93. The allegations of Paragraph 93 of the Complaint set forth legal conclusions and no response is required.
94. The allegations of Paragraph 94 of the Complaint set forth legal conclusions and no response is required.
95. Intervenors deny that Defendants have failed to enforce the Interim Plan. The remaining allegations of Paragraph 95 purport to characterize the Interim Plan and no response is required.

96. The allegations of Paragraph 96 of the Complaint set forth legal conclusions and no response is required.

**Responses To The Second Claim For Relief**

97. Intervenors repeat the responses in the preceding paragraphs as if fully set forth herein.

98. The allegations of Paragraph 98 of the Complaint set forth legal conclusions and no response is required.

99. The allegations of Paragraph 99 of the Complaint purport to characterize the Migratory Bird Act, which speaks for itself, and no response is required.

100. The allegations of Paragraph 100 of the Complaint purport to characterize the Migratory Bird Act, which speaks for itself, and no response is required.

101. The allegations of Paragraph 101 of the Complaint purport to characterize the regulations referenced and/or Migratory Bird Act, which speak for themselves, and no response is required.

102. The allegations of Paragraph 102 of the Complaint purport to characterize the referenced regulations and/or the Migratory Bird Act, which speak for themselves, and no response is required.

103. Intervenors admit the allegations of Paragraph 103 of the Complaint.

104. The allegations of Paragraph 104 of the Complaint set forth legal conclusions and no response is required.

105. The allegations of Paragraph 104 of the Complaint set forth legal conclusions and no response is required.

106. Intervenors admit that President William J. Clinton issued the Executive Order identified in the first sentence of Paragraph 106 of the Complaint. The remaining allegations of the paragraph purport to characterize the Executive Order, which speaks for itself, and no response is required.

107. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 107 of the Complaint.

108. The allegations of Paragraph 108 of the Complaint set forth legal conclusions and no response is required.

#### **Responses To Third Claim For Relief**

109. Intervenors repeat the responses in the preceding paragraphs as if fully set forth herein.

110. The allegations of Paragraph 110 of the Complaint purport to characterize NEPA, which speaks for itself, and no response is required.

111. The allegations of Paragraph 111 of the Complaint purport to characterize the regulations referenced, which speaks for themselves, and no response is required.

112. The allegations of Paragraph 112 of the Complaint set forth legal conclusions and no response is required.

113. The allegations of Paragraph 113 of the Complaint set forth legal conclusions and no response is required. To the extent the allegations are considered factual, Intervenors deny the allegations.

114. The allegations of Paragraph 114 of the Complaint set forth legal conclusions and no response is required. To the extent the allegations are considered factual, Intervenors deny the allegations.

115. The allegations of Paragraph 115 of the Complaint set forth legal conclusions and no response is required. To the extent the allegations are considered factual, Intervenors deny the allegations.

116. The allegations of Paragraph 116 of the Complaint set forth legal conclusions and no response is required.

117. The allegations of Paragraph 117 of the Complaint set forth legal conclusions and no response is required.

118. The allegations of Paragraph 118 of the Complaint set forth legal conclusions and no response is required.

119. The allegations of Paragraph 119 of the Complaint set forth legal conclusions and no response is required. To the extent the allegations are considered factual, Intervenors deny the allegations.

120. The allegations of Paragraph 120 of the Complaint set forth legal conclusions and no response is required.

121. The allegations of Paragraph 121 of the Complaint set forth legal conclusions and no response is required. To the extent the allegations are considered factual, Intervenors deny the allegations.

122. The allegations of Paragraph 122 of the Complaint set forth legal conclusions and no response is required.

123. The allegations of Paragraph 123 of the Complaint set forth legal conclusions and no response is required.

124. The allegations of Paragraph 124 of the Complaint set forth legal conclusions and no response is required.

**Responses To The Fourth Claim For Relief**

125. Intervenors repeat the responses in the preceding paragraphs as if fully set forth herein.

126. The first two sentences of Paragraph 126 of the Complaint purport to characterize the Administrative Procedure Act, which speaks for itself, and no response is required. The remaining allegations of the paragraph set forth legal conclusions and no response is required.

127. The allegations of Paragraph 127 of the Complaint set forth legal conclusions and no response is required.

128. The allegations of Paragraph 128 of the Complaint purport to characterize the document referenced, which speaks for itself, and no response is required.

129. The allegations of Paragraph 129 of the Complaint set forth legal conclusions and no response is required.

130. The allegations of Paragraph 130 of the Complaint set forth legal conclusions and no response is required.

131. The allegations of Paragraph 131 of the Complaint set forth legal conclusions and no response is required.

**Response To Prayer For Relief**

The remainder of the Complaint sets forth Plaintiffs' Prayer For Relief, to which no response is required. To the extent a response is deemed to be required, the Intervenors deny that Plaintiffs' are entitled to any relief whatsoever.



**GENERAL DENIAL**

To the extent any allegation in the Complaint is not expressly admitted, it is denied.

**AFFIRMATIVE DEFENSES**

First Affirmative Defense

The complaint fails to state a claim on which relief can be granted.

Second Affirmative Defense

Some or all of Plaintiffs' claims are barred by the applicable statute of limitations. *See* 28 U.S.C. § 2401.

**RESERVATION AND NON-WAIVER**

Intervenors reserve and do not waive additional defenses as may be disclosed by further study, investigation and discovery.

Respectfully submitted,

HOLLAND AND KNIGHT

By:                                 /s/                                  
Lawrence R. Liebesman  
DC Bar No. 193086  
E-mail: [lawrence.liebesman@hklaw.com](mailto:lawrence.liebesman@hklaw.com)  
Tel. No. 202-419-2477

By:                                 /s/                                  
Lois Godfrey Wye  
DC Bar No. 429674  
E-mail: [lois.wye@hklaw.com](mailto:lois.wye@hklaw.com)  
Tel. No. 202-457-7062  
2099 Pennsylvania Avenue, N.W.  
Suite 100  
Washington, DC 20006  
(Attorneys for Intervenors)

HORNTHAL, RILEY, ELLIS & MALAND, LLP

By: \_\_\_\_\_ /s/  
L.P. Hornthal, Jr.  
N.C. State Bar No. 2186  
E-mail: [lpornthal@hrem.com](mailto:lpornthal@hrem.com)  
Tel. No. 252-335-0871  
(LR 83.1 Counsel for Interveners)

By: \_\_\_\_\_ /s/  
L. Phillip Hornthal, III  
N.C. State Bar No. 14984  
E-mail: [phornthal@hrem.com](mailto:phornthal@hrem.com)  
Tel. No. 252-335-0871  
P.O. Box 220  
Elizabeth City, NC 27907-0220  
(LR 83.1 Counsel for Interveners)# 4960046\_v1