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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

DEFENDERS OF WILDLIFE,)	
)	
)	
PLAINTIFF,)	
)	
VS)	CASE NO. 2:07-CV-45-BO
)	
)	
NATIONAL PARK SERVICE,)	
ET AL,)	
)	
DEFENDANTS.)	

MOTION HEARING

JUNE 2, 2009

HONORABLE TERRENCE W. BOYLE, PRESIDING

APPEARANCES:

MR. DERB S. CARTER, JR.
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MS. JULIE F. YOUNGMAN
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APPEARANCES: (CONT.)

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SHARON K. KROEGER, COURT REPORTER
MACHINE SHORTHAND REPORTER, COMPUTER AIDED TRANSCRIPTION

1 THE COURT: ALL RIGHT. THE NEXT CASE ON THE
2 CALENDAR IS THE DEFENDER'S OF WILDLIFE VERSUS PARK
3 SERVICE CASE. OKAY. YOU ARE MS. YOUNGMAN.

4 MS. YOUNGMAN: I AM, YOUR HONOR.

5 THE COURT: YOU ARE HERE FOR THE PLAINTIFFS.
6 AND MS. TRIPP, YOU ARE HERE AS THE ASSISTANT UNITED
7 STATES ATTORNEY. AND THE MAIN ITEM THAT YOU HAVE ASKED
8 THE COURT TO ACCEPT OR APPROVE IN THE CONSENT DECREE HAS
9 TO DO WITH AUTOMATIC EXTENSIONS OF CLOSURES OR EXTENSIONS
10 OF PERIODS OF TIME WHEN THERE IS SOME VIOLATION; IS THAT
11 RIGHT?

12 MS. TRIPP: WELL, THERE ARE THREE MAIN
13 REQUESTED MODIFICATIONS. ONE THAT RELATES TO PARAGRAPH
14 23 AND THE VIOLATIONS PROVISION.

15 THE COURT: YES.

16 MS. TRIPP: WE ARE ESSENTIALLY CREATING A
17 POSITIVE INCENTIVE TO REPORT VIOLATIONS. RIGHT NOW THERE
18 ARE PENALTIES AND WE WANTED TO CREATE SOME SORT OF
19 POSITIVE INCENTIVE. AND SO THE MODIFICATION THAT WE ARE
20 PROPOSING THAT WOULD ALLOW THE PARK THE DISCRETION TO
21 EITHER RETRACT A BUFFER IF WE EXPANDED IT BECAUSE OF A
22 VIOLATION AND THEN THERE HAS BEEN AN APPREHENSION OF A
23 VIOLATOR, OR IF WE CATCH THE VIOLATE BEFORE WE HAVE
24 EXTENDED THE BUFFER TO HAVE THE DISCRETION NOT TO EXPAND.

25 THE COURT: BECAUSE THE SORT OF COMMON SENSE

1 OR PRACTICAL CONCERN THAT IS INVOLVED HERE IS THAT YOU
2 WILL HAVE A CLOSURE, YOU WILL HAVE MARKING, AND YOU WILL
3 HAVE BARRIERS, AND YOU WILL HAVE A DESICCATION OF THAT BY
4 THEN UNKNOWN PARTY AND THAT WILL RESULT IN AN ENHANCED
5 CLOSURE OR ENHANCED ENFORCEMENT SO THAT THE INITIAL
6 PERIOD OR THE INITIAL AREA GETS EXPANDED AND THERE IS
7 SOME CONCERN, OR JUST REALITY, THAT SOME PERVERSE KIND OF
8 THINKING MIGHT CAUSE SOMEONE TO CREATE A VIOLATION IN
9 ORDER TO CONTINUALLY ESCALATE THE CLOSING.

10 MS. TRIPP: THAT'S CORRECT, YOUR HONOR.

11 THE COURT: THAT SOMEBODY WHO WAS A SABOTEUR
12 COULD COME IN AND UNKNOWN TO THE AUTHORITIES DO SOMETHING
13 THAT PROVOKES A RESPONSE AND THE RESPONSE WOULD HAVE NOT
14 BEEN CONSISTENT WITH THE GOALS OF ENFORCEMENT.

15 MS. TRIPP: THAT'S CORRECT. THERE IS ALSO THE
16 REALITY THAT LAST YEAR WE DID HAVE SIX VIOLATIONS AND WE
17 WERE NOT ABLE TO APPREHEND THE VIOLATOR. AND SO THERE IS
18 THE REAL HARM CAUSED BY WHEN WE HAVE -- YOU KNOW, THE
19 SIGNS ARE VANDALIZED OR REMOVED.

20 THERE WAS ONE INCIDENCE OF ONE EGG LEAST TERN
21 NEST BEING RUN OVER. THAT WAS THE ONLY RESOURCE DAMAGE
22 THAT WE HAD THAT WE DO HAVE TO EXPAND THE BUFFERS, BUT WE
23 WANT TO CREATE AN INCENTIVE TO THE PUBLIC BECAUSE WE
24 RECOGNIZE THAT THERE MAY BE THE SABOTEURS AND WHERE WE
25 HAVE TO EXPOSE THE EXPANDED BUFFER ON THE ENTIRE PUBLIC.

1 SO WE WANT TO HAVE INCENTIVE TO HAVE A REWARD,
2 IF YOU WILL, IF WE APPREHEND THE VIOLATOR.

3 THE COURT: YES.

4 MS. TRIPP: SO THAT IS ONE MODIFICATION
5 PROPOSAL.

6 THE OTHER IS PARAGRAPH 26, AND THAT RELATES TO
7 THE -- WHAT A FULL BEACH CLOSURE MEANS FOR UNHATCHED
8 TURTLE NESTS AND AS IT RELATES TO NIGHT DRIVING. THE
9 NIGHT DRIVING PROVISIONS ARE SET OUT IN PARAGRAPHS 24 AND
10 25. AND ESSENTIALLY AT THE END OF LAST SEASON, WE
11 REALIZED THAT WE DIDN'T HAVE A MEETING OF THE MINDS AS TO
12 WHAT FULL BEACH CLOSURE MEANT.

13 THE COURT: FULL BEACH CLOSURE IN A SPECIFIC
14 IDENTIFIED AREA?

15 MS. TRIPP: CORRECT.

16 THE COURT: SO THERE IS BETWEEN RAMP SUCH AND
17 SUCH AND SUCH AND SUCH, THERE IS THE PRESENCE OF TURTLE
18 EGGS, AND SO YOU HAVE A FULL BEACH CLOSURE.

19 MS. TRIPP: CORRECT.

20 THE COURT: AND THE PARAMETERS OF THAT,
21 WHETHER THAT MEANS INTO THE OCEAN OR INTO THE DUNE OR
22 EXACTLY WHAT IT MEANS IS UNCLEAR.

23 MS. TRIPP: THIS WAS ACTUALLY THE TIMING OF
24 IT.

25 THE COURT: OKAY.

1 MS. TRIPP: SO FULL BEACH CLOSURE STILL MEANS
2 DUNE TO SHORE, BUT WHAT WE MEANT, WE ALL REALIZED
3 ACTUALLY THAT WE DIDN'T MEAN FOR IT TO BE A 24 HOUR A DAY
4 CLOSURE; THAT IT FITS INTO THE NIGHT DRIVING PROVISION.
5 SO THIS ACTUALLY ALSO NEEDS TO ONLY BE FOR THE NIGHT, SO
6 SUNSET TO 6:00 A.M. WOULD BE THE MODIFICATION. SO
7 INSTEAD OF A 24 HOUR A DAY CLOSURE FOR THE UNHATCHED
8 TURTLE NESTS, THIS WOULD BE A SUNSET TO 6:00 A.M. FULL
9 BEACH CLOSURE.

10 THE COURT: IS THAT CONSISTENT WITH YOUR
11 UNDERSTANDING?

12 MS. YOUNGMAN: IT IS, YOUR HONOR.

13 MS. TRIPP: AND THEN THE FINAL MODIFICATION IS
14 A NEW PARAGRAPH, PARAGRAPH 28, WHICH WOULD BE ALSO PART
15 OF THE NIGHT DRIVING PROVISION, AND THIS ALSO IS FOR
16 OPERATING. LAST YEAR WE REALIZED THAT ONE OF THE
17 UNINTENDED CONSEQUENCES OF OUR NIGHT DRIVING PROHIBITION
18 WAS THAT LICENSED COMMERCIAL FISHERMAN WERE BEING
19 NEGATIVELY IMPACTED. AND AS THE COURT IS AWARE,
20 COMMERCIAL FISHERMEN DO HAVE A SPECIAL USE PROVISION
21 UNDER OUR ENABLING ACT, AND WE WANTED TO REMEDY THIS
22 NEGATIVE IMPACT.

23 AND ESSENTIALLY WHAT OUR POSITION --

24 THE COURT: NOW, COMMERCIAL FISHERMEN ARE
25 SEINE FISHERMEN WHO ARE USING THAT HISTORIC RIGHT TO

1 SEINE FISH OFF THE BEACH?

2 MS. TRIPP: CORRECT. THEY ARE HAUL SEINE
3 FISHERMEN AND --

4 THE COURT: NOT SOMEBODY GOING OUT THERE WITH
5 A POLE AND SAYING MAYBE I'LL CATCH SOMETHING?

6 MS. TRIPP: NO. THESE ARE NET FISHERMEN.

7 THE COURT: CORRECT.

8 MS. TRIPP: AND WE ARE NOT AWARE OF --

9 THE COURT: AND THEY ARE ENTITLED HISTORICALLY
10 TO LEAVE EQUIPMENT OR AT LEAST A DORY OR SOMETHING LIKE
11 THAT ON THE BEACH DURING THEIR PERIOD OF ACTIVE FISHING;
12 AREN'T THEY?

13 MS. TRIPP: THAT'S CORRECT. WE HAVE CODIFIED
14 THEIR SPECIAL ACCESS UNDER OUR ENABLING ACT. AND IT WAS
15 REALLY AN INADVERTENT OVERSIGHT WHEN WE WERE DRAFTING THE
16 CONSENT DECREE THAT WE DIDN'T TAKE INTO EFFECT HOW THIS
17 WOULD IMPACT THE COMMERCIAL FISHERMEN, AND IT DOES HAVE A
18 VERY SIGNIFICANT IMPACT BECAUSE CURRENTLY THE NIGHT
19 DRIVING PROHIBITION APPLIES TO THEM.

20 THE COURT: YES. WHICH IT IS NOT INTENDED TO
21 DO.

22 MS. TRIPP: WELL, WHAT OUR MODIFICATION -- WE
23 ARE GIVING ONE MORE HOUR OF ACCESS. SO THEY ARE STILL
24 NOT GOING TO HAVE FREE REIGN, ALL NIGHT, BUT THEY WILL GO
25 ON TO THE BEACH WITH A SPECIAL PERMIT. SO THE PARK IS

1 GOING TO HAVE THE DISCRETION TO GIVE A PERMIT TO A
2 LICENSED COMMERCIAL FISHERMEN THAT MEET VARIOUS
3 REQUIREMENTS.

4 THE COURT: BUT THIS IS ONLY RELEVANT TO AN
5 AREA THAT HAS A CLOSURE.

6 MS. TRIPP: NO.

7 THE COURT: BECAUSE THE BEACH DRIVING IS
8 FORBIDDEN EVERYWHERE.

9 MS. TRIPP: CORRECT. YES. THIS IS PART OF
10 OUR NIGHT DRIVING PROHIBITION.

11 THE COURT: OKAY.

12 MS. TRIPP: SO IT WOULD BE ALL NIGHT DRIVING
13 IS PROHIBITED, BUT THESE LICENSED COMMERCIAL FISHERMEN
14 WOULD BE ABLE TO GET A SPECIAL USE PERMIT FROM THE PARK
15 TO GO ONTO THE BEACH AT 5:00 A.M.

16 AND WE HAVE BEEN CALLED -- I THINK ALL OF US
17 HAVE BEEN CALLED BY THE COMMERCIAL FISHERMEN ABOUT WHAT
18 AN IMPACT THIS HAS.

19 THE COURT: WELL, IT'S DAYLIGHT IN THE SUMMER
20 AT 5:00 A.M. THE SUN COMES UP BY THEN.

21 MS. TRIPP: RIGHT NOW IS THE PRIME PERIOD.
22 IT'S THE MAY 1 TO THE MIDDLE OF JUNE, I BELIEVE, THAT IS
23 CAUSING THE MOST ECONOMIC IMPACT.

24 I HAD A FISHERMAN I TALKED TO ON MONDAY,
25 YESTERDAY, WHO SAID IT WOULD MAKE A ONE-THIRD IMPACT ON

1 HIS INPUT THAT HE WOULD BE ABLE TO HAUL IN BECAUSE THEY
2 ARE COMPETING WITH THE BOAT FISHERMEN, OF COURSE, YOU
3 KNOW, FOR THE CATCH, AND ONCE THE WATER WARMS UP, THE
4 FISH GO FURTHER OFFSHORE.

5 SO IT'S REALLY THIS EARLY PERIOD THAT THEY ARE
6 FOCUSED UPON, BUT OUR PROVISION WOULD GO FROM MAY 1
7 THROUGH SEPTEMBER 15.

8 THE COURT: OKAY.

9 MS. TRIPP: AND THOSE ARE THE ONLY
10 MODIFICATIONS. AS WE SAID IN THE STIPULATION, IT'S THE
11 RESULT OF JUST OPERATING THROUGH ONE YEAR, THE CONSENT
12 DECREE, THAT WE THINK THAT THESE ARE IMPORTANT, SEEMINGLY
13 SMALL, BUT IMPORTANT MODIFICATIONS, AND WE DON'T
14 ANTICIPATE HAVING TO COME BACK TO THE COURT WITH ANY
15 OTHER REQUESTS.

16 THE COURT: AND DO YOU CONCUR IN THESE?

17 MS. YOUNGMAN: WE DO, YOUR HONOR. WE
18 APPRECIATE THE PARK SERVICE COMING TO US WITH CLEARLY
19 WELL THOUGHT OUT PROPOSALS. WE HAVE CONSIDERED THEM AND
20 SATISFIED OURSELVES THAT RESOURCE PROTECTION UNDER THE
21 SIGNS IS NOT GOING TO BE COMPROMISED AND WE CONSENT TO
22 THEM AS THEY ARE WORDED NOW.

23 THE COURT: NOW, BEFORE I TAKE THESE UP, I
24 WANT TO TOUCH ON A FEW OTHER ITEMS. THE PEA ISLAND
25 REFUGE IS WHOLLY WITHIN CAPE HATTERAS NATIONAL SEASHORE;

1 TRUE?

2 MS. TRIPP: YES, YOUR HONOR.

3 THE COURT: AND THE REFUGE IS A SITE FOR
4 ENDANGERED SPECIES NESTING AND FOR THE RESOURCE
5 PROTECTION, BOTH WITH RESPECT TO BIRDS AND TURTLE?

6 MS. TRIPP: CORRECT.

7 THE COURT: AND THERE IS NO BEACH DRIVING EVER
8 ON THE REFUGE, SO WE DON'T HAVE A SITUATION WHERE YOU
9 HAVE A TARGETED CLOSURE. FOR INSTANCE, IF YOU DISCOVER
10 ACTIVE NESTING GOING ON FOR ONE OF THE OTHER SPECIES THAT
11 ARE ADDRESSED HERE, YOU WOULDN'T HAVE TO INTERVENE AND
12 CLOSE DOWN OR MARK -- TELL ME IF I AM WRONG --

13 MS. TRIPP: NO, YOU ARE CORRECT, YOUR HONOR.

14 THE COURT: YOU WOULDN'T HAVE TO INTERVENE
15 AND CLOSE DOWN AN AREA OR SEGREGATE AN AREA IN ORDER TO
16 ISOLATE THE NESTS BECAUSE PEOPLE SHOULDN'T BE THERE
17 EITHER ON FOOT OR IN A VEHICLE; SHOULD THEY?

18 MS. TRIPP: LET ME CONFER WITH THE --

19 THE COURT: AND I KNOW THAT THIS IS A -- THE
20 PARK SERVICE IS THE MANAGER AND JURISDICTION FOR THE
21 SEASHORE, AND THE DEPARTMENT OF INTERIOR FISH AND
22 WILDLIFE SERVICE IS THE PRIMARY OBLIGOR FOR THE REFUGE;
23 IS THAT NOT RIGHT?

24 MS. TRIPP: THAT IS CORRECT, YOUR HONOR.

25 THE COURT: SO WHILE THE PARK ENVELOPES THE

1 REFUGE, THE REFUGE IS A SEPARATE ENTITY WITHIN THE PARK?

2 MS. TRIPP: THAT'S CORRECT.

3 THE COURT: BUT ARE PEOPLE PERMITTED TO HAVE
4 FOOT TRAFFIC ON THE BEACH IN AREAS THAT WOULD INVOLVE
5 THESE RESOURCES AND NESTING?

6 MS. TRIPP: I AM NOT FAMILIAR WITH HOW OUR
7 CLOSURES OPERATE WHEN THERE IS NESTING. I KNOW THAT
8 THERE IS LIMITED PEDESTRIAN ACCESS ALLOWED TO THE REFUGE
9 GENERALLY, BUT I AM NOT FAMILIAR WITH HOW WE HANDLE NEST
10 SITES.

11 THE COURT: DOES THE SUPERINTENDENT KNOW?

12 MR. MURRAY: YES, SIR. ON THE REFUGE, THERE
13 IS NO OFF ROAD VEHICLE USE ALLOWED AT ANY TIME.

14 THE COURT: RIGHT.

15 MR. MURRAY: THEY ALSO HAVE BEACH NESTING
16 SHORE BIRDS AND SEA TURTLE. THE BEACH IS NORMALLY OPEN
17 TO PEDESTRIANS.

18 THE COURT: IT IS.

19 MR. MURRAY: YES, SIR.

20 THE COURT: WHAT HAPPENS WHEN YOU HAVE -- DOES
21 THE FISH AND WILDLIFE SERVICE ACTIVELY IDENTIFY NESTING?

22 MR. MURRAY: YES, THEY DO. THEY ALSO USE
23 SIGNS AND STRING FENCE -- THEY CALL IT SYMBOLIC FENCING
24 -- TO DEMARCATATE AREAS CLOSED FOR BIRD NESTING.

25 THEY ALSO PATROL EACH MORNING AND CHECK FOR

1 TURTLE TESTS AND THEN MARK THE TURTLE NESTS.

2 THE COURT: I AM ASSUMING THAT THERE IS A VERY
3 SMALL POPULATION OF FOOT TRAFFIC IN THE REFUGE BECAUSE
4 THERE ARE NO RAMPS IN THE REFUGE; ARE THERE?

5 MR. MURRAY: IT'S RELATIVELY SMALLER.

6 THE COURT: YOU CAN'T RAMP ON TO THE BEACH?

7 MR. MURRAY: CORRECT.

8 THE COURT: AND SO YOU WOULD HAVE TO EITHER
9 WALK OVER THE DUNE, WHICH YOU MAY OR NOT BE PERMITTED TO
10 DO, OR ENTER FROM ONE EXTREMITY OR THE OTHER WHERE YOU
11 WOULD HAVE PEDESTRIAN ACCESS. IS THAT A TRUE PICTURE OF
12 IT?

13 MR. MURRAY: CORRECT. THERE ARE A FEW PARKING
14 AREAS WITH A VERY SORT OF UNDEVELOPED PEDESTRIAN ROUTE
15 OVER.

16 THE COURT: PATH?

17 MR. MURRAY: PATH; YES.

18 THE COURT: AND ARE YOU PERMITTED TO PARK? I
19 KNOW THERE IS A VISITOR CENTER ON THE REFUGE. COULD YOU
20 PARK THERE AND WALK OVER THE DUNE ON TO THE OCEAN?

21 MR. MURRAY: YES, YOU COULD.

22 THE COURT: SO IT'S NOT ILLEGAL TO WALK OVER
23 THE DUNE? OR IS IT?

24 MR. STEVENS: YOUR HONOR, THEY ESSENTIALLY
25 PROTECT THEIR BIRDS AT PEA ISLAND JUST THE WAY WE DO.

1 FOR INSTANCE, WHERE THEIR VISITOR CENTER IS ON PEA
2 ISLAND, IF FOR ONE YEAR, LET'S SAY THIS YEAR, WE HAD A
3 COLONY OF LEAST TERNS THAT DECIDED TO NEST RIGHT ON THE
4 OTHER SIDE OF THE DUNE TO THE EAST OF THEIR VISITOR
5 CENTER. THAT ENTIRE AREA WOULD BE CLOSED AND THEY WOULD
6 NOT ALLOW FOR FOOT TRAFFIC TO GO OUT THERE. SO ALL OF
7 THEIR RESOURCE PROTECTION AREAS FOR THE NESTING BIRDS ARE
8 CLOSED TO PEDESTRIANS.

9 THE COURT: BUT AS A GENERAL MATTER, FOR AN
10 AREA THAT HASN'T BEEN IDENTIFIED AS A NESTING AREA,
11 DURING THE SUMMER SEASON OR ANY SEASON, CAN A PERSON WALK
12 ACROSS THE DUNE TO THE OCEAN?

13 MR. STEVENS: YES, SIR.

14 THE COURT: YOU CAN? YOU ARE PERMITTED TO
15 WALK AS A PEDESTRIAN IN THE REFUGE?

16 MR. STEVENS: YES, SIR.

17 THE COURT: AND --

18 MR. STEVENS: THEY DO HAVE CERTAIN
19 RESTRICTIONS AT NIGHTTIME. YOU HAVE TO OBTAIN A PERMIT
20 FROM THE FISH AND WILDLIFE SERVICE TO ACCESS THEIR
21 BEACHES AT NIGHT TO NIGHT FISH. SO THEY DO RESTRICT
22 ACCESS AT NIGHT.

23 THEY DO NOT ALLOW ANY CAMPFIRES OF ANY TYPE
24 AND NO CAMPING ON THE BEACH FRONT, WHEREAS IN THE
25 SEASHORE, WE DO HAVE A PROVISION TO ALLOW FOR SOME FIRES

1 AT GIVEN TIMES.

2 THE COURT: OKAY. THANK YOU. AND THANK YOU
3 FOR ANSWERING MY QUESTIONS.

4 I AM GOING TO CONTINUE, BUT THE REASON THAT
5 THIS IS RELEVANT HERE IS THAT THIS IS A REFUGE, BUT IT'S
6 NOT THE ONLY REFUGE THAT IS WITHIN THE SUBJECT AREA OR
7 THE REFUGE IN CURRITUCK WHICH NO ONE HAS ADDRESSED IN
8 THIS LAWSUIT, LIES -- ARE YOU FAMILIAR AT ALL WITH THE
9 CURRITUCK REFUGE? IT LIES JUST NORTH OF COROLLA.
10 I THINK IT BEGINS AFTER THE PAVED ROAD RUNS OUT.

11 MS. YOUNGMAN: I BELIEVE THERE IS A WOODEN
12 FOOT PATH THROUGH THERE.

13 THE COURT: WELL, I AM NOT SURE ABOUT THAT.
14 BUT IT'S ABOUT ROUGHLY FIVE THOUSAND ACRES, GIVE OR TAKE,
15 I BELIEVE, AND IT'S NOT SEASHORE AND IT'S NOT IN THE
16 ENFORCEMENT JURISDICTION OF THE PARK SERVICE WITH PARK
17 RANGERS, BUT IT BEARS ALL OF THE SAME IDENTICAL
18 CHARACTERISTICS OF THE BARRIER ISLANDS ECOLOGY THAT ARE
19 ADDRESSED IN THIS LAWSUIT. IT JUST DOESN'T HAVE ANY
20 ATTENTION. IT HAS NO CONSTITUENCY.

21 AND COMMON SENSE WOULD SUGGEST THAT THE SAME
22 KINDS OF RESOURCE DEGRADATION AND CRITICAL MANAGEMENT OF
23 RESOURCE WITH RESPECT TO NESTING BIRDS AND NESTING
24 TURTLES WOULD OCCUR AT THE CURRITUCK REFUGE AS OCCURS IN
25 CAPE HATTERAS NATIONAL SEASHORE, AND MORE SPECIALLY IN

1 PEA ISLAND REFUGE.

2 MAYBE SOME OCEAN ECOLOGIST COULD DISTINGUISH
3 BETWEEN IT, BUT I DOUBT IT. I DOUBT THAT IF THE DISTANCE
4 BETWEEN WHALEBONE AND COROLLA IS SO DRAMATIC,
5 ECOLOGICALLY, THAT YOU WOULDN'T HAVE THE SAME NATURAL
6 EXPERIENCE THERE.

7 I DON'T THINK ANYBODY CAN TELL WITHIN THE
8 CONTEXT OF THIS LAWSUIT WHAT THE CURRENT AND RECENT
9 EXPERIENCE HAS BEEN WITH RESPECT TO NESTS, SHORE BIRDS,
10 ENDANGERED SPECIES OR TURTLES THERE.

11 BUT I THINK IT'S -- I THINK IT'S MATERIAL, IF
12 ONLY FOR A COMPARATIVE BASIS, AND I THINK THAT THE
13 GOVERNMENT OUGHT TO, AS A PART OF THEIR CONTINUING
14 PERFORMANCE UNDER THE CONSENT DECREE, NOT ONLY RECOVER
15 THE INFORMATION AND DATA THAT YOU FILED IN THE WINTER
16 FROM THE 2008 SEASON, BUT HAVE A RUNNING UPDATE ON THAT
17 SO THAT SCIENCE AND THE LAW CAN HAVE A REASONABLE AND
18 INFORMED BASIS FOR JUDGING, AND SO THAT THIS CAN BE
19 INTEGRATED INTO YOUR ULTIMATE BEACH DRIVING PLAN BECAUSE
20 THAT -- THAT IS WHAT THE CONSENT DECREE WAS LOOKING
21 FORWARD TO. IT WAS LOOKING FORWARD TO THE PARK SERVICE,
22 THE DEPARTMENT OF INTERIOR, AND THE GOVERNMENT, COMPLYING
23 WITH THE MANDATE THAT THERE BE A KNOWN, ESTABLISHED PLAN
24 FOR MOTOR VEHICLE OPERATION ON THE BEACH, THAT THAT IS
25 SUPPOSED TO HAPPEN TWO YEARS FROM NOW OR SOME TIME

1 BETWEEN NOW AND THEN. AND EVERYTHING THAT YOU NEGOTIATED
2 AND EVERYTHING THAT YOU HAVE RESOLVED WAS LOOKING TOWARDS
3 A FORMAL ESTABLISHED OUTCOME THAT WOULD BE DEMOCRATIC AND
4 CONSISTENT WITH THE LAW.

5 WELL, ONE OF THE MOST PREGNANT PIECES OF
6 INFORMATION THAT YOU SHOULD HAVE IN DOING THAT IS WHAT
7 HAPPENS IN THE REFUGE THAT YOU ARE MANAGING WITHIN CAPE
8 HATTERAS SEASHORE WHERE YOU HAVE NO AUTHORIZED DRIVING?
9 DO YOU HAVE SIGNIFICANTLY HIGHER PERFORMANCE? DO YOU
10 HAVE SIGNIFICANTLY LOWER PERFORMANCE? DO YOU HAVE THE
11 SAME PERFORMANCE?

12 YOU NEED -- THAT WOULD BE ONE OF THE FIRST
13 PIECES OF INFORMATION THAT YOU WOULD WANT TO KNOW. IT'S
14 LIKE HAVING A PLACEBO SAMPLE IN A MEDICAL TEST. AND THEN
15 YOU WOULD -- BECAUSE THIS INFORMATION IS ALL RECOVERABLE
16 RIGHT THERE IN YOUR DEPARTMENT, IN THE DEPARTMENT OF
17 INTERIOR. I CAN'T IMAGINE THAT THEY ARE NOT IN THE FISH
18 AND WILDLIFE SERVICE AND THE ENDANGERED SPECIES SECTION,
19 THAT THEY ARE NOT RECOVERING DATA THAT COULD READILY BE,
20 YOU KNOW, CALL THEM UP AND FIVE MINUTES LATER ON THE
21 INTERNET THEY SEND IT TO YOU KIND OF THING.

22 AND SO YOU ALSO HAVE THIS SAMPLE ALL WITHIN
23 THE SAME TEST AREA OF THE CURRITUCK REFUGE AND WHAT IS
24 HAPPENING THERE? WELL, COMMON SENSE WOULD TELL YOU THAT
25 IT'S BEING EXPOSED TO THE WORST POSSIBLE DEGRADATION

1 BECAUSE YOU HAVE INDISCRIMINATE TRAFFIC, UNREGULATED,
2 CROSSING BETWEEN THE ATLANTIC OCEAN AND THE MEAN HIGH
3 WATER MARK OF THE REFUGE DAY AND NIGHT. THERE IS NO
4 REGULATION ON THE SIZE OF VEHICLE.

5 IF YOU COULD DO IT, IF YOU COULD GET THE KIND
6 OF FOUR-WHEEL DRIVE OR EXTENDED DRIVE, YOU COULD DRIVE AN
7 18-WHEELER UP THERE, WHICH THEY PROBABLY DO BECAUSE THEY
8 ARE POURING CEMENT AND DELIVERING BLOCK AND DELIVERING
9 SHEETROCK.

10 AND SO YOU HAVE A SAMPLE THAT IS -- THAT
11 TOUCHES THE DUNE LINE. I MEAN, IT COMES ACROSS THE DUNE
12 LINE TO THE MEAN HIGH WATER MARK. AND YOU HAVE
13 INDISCRIMINATE AND UNREGULATED BEACH TRAFFIC. IT WOULD
14 BE INTERESTING TO SEE IF UNDER THOSE CIRCUMSTANCES ANY
15 BIRD SURVIVES, ANY TURTLE HAS A NEST, AND WHAT THE ACTUAL
16 DATA ARE.

17 AS FAR AS I KNOW -- AND THIS IS JUST EMPIRICAL
18 KNOWLEDGE FROM HANDLING CRIMINAL COURT -- AS FAR AS I
19 KNOW, THERE IS NO UNITED STATES GOVERNMENT LAW
20 ENFORCEMENT ACTIVELY POLICING AND ENFORCING THE CRIMINAL
21 LAWS ON THE CURRITUCK WILDLIFE REFUGE. I HAVEN'T SEEN A
22 CASE IN COURT FROM THAT REFUGE, TO MY KNOWLEDGE, IN A
23 YEAR.

24 NOW, THERE MAY HAVE BEEN SUBMITTED CASES WHERE
25 TICKETS WERE WRITTEN AND THEY JUST DIDN'T HAVE A COURT

1 APPEARANCE, SO I WOULDN'T SPEAK TO THAT BECAUSE IF THERE
2 WERE SUBMITTED CASES, THEY WOULDN'T COME IN FRONT OF THE
3 COURT FOR ACTIVE HEARING. BUT I HAVE NO MEMORY IN A LONG
4 PERIOD OF TIME, MORE THAN A YEAR, OF HAVING A COURT
5 APPEARANCE CHARGE, REGARDLESS OF THE OUTCOME, FROM THE
6 CURRITUCK REFUGE.

7 AND IF THERE IS NO ENFORCEMENT, THEN WHO IS TO
8 SAY -- I MEAN, THE ATLANTIC OCEAN IS NO RESPECTER OF DUNE
9 LINES. YOU HAVE MEAN HIGH WATER, AND YOU KNOW WHAT THAT
10 IS, THAT IS A SCIENTIFIC TERM, AND MEAN LOW WATER. BUT
11 YOU HAVE TIDES AND HYDRAULIC CONDITIONS WHERE THE STRETCH
12 OF THE MEAN HIGH TIDE MAY BE HUNDREDS OF FEET, OR, YOU
13 KNOW, ANY NUMBER OF YARDS PAST WHERE THE MEAN HIGH WATER
14 LINE IS, IN WHICH CASE THE OCEAN WOULD BE ON THE REFUGE.

15 WELL, IF THE OCEAN IS ON THE REFUGE, YOU CAN'T
16 DRIVE ON THE LAND. THERE IS NO EITHER FORMAL OR INFORMAL
17 PERMISSION TO DRIVE ON THE REFUGE. THAT IS WHY I STARTED
18 OFF BY ASKING ABOUT THE PEA ISLAND REFUGE. I MAKE AN
19 ASSUMPTION THAT THE KIND OF GENERAL PROHIBITIONS THAT
20 EXIST ON PEA ISLAND IN TERMS OF VEHICULAR TRAFFIC AND
21 FOOT TRAFFIC WOULD OCCUR ON CURRITUCK REFUGE. AND SO IF
22 YOU CAN'T DRIVE ON THE REFUGE, EVER, WHAT HAPPENS TO ALL
23 THE TRAFFIC THAT IS DRIVING THROUGH THE REFUGE WHEN THE
24 OCEAN IS AT THE BOUNDARY LINE OF THE REFUGE? EVERY ONE
25 OF THEM IS COMMITTING A FEDERAL CRIME.

1 I WOULD ALSO SUGGEST THAT THE GOVERNMENT,
2 SINCE YOU HAVE THE GOVERNMENT, UNITED STATES ATTORNEY,
3 SINCE YOU HAVE CONTROL OVER THIS, MONITOR THIS SITUATION
4 AS THE ONE I AM ABOUT TO DISCUSS, WHICH I BELIEVE THE
5 PARTIES SHOULD TAKE INTO ACCOUNT IN RESOLVING THE BEACH
6 DRIVING ISSUE AND THE ENFORCEMENT ISSUE IN A FINAL PLAN
7 AND IT'S THIS.

8 AND WHAT I RECOGNIZE HERE IN COURT IS ONLY
9 EMPIRICAL RESULTS OR DATA FROM HOLDING CRIMINAL COURT,
10 AND THAT IS THAT BEFORE THE CONSENT DECREE, YOU HAD "X"
11 NUMBER OF ACRES WITHIN THE CAPE HATTERAS NATIONAL
12 SEASHORE THAT WERE ENGAGED IN VEHICULAR DRIVING AND
13 PUBLIC ACCESS.

14 NOW YOU HAVE "X" MINUS "Y". I DON'T KNOW WHAT
15 THAT IS, BUT I KNOW THAT IT'S THINGS LIKE THE -- IS IT
16 RAMP 4 AT OREGON INLET? YES. THE SPIT OFF THE SOUTH OR
17 WEST SIDE OF RAMP 4, CAPE POINT, AND OTHER AREAS THAT
18 HAVE BEEN CLOSED TO ACCESS, BUT WHICH HISTORICALLY HAD
19 HIGH DENSITY ACCESS, PARTICULARLY ON THE THREE CRITICAL
20 WEEKENDS OF THE SUMMER SEASON.

21 SO NOW YOU DON'T HAVE VEHICLES OR PEOPLE ON
22 THOSE. AND SO THE NUMBER OF PARK RANGERS AND THE
23 ENFORCEMENT RESOURCE THAT EXISTED EACH YEAR WAS CONSTANT,
24 BUT THE AREA OF ENGAGEMENT WAS SIGNIFICANTLY EXPANDED.
25 NOW IT'S CONTRACTED. AND SO WE ARE SEEING MUCH MORE

1 SUCCESS. WE, MEANING THE UNITED STATES ATTORNEY, IN THE
2 ENFORCEMENT OF THE CRIMINAL LAWS. DRUNK DRIVING, BEACH
3 VIOLATIONS, CAMPGROUND VIOLATIONS ARE ALL BEING POLICED
4 AND ENFORCED MORE THOROUGHLY NOW BECAUSE YOU HAVE THE
5 SAME NUMBER OF ENFORCEMENT PEOPLE, BUT THEY HAVE A MUCH
6 MORE CONCENTRATED AREA WITHIN WHICH TO PRACTICE THEIR
7 ENFORCEMENT. THEY ARE NOT STRETCHED OUT OVER 50 OR 70
8 MILES, AND THEY CAN RESPOND MUCH QUICKER.

9 SO THE PUBLIC IS BEING TREMENDOUSLY SERVED
10 WITH A MORE PEACEFUL AND LAW-ABIDING ENVIRONMENT BECAUSE
11 OF THE CLOSURES. THIS IS AN UNINTENDED CONSEQUENCE.
12 NOBODY SET OUT TO DO THAT, BUT THE REALITIES OF THE
13 SITUATION HAVE RESULTED IN A MUCH SAFER AND MORE
14 WHOLESOME SEASHORE. AT LEAST ONE COULD DRAW THAT
15 CONCLUSION.

16 AND I THINK THOSE NUMBERS NEED TO BE FOLLOWED
17 AND NEED TO BE DOCUMENTED WHEN YOU PUT ALL OF THIS INTO
18 THE CALCULUS THAT GOES INTO THE BEACH DRIVING PROCESS.

19 DO YOU HAVE ANY OTHER AREAS THAT HAVE COME UP?

20 MS. TRIPP: NO, YOUR HONOR. WE CERTAINLY HEAR
21 YOU LOUD AND CLEAR.

22 WE JUST WANT TO NOTE FOR THE RECORD THAT THE
23 INTERVENERS ARE REPRESENTED HERE BY MR. HORNTAL AND
24 COMMISSIONER OUTTEN AND THEY ALSO HAVE AGREED TO THE
25 STIPULATIONS THAT WE HAVE PROPOSED.

1 THE COURT: OKAY.

2 MS. TRIPP: AND JUST TO NOTE, AS YOU HAVE
3 ALREADY ON THE RECORD THAT THE REASON WHY WE HAVEN'T
4 COMPILED THIS DATA PREVIOUSLY IS BECAUSE THE REFUGES ARE
5 OUTSIDE OF THE PURVIEW OF THE PARK SERVICE, BUT WE
6 CERTAINLY HEAR YOU LOUD AND CLEAR ON GATHERING THIS DATA.

7 THE COURT: WELL, I AM TELLING YOU THAT I
8 WON'T CONTINUE TO APPROVE CHANGES OR ASPECTS OF THIS
9 WITHOUT THAT DATA BECAUSE I THINK IT'S IRRESPONSIBLE NOT
10 TO HAVE THE CORRESPONDING SAMPLES FROM THE REFUGE WHICH
11 PRODUCE CLEAR, COMPARATIVE DATA INVOLVING DRIVING.

12 MS. TRIPP: WE UNDERSTAND. THANK YOU.

13 THE COURT: SO I THINK THAT YOU NEED TO BEGIN
14 TO RECOVER AND PUBLISH THAT.

15 THE COURT: ANYTHING FROM THE PLAINTIFFS?

16 MS. YOUNGMAN: NO, YOUR HONOR.

17 THE COURT: ALL RIGHT. THANK YOU. WE'LL BE
18 IN RECESS. I WILL APPROVE AND SIGN THOSE ORDERS ADOPTING
19 THOSE CONSENTS.

20 MS. TRIPP: THANK YOU, YOUR HONOR.

21 (WHEREUPON, THE HEARING WAS ADJOURNED.)
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CERTIFICATE

THIS IS TO CERTIFY THAT THE FOREGOING
TRANSCRIPT OF PROCEEDINGS TAKEN IN THE UNITED STATES
DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION OF
THE SHORTHAND NOTES OF THE PROCEEDINGS TAKEN BY ME IN
MACHINE SHORTHAND AND TRANSCRIBED BY COMPUTER UNDER MY
SUPERVISION.

DATED THIS 7TH OF JULY, 2009.

/S/ SHARON K. KROEGER
COURT REPORTER