

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

No. 02:07-CV-00045-BO

DEFENDERS OF WILDLIFE and
THE NATIONAL AUDUBON SOCIETY,
Plaintiffs,
v.
NATIONAL PARK SERVICE; UNITED
STATES DEPARTMENT OF THE
INTERIOR; DIRK KEMPTHORNE,
SECRETARY OF THE INTERIOR; MARY
A. BOMAR, DIRECTOR OF THE
NATIONAL PARK SERVICE; and
MICHAEL B. MURRAY,
SUPERINTENDENT OF THE CAPE
HATTERAS NATIONAL SEASHORE,
Defendants,
and
DARE COUNTY, NORTH CAROLINA;
HYDE COUNTY, NORTH CAROLINA; and
THE CAPE HATTERAS ACCESS
PRESERVATION ALLIANCE,
Defendant- Intervenors.

DECLARATION OF
STEVEN D. HARRISON

I, Steven D. Harrison, under penalty of perjury, depose and state as follows:

- 1. My name is Steven D. Harrison. I reside at 869 Indian Hill Road, Hendersonville, North Carolina. I am currently retired. Prior to retirement, I was employed by the National Park Service (NPS) for 30 years. I transferred from the Southeast Regional Office, Atlanta, Georgia, to the Outer Banks Group (Cape Hatteras National Seashore, Fort Raleigh National Historic Site, and Wright Brothers National Memorial) on November 13, 1994. I became Chief of Resource Management on May 11, 1997. I was voluntarily reassigned to the Carl Sandburg Home National Historic Site on October 30, 2005. I retired on June 30, 2007.
2. The opinions expressed in this Declaration are based on my experiences in my professional career and at Cape Hatteras National Seashore (Seashore) specifically.

3. During my time as Chief of Resource Management at the Outer Banks Group, the use of Off-Road Vehicles became a major issue for the Seashore, the National Park Service (Service) and the Department of the Interior (Department).

4. My role as Chief of Resource Management was to support the Seashore's resource management field staff, and to advise Seashore management based on law, policy and regulations as well as science and field data.

5. Part of my responsibility at the Seashore was to oversee species monitoring. Initially, the Seashore monitored for many years, with a very small staff, federally listed threatened and endangered species (piping plover, seabeach amaranth and nesting sea turtles.) During my time as Chief of Resource Management, our monitoring expanded as new information became available through research on species such as the American oystercatcher. We also had an interest in state-listed species such as various terns. Eventually our monitoring and protection efforts broadened to Migratory Bird Treaty Act (MBTA) species, which included most birds nesting on the Seashore.

6. The data during my tenure clearly showed a decline in the populations of nearly all species we were monitoring at the Seashore. For some species, the declines were sharp and dramatic because of the very small populations. As a manager, I thought the Seashore should do more to protect the species, not less. But there was a strong sense from my superiors that we would not and could not do more and there were continual discussions about doing less, meaning opening areas to vehicle use that had not been open or been closed due to natural events. This resistance to expanding protections for species when it limited ORV access was also part of management's consideration of resource closure requests.

7. While I was Chief of Resource Management at the Seashore, there was a decrease in flexibility for field staff biologists to use their knowledge to make observations and initiate protective actions such as closures for birds or turtles. The Seashore started to require the Superintendent's written approval for all natural resource closures. I understand this approval may be the result, in part, of legal requirements in Park Service Regulations. I believe this also reflected distrust by my superiors of the field staff which, in part, was a response to continued questioning of Seashore actions by certain members of the public who usually were not biologists and who opposed closures. There were no exceptions to the closure approval policy and I was threatened by one superintendent with disciplinary action if any of my staff put up a closure without prior approval.

8. It was very difficult for Seashore staff (resource management and law enforcement rangers) to protect the Seashore's resources when almost all the Seashore beaches were open to unlimited vehicle use 24 hours/day, 7 days/week. Nearly everything we did to attempt to protect birds, turtles and other natural resources on the Seashore was increasingly under close scrutiny by some Seashore users and user groups as well as NPS management in the Southeast Regional Office (SERO) and the Washington Office (WASO). There were very rarely instances of requests or pressure to enlarge a closure or increase protection. On the other hand, there were increasing requests and pressures to decrease the size or duration of closures resulting in a decrease of protection.

9. The influence of ORV groups on Seashore management increased while I was Chief of Resource Management. ORV groups strongly influenced Seashore management through phone calls to Department officials and NPS staff in WASO and SERO as well as interactions with Seashore management and field staff. Everything the Seashore did included

consideration of the impact on ORV use and the reaction of these user groups. Seashore management showed preference to ORV use that was detrimental to the natural resources on the Seashore. One example of this is that resource protection closures that would not affect ORV use were generally readily approved but closures that would affect ORV use were discussed and sometimes adjusted solely to avoid disruption of ORV use. As a supervisor of field staff, I knew they were aware of the pressure and scrutiny from ORV groups and higher levels within the Service and Department. On several occasions, I counseled my staff to make closure recommendations based on the biological needs at each specific location and let management make any adjustments they felt necessary based on other considerations such as visitor use.

10. There were several occasions when closures necessary to protect species were requested and the requests either denied or ignored. One example is from 2005, when I prepared five closure requests for pre-breeding closures for piping plover. I prepared the requests on March 23, 2005 and left them for the Superintendent who was out of the office at the time. The piping plover recovery plan states that closures should be installed by April 1 and I wanted field staff to have time to install them by that date. On March 24, the Superintendent came to my office and told me he had received the requests and had faxed them to the Fish and Wildlife Service (FWS) office in Raleigh, North Carolina. The Superintendent stated: "You know I won't be able to approve them." He said he would wait to hear from FWS and if they wanted us to do these closures, he would get it in writing. On March 31, after a conference call between NPS and FWS staff, the Superintendent phoned me and ordered me to draft a memorandum to FWS stating that the Seashore planned to close the three spits except for a 150-foot corridor around the shoreline. I asked if that included the soundside beach and he said yes. He wanted us to say we were mitigating for not following the Endangered Species Act recovery plan by increasing

monitoring with increased staff and more volunteers. I told him I didn't agree with the "closure" because I wanted to be sure he knew how I felt about it. As a result of these delays, it was sometime after April 1 before any closures were in place for piping plover.

11. When closures were approved and established, they were often disregarded. During my tenure at the Seashore, there were numerous and repeated violations of closures by vehicles and pedestrians. There was also vandalism of signs and closures. These were documented by both field resource management staff and law enforcement rangers. In one instance on Hatteras Island near Avon, a vehicle drove through a closed area and ran over several birds. In another instance, described below in paragraph 14, terns were run over on Hatteras Spit.

12. Barrier islands are dynamic and an important event that created prime bird nesting and foraging habitat at the Seashore was Hurricane Isabel in 2003. There were clearly many potential long-term benefits to the ecosystem as well as some of the species being monitored and protected due to the natural creation of habitat as beaches widened as a result of the storm and the creation of a new inlet. However, some local residents and ORV users wanted everything exactly the way it was before the storm. The "Pole Road" on Hatteras Island, an unpaved ORV trail, became highly contentious after the Seashore management decided not to reopen it following major damage to the road from Isabel and the creation or reestablishment of important bird habitat adjacent to the road. The Seashore's resource management staff, as well as other biologists within and outside the Service, believed this new habitat was very important because Highway 12 maintenance requirements limit opportunities for the retention of newly created habitat along the rest of the Seashore. Highway 12 ends at the ferry dock in Hatteras Village and Pole Road begins in Hatteras Village and continues down the island to Hatteras Spit. Because

Pole Road is not paved and is not a formal public road, there was no requirement for the Seashore to maintain it or reestablish it after the significant changes from Hurricane Isabel that created new wildlife habitat. Because of this new habitat, Seashore management initially decided not to reopen Pole Road. Some residents on Hatteras Island and ORV groups reacted to the closure by making clear to the Seashore management that they wanted access to a few locations on the soundside of the island that they formerly accessed from Pole Road. The Seashore staff established alternate access to those areas from the beach only to discover through complaints that what the groups really wanted was Pole Road reopened and that the alternative access was not satisfactory.

13. As the controversy continued, it is my understanding that on or about June 30, 2004, the NPS Regional Director told the Seashore superintendent to reopen Pole Road on Saturday, July 3 despite the presence of high quality bird habitat. On July 1, the Seashore superintendent instructed the staff to reopen Pole Road. He also instructed Seashore staff to install a full closure of the entire Hatteras spit from where Pole Road exits to the beach near Hatteras Inlet. He did not consult the resource management staff prior to ordering this large closure of Hatteras spit. Later we found out that the superintendent was in part justifying the closures for possible renesting of Piping Plover but the nest, eggs, and chicks that had been on the spit had all been lost and the adults had not been seen for about a week. Several weeks passed and the superintendent advised me on July 19 that we were going to Hatteras spit the following day. While on the spit on July 20, many nesting shorebirds (terns) were present and we were repeatedly dive bombed by adult terns. Dive bombing is a protective measure used by terns when they are nesting or have young, indicating that nests or chicks were present in or near the closure.

14. On Wednesday, July 21, all the resource closures were removed from Hatteras spit and the 150 foot wide visitor use (vehicle and pedestrian) corridor was reestablished on the ocean, inlet and soundside of the spit. The following day, July 22, field staff contacted me to report that a local citizen had removed two live tern chicks from tire ruts within the corridor and the citizen was very concerned about the safety of chicks in the corridor. The field staff went to the spit and also found chicks in the corridor. They phoned me and recommended a resource closure. I phoned the superintendent who was out of the office. Before I could explain the situation and request a closure or suggest other efforts to protect the chicks, the superintendent told me "We're not putting up any closures. I just can't do it." I explained that I wanted to be sure he was aware of the situation. The following day, July 23, I received a report from field staff that two tern chicks had been run over within the corridor. When I contacted the superintendent by telephone, he again refused to consider a closure to protect the tern chicks. Later that day, the superintendent finally authorized a modification of the corridor to protect ten tern nests. I advised the superintendent that even the modification would not guarantee protection for the mobile chicks and he indicated to me that he knew that but would not consider any further modifications.

15. It is my understanding that the killing of the tern chicks was a violation of the MBTA. As a result, there were simultaneous investigations by an agent for the Fish and Wildlife Service (criminal investigation) and an NPS employee from the Midwest Regional office in Omaha (administrative investigation). I am aware that the superintendent became the focus of those investigations but I am not aware of any legal or administrative actions that resulted from the investigations.

16. On July 28, as the criminal and administrative investigations began, the superintendent told me that he wanted the Seashore staff to put up a resource closure on Hatteras Spit beginning where Pole Road exits to the beach. There was no discussion, no request for data or information about bird activity and locations, and no request for recommendations or suggestions. He said he wanted me to complete a closure request for him to sign. I prepared the form but did not sign it myself on the "support" line because I believed it was an unnecessary closure from a resource protection standpoint. The closure was much too large and more importantly still did not protect the nesting birds and their chicks. It did not prevent chicks from going into the corridor or prevent pedestrians and vehicles from disturbing birds on the landward side of the white posts that defined the corridor. On Friday, July 30, the superintendent told me that he was going to modify the resource closure on Hatteras spit so vehicles could drive on the beach to the first group of birds, but not past them.

17. Another example of the Seashore management compromising resource protection to maintain ORV access involved nesting birds at Hatteras Inlet. Sometime after Hurricane Isabel, it became necessary for the Seashore to close access to Hatteras Inlet because birds nested on the beach. The closure of this popular location, for any reason, was unacceptable to some ORV groups. As a result of public pressure and perhaps as a desire to demonstrate cooperation with some vocal Seashore users management decided to experiment with a staffed closure that used Service escorts to maintain ORV access to the Spit. This ORV escort service significantly consumed limited staff time and took away from resource management staff's ability to conduct other necessary monitoring and protection efforts at the Seashore.

18. Resource closures became increasingly controversial during my tenure at the Seashore. Due to the lack of biological knowledge on the part of some members of the public,



the behavior of certain species and individuals was not understood. The closures were often intended to not only protect the eggs from being crushed by pedestrian and vehicle traffic but also to prevent disturbance of adults who were incubating and protecting the eggs or feeding and protecting chicks. Although Seashore staff attempted to develop standardized science-based guidance for closures, these were never accepted by Seashore management. Therefore, it was decided to have science-based protocols developed by an outside, independent group of experts. Working with NPS staff in SERO and WASO, and in consultation with FWS, the Seashore entered into an agreement with the United States Geological Survey (USGS) to prepare protocols for the actively protected species at CAHA. As part of my job, I was actively involved in preparing the agreement and working with USGS staff. In discussions with USGS scientists, the Seashore emphasized the desire to have the protocols be science-based and not to be influenced by existing management challenges such as the use of off-road vehicles. It was my understanding that Seashore management would use the USGS protocols, in conjunction with other NPS laws, policies and guidance to develop management strategies and guidance for resource closures that would afford appropriate and necessary protection for the various species.

19. I believe it is critical that the Service manage wildlife and other natural resources based on the best scientific information available. As summarized above, during my tenure as Chief of Resource Management at the Seashore, protection of birds and other natural resources was often compromised by Seashore management to accommodate ORV use and ORV user groups. The recommendations by resource management staff to minimize ORV impacts to natural resources were sometimes ignored or overruled by Seashore management. I believe it is urgent that the Service develop and implement a plan to control ORV use based on the best scientific information to halt the decline of protected species on the Seashore.

20. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Steven D. Harrison

Signature

JANUARY 17, 2008

Date