

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CAPE HATTERAS ACCESS PRESERVATION)
ALLIANCE,)

Plaintiff,)

v.)

KENNETH LEE SALAZAR, IN HIS OFFICIAL)
CAPACITY AS SECRETARY, UNITED)
STATES DEPARTMENT OF THE INTERIOR;)
JONATHAN B. JARVIS, IN HIS OFFICIAL)
CAPACITY AS DIRECTOR, NATIONAL PARK)
SERVICE; NATIONAL PARK SERVICE;)
DEPARTMENT OF THE INTERIOR;)
1849 C Street, NW)
Washington D.C. 20240)

and)

MICHAEL B. MURRAY, IN HIS OFFICIAL)
CAPACITY AS SUPERINTENDENT OF THE)
CAPE HATTERAS NATIONAL SEASHORE)
RECREATION AREA,)
1401 National Park Drive)
Manteo, NC 27954)

Defendants,)

and)

DEFENDERS OF WILDLIFE; NATIONAL)
AUDUBON SOCIETY; NATIONAL PARKS)
CONSERVATION ASSOCIATION,)

Intervenor-Defendants.)

**ANSWER TO PLAINTIFF'S COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Defendants Kenneth Lee Salazar, in his official capacity of Secretary, United States

Department of the Interior (“DOI”); Jonathan B. Jarvis, in his official capacity as Director, National Park Service (“NPS”); NPS; DOI; and Michael B. Murray, Superintendent of Cape Hatteras National Seashore (“Seashore”) (collectively “Federal Defendants”); by and through undersigned counsel, hereby assert defenses to Plaintiff’s Complaint, and answer each numbered paragraph as follows:

INTRODUCTION

1.-2. Paragraphs 1 and 2 contain Plaintiff’s characterization of its lawsuit, to which no response is required.

3. Federal Defendants deny the allegations in Paragraph 3.

4. Paragraph 4 contains Plaintiff’s characterization of its lawsuit, to which no response is required.

JURISDICTION AND VENUE

5.-6. The allegations in Paragraphs 5 and 6 are legal conclusions to which no response is required.

PARTIES AND STANDING

Plaintiff

7. Federal Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7, and on that basis deny them.

8. The allegations in Paragraph 8 refer to this Court’s decision in Cape Hatteras Access Preservation Alliance v. Norton, 344 F. Supp.2d 108, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

9. Federal Defendants are without knowledge or information sufficient to form a belief in the truth of the allegations in Paragraph 9, and on that basis deny them.

10. As to the allegations in Paragraph 10, Federal Defendants admit that both Plaintiff and the Outer Banks Preservation Association (“OBPA”) actively participated in the negotiated rulemaking process for the off-road vehicle (“ORV”) regulation and management plan that are at issue in this litigation, and members of OBPA commented extensively on the regulation and plan.

Federal Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and on that basis deny them.

Defendants

11. As to the allegations in Paragraph 11, Federal Defendants admit that DOI is a department of the United States government. The remaining allegations in this paragraph are legal conclusions to which no response is required.

12. As to the allegations in the first sentence of Paragraph 12, Federal Defendants admit that NPS is a bureau within DOI. The remaining allegations in this sentence are legal conclusions to which no response is required. Federal Defendants admit the allegations in the second sentence.

13. Federal Defendants admit the allegations in the first sentence of Paragraph 13. The allegations in the second sentence are legal conclusions to which no response is required.

14. As to the allegations in Paragraph 14, Federal Defendants admit that Jonathan B. Jarvis is the Director of NPS and that he is sued in his official capacity. The remaining allegations in this paragraph are legal conclusions to which no response is required.

15. Federal Defendants admit the allegations in the first sentence of Paragraph 15.

The allegations in the second sentence are legal conclusions to which no response is required.

LEGAL FRAMEWORK

National Park Service Organic Act

16.-17. The allegations in Paragraphs 16 and 17 refer to the National Park Service Organic Act (“Organic Act”), which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

Seashore Enabling Legislation

18.-19. The allegations in Paragraphs 18 and 19 refer to the enabling legislation for the Seashore, which legislation speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

20. The allegations in the first sentence of Paragraph 20 refer to the enabling legislation for the Seashore, which legislation speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning. The allegations in the second sentence refer to the 1938 *Prospectus for Cape Hatteras National Seashore* (“Prospectus”), which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

National Environmental Policy Act

21.-23. The allegations in Paragraphs 21 through 23 refer to the National Environmental Policy Act (“NEPA”), which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

24. The allegations in Paragraph 24 refer to NEPA’s implementing regulations, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any

allegations contrary to their plain meaning.

Administrative Procedure Act

25. The allegations in Paragraph 25 refer to the Administrative Procedure Act (“APA”), which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

26. The allegations in the first sentence of Paragraph 26 refer to the APA, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning. The allegations in the second sentence are legal conclusions to which no response is required.

FACTUAL ALLEGATIONS

27. The allegations in Paragraph 27 refer to the legislation establishing the Seashore, which legislation speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

28. The allegations in Paragraph 28 refer to Zaslowsky et al., *These American Lands*, and Kenney et al., “Our Changing Atlantic Coastlines,” both of which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

29. As to the allegations in the first sentence of Paragraph 29, Federal Defendants admit that portions of the Seashore have been used, before the Seashore was established, for commercial and recreational purposes. Due to vagueness and ambiguity, Federal Defendants are unable to form a belief as to the truth of the remaining allegations in this sentence, and on that basis deny them. As to the allegations in the second sentence, Federal Defendants admit that

ORV access to Seashore beaches predates the creation of the Seashore. Due to vagueness and ambiguity, Federal Defendants are unable to form a belief as to the truth of the remaining allegations in this sentence, and on that basis deny them, and aver that the importance of beach driving for the purpose of transportation decreased following the construction of North Carolina Highway 12. As to the allegations in the third sentence, Federal Defendants admit that the NPS installed permanent beach access ramps throughout the Seashore but aver that the primary purpose of the ramps was to allow commercial fishermen to enter the beach. Federal Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this sentence, and on that basis deny them. Due to vagueness and ambiguity, Federal Defendants are unable to form a belief as to the truth of the allegations in the fourth sentence, and on that basis deny them. As to the allegations in the fifth sentence, Federal Defendants admit that ORVs remain a part of the culture, tradition, and economy of the Outer Banks. Due to vagueness and ambiguity, Federal Defendants are unable to form a belief as to the truth of the remaining allegations in this sentence, and on that basis deny them.

30. The allegations in Paragraph 30 refer to an October 31, 1952 letter from then-NPS Director Conrad Wirth, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

31. The allegations in Paragraph 31 refer to Executive Order 11644, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

32. The allegations in Paragraph 32 refer to NPS regulations at 36 C.F.R. § 7.58(b)(6), which speak for themselves and are the best evidence of their contents. Federal Defendants deny

any allegations contrary to their plain meaning.

33. The allegations in Paragraph 33 refer to Executive Order 11989, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

34. As to the allegations in Paragraph 34, Federal Defendants admit that the U.S. Fish and Wildlife Service (“FWS”) began to prohibit ORV use at Pea Island National Wildlife Refuge at some time during the late 1970s, and that a 1978 ORV management plan, drafted by NPS but never finalized, provided for seasonal closures in certain areas, including village beaches on Hatteras Island, from May 15 through September 15. Federal Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and on that basis deny them.

35. The allegations in Paragraph 35 refer to NPS regulations at 36 C.F.R. §§ 4.10 and 1.5, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

36. Federal Defendants admit the allegations in Paragraph 36 but aver that since the promulgation of the 1984 General Management Plan for the Seashore, construction of recreational facilities has been consistent with the management zones set forth in that document.

37. As to the allegations in Paragraph 37, Federal Defendants admit that NPS did not, prior to the regulation at issue in this litigation, promulgate a special regulation for ORV use at the Seashore. Due to vagueness and ambiguity, Federal Defendants are unable to form a belief as to the truth of the remaining allegations in the first sentence, and on that basis deny them. As to the allegations in the second sentence, Federal Defendants admit that ORV use continued at the

Seashore since Executive Orders 11644 and 11989 and 36 C.F.R. § 4.10 were issued, although such use was not authorized by a special regulation. Federal Defendants deny the remaining allegations in this sentence.

38. As to the allegations in the first sentence, Federal Defendants admit that NPS began the process of developing the *Interim Protected Species Management Strategy/Environmental Assessment* (“Interim Strategy”) for the Seashore in 2005. Federal Defendants deny the remaining allegations in this sentence. Federal Defendants admit the allegations in the second sentence. As to the allegations in the third sentence, Federal Defendants admit that on July 13, 2007, NPS issued a Finding of No Significant Impact (“FONSI”) for the Interim Strategy. Federal Defendants deny the remaining allegations in this sentence and aver that the purpose of the Interim Strategy was to evaluate and implement strategies to protect sensitive species and to provide for recreational use as directed in the Seashore’s enabling legislation.

Negotiated Rulemaking Effort

39. As to the allegations in the first sentence of Paragraph 39, Federal Defendants admit that on June 28, 2007, NPS published a Notice of Intent to establish a negotiated rulemaking committee to develop special regulations for ORV management at the Seashore. Federal Defendants deny the remaining allegations in this sentence. Federal Defendants admit the allegations in the second sentence.

40. Federal Defendants admit the allegations in Paragraph 40.

41. Federal Defendants admit the allegations in Paragraph 41.

42. As to the allegations in Paragraph 42, Federal Defendants admit that a majority of

members of the negotiated rulemaking committee submitted an addendum to the committee's final report outlining recommendations for ORV management actions and regulations. Federal Defendants deny the remaining allegations in this sentence and aver that the ground rules for the negotiated rulemaking committee provided that all decisions must be made by consensus.

43. Federal Defendants admit the allegations in Paragraph 43.

Defenders of Wildlife and National Audubon Society Litigation and Consent Decree

44.-45. The allegations in Paragraphs 44 and 45 refer to the complaint filed in Defenders of Wildlife v. National Park Service, No. 2:07-CV-45-BO (E.D.N.C.), which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

46. The allegations in Paragraph 46 refer to the April 2008 Consent Decree in Defenders of Wildlife v. National Park Service, No. 2:07-CV-45-BO (E.D.N.C.) (“Consent Decree”), which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning and aver that Plaintiff was a signatory to the Consent Decree.

NEPA Process

47. As to the allegations in Paragraph 47, Federal Defendants admit that in March 2010, NPS published the Draft ORV Management Plan/Environmental Impact Statement (“Draft ORV Plan”) for the Seashore. Federal Defendants deny the remaining allegations in this sentence.

48. As to the allegations in Paragraph 48, Federal Defendants admit that Plaintiff provided written comments to the Seashore on the Draft ORV Plan. The remaining allegations in

this paragraph refer to those comments, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

49. Federal Defendants admit the allegations in the first sentence of Paragraph 49. The allegations in the second sentence refer to the Final ORV Management Plan/Environmental Impact Statement (“Final ORV Plan”), which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

50.-58. The allegations in Paragraphs 50 through 58 refer to the Final ORV Plan, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

59. The allegations in Paragraph 59 refer to Plaintiff’s comments on the Draft ORV Plan, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

60. The allegations in Paragraph 60 refer to the Final ORV Plan, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

61. The allegations in Paragraph 61 refer to Plaintiff’s comments on the Draft ORV Plan, which comments speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

62. The allegations in Paragraph 62 refer to the Final ORV Plan, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

63. The allegations in Paragraph 63 refer to Plaintiff’s comments on the Draft ORV

Plan, which comments speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

64.-65. The allegations in Paragraphs 64 and 65 refer to the Final ORV Plan, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

66. The allegations in the first, second and fourth sentences of Paragraph 66 refer to Plaintiff's comments on the Draft ORV Plan, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning. Federal Defendants deny the allegations in the third sentence.

67. The allegations in the first sentence of Paragraph 67 refer to the Final ORV Plan, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning. The allegations in the second sentence refer to the Final ORV Plan, the U.S. Geological Survey Protocols for managing certain species ("USGS Protocols"), and the FWS's Piping Plover Recovery Plan, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

68. The allegations in Paragraph 68 refer to Plaintiff's comments on the Draft ORV Plan, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

69. As to the allegations in Paragraph 69, Federal Defendants admit that the negotiated rulemaking committee did not ultimately reach a consensus. The remaining allegations in this paragraph refer to Plaintiff's comments on the Draft ORV Plan, which speak for themselves and

are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

70.-71. The allegations in Paragraphs 70 and 71 refer to the Final ORV Plan, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

72. The allegations in Paragraph 72 refer to Plaintiff's comments on the Draft ORV Plan, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

73. As to the allegations in the first sentence of Paragraph 73, Federal Defendants admit that NPS received a great deal of information, from Plaintiff and others, as part of the rulemaking process. Federal Defendants deny the remaining allegations in this sentence and aver that the negotiated rulemaking process had been completed before NPS issued the Draft ORV Plan. As to the allegations in the second sentence, Federal Defendants admit that Plaintiff and others submitted studies addressing resource protection buffers and other protection measures. The remaining allegations in this sentence refer to a 1995 study by Collazo et al., which study speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

74. The allegations in Paragraph 74 refer to the Final ORV Plan, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

75. The allegations in the first through third sentences in Paragraph 75 refer to Plaintiff's comments on the Draft ORV Plan, which speak for themselves and are the best

evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning. The allegations in the fourth sentence refer to the Final ORV Plan, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

76. The allegations in Paragraph 76 refer to Plaintiff's comments on the Draft ORV Plan, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

77. Federal Defendants deny the allegations in Paragraph 77. 78. The allegations in Paragraph 78 refer to comments by the North Carolina Wildlife Resources Commission on the Draft ORV Plan, which comments speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

79.-80. The allegations in Paragraphs 79 and 80 refer to the Final ORV Plan, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

81. The allegations in the first and second sentences of Paragraph 81 refer to Plaintiff's comments on the Draft ORV Plan, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning. As to the allegations in the third sentence, Federal Defendants admit that NPS considered the USGS Protocols in the Final ORV Plan. Federal Defendants deny the remaining allegations in this sentence. As to the allegations in the fourth sentence, Federal Defendants admit that the citation to Cohen et al. refers to the USGS Protocols. The remaining allegations in this sentence refer to the Final ORV Plan, which speaks for itself and is the best evidence of its

contents. Federal Defendants deny any allegations contrary to its plain meaning.

82. The allegations in Paragraph 82 refer to Plaintiff's comments on the Draft ORV Plan, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

83. Federal Defendants deny the allegations in Paragraph 83.

Rulemaking Process

84. As to the allegations in Paragraph 84, Federal Defendants admit that NPS published a proposed special regulation for ORV use at the Seashore ("Proposed Rule") on July 6, 2011. The remaining allegations in this paragraph refer to the Proposed Rule, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

85. The allegations in Paragraph 85 refer to the Proposed Rule, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

86. As to the allegations in the first sentence of Paragraph 86, Federal Defendants admit that Plaintiff submitted comments on the Proposed Rule on September 19, 2011. The remaining allegations in this sentence and in this paragraph refer to Plaintiff's comments, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

87. As to the allegations in the first sentence of Paragraph 87, Federal Defendants admit that Plaintiff submitted additional comments on the Proposed Rule in a letter dated November 5, 2011, after the public comment period had closed. The remaining allegations in this

sentence and in this paragraph refer to those comments, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

88. Federal Defendants admit the allegations in Paragraph 88 but aver that Plaintiff's letter was received outside the comment period on the Proposed Rule, and that NPS considered Plaintiff's comments on the Draft ORV Plan and Proposed Rule that were submitted prior to the close of the respective comment periods, and responded to them in the same manner as all other comments received on the Draft ORV Plan and Proposed Rule.

89. As to the allegations in Paragraph 89, Federal Defendants admit that the federal defendants in Defenders of Wildlife v. National Park Service, No. 2:07-CV-45-BO (E.D.N.C.) filed an unopposed motion on November 15, 2011 to modify the Consent Decree to extend the deadline for issuing a special regulation to February 15, 2012. Federal Defendants deny the remaining allegations in this sentence. Federal Defendants admit the allegations in the second sentence.

90. Federal Defendants admit the allegations in Paragraph 90.

91.-93. The allegations in Paragraphs 91 through 93 refer to the final special regulation for ORV use at the Seashore ("Final Rule"), which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

94. The allegations in Paragraph 94 refer to Plaintiff's comments on the Proposed Rule, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

95. The allegations in Paragraph 95 refer to the preamble to the Final Rule, which

speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

96. The allegations in Paragraph 96 refer to Plaintiff's comments on the Proposed Rule, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

97. The allegations in Paragraph 97 refer to the preamble to the Final Rule, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

98. The allegations in Paragraph 98 refer to Plaintiff's comments on the Proposed Rule, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

99.-100. The allegations in Paragraphs 99 and 100 refer to the preamble to the Final Rule, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

Use of Seashore and Economic Effect of Restrictions

101. As to the allegations in the first sentence of Paragraph 101, Federal Defendants admit that access to the beach at the Seashore is important to many individuals and businesses. Due to vagueness and ambiguity, Federal Defendants are unable to form a belief as to the truth of the remaining allegations in this sentence, and on that basis deny them. As to the allegations in the second sentence, Federal Defendants admit that individuals regularly use ORVs to transport families and friends and their gear to access areas of the Seashore, including areas inaccessible by paved roads, to engage in recreational activities such as fishing, swimming, surfing, and

picnicking, but aver that ORV use must be managed in accordance with applicable NPS statutes, regulations, and other authorities. Due to vagueness and ambiguity, Federal Defendants are unable to form a belief as to the truth of the remaining allegations in this sentence, and on that basis deny them. As to the allegations in the third sentence, Federal Defendants admit that visitors who access the beach using ORVs contribute to the Outer Banks' economy, but aver that visitors who prefer to access the beach without an ORV also contribute to the local economy. Federal Defendants deny the remaining allegations in this sentence.

102. Federal Defendants deny the allegations in Paragraph 102.

103. Federal Defendants deny the allegations in Paragraph 103.

104. As to the allegations in Paragraph 104, Federal Defendants admit that weather events have adversely affected, and will continue to adversely affect, the success of breeding and nesting birds, fledged chicks, and turtle nests. Due to vagueness and ambiguity, Federal Defendants are unable to form a belief as to the truth of the remaining allegations in this paragraph and on that basis deny them.

105. As to the allegations in Paragraph 105, Federal Defendants admit that at the Seashore most of the historical loss of established sea turtle nests can be directly attributed to factors other than pedestrian or ORV use. Federal Defendants deny the remaining allegations in this paragraph and aver that a reduction in the level of human disturbance, especially beach driving at night, increases nesting that may not otherwise occur.

106. Federal Defendants deny the allegations in the first sentence of Paragraph 106. As to the allegations in the second sentence, Federal Defendants admit that without ORVs, the level of visitor access to remote beaches within the Seashore might be reduced, but aver that neither the

Final ORV Plan nor the Final Rule prohibits ORV use at the Seashore. Federal Defendants deny the remaining allegations in this sentence.

107. As to the allegations in Paragraph 107, Federal Defendants admit that restrictions on ORVs may affect established recreational activities on the beach within particular areas of the Seashore or at specific times, such as during the breeding season of protected species. Federal Defendants deny the remaining allegations in this paragraph and aver that these activities may still be conducted throughout the Seashore along designated ORV routes and at many other locations accessible by foot from such routes or from paved roads.

108. As to the allegations in Paragraph 108, Federal Defendants admit that the Final ORV Plan and Final Rule could have indirect impacts to local businesses, especially those businesses that directly serve ORV users, but aver that such impacts were analyzed and disclosed in the Final ORV Plan, Final Rule, and the Benefit-Cost Analysis for the Rule. Federal Defendants deny the remaining allegations in this paragraph.

109. Federal Defendants deny the allegations in Paragraph 109.

CLAIMS FOR RELIEF

COUNT 1

110. The responses to the allegations in Paragraphs 1 through 109 are incorporated by reference.

111. The allegations in Paragraph 111 refer to the APA, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

112. The allegations in Paragraph 112 refer to the enabling legislation for the Seashore,

which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

113. Federal Defendants deny the allegations in Paragraph 113.

114. The allegations in Paragraph 114 are legal conclusions of law to which no response is required. To the extent that a response is required, Plaintiff denies the allegations.

COUNT 2

115. The responses to the allegations in Paragraphs 1 through 109 are incorporated by reference.

116. The allegations in Paragraph 116 refer to NEPA, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

117. The allegations in Paragraph 117 refer to NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

118. The allegations in Paragraph 118 refer to the Data Quality Act and NPS Director's Order No. 11B, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

119.-121. The allegations in Paragraphs 119 through 121 refer to NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

122. The allegations in Paragraph 122 refer to NPS Director's Order No. 12, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations

contrary to its plain meaning.

123. The allegations in Paragraph 123 are legal conclusions to which no response is required. To the extent that a response is required, Federal Defendants deny the allegations.

124. Federal Defendants deny the allegations in Paragraph 124.

125. Federal Defendants deny the allegations in Paragraph 125.

126. As to the allegations in Paragraph 126, Federal Defendants admit that many of the substantive elements in Preferred Alternative F were neither reviewed nor agreed to during the negotiated rulemaking process. Federal Defendants deny the remaining allegations and aver that Preferred Alternative F was derived from input from the negotiated rulemaking committee, and that Preferred Alternative F, and all other alternatives, were described in, and made available for public comment through, the Draft ORV Plan.

127. Federal Defendants deny the allegations in Paragraph 127.

128. Federal Defendants deny the allegations in Paragraph 128.

129. The allegations in Paragraph 129 are legal conclusions to which no response is required. To the extent that a response is required, Federal Defendants deny the allegations.

COUNT 3

130. The responses to the allegations in Paragraphs 1 through 109 are incorporated by reference.

131.-132. The allegations in Paragraphs 131 and 132 refer to NEPA, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

133. The allegations in Paragraph 133 refer to NEPA's implementing regulations,

which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

134.-135. The allegations in Paragraphs 134 and 135 refer to NEPA's "Forty Most Asked Questions," which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

136.-138. The allegations in Paragraphs 136 through 138 refer to NPS's DO-12 Handbook, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to their plain meaning.

139. Federal Defendants deny the allegations in Paragraph 139.

140. Federal Defendants deny the allegations in Paragraph 140.

141. The allegations in Paragraph 141 are legal conclusions to which no response is required. To the extent that a response is required, Federal Defendants deny the allegations.

COUNT 4

142. The responses to the allegations in Paragraphs 1 through 109 are incorporated by reference.

143. The allegations in Paragraph 143 refer to NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

144. Federal Defendants deny the allegations in Paragraph 144.

145. Federal Defendants deny the allegations in Paragraph 145.

146. Federal Defendants deny the allegations in Paragraph 146.

147. Federal Defendants deny the allegations in Paragraph 147.

148. Federal Defendants deny the allegations in Paragraph 148.

149. Due to vagueness and ambiguity, Federal Defendants are unable to form a belief as to the truth of the allegations in Paragraph 149, and on that basis deny them.

150. As to the allegations in Paragraph 150, Federal Defendants admit that there were elements common to all action alternatives. Federal Defendants deny the remaining allegations in this paragraph.

151. The allegations in Paragraph 151 are legal conclusions to which no response is required. To the extent that a response is required, Federal Defendants deny the allegations.

COUNT 5

152. The responses to the allegations in Paragraphs 1 through 109 are incorporated by reference.

153. The allegations in Paragraph 153 refer to the enabling legislation for the Seashore, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

154. Federal Defendants deny the allegations in Paragraph 154.

155. Federal Defendants deny the allegations in Paragraph 155.

156. The allegations in Paragraph 156 are legal conclusions to which no response is required. To the extent that a response is required, Federal Defendants deny the allegations.

COUNT 6

157. The responses to the allegations in Paragraphs 1 through 109 are incorporated by reference.

158. The allegations in Paragraph 158 refer to NEPA's implementing regulations,

which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

159. The allegations in Paragraph 159 refer to NPS's DO-12 Handbook, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

160. Federal Defendants deny the allegations in Paragraph 160.

161. As to the allegations in Paragraph 161, Federal Defendants admit that management of ORVs under the Consent Decree was a no-action alternative. Federal Defendants deny the remaining allegations in this paragraph.

162. Federal Defendants deny the allegations in Paragraph 162.

163. Federal Defendants deny the allegations in Paragraph 163.

164. The allegations in Paragraph 164 refer to the Final ORV Plan, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

165. Federal Defendants deny the allegations in Paragraph 165.

166. Federal Defendants deny the allegations in Paragraph 166.

167. Federal Defendants deny the allegations in Paragraph 167.

168. The allegations in Paragraph 168 are legal conclusions to which no response is required. To the extent that a response is required, Federal Defendants deny the allegations.

COUNT 7

169. The responses to the allegations in Paragraphs 1 through 109 are incorporated by reference.

170. The allegations in Paragraph 170 refer to NEPA's implementing regulations, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

171. The allegations in Paragraph 171 refer to NEPA, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

172. The allegations in Paragraph 172 refer to NPS's DO-12 Handbook, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

173. The allegations in Paragraph 173 refer to the Organic Act and the enabling legislation for the Seashore, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to their plain meaning.

174. The allegations in Paragraph 174 refer to the Final ORV Plan, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

175. Federal Defendants deny the allegations in Paragraph 175.

176. The allegations in Paragraph 176 refer to the Final ORV Plan, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to its plain meaning.

177. Federal Defendants deny the allegations in Paragraph 177.

178. The allegations in Paragraph 178 are legal conclusions to which no response is required. To the extent that a response is required, Federal Defendants deny the allegations.

PRAYER FOR RELIEF

The remainder of Plaintiff's Complaint states Plaintiff's prayer for relief, to which no response is required. To the extent that a response is required, Federal Defendants deny that Plaintiff is entitled to the relief requested or any relief whatsoever.

ALL CLAIMS

Federal Defendants deny any claims in Plaintiff's Complaint, whether express or implied, that are not specifically admitted, denied, or qualified. To the extent that any allegations contained in Plaintiff's Complaint remain unanswered, Federal Defendants deny such allegations.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim upon which relief may be granted.

WHEREFORE, Federal Defendants ask the Court to deny all relief sought by Plaintiff, to grant judgment to Federal Defendants, and to grant Federal Defendants any other appropriate relief.

Respectfully submitted,

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