

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

No. 2:07-CV-45-BO

DEFENDERS OF WILDLIFE, <u>et al.</u> ,)	STIPULATION AND ORDER
)	MODIFYING CONSENT DECREE
Plaintiffs,)	
)	
v.)	
)	
NATIONAL PARK SERVICE, <u>et al.</u> ,)	
)	
Defendants,)	
)	
and)	
)	
DARE COUNTY, <u>et al.</u> ,)	
)	
Intervenor-Defendants.)	

Plaintiffs, Defenders of Wildlife and the National Audubon Society; Federal Defendants, the National Park Service ("NPS"); the United States Department of Interior ("DOI"); Ken Salazar,¹ Secretary of the Interior; Daniel N. Wenk,² Acting Director of NPS; Michael B. Murray, Superintendent of the Cape Hatteras National Seashore ("CAHA"); the United States Fish and Wildlife Service ("FWS"); and Rowan Gould,³ Acting Director of FWS; and Intervenor-Defendants, Dare County, North Carolina; Hyde County,

¹Pursuant to Fed. R. Civ. P. 25(d), Mr. Salazar has been substituted for his predecessor in office.

²Pursuant to Fed. R. Civ. P. 25(d), Mr. Wenk has been substituted for his predecessor in office.

³Pursuant to Fed. R. Civ. P. 25(d), Mr. Gould has been substituted for his predecessor in office.

North Carolina; and the Cape Hatteras Access Preservation Alliance state as follows:

WHEREAS on April 16, 2008, the parties filed a Joint Motion for Entry of Consent Decree (Docket Entry 56).

WHEREAS on April 30, 2008, the Court signed the Consent Order resolving this litigation and closed the case (Docket Entry 65).

WHEREAS Paragraph 32 of the Consent Decree provided that, "The Court may modify any requirements of this Consent Decree, ..., for good cause shown by the Plaintiffs, Federal Defendants, and/or Intervenor-Defendants."

WHEREAS Paragraph 43 of the Consent Decree provided that, "Notwithstanding the dismissal of this action, the Court retains jurisdiction ... for issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, or enforce the terms of this Consent Decree"

WHEREAS after operating under the Consent Decree for one year, the parties have determined that certain areas of the Consent Decree require clarification, and accordingly, that modification of certain provisions is warranted.

WHEREAS the parties agree these modifications are consistent with applicable laws and the public interest.

NOW, THEREFORE, the parties hereby Stipulate and Agree as follows:

1. Paragraph 23 of the Consent Decree is amended to provide as follows (amendments are underlined in the text):

Violations of Pre-nesting Areas and Buffers: Plaintiffs, Federal Defendants, and Intervenor-Defendants recognize that visitor noncompliance with NPS resource protection measures can seriously compromise the effectiveness of those measures. At all established pre-nesting areas and buffers, if, in the opinion of NPS, a confirmed deliberate act that disturbs or harasses wildlife or vandalizes fencing, nests, or plants, is documented by NPS personnel, the pre-nesting area or buffer shall be expanded automatically by 50 m. If a second such act occurs in the same area, the buffer shall be expanded automatically by an additional 100 m. If a third such act occurs, the buffer shall be expanded automatically by an additional 500 m or more, if NPS determines it is necessary to minimize the extent of further disturbance. To the extent possible, NPS shall provide public notice of violations and the relevant buffer expansions. If information provided by the public, or information obtained by NPS from other sources, leads to the apprehension of a violator, NPS is not required to expand the buffer. If the buffer has been expanded due to a violation and information provided by the public, or information obtained by NPS from other sources, leads to the apprehension of a violator, NPS, in its discretion, may retract the expanded buffer.

2. Paragraph 26 of the Consent Decree is amended to provide as follows (amendments are underlined in the text):

After September 15 all remaining unhatched turtle nests, once they reach their hatch window, shall be protected by full beach closures between the hours of sunset and 6 a.m., in addition to the fencing methodology described in the Interim Strategy.

3. A new paragraph addressing the night-driving needs of commercial fishermen will be inserted into the Consent Decree before Paragraph 28. This new paragraph will be numbered Paragraph 28, and all subsequent paragraphs of the Consent Decree will be re-numbered. For example, former Paragraph 28, Education, now will be numbered Paragraph 29, Education.

4. Newly numbered Paragraph 28 will provide as follows:

Commercial Fishing: Commercial fishing at CAHA is authorized and managed under a special use permit in accordance with 36 C.F.R. § 7.58(b). Commercial fishermen's vehicles are considered non-essential vehicles and prohibited entry into resource closures. In areas outside of existing resource closures, from May 1 through September 15, NPS may waive or modify, subject to the terms and conditions in the special use permit, the night driving prohibition for commercial fishermen, who are actively engaged in authorized commercial fishing activity with nets, who can produce five or more fish house receipts (or equivalent

certification from the fish house) from a single, continuous thirty-day period during the previous year, and who are not working as recreational fishing guides. The modification may occur as follows: NPS may authorize permitted commercial fishermen to operate vehicles on the beach during the hours of 5 a.m. to 6 a.m. at the portion of Bodie Island between Ramps 1 and 4, Hatteras Island, and Ocracoke Island. In addition, commercial fishermen who have received such authorization must travel in no more than four vehicles in single file from the ramp they use to enter the beach directly toward the ocean, and then travel in single file along the beach either below the mean high water line or as close to it as safely possible, and must immediately report any evidence of turtle nesting activity that they observe to NPS. This paragraph does not limit the discretion of NPS to impose additional permit conditions on commercial fishermen to protect nesting turtles.

5. All other terms of the Consent Decree not addressed in this Stipulation shall remain in full force and effect.

It is so stipulated this 15th day of May, 2009.

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Pursuant to Stipulation, IT IS SO ORDERED.

This 4 day of June, 2009.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE