

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

No. 02:07-CV-0045-BO

DEFENDERS OF WILDLIFE and )  
THE NATIONAL AUDUBON SOCIETY, )

Plaintiffs, )

v. )

NATIONAL PARK SERVICE; UNITED )  
STATES FISH AND WILDLIFE SERVICE; )  
UNITED STATES DEPARTMENT OF THE )  
INTERIOR; DIRK KEMPTHORNE, )  
SECRETARY OF THE INTERIOR; MARY A. )  
BOMAR, DIRECTOR OF THE NATIONAL )  
PARK SERVICE; H. DALE HALL, )  
DIRECTOR OF THE U.S. FISH AND )  
WILDLIFE 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. )

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AFFIDAVIT OF NOAH MATSON

I, Noah Matson, under penalty of perjury, depose and state:

1. I am the Vice President for Land Conservation of Defenders of Wildlife (“Defenders”).

Defenders is a national non-profit, public interest organization founded in 1947. It has more than

one million members and supporters, including 9,000 members and supporters in North Carolina. It also has more than 10,000 members of its “Defenders Electronic Network” in North Carolina.

2. As the Vice President for Land Conservation of Defenders, I am responsible for Defenders’ private lands conservation program, transportation and wildlife program, conservation planning program, and federal lands program. Defenders’ federal lands program is focused on improving wildlife management and reducing threats to wildlife and habitat on federal lands including national parks, wildlife refuges, forests and the public lands managed by the Bureau of Land Management. I personally have been involved in wildlife conservation work in eastern North Carolina, including the Outer Banks, for almost a decade. I am keenly aware of the dynamic ecosystem of the Outer Banks, the sensitive wildlife species that rely on Cape Hatteras National Seashore, and the impacts of destructive activities, including off-highway vehicle use on the species and ecosystems of the National Seashore.

3. Defenders has members who live in the general vicinity of Cape Hatteras National Seashore. These members, in addition to members from across the country, visit, recreate, observe birds and other wildlife, photograph and otherwise use and enjoy the public lands, beaches, wetlands and other lands at Cape Hatteras National Seashore and Pea Island National Wildlife Refuge.

4. Defenders is dedicated to the protection of all native wild animals and plants in their natural communities, and the preservation of the habitat on which they depend. Defenders advocates new approaches to wildlife conservation that will help keep species from becoming endangered, and the organization employs education, litigation, research, legislation and advocacy to defend wildlife and their habitat.

5. Defenders is an advocate for wildlife on our public lands. Our work has focused heavily on protecting the National Wildlife Refuge System, which totals 95 million acres, and we have also been advocates for wildlife protection in our National Parks, Seashores, and other public lands. For example, Defenders organized the Commission on New Directions for the National Wildlife Refuge System, which identified threats to wildlife refuges, including harmful test bombing, oil and gas drilling, grazing and other “secondary uses.” In 2007, Defenders published a *Refuges at Risk* report that focuses on the 10-year anniversary of the passage of the National Wildlife Refuge System Improvement Act. Pea Island National Wildlife Refuge was among those highlighted in the report. This refuge boasts an enormous array of birds, mammals, reptiles and amphibians, including breeding American oystercatchers and loggerhead sea turtles. A planned replacement bridge and highway would carve through the heart of refuge wetlands, requiring constant maintenance as even mild storms regularly inundate the road with sand and ocean water.

6. Defenders has long been active in eastern North Carolina, promoting the introduction of the endangered red wolf to Alligator River National Wildlife Refuge, and then successfully defending that program in court. The red wolves now range throughout much of northeastern North Carolina, specifically including the Pungo Unit of the Pocosin Lakes National Wildlife Refuge and much of the agricultural land to the west of that refuge that the Navy has targeted for acquisition.

7. Defenders was also active in commenting on and opposing a permit issued to allow certain erosion-control measures to be introduced in Oregon Inlet in the northern section of Cape Hatteras National Seashore in 2001.

8. Defenders has been concerned with the protection of Cape Hatteras National Seashore and the adjacent Pea Island National Wildlife Refuge for many years. Cape Hatteras National Seashore is home to nesting shorebirds, such as the threatened piping plover, as well as threatened loggerhead turtles, and endangered leatherback turtles. Since 1999, several tern species have been all but eliminated at the seashore, along with black skimmers. Other sensitive species of birds have seen their numbers decline by almost one half. Widespread and unregulated off-road vehicle use at Cape Hatteras National Seashore is a significant cause of disturbance to breeding birds and sea turtles.

9. Defenders has been actively engaged in encouraging Defendants to comply with their legal obligations to regulate ORV use in the Seashore, in participating in the environmental review process for the interim plan, and preparing and submitting comments on the draft Environmental Assessment. Defenders also brought a lawsuit in 1996 to require designation of critical habitat for piping plovers, which led to the designation of parts of the Seashore as critical habitat. Defenders remains an intervenor in litigation brought by off-road vehicle user groups successfully challenging that critical habitat designation. The Fish and Wildlife Service has yet to comply with the court's timetable for issuing a new designation on remand.

10. In May 2005 and again in December 2006, Defenders issued a notice of intent to sue the National Park Service for failure to comply with the Endangered Species Act, the Migratory Bird Treaty Act, the National Environmental Policy Act, the Administrative Procedures Act, and two Presidential Executive Orders and other federal laws and regulations with respect to its authorization of unlimited off-road vehicle use at the seashore. Defenders staff and members have repeatedly discussed these issue with Park Service staff to no avail.

11. Defenders staff Jason Rylander and Andrew Hawley were selected by the National Park Service to participating in a negotiated rulemaking process established at the Cape Hatteras National Seashore to address the development of a long-term off-road vehicle management plan. That process formally began in January 2008 and is on-going.

12. Defenders also filed numerous comment letters on its own behalf and in conjunction with the North Carolina Chapter of the National Audubon Society, The Wilderness Society, and the National Parks and Conservation Association, the Natural Resources Defense Council and other groups concerning species protection, off-road vehicle management, and specifically the preparation and implementation of the Interim Protected Species Management plan, which is the subject of this suit.

13. Under the Park Service's interim management plan, Cape Hatteras National Seashore experienced one of the worst years on record for shorebird productivity in 2007. Furthermore, the number of nesting attempts by threatened sea turtles exceed the number of nests, which contributes to reproductive failure and population decline. If this plan continues to govern species protection at the Seashore, we expect continued declines in species populations this season. Given that this plan is expected to remain in place for two-to-four years while the process of negotiated rulemaking is underway, Defenders is concerned that continued declines in wildlife populations could lead to the extirpation of those species from the seashore before a final management plan can even be adopted.

14. Defenders, its staff, and members particularly derive scientific, aesthetic, and spiritual benefit from the existence of Cape Hatteras National Seashore, which is seriously impacted by off-road vehicle use, and from the abundant bird and wildlife species -- including the piping plover and loggerhead sea turtle -- that depend on this ecosystem. Defenders' members have

educational and scientific interests in the preservation of the seashore, refuges, and species in eastern North Carolina.

15. Defenders' staff members visit Cape Hatteras National Seashore and Pea Island National Wildlife Refuge on personal trips to enjoy the birds, wildlife, solitude, and other resources offered and protected by these refuges.

16. Off-road vehicle use at Cape Hatteras National Seashore and associated recreational activities disrupt and interfere with birds and wildlife that nest, reside, feed and travel through Cape Hatteras National Seashore and Pea Island National Wildlife Refuge. The National Park Service's and the Fish and Wildlife Service's management of those lands to promote off-road vehicle use at the expense of wildlife and birds will severely constrain the ability of Defenders' members to use and enjoy the seashore and surrounding lands for observation, study, and photography of wildlife and birds.

17. The noise and traffic and crowding that beach driving causes at Cape Hatteras National Seashore interferes with our members' use and enjoyment of these public lands and their ability to observe wildlife and birds in their natural habitat.

18. As set forth above, Defenders and its members have interests which are adversely affected and irreparably harmed by the decisions of the National Park Service and the Fish and Wildlife Service regarding the authorization of beach driving at Cape Hatteras National Seashore. These actual and potential injuries have been and continue to be caused by the illegal decisions of these agencies with respect to off-road vehicle use at the seashore. These injuries will not be redressed except by an order from this Court vacating the Interim Plan for management of ORV use that is not protective of Seashore resources, requiring defendants to comply with the Endangered Species Act, National Park Service Organic Act and its

implementing regulations, the Cape Hatteras National Seashore Enabling Legislation, the Migratory Bird Treaty Act and its implementing regulations, Executive Order 13186, Executive Order 11644 as amended by Executive Order 11989, 36 C.F.R. § 4.10, and ordering the other relief sought in this action.

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



January 17, 2008

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Signature

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Date

WASHINGTON, D.C.