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MISCELLANEOUS NATIONAL PARKS BILLS

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON

S. 1816	**S. 3148**
S. 2093	**S. 3158**
S. 2535	**S. 3226**
S. 2561	**S. 3247**
S. 3011	**H.R. 5137**
S. 3113	

JULY 30, 2008

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MISCELLANEOUS NATIONAL PARKS BILLS

WEDNESDAY, JULY 30, 2008

U.S. SENATE,
SUBCOMMITTEE ON NATIONAL PARKS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:30 p.m. in room SD–366, Dirksen Senate Office Building, Hon. Daniel K. Akaka presiding.

OPENING STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

Senator AKAKA. Good afternoon. The Subcommittee on National Parks will come to order. We have a long list of bills to consider today, including the following:

S. 1816, to authorize the Secretary of the Interior to establish a commemorative trail in connection with the Women's Rights National Historical Park, and will link properties that are associated with the struggle for women's suffrage.

S. 2093, to direct the Secretary of the Interior to study segments of two rivers in the State of Vermont for potential addition to the National Wild and Scenic Rivers System.

S. 2535, to revise the boundary of the Martin Van Buren National Historic Site in New York.

S. 2561, to require the Secretary of the Interior to conduct a theme study to identify sites to commemorate and interpret the Cold War.

S. 3011, to expand the boundaries of the Palo Alto Battlefield National Historic Site in Texas.

S. 3113, which concerns off road vehicle use in Cape Hatteras National Seashore in North Carolina.

S. 3148, to modify the boundary of Oregon Caves National Monument.

S. 3158, to extend the authority for the Cape Cod National Seashore Advisory Commission.

S. 3226, to rename the Abraham Lincoln Birthplace National Historic Site in Kentucky as the Abraham Lincoln Birthplace National Historical Park.

S. 3247, to designate the River Raisin National Battlefield Park in Michigan.

H.R. 5137, to ensure that hunting remains a purpose of the New River Gorge National River in West Virginia.

While most of the bills on the agenda are non-controversial, a few bills will require more discussion. One of the bills is S. 3113,

regarding off road vehicle use within the Cape Hatteras National Seashore. This bill will overturn a consent decree negotiated by the affected parties and approved by the Federal judge, which is not our normal practice.

The bill also raises issues about how the Park Service should manage the seashore and threatened wildlife. I understand that this is an important piece of legislation for the Senators from North Carolina. I hope that we can use this hearing to gain a better understanding of the situation.

This is our last hearing of the summer. I wanted to thank our ranking member for working with me in such a cooperative and productive manner. Last week the subcommittee held an oversight hearing in Asheville, North Carolina regarding a biodiversity program of the Great Smoky Mountains National Park. The hearing was chaired by Senator Burr, and, by all accounts was a great success. I want to acknowledge Senator Burr's efforts to facilitate a timely discussion on the topic.

With that I'd like to recognize Senator Burr for his opening remarks.

[The prepared statements of Senators Sanders and Wyden follow:]

PREPARED STATEMENT OF HON. BERNARD SANDERS, U.S. SENATOR FROM VERMONT, ON S. 2093

Chairman Akaka, Ranking Member Burr, as the Subcommittee on National Parks today considers a variety of bills I want to briefly comment on S. 2093, the Missisquoi and Trout Rivers Wild and Scenic River Study Act (S. 2093). Sponsored by Senator Leahy and myself, this bill would simply establish a study to determine the appropriateness of adding the Missisquoi River and its major tributary, the Trout River, to the National Park Service's Wild and Scenic River System. It would be the state's first wild and scenic river designation and as you might guess, is very important to the state of Vermont.

Vermonters have long valued the natural beauty and water quality of our state's rivers. The Missisquoi River, in particular, offers significant values for wildlife, scenery, and recreational activities. In addition, as the Missisquoi River flows into Missisquoi Bay on Lake Champlain, the bill is important to ongoing efforts by the state of Vermont and local communities to protect and maintain water quality on the lake. It is important to note that since 1982, segments of the Missisquoi have been listed on the National Park Service's Nationwide Rivers Inventory list as being candidates for wild and scenic designation.

The Missisquoi River Basin Association of East Berkshire, Vermont, is committed to protecting water quality through numerous on-the-ground projects in the area. They are also coordinating efforts in the state, with state and local governments and affected communities, to proceed with the Missisquoi River study called for in S. 2093. I have received letters supporting these efforts from them, the state Agency of Natural Resources, and affected communities along the river.

As I read the Administration's testimony on S. 2093, I understand that there are concerns about areas on the Missisquoi River that they feel are not suitable for wild and scenic river consideration. I am confident that the Committee will be able to proceed in a positive manner that addresses the legitimate concerns of local communities in Vermont, for whom the Missisquoi's wild and scenic designation is crucial to protecting water quality and preserving the river's rich wildlife and recreational opportunities, and I look forward to moving this legislation quickly through the Committee.

PREPARED STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON, ON S. 3148

I am very pleased that we are having a hearing today on S. 3148, legislation that I introduced to expand the boundary of the Oregon Caves National Monument, and I thank the Chairman for holding this hearing today.

My bill would expand the Monument boundary by 4,084 acres to include the entire Cave Creek Watershed, management of which would be transferred from the United States Forest Service to the National Park Service.

Expanding this boundary will allow us to further protect the stunning majesty of both the underground and the above-ground treasures found at this National Monument.

Because the current 480-acre boundary is insufficient to adequately protect this cave system, the National Park Service has formally proposed a boundary modification numerous times, first in 1939, again in 1949, and most recently in 2000.

In addition, my legislation would designate at least 9.6 miles of rivers and tributaries as Wild, Scenic, or Recreational, under the federal Wild and Scenic Rivers Act, including the first subterranean Wild and Scenic River, the River Styx. A perennial stream, the "River Styx,"—an underground portion of Cave Creek—flows through part of the cave and is one of the dynamic natural forces at work in the National Monument.

This bill would also provide authorization for the voluntary retirement of existing grazing allotments. The current grazing permitee, Phil Krouse and his family, has had the Big Grayback Grazing Allotment (19,703 acres) since 1937. But Mr. Krouse now favors lease retirement with private compensation for his allotment; my bill will enable that local solution to further protect monument resources.

The Oregon Caves National Monument makes a unique contribution to Southern Oregon's economy and to the national heritage. The Monument receives over 80,000 visitors annually, and is the second smallest unit of the National Park System.

A larger Monument boundary will help showcase more fully the recreational opportunities on the above-ground lands within the proposed Monument boundary and provide visitors more chances to enjoy them. In addition to the numerous subsurface resources, the Monument's above-ground lands in the Siskiyou Mountains possess a beauty and diversity that is unique in America, and indeed the world.

I want to express my thanks to all the volunteers and supporters in the local business and conservation community in Southern Oregon, to Phil Krouse for his commitment to Oregon's natural resources, and to Craig Ackerman, the former Superintendent of the Oregon Caves National Monument.

I look forward to working with my Senate colleagues and my colleagues in the House of Representatives, Representatives DeFazio, Hooley, Blumenauer and Wu, who have introduced the companion legislation to this bill, to advance this legislation.

I will be submitting questions for record for the Agency witnesses.

STATEMENT OF HON. RICHARD BURR, U.S. SENATOR FROM NORTH CAROLINA

Senator BURR. Thank you, Mr. Chairman. Good afternoon. More importantly thank you for holding this hearing.

As I've ended every hearing that we've had here with a long list of bills, the Chairman has suggested that we're through, only to find out a couple weeks later that we're back doing it again. So I'm not sure whether I'm going to take him at his word that this is the last of this year. But I do hope that we have addressed all of the bills that our colleagues find a need for us to address.

Before going into any details on the bills before us today I also want to thank Senator Akaka, Senator Bingaman for allowing me to do a field hearing in the Great Smoky Mountains. This was an effort to update this committee and this Congress on the efforts undertaken years ago to do an inventory, an All Taxa Biodiversity Inventory, of each species and plants that maybe we didn't know existed in the United States or in the world. I will say that from the results of that hearing we have found phenomenal progress, the discovery of things never imagined. For anybody scared of spiders they might not want to hear how many new species of spiders have actually been found.

Kira Rachel from the committee staff did a wonderful job, Mr. Chairman, working with the University of North Carolina at Ashe-

ville and with my staff to make this hearing a success. I, once again, I thank you publicly for your willingness to allow this to be undertaken.

Now, I understand that this may be the last hearing of our subcommittee this year. I'd like to take a moment to acknowledge your leadership, Chairman Akaka as it's been productive. In the 12 hearings during 110th Congress, this subcommittee received testimony and discussions on 117 bills.

I'm not sure how that compares with other subcommittees, but it must be a record. I'll say that's it a record, Mr. Chairman. Of the 11 bills on our agenda today, is close to the average. I know all the members appreciate your leadership in addressing these bills in a timely fashion.

Today's agenda includes the important bill that my State of North Carolina with Cape Hatteras National Seashores. It's a national treasure for the people of North Carolina and more importantly for the visitors around this country that have enjoyed it for generations. The National Park Service has been remiss in their requirement to prepare an off road vehicle management plan for the park.

Because of that, we're now faced with the situation in which a court sanctioned agreement is dictating the use of the area while the Park Service works on their rulemaking process that may take up to 3 years to complete. A bill introduced by Senator Dole, S. 3113, would authorize the Park Service to follow their interim management plan which addresses endangered species in accordance with the biological opinion issued by the U.S. Fish and Wildlife Service rather than the court sanctioned agreement.

I support this legislation. I want to commend Senator Dole for her leadership in introducing this bill and for working to find a solution. She's here today now. She's here to provide more details about her bill. I certainly look forward to her testimony.

We also, Mr. Chairman, have two witnesses here from North Carolina to provide testimony. I'd like to publicly welcome Warren Judge, from Dare County and Derb Carter from Chapel Hill. I thank both of them for their willingness to be here to make the trip to testify in front of this committee.

Mr. Chairman, I'd love to think that we could get Senator Dole's bill done this year. I understand the comments that you made. I would only ask you and my colleagues throughout the entire Senate to understand we haven't been thrown a usual curveball, but we've been thrown a curveball that didn't exist up until now in large measure because the Park Service didn't do their management plan on time. The net result is that courts got involved in something that, quite frankly, they never should have gotten involved in. Those that will suffer are the next generation whose parents and grandparents use that national treasure in a way that they were protective of the environment, but enjoyed that national treasure in a way that I think God meant it to be enjoyed.

I thank you for this hearing. Look forward to our witnesses.

Senator AKAKA. Thank you very much, Senator Burr. I want all of you to know that we are honored today to have three of our colleagues here to testify on some of these bills. This doesn't happen very often, but we have you here and I want to then ask in this

order of Senator Levin, Senator Clinton and Senator Dole to give their statements.

Senator Levin.

STATEMENT OF HON. CARL LEVIN, U.S. SENATOR FROM MICHIGAN

Senator LEVIN. Thank you very much, Senator Akaka. Senator Burr, thank you for the extraordinary work that you two do so well together. The issues that you grapple with, types, issues that we have on your agenda here today I know are important to each one of us. But you make these issues that are important to us, important to you as well and your staffs and that's very, very much appreciated.

The bill that I'm here on is the River Raisin National Battlefield Act. The bill is co-sponsored by Senator Stabenow. It is a Senate Companion bill to the one introduced by Congressman Dingell, who I know had hoped to be here. I think there's three votes in the House. So he may not be able to get here I understand.

He has spearheaded the effort to designate this battlefield as a unit of the National Park System. The battles of the River Raisin which took place in January of 1813 during the height of the War of 1812 were a critical part of the American campaign to retake Detroit in the Michigan territory from the British and from their Native American allies. On January 18, 1813, American militiamen were successful initially in overpowering the British forces in Frenchtown, now part of Monroe, Michigan.

Four days later bolstered with additional support from their Native American allies the British returned killing hundreds of American soldiers. Outmatched the American forces were defeated and about 60 wounded militiamen were unable to walk were left behind on the battlefield. It was early the next morning on January the 23rd, when unarmed, wounded militiamen were killed.

Settlement homes were set ablaze. The bodies of slain soldiers were thrown into the fires. Of the nearly 1,000 Americans who fought in these fierce battles, about 400 were killed or missing in action, roughly 500 were taken as prisoners of war and only 33 escaped death or captivity.

It was a brutal confrontation. It gave birth to a rallying cry, "Remember the Raisin." That rallying cry galvanized American resolve of the War of 1812.

It helped to rally American forces to overcome the British and to secure our Northern border. Visualize rallying cries like, "Remember the Maine," or "Remember Pearl Harbor," or just simply, 9–11. It may give you a flavor of what the cry, "Remember the Raisin" meant in America in 1813.

The War of 1812 sometimes called America's forgotten war was a vital turning point in our Nation's history. It established America's place as an independent Nation capable of defending itself. It secured our borders and enhanced our international reputation and boosted our young Nation's morale.

The River Raisin Battlefield sites were the place of horrific events. Yet these events became a turning point. A turning point that spurred our troops to future victories, protect our lands and

it culminated in a celebration of America's second war of independence.

While there are currently eight War of 1812 battlefield sites there are included in the National Park System, none of these sites are located in areas that were then considered the Northwest. All of the National Park sites relating to War of 1812 are located in the Eastern and Southern parts of the country. So the River Raisin Battlefield site meets important criteria for inclusion in the Park System.

That is that it represents themes, sites and resources not already represented in the National Park System. Securing the Northwest, as it was then known during the War of 1812, as a vital piece of American history. It should be part of our Nation's Park System.

Today we are delighted to have with us and you will hear from a representative of the Monroe Historical Commission and Society, Mark Worrel. Excuse me. That's the Mayor of Monroe is here today, Mark Worrel. He will not be testifying apparently.

But William Braunlich, who is President of the Monroe County Historical Society is here. He will be representing Monroe. So we're delighted to have Mayor Worrel and Mr. Braunlich here with us.

In summary, Mr. Chairman, the events at the River Raisin were a critical part of our Nation's history. They deserved to be shared with all Americans through our National Park System. Now this resource meets the criteria for inclusion in our Park System.

We should not delay designating this area as a battlefield because we are approaching the 200th anniversary of the War of 1812. We need to act quickly if we're to see this site properly interpreted in time for this national celebration. I would ask that the balance of my statement be inserted in the record.

Senator AKAKA. No objection.

[The prepared statement of Senator Levin follows:]

PREPARED STATEMENT OF HON. CARL LEVIN, U.S. SENATOR FROM MICHIGAN, ON S. 3247

Chairman Akaka, Ranking Member Burr, thank you for holding this hearing today on S. 3247, The River Raisin National Battlefield Act. This bill, cosponsored by Senator Stabenow, is the Senate companion to a bill Congressman John Dingell introduced in the House. Congressman Dingell will also be testifying today and has spearheaded the effort to designate this battlefield as a unit of the National Park System.

The Battles of River Raisin, which took place in January of 1813 during the height of the War of 1812, were a critical part of the American campaign to retake Detroit and the Michigan Territory from the British and their Native American allies. On January 18, 1813, American militiamen were successful in initially overpowering the British forces in Frenchtown, which is now part of Monroe, Michigan. Four days later, bolstered with additional support from their Native American allies, the British returned, killing hundreds of American soldiers. Outmatched, the American forces were defeated, and about 60 wounded militiamen who were unable to walk were left behind on the battlefield. Early the next morning, on January 23, 1813, the unarmed wounded militiamen were killed. Settlement homes were set ablaze and the bodies of slain soldiers were thrown into the fires. Of the nearly 1,000 Americans who fought in these fierce battles, about 400 were killed or missing in action, roughly 500 were taken as prisoners of war, and only 33 escaped death or captivity. This brutal confrontation gave birth to the rallying cry, "Remember the Raisin." It galvanized American resolve in the War of 1812 and helped rally American forces to overcome the British and secure our northern border.

The War of 1812 is also known as America's forgotten war, and yet it was a vital turning point in our nation's history and established America's place as an independent nation, capable of defending itself. It secured our borders, enhanced our

international reputation, and boosted our young nation's morale. The River Raisin battlefield sites were the place of horrific events; yet these events became a turning point that spurred our troops to future victories, protected our lands, and culminated in a celebration of America's "Second War of Independence."

The River Raisin battles and the massacre that followed were some of the most significant of the War of 1812, and had one of the highest casualty rates for the American Army during the entire course of the war. The Monroe County Historical Society recently commissioned a study by Brian Dunnigan, Interim Director of the Clements Library at the University of Michigan, to address the issue of "national significance." He concludes, "The significance of the site lies in its manifestation that the War of 1812 in the West actually constituted a pair of parallel conflicts, in which the United States forces contended with the British and Canadians in a conventional war but were also involved in a full-scale and bitter wilderness conflict with the remaining organized Native American groups living east of the Mississippi River. . . . No other site better represents this theme of American history." The battlefield is also already listed on the National Register of Historic Places, and is being nominated for designation as a National Historic Landmark.

While there are currently eight War of 1812 Battlefield sites that are included within the National Park System, none of these sites are located in areas that were then considered the "Northwest." Instead, the War of 1812 sites currently within the National Park System are all located in the eastern and southern parts of our country. Thus, the River Raisin battlefield site also meets another criterion for inclusion in the park system: that it represents themes, sites, and resources not already represented in the National Park System. Securing the then Northwest during the War of 1812 is a vital piece of American history, and should be part of our nation's park system.

When studying an area for inclusion in the park system, alternative management options also need to be considered to determine whether the National Park Service is best suited to administer the resource. Currently, some of the River Raisin battlefield is being managed through a cooperative agreement between the Monroe County Historical Commission and the Monroe County Historical Society. The City of Monroe and Monroe County own other parts of the battlefield site. Many local groups are involved, and powerful collaborative efforts are under way to protect and interpret these historical resources. It is critical that the federal government provide leadership to coordinate these efforts and bring this story to all of the American people through the National Park System. Elevating this nationally significant site to the Federal level will enhance its accessibility to all Americans and will bring this important story of America's Second War of Independence to the rest of our country.

Finally, an area to be designated as a unit of the National Park System must have sufficient public support. The local enthusiasm behind this proposal is tremendous. Later during this hearing, in your third panel of witnesses, you will hear from William Braunlich, President of the Monroe County Historical Society, who has vast knowledge about the River Raisin site. Importantly, the Mayor of Monroe, Mark G. Worrell is also present today to show his strong support for this designation. Other current and past members of the Monroe County Historical Society are also here today to urge your support for this designation. I believe that you have also received several letters from other community members in support of this legislation. I have not heard of a single dissenting voice in the community. Significantly, the local community has donated tremendous time, money, and energy to preserving this battlefield site. Since 2000, a total of $1.5 million in local funds have been committed to the River Raisin battlefield site. The State of Michigan has long recognized the significance of this battlefield site, and placed it in the State Register of Historic Places in 1956. Since 2000, the state has provided over $2 million for the River Raisin battlefield site. Additionally, the City of Monroe is committed to donating a core 36-acre parcel of the battlefield to the National Park Service, which this bill will also authorize.

The events at the River Raisin are a critical part of our nation's history, and deserve to be shared with all Americans through our National Park System. This resource clearly meets the criteria for inclusion in our park system, and we should not delay designating this area as a Battlefield. With the approaching 200th Anniversary of the War of 1812, we need to act quickly if we are to see this site properly interpreted in time for this national celebration. I now urge the Committee to favorably report the River Raisin National Battlefield Act so that all Americans will "Remember the Raisin."

Senator LEVIN. Again I thank the Chair.

Senator AKAKA. Included in the record. Thank you very much, Senator Levin. Now we'll hear from Senator Hillary Clinton.

STATEMENT OF HON. HILLARY RODHAM CLINTON, U.S. SENATOR FROM NEW YORK

Senator CLINTON. Thank you very much, Chairman Akaka and Senator Burr. Thank you for inviting us to testify today on some important matters to our states and to our country.

I'm privileged to be here this afternoon with Coline Jenkins, who you will hear from in the next panel. She is the great, great granddaughter of Elizabeth Cady Stanton and the President of the Elizabeth Cady Stanton Trust. I'm testifying today on behalf of two pieces of legislation.

One that would create the National Women's Rights History Project Act and the second, the Martin Van Buren National Historic Site Boundary Revision Act. You know, it has been a cause of mine for a number of years to make sure that all of our history is known and appreciated and particularly accessible to future generations. When I was privileged to be First Lady I created the Save America's Treasures Program which the Congress has consistently supported to preserve and promote historic treasures and landmarks throughout America.

I also believe this is critical for economic development. Heritage, tourism, nostalgia tourism are real economic tools that more and more communities are beginning to use. When I look at the role that Upstate New York played in the Women's Rights movements that led to the women's right to vote and still is influencing the world today, I'm very excited by this legislation.

Five years ago I started working with my colleague, Congresswoman Louise Slaughter to establish a tourism trail to be known as the Votes for Women History Trail Route. It is a commemorative trail in connection with the existing Women's Rights National Historical Park. It would create an auto route across upper New York State that would link properties historically and thematically associated with the struggle for women's rights.

It will include uniform signage and maps and educational handbooks, interpretive guides and websites. It does not authorize through this legislation any land acquisition. But it links already existing sites, both privately and publicly owned. It would ensure that all the sites on the tour have verifiable connections to the expansion of women's rights.

It will also recognize that although New York is where the Declaration of Sentiments was drafted in 1848 in this month, all those years ago, that women won the rights because of national action in amending our Constitution and passing necessary legislation. So the second part of the legislation would authorize the Secretary of the Interior to make annual grants for up to 5 years to assist in stage historic preservation efforts. It's important because then we would be able to have the National Women's Rights History Project National Registry.

So we're going to both honor women's rights including Susan B. Anthony's home in Rochester, New York, the homes of Harriet Tubman in Auburn, New York. The Farmington Quaker Meeting House where members signed a petition to the New York legislature in favor of women's suffrage in 1848. But will also be expanding to a public/private partnership that will reach across our country.

I want to say a few words about the Martin Van Buren National Historic Site Boundary Revision Act. President Van Buren, our eighth President, was born in a tavern in the tiny Upstate New York village of Kinderhook in 1782. After his Presidency, that's where he returned home to.

The Martin Van Buren National Historic Site was established by Congress in 1974. It preserves a portion of land from the Van Buren's original farm as well as the mansion built in the 1790s. Although the original farm was 225 acres, today the general public has access to only 20 acres.

My legislation will adjust the boundary to increase the site to approximately 261 acres. That sounds like a big expansion. But all of the land owners agree because the majority of the land will remain under private ownership and management.

But it will enable the Park Service to provide visitor access to Van Buren's original farm by way of trails. So the land will remain under private ownership and management. But will be accessible to the general public.

So, Mr. Chairman and Senator Burr these are two very important projects to my state and our country. It's important that we recognize these historic achievements. We just marked the 160th anniversary of the Women's Rights Convention in Seneca Falls, New York for the very first time in all of history. Women and some courageous men came together to declare that women should have the same rights and to begin the long march toward suffrage which we finally achieved.

My mother was born before women could vote. So for her and for so many of our mothers and our grandmothers this recognition linking our past to our present and moving into the future is especially important. I thank the committee for their consideration.

Senator AKAKA. Thank you very much for your statement. It will certainly help us in our consideration of your bills. At this point in time I would suggest to Senator Levin and Senator Clinton that you may be excused if you——

Senator LEVIN. Thank you. Yes.

Senator AKAKA. Thank you very much for your statements.

Now we will hear from Senator Dole and look forward to your statement.

STATEMENT OF HON. ELIZABETH DOLE, U.S. SENATOR FROM NORTH CAROLINA

Senator DOLE. Thank you very much, Mr. Chairman, Senator Burr. Thank you for holding this hearing today on S. 3113, a bill to reinstate the National Park Service's Interim Management Strategy governing off-road vehicle use in the Cape Hatteras National Seashore in North Carolina. I introduced this bill with my colleague, Senator Burr. I appreciate your remarks earlier.

This was introduced last month after hearing the cipherous concerns from local leaders and many of the seashore's visitors discussing the issue with the Park Superintendent and reviewing the Park's management plan. I strongly support the reinstatement of the National Park Services Interim Management Strategy. Because this will allow the time and opportunity for all parties to work to-

gether to find a long term, practical approach to off-road vehicle use at Cape Hatteras without the fear of litigation.

No question the National Park Service has been out of compliance with the law for the past 35 years. That must be remedied. A management plan must be developed. However, residents and visitors as well as the local economy should not have to suffer in the meantime.

I've heard from local officials and hundreds, hundreds of concerned constituents that the economic damage to the area as a result of the consent decree issued last April would be devastating. Furthermore high gas prices and other economic woes have made for hard times for our tourism industry. Severely limiting access to Cape Hatteras National Seashore, a favorite destination, only makes a tough situation even worse for folks who rely on tourism for their livelihood.

Additionally, managing the seashore through the courts without allowing for public input is the wrong way to come to a resolution on this issue. To ensure that a long term, sustainable solution is reached, public involvement is absolutely critical. Access to beach areas for fishing and other recreational activities is a long standing tradition that I believe can be continued with the appropriate safeguards for public safety and protection of the seashore's natural environment.

I appreciate the fact that Warren Judge, Chairman of the Dare County Board of Commissioners is here today to testify in support of this bill. I also have a statement from North Carolina Senate President Pro Tempore, Mark Basnight in support of the bill. Mr. Chairman, I ask that Senator Basnight's letter* be made a part of the record.

Mr. Chairman, Senator Burr, I encourage you to support this legislation. It is the right thing to do for the local community, for North Carolina and for this National Park. I appreciate this opportunity to make this statement today.

Senator AKAKA. Thank you very much, Senator Dole, for your statement. I'm looking forward to also a statement from Representative Dingell. Senator Dole, like the others, I will certainly excuse you from the hearing here.

Senator DOLE. Thank you, Mr. Chairman.

Senator AKAKA. Yes. Let me call the first panel to the desk. Soon as they're situated I'm going to call on Senator Smith for any remarks he may have.

This is considered an Administration panel. We have Daniel N. Wenk, Deputy Director, National Park Service, Department of the Interior; and, Joel Holtrop, Deputy Chief for the National Forest System, Forest Service, Department of Agriculture.

Welcome and I'm now going to call on Senator Smith for his opening statement.

STATEMENT OF HON. GORDON H. SMITH, U.S. SENATOR FROM OREGON

Senator SMITH. Thank you so much, Mr. Chairman. It's a pleasure to serve with you.

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* See Appendix II.

I speak today on behalf of S. 3148, the Oregon Caves Monument Boundary Adjustment. It's an act of 2008. I appreciate the work of this subcommittee in bringing this legislation before us. The Oregon Caves Monument is a very special place to the residents of Oregon, particularly to those in the Southern Oregon's Illinois Valley.

Ever since their unofficial discovery, most likely by the Takelma Indians of Southern Oregon and the subsequent re-discovery by Elijah Davidson in the fall of 1874, this jewel of Southern Oregon has illuminated the culture and history of the region. When President Taft established the 480 acre Oregon National Caves Monument in 1909, he did so to preserve this wonderful and unique site for generations to come. The caves have played a key role in the development of the community of Cave Junction in Josephine County.

In the 1920s the Oregon Cave's Cavemen were formed by a group of local businessmen and drafted Neanderthals to promote tourism to the caves in the region. With their cavemen attire and zany antics, they were a superb promotion for the caves and attracted thousands of tourists to the region. In 1931 a local designer and builder named Gust Lium, built the Oregon Caves chateau which today still stands as one of three great lodges in Oregon.

The chateau has played a critical role in bringing tourists to this remote location. Today the chateau is maintained by the Illinois Valley Community Development Corporation. An organization dedicated to improving economic conditions in Oregon's rural southwest.

Next year will mark the Oregon Caves National Monument centennial anniversary. I believe this is a fitting time to discuss the options before us. While I'm generally supportive of the legislation to expand the monument's boundary, I do have some concerns and would like to work with the subcommittee and with Senator Wyden to make some important changes to this bill.

In addition to the critical aspects of tourism which has help build the local community, elements of agriculture, forestry and grazing have been equally, if not more important to the cultural and historical development of this community. To this end I have three concerns regarding this legislation.

My first concern is that the bill's provisions on grazing do not adequately protect Mr. Phil Krouse, whose family has brought their livestock to graze on these allotments since the 1930s. Mr. Krouse has prepared a statement for today's hearing. Mr. Chairman, I would ask that this be included in the record, his statement.*

Senator AKAKA. No objection. It will be included in the record.

Senator SMITH. I hope to work with the subcommittee to ensure that the regulations managing these allotments remain with the Forest Service in the Bureau of Land Management until such time as Mr. Krouse is willing to accept a voluntary and private buy out of his grazing permits, subsequently relinquishing them back to the Federal Government.

My second concern relates to forest contiguous to the monument. The forests around Oregon caves are in need of thinning and res-

* See Appendix II.

toration to reduce the risk of catastrophic fire. The historic chateau, in particular, must be protected from the threat of wildlife.

The National Park Service is fully capable of carrying out fuels treatment projects. I wish to include a condition in this legislation that the Park Service complete adequate fuels treatment projects on the lands acquired from the Forest Service.

My third concern relates to hunting. Since lands administered by the Park Service are generally off limits to hunting. However, Oregon hunters, particularly bear hunters use the area discussed in this bill. According to the National Park Service there are roughly 70 park units that currently allow hunting.

The Oregon Department of Fish and Wildlife has statewide jurisdiction for managing wildlife for hunting as well as managing the hunting seasons. So I would hope that the Park Service would work with ODF and W to determine how best to accommodate both hunting and tourism in the woods around Oregon Caves. After all, the caves were discovered by a bear hunter and his dog.

Mr. Chairman, I appreciate the subcommittee's time. I look forward to working with you as this bill expanding the Oregon Caves National Monument moves through the legislative process. I thank you.

Senator AKAKA. Thank you. Thank you very much, Senator, for your testimony. I want to include in the record the testimony of Representative John Dingell to the record.

[The prepared statement of Mr. Dingell follows:]

PREPARED STATEMENT OF HON. JOHN D. DINGELL, U.S. REPRESENTATIVE FROM MICHIGAN, ON S. 3247

I write to express my wholehearted support for S. 3247, the River Raisin National Battlefield Act, which will be under consideration in the Subcommittee on July 30. I have introduced companion legislation, H.R. 6740, in the House. It is my sincere hope that with your help we can see this legislation signed into law by the end of the year.

S. 3247 would direct the Secretary of the Interior to accept the donation of lands related to the Battles of the River Raisin in Monroe or Wayne County, Michigan and to designate those lands as a unit of the National Park System, to be known as River Raisin National Battlefield Park. The River Raisin Battlefield is the site of a major engagement of the War of 1812 that occurred during the American campaign in the winter of 1813 to retake Fort Detroit from the British. Although the Americans repelled the British in first battle at the settlement, then known as Frenchtown, along the River Raisin, the second battle ended in major defeat and significant loss of life, causing General William Henry Harrison to describe the occurrences in Frenchtown as a "national calamity." The disastrous loss gave birth to the rallying cry, "Remember the Raisin," aiding recruitment efforts for Harrison's spring 1813 campaign, and ultimately spurred the American troops to victory at the Battle of the Thames nine months later, effectively ending the War.

Many reasons underscore the importance of support for S. 3247. I have outlined them below:

- The Battle of the River Raisin is arguably the largest land engagement during the War of 1812. While the battle was a devastating loss to the American Army, the tragedy created a rallying point for U.S. troops and led to a decisive American victory effectively ending the War.
- The casualties incurred at the River Raisin rank it among the most disastrous battles for the American Army during the entire War of 1812. 397 Americans were listed as killed or missing in action and 536 listed as prisoners of war. Designation of the site as a National Park will honor the sacrifice of those patriots who gave their lives in defense of our fledgling country.
- The federal government will obtain River Raisin Battlefield at no cost. The good people of Monroe and/or Wayne Counties, Michigan will donate the battlefield to the federal government.

- The local community values the River Raisin Battlefield for its historical and national significance, and its designation as a National Park enjoys vast public support. Indeed, designation would have positive economic benefits for the local community and state through increased heritage tourism.
- There is little debate that the River Raisin is a nationally significant site.
- The National Park Service is the only entity with the expertise to interpret and care for a site of such national importance. We owe the many Americans who died at the River Raisin defending our young country the sufficient dignity and esteem inherent in becoming a unit of our National Park System without delay.

Designation of the River Raisin battlefield as a National Park will afford the site with much deserved national recognition. Through enactment of S. 3247, not only can we commemorate the heroism of those who lost their lives during the Battle, but also add insight into an important chapter in our nation's history.

Senator AKAKA. Again, I want to welcome our witnesses today. We will include your full written statement in the hearing record. So I would ask that you please limit your remarks to no more than 5 minutes. Following your statements we will have questions.

So, Mr. Wenk, will you please begin with your statement?

STATEMENT OF DANIEL N. WENK, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. WENK. Mr. Chairman, thank you for the opportunity to appear before this subcommittee to present the Administration's views on the 11 subjects on today's agenda. I would like to submit our full statements for each of these subjects for the record and summarize the Administration's position on these bills.

The Department supports the following bills.

S. 2093, which would designate a segment of the Missisquoi and Trout Rivers in the State of Vermont for study for potential addition to the National Wild and Scenic River System.

S. 2535, which would expand the boundary of Martin Van Buren National Historic Site.

S. 2561, which would require the Secretary of the Interior to conduct a theme study to identify sites and resources to commemorate and interpret the cold war.

S. 3011, which would expand the boundaries of Palo Alto Battlefield National Historic Site.

S. 3158, which would extend the authority for Cape Cod National Seashore Advisory Commission.

S. 3226, which would rename the Abraham Lincoln Birthplace National Historic Site in the State of Kentucky as the Abraham Lincoln Birthplace National Historical Park.

H.R. 5137, which would ensure that hunting remains a purpose of the New River Gorge National River.

The reasons for our positions on these bills are explained in detail in our full statements. For some of the bills we are requesting that the committee make minor amendments to the bill language. Explanations of these requested amendments are also contained in the full statements.

On the remaining four bills, the position of the Department is as follows.

On S. 1816, which would authorize the Secretary of Interior to establish a commemorative Votes for Women History Trail Route in connection with Women's Rights National Historical Park, the Department could support the bill if it is amended to delete the grant authorizations in sections three and four. These grant pro-

grams would divert available resources from broader historic preservation purposes to specific sets of beneficiaries and duplicate existing authorities.

The Department would welcome the opportunity to work with the committee to see if we could achieve the goals of these two sections within our existing authorities.

On S. 3148, which would modify the boundary of Oregon Caves National Monument, the Department supports the intent of the bill, but recommends deferring action to give us the opportunity to explore ways to maintain continuity and interagency coordination on issues related to forest health and recreational opportunities. The U.S. Forest Service which currently manages the 4,070 acres that would be added to the monument, is working on a multi-year effort to reduce fuels under a comprehensive forest plan, which in turn would benefit monument resources that are at risk from fire and fire suppression damage. The Department also finds it important to acknowledge that hunting is allowed by the U.S. Forest Service on the lands that would be transferred to the National Park Service.

We would like to continue our discussions with the Forest Service on these matters prior to further action on this legislation.

On S. 3247, which would provide for the designation of the River Raisin National Battlefield Park in the State of Michigan, the Department recommends deferring action. Our recommendation does not detract from the significance and importance of this battlefield site and the historical events associated with this major engagement of the War of 1812. The special resource study and the National Historic Landmark nomination currently underway need to be completed so a determination could be made if the site is nationally significant and is both suitable and feasible to be designated as a unit of the National Park System.

With public involvement these two efforts will provide needed information to determine the best path for preservation and interpretation of the battlefield. We expect both to be completed in 2 to 3 years from now.

On S. 3113, which would re-instate the Interim Management Strategy governing off-road vehicle use at Cape Hatteras National Seashore, North Carolina pending the completion of an ORV management plan in issuance of a final rule for ORV use the Department cannot support the legislation. The Department supports allowing public use and access of National Seashores to the greatest extent possible while ensuring protection for wildlife there including the federally protected species that are the focus of our present concern.

We believe that the April 30, 2008, consent decree will accomplish its objective better than the original 2007 Interim Management Strategy for the period until a final ORV plan and rule are adopted.

Mr. Chairman, that concludes my statement. I'd be pleased to answer questions that you may have.

[The prepared statements of Mr. Wenk follow:]

PREPARED STATEMENT OF DANIEL N. WENK, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

H.R. 5137

Mr. Chairman and members of the subcommittee, thank you for the opportunity to present the views of the Department of the Interior on H.R. 5137, to ensure that hunting remains a purpose of the New River Gorge National River.

The Department strongly supports enactment of H.R. 5137. This bill would amend Section 1106 of the National Parks and Recreation Act of 1978, the New River Gorge National River's (park) authorizing legislation to require the Secretary of the Interior to permit hunting and fishing on National Park Service (NPS) lands within the park, instead of allowing this authority to be discretionary. If enacted, this bill would provide legislative direction to the Department on hunting and fishing at New River Gorge. We believe that enactment of the legislation will maintain important protections that allow hunting in the park to be managed consistent with the NPS mission to ensure public safety and to conserve the park's natural resources, including wildlife and its habitat. The bill is consistent with other policy statements from Congress and the Park Service, and also advances the purposes of Executive Order 13443, "Facilitation of Hunting Heritage and Wildlife Conservation."

The New River Gorge National River was established in 1978, by Public Law 95-625, to conserve and protect 53 miles of the New River as a free-flowing waterway. Section 1106 states in part that "The Secretary may permit hunting and fishing on lands and waters under his jurisdiction within the boundaries of the New River Gorge National River in accordance with applicable Federal and State laws, and he may designate zones where, and establish periods when, no hunting or fishing shall be permitted for reasons of public safety, administration, fish or wildlife management, or public use and enjoyment." We believe that enactment of H.R. 5137 would have the narrow effect of requiring a continuation of an ongoing recreational activity in the park while maintaining the Service's ability to continue to manage the activity in a manner that protects public safety and retains natural resource and wildlife conservation tools such as adaptive management.

The park's current GMP, dated November 1982, addressed hunting as an approved recreational activity, stating "Recreational hunting of game will be permitted in accordance with State regulations, with the exception of jointly designated limited closures for reasons of public safety or wildlife preservation." Since adoption of the GMP, the park has permitted hunting on lands owned and administered by the NPS, except in areas of developed recreational facilities, such as river accesses and campgrounds, for reasons of public safety.

In an April 10, 2002, letter, the Public Employees for Environmental Responsibility pointed out the need for a regulation to be promulgated to permit hunting at New River Gorge National River. On September 25, 2003, an interim final rule was published in the Federal Register that would have allowed hunting to continue within the park. The rule was written to become effective immediately. On October 9, 2003, the NPS Director received a letter from a law firm representing the Fund for Animals that questioned the legality of the interim final regulation.

The 2004 Interior Appropriations Act, Section 150, stated that "The National Park Service shall issue a special regulation concerning continued hunting at New River Gorge National River in compliance with the requirements of the Administrative Procedures Act, with opportunity for public comment, and shall also comply with the National Environmental Policy Act as appropriate. Notwithstanding any other provision of law, the September 25, 2003 interim final rule authorizing continued hunting at New River Gorge National River shall be in effect until the final special regulation supersedes it."

The NPS was about to begin a GMP for New River Gorge National River when Congress enacted the 2004 directive. As part of the GMP, it was decided that the NPS would undertake an extensive public involvement process on the issue of hunting within the park. The draft GMP includes four action alternatives; three of those alternatives would allow continued hunting within the park. About 300 people attended one or more of the three public meetings held on the hunting issue, and the public was overwhelmingly in favor of the continuation of hunting at New River Gorge National River. The draft GMP is being finalized, and we hope to release it for public review by the end of this year.

As part of the process to revise the GMP, the NPS contracted with the Virginia Tech Department of Fisheries and Wildlife Services to assess the impacts of hunting in the park. The assessment, which was finalized in 2006, concluded the "hunting conducted in accordance with existing laws and regulations should have no adverse impact on the fauna and flora within the boundaries of New River Gorge". We do

not believe that enactment of this legislation would have any effect on this science-based assessment and its conclusions.

The NPS is cognizant of the importance of hunting to the local community as well as the ecological implications of hunting within New River Gorge National River. The "no hunting alternative" has proven to be very controversial with the State of West Virginia and with local hunters. However, the NPS has determined that under the existing legislation the park must include an analysis of the no hunting alternative to ensure that the requirements of the National Environmental Policy Act are adequately met. When the draft GMP is released for public review it will include a preferred alternative stating the NPS's position on continued hunting at New River Gorge National River, regardless of whether or not this legislation is enacted. After the GMP is completed, NPS would be required to promulgate a special regulation for any preferred alternative involving hunting on park lands within the national river.

Executive Order 13443, "Facilitation of Hunting Heritage and Wildlife Conservation" was signed by President Bush on August 17, 2007, directing the Department of the Interior and other Cabinet officers to facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat. We are pleased that H.R. 5137 is consistent with this direction and would provide a specific way to contribute toward the results of E.O. 13443.

That concludes my statement. I will be happy to answer any questions you or any members of the subcommittee may have.

S. 1816

Mr. Chairman, thank you for the opportunity to appear before your committee to present the views of the Department of the Interior on S. 1816, a bill to authorize the Secretary of the Interior to establish a commemorative "Votes for Women History Trail Route" in connection with Women's Rights National Historical Park. The trail route would link sites that are historically and thematically associated with the struggle for women's suffrage in the State of New York.

The Department could support this legislation if amended to delete grant authorizations in sections 3 and 4.

The Omnibus Appropriations Act for Fiscal Year 1999 (Public Law 105-277) provided funding for a Women's Rights National History Trail feasibility study. The study team documented women's rights history-related properties reaching from Maine to Virginia, including the District of Columbia. The largest numbers of properties in the Northeast were in the Commonwealth of Massachusetts and the State of New York. The study team considered a long-distance trail in the corridor between Boston and Buffalo, but determined that this concept was not viable based upon the lack of properties between these two places. The study also found that the trail would not meet the criteria as a national historic trail under the National Trails System Act.

The study concluded that significant concentrations of resources associated with the struggle for women's suffrage in the United States lie within an area stretching from Syracuse, New York in the east through the Finger Lakes region westerly to Rochester. In the midst of this concentration of resources are the towns of Seneca Falls and Waterloo, New York, where the first women's rights convention in America was planned and held in 1848. Women's Rights National Historical Park, established in 1980 by Public Law 96-607, preserves and interprets the important sites associated with the formal beginning of the struggle for equal rights for women in the United States. It was at Seneca Falls in 1848 that the Declaration of Sentiments was signed, advocating for political, economic, educational, religious, and societal equality for women.

The final report described three concepts that could support the recognition, promotion, and protection of properties associated with women's rights history: A "Votes for Women" History Trail, a vehicular tour route linking together a number of historic properties associated with women's suffrage in New York State; a National Women's Rights History Project focused on expanding the number of properties listed on the National Register of Historic Places that are associated with women's rights; and a National Women's Rights History Project and Partnerships Network that would offer financial and technical assistance to participating members for interpretive and educational program development through the use of partnerships and matching grants. A final report was transmitted to Congress in January 2004.

Section 2 of S. 1816 would amend Public Law 96-607 to establish a "Votes for Women History Trail Route", a vehicular tour route linking sites associated with the 72-year struggle for women's suffrage across New York State, a movement which

spread throughout the nation. The trail route would be administered by the National Park Service through Women's Rights National Historical Park. The National Park Service would be authorized to support the development of interpretive signage and to develop and disseminate interpretive and educational materials and media to provide public understanding and appreciation of the resources along the trail route and their respective roles in the women's suffrage movement. Sites along the trail route could include the Susan B. Anthony House in Rochester, the Wesleyan Chapel in Seneca Falls, and Harriet Tubman Home in Auburn.

Section 2 of the bill would also authorize the Secretary to enter into cooperative agreements with other Federal agencies, the State of New York, and other governmental and private entities to facilitate the development of the trail route and to provide technical and financial assistance to such organizations to achieve the purposes of the legislation. The public/private partnerships envisioned would provide opportunities for the public to learn about the rich, yet largely unknown history of the struggle for women's suffrage in the United States, while enhancing preservation of the remaining tangible resources associated with this effort.

Section 3 of the bill would establish a National Women's Rights History Project National Registry that would authorize the Secretary to provide grants to State Historic Preservation Offices (SHPOs) to assist in surveying, evaluating, and nominating women's rights history properties for consideration to be listed on the National Register of Historic Places. Such activities are already within the purview of existing SHPO responsibilities. This legislation would therefore duplicate SHPO responsibilities, and divert limited available funds for broad SHPO responsibilities to a specific set of beneficiaries and purposes. SHPOs already have the ability to add sites to the National Park Service's website, "Places Where Women Made History." The website lists historic places associated with women's history in New York and Massachusetts, travel itineraries, maps, photographs, and other information about these historic properties. The website has the capacity to provide opportunities for citizens of this nation, and those outside of the United States, to learn about the sites and people associated with the struggle for women's rights in America. These struggles remain relevant in American society today, and provide inspiration to others seeking equal rights in their own countries.

Finally, section 4 of S. 1816 provides for the establishment of a National Women's Rights History Project Partnerships Network, managed through a nongovernmental entity, which would offer matching grants and technical assistance for the purpose of providing interpretive, educational, and historic preservation program development. The establishment of such a network would earmark historic preservation grants for a specific set of beneficiaries and would divert available resources for broader historic preservation purposes. NPS already has the authority to enter into collaborative proposals that could involve a variety of property types and that would be anchored by one or more National Register-eligible properties.

We believe that particular aspects of S. 1816 provide the opportunity for all to gain a clear understanding and appreciation of the sacrifices and contributions of those associated with the quest for women's rights in the past, and for those who continue their work today throughout the world. However, we also believe that particular aspects of this legislation divert available resources from broader historic preservation purposes to specific sets of beneficiaries and duplicates existing authorities. The Department would welcome the opportunity to work with the committee to further review existing NPS programs to determine if we could achieve the goals of section 3 and 4 of the bill within our existing authorities.

Mr. Chairman, this concludes my remarks, and I would be happy to respond to any questions that you and the committee may have.

S. 2093

Mr. Chairman, thank you for the opportunity to appear before you today to discuss the views of the Department of the Interior on S. 2093, a bill to amend the Wild and Scenic Rivers Act to designate a segment of the Missisquoi and Trout Rivers in the State of Vermont for study for potential addition to the National Wild and Scenic Rivers System.

The Department supports enactment of this legislation with the amendments described in this testimony. However, the Department feels that priority should be given to the previously authorized studies for potential units of the National Park System, potential new National Heritage Areas, and potential additions to the National Trails System and National Wild and Scenic River System that have not yet been transmitted to the Congress. On April 24, 2008, the Department testified in support of the House companion bill, H.R. 3667.

S. 2093 would direct the Secretary of the Interior to study the segment of the Missisquoi and Trout Rivers from the headwaters of the rivers downstream to the confluence of that segment with the Missisquoi Bay of Lake Champlain in the State of Vermont. A report that describes the results of the study is required to be submitted to Congress not later than three years after the date of enactment of this Act.

Two segments of the Missisquoi River are listed on the Nationwide Rivers Inventory of candidate wild and scenic rivers. The mouth of the river includes the Missisquoi National Wildlife Refuge which comprises the Missisquoi River Delta and Missisquoi Bay on Lake Champlain. Upper portions of the Missisquoi and Trout Rivers are prized for their scenic beauty, recreational boating and fishing opportunities, and historic and archaeological values.

The Missisquoi Valley Rail Trail parallels much of the upper Missisquoi River, and offers excellent potential for public access and recreational opportunities linked to the river and the broader river valley. Portions of the river also serve as the route for the Northern Forest Canoe Trail, based on the river's historical significance as a travel route for the Abenaki Indians. Great Falls on the upper Missisquoi is recognized as Vermont's largest undammed falls, and is part of a series of spectacular gorges and falls located on the upper river.

The State of Vermont, Agency of Natural Resources (ANR) has been working extensively with communities of the upper Missisquoi watershed to address river management issues related primarily to agricultural run-off affecting water quality of the river and Missisquoi Bay/Lake Champlain. The forum that has been created through these efforts offers an ideal opportunity for the National Park Service to join the ANR and local communities in a comprehensive study that would add broader natural, recreational, and cultural considerations to the issues already being considered. The ANR and affected communities of the upper Missisquoi have all expressed their support for such a partnership-based study.

The Department notes that several large hydroelectric generating facilities are located on the lower Missisquoi River, making it inappropriate for wild and scenic river consideration. In addition, a segment of the upper Missisquoi River bows north into Canada, and should be excluded from this study effort. Therefore, we recommend S. 2093 be amended to direct the study effort to the following river segments:

- The approximately 25-mile segment of the upper Missisquoi from Enosburg Falls upstream to the Canada border in East Richford;
- The approximately 25-mile segment of the upper Missisquoi from the Canada border in North Troy upstream to the headwaters in Lowell;
- Approximately 20 miles of the Trout River from its confluence with the Missisquoi to its headwaters.

The Department would also like to work with the committee on several technical amendments to make this bill consistent with other recently enacted wild and scenic river study bills.

This concludes my prepared remarks, Mr. Chairman. I will be happy to answer any questions you or other committee members may have regarding this bill.

S. 2535

Mr. Chairman, thank you for the opportunity to appear before your committee to present the views of the Department of the Interior on S. 2535, a bill to revise the boundary of Martin Van Buren National Historic Site, and for other purposes.

The Department supports enactment of this bill.

S. 2535 would expand the boundary of the Martin Van Buren National Historic Site, located in Kinderhook, New York, by including 261 acres of land surrounding Lindenwald, the home and farm of the eighth President of the United States. The bill also provides to the Secretary of the Interior land acquisition authority from willing sellers, by donation, by purchase with donated or appropriated funds, or by exchange.

The boundary expansion would help visitors to understand the importance of agriculture in President Van Buren's life and the role of the changing agricultural economy before the Civil War. In addition to protecting Lindenwald in its historic agricultural setting, the legislation offers increased opportunities for public enjoyment of the park and surrounding land as part of an overall plan that was developed in concert with local landowners and governments.

The proposed acreage includes a farm cottage, one of only three surviving structures associated with President Van Buren, and agricultural lands that once were a part of his original 226-acre farm and are still in active cultivation. Preserving

these scenic and historic resources is critical to the future of the park. The expanded boundary would also allow the National Park Service (NPS) to replace temporary operational facilities, including a maintenance garage directly behind Lindenwald, and administrative facilities now housed in trailers, with permanent buildings more appropriate to the historic setting.

Martin Van Buren National Historic Site was established by Public Law 93-486 to commemorate the life and work of President Martin Van Buren through the preservation and interpretation of his home and farm. The 39-acre park predominately consists of a prominent mansion located within the present boundary, a factor that narrows the focus of interpretation to a traditional house tour. Although agrarian ideals formed a central theme of Van Buren's political philosophy, agricultural components of the 226 original acres of Lindenwald are neither fully protected nor available for interpretation.

Kinderhook, New York, part of the Hudson River Valley, was a rural farming area when the site was established in 1974. Since then, suburban, residential and commercial development has begun to threaten the area surrounding the park. This prompted the NPS to undertake a comprehensive study of the area in 2003, and to address concerns such as protecting the historic setting and enhancing opportunities for interpretation. The boundary study identified 24 contributing characteristics and features outside of the current park boundary that can be traced directly to Van Buren's tenure at Lindenwald. Expansion of the boundary to include these resources will provide for future protection of park-related resources and scenic values, and increase public understanding and appreciation of the life and ideals of Martin Van Buren, a preeminent politician during the Nation's turbulent antebellum years.

Park managers have a close working relationship with the present owners of the land proposed for addition to the boundary of the park, some of whom will continue to farm the land and have agreed to make portions of their land available to visitors for a trail to enhance interpretation of the park. Within the proposed 261-acre boundary, 25 acres are expected to be donated in fee to the NPS and 173 acres are expected to be donated in the form of conservation easements. The NPS would seek to acquire the remaining 63 acres through purchase of easements or fee interests from willing sellers. If acquired in fee, the cost would be approximately $667,000, subject to NPS priorities and the availability of appropriations. The majority of the land will remain in agricultural use. Monitoring of the conservation easements will be done by NPS personnel through the park's existing operations budget. The conservation easement lands would remain on the local tax rolls.

The only structure that would be acquired on the 261 acres is an 800-square foot historic cottage that is in sound condition, but will require some improvements such as painting the wood siding and repairing decaying window frames. Some of this cost could be paid through park maintenance funds, but if more extensive repairs are needed depending on the future use of the cottage, funds would be subject to NPS priorities and the availability of appropriations. The future use of the cottage will be determined in the general management planning process, which just began for the existing park.

Should this legislation be signed into law, the general management planning process also would determine the need to relocate operational, maintenance or administrative facilities on the lands included in the park by this boundary addition, to move some of these facilities outside the park boundaries or to address the code and safety issues in the facilities' current location. The park currently rents two double-wide trailers for administrative facilities, and houses curatorial storage in a deteriorating barn. Located adjacent to the trailers is a shed, built by NPS, that is used for visitor contact. The park also uses a garage for a maintenance facility that has serious code and worker safety issues and that is intruding on the historic setting of the Van Buren house. It is estimated it would cost $1.9-$2.8 million to address these two priority issues with or without a boundary change, since the temporary facilities are inadequate to be used in the long-term. Any final decisions would be made as part of the general management planning process, and if included in the final plan, would be subject to the budget prioritization process of the NPS.

This legislation enjoys broad support from various constituencies interested in conservation, historic preservation, and agricultural sustainability, including the New York State Office of Parks, Recreation, and Historic Preservation; the Columbia Land Conservancy; the Open Space Institute; the Columbia County Board of Supervisors; the Friends of Lindenwald; the Kinderhook Town Board; the Kinderhook Village Board; the Valatie Village Board; the Columbia County Tourism Department; and many other public organizations and local agencies.

Mr. Chairman, this concludes my testimony and I am pleased to answer any questions you or other members of the subcommittee may have.

S. 2561

Mr. Chairman, thank you for the opportunity to present the Department of the Interior's views on S. 2561. This bill would require that the Secretary of the Interior conduct a theme study to identify sites and resources associated with the Cold War and to recommend ways to commemorate and interpret that period of our nation's history.

The Department supports this legislation as we believe that it is wholly appropriate for the National Park Service to undertake a study that will help ensure that the history of the Cold War era is preserved for future generations of Americans. In the 108th Congress, the Department testified in support of similar legislation, S. 452; however there was no other action taken on the bill.

S. 2561 would require the Secretary of the Interior to conduct a National Historic Landmark theme study to identify sites and resources in the United States that are significant to the Cold War. The bill specifically provides that the study consider the inventory of Cold War resources that has been compiled by the Department of Defense and other historical studies and research on various types of military resources. It also requires the study to include recommendations for commemorating these resources and for establishing cooperative arrangements with other entities.

We want to note that the study would not cover every resource that may be significant to the history of the Cold War as it affected our nation, since it would not include sites outside the United States such as U.S. installations in Germany or South Korea. It is necessary to limit the scope of the study to sites and resources within the United States, as S. 2561 does, because we do not have the authority to identify resources that are beyond our borders for potential National Historic Landmark status.

In addition to authorizing the theme study, S. 2561 would require the Secretary to prepare and publish an interpretive handbook on the Cold War and to disseminate information gathered through the study in other ways. S. 2561 would authorize appropriations of $500,000 to carry out the legislation.

National Historic Landmark theme studies are funded from a variety of sources including, in some cases, the special resource study budget, which is about $935,000 in FY 2008. There are 37 studies previously authorized by Congress that are being funded from the special resource study budget, nearly half of which will have at least some funding needs beyond Fiscal Year 2008. Our highest priority is to complete pending studies, though we expect to start newly authorized studies as soon as funds are made available.

The National Historic Landmarks program was established by the Act of August 21, 1935, commonly known as the Historic Sites Act (16 U.S.C. 461 et. seq.) and is implemented according to 36 CFR Part 65. The program's mission is to identify those places that best illustrate the themes, events, or persons that are nationally significant to the history of the United States and that retain a high degree of integrity. Potential national historic landmarks are often identified through theme studies such as the one that would be authorized by this legislation.

Theme studies are not the same as special resource studies, which assess the suitability and feasibility of adding a site to the National Park System. Theme studies may identify sites that may be appropriate candidates for special resource studies, but these studies themselves do not evaluate sites for possible addition to the National Park System. Therefore, theme studies do not have the potential to lead directly to new operation, maintenance or other costs for the National Park Service.

For example, in 2008, the National Park Service completed and transmitted to Congress a National Landmark Theme Study on the World War II Home Front. Through a partnership with the Organization of American Historians (OAH), NPS focused on themes that saw transformation during this period: civil rights with regard to an integrated work force, migration and resettlement to support mobilization, changes in gender roles as women entered the work force, labor relations as unions flexed new-found powers, economic mobilization and government cooperation with the private sector to support the war effort, technological advances, popular culture, and architectural change. The National Park Service is also conducting several other theme studies, including one on American Civil Rights, one related to the history of the labor movement, another on the earliest inhabitants of Eastern North America, and another on sites associated with Japanese Americans during World War II.

At the moment, the history of the Cold War has some presence in the National Park System and on the two lists of historic sites maintained by the National Park Service. The National Park System includes one unit related to the Cold War, the Minuteman Missile National Historic Site in South Dakota, which Congress estab-

lished in 1999 to preserve and interpret the role of Intercontinental Ballistic Missiles in our nation's defense system.

Out of 2,444 designated national historic landmarks, at least five recognize civilian or military aspects of Cold War history; and out of approximately 76,000 listings on the National Register of Historic Places, at least 17 (including the five landmarks) are related to the Cold War. The relatively small number of recognized sites is due in large part to the fact that the Cold War has only recently been viewed as historically important. With or without a theme study, these numbers would likely increase over time, and the Department of Defense could take steps on its own to identify these sites under their jurisdiction.

National Historic Landmark program regulations require consultation with Federal, state, and local governments; national and statewide associations; and a variety of other interested parties. Through partnering with a national historical organization, using a peer-review process, and consulting with appropriate subject experts as well as the general public, the National Park Service would ensure that the broadest historical perspectives are represented in any study it undertakes.

In addition, we have been informed by the Department of Justice that the provisions of the bill that would require the Secretary of the Interior to make recommendations to Congress concerning federal protection for Cold War sites raise concerns with regard to the Recommendations Clause of the Constitution, which reserves to the President the power to decide whether it is necessary or expedient for the Executive Branch to make legislative policy recommendations to the Congress. The Administration would be pleased to provide language to resolve these constitutional concerns.

Mr. Chairman, that concludes my statement. I would be pleased to answer any questions you or other members of the Subcommittee may have.

S. 3011

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to present the views of the Department of the Interior on S. 3011, a bill to amend the Palo Alto Battlefield National Historic Site Act of 1991 to expand the boundaries of the historic site, and for other purposes.

The Department supports S. 3011 with an amendment to provide the correct map reference for the boundary expansion. On June 5, 2008, the Department testified in support of H.R. 4828, an almost identical bill, before the House Subcommittee on National Parks, Forests and Public Lands.

S. 3011 would amend Public Law 102-304 to adjust the boundary of the Palo Alto Battlefield National Historic Site (park) to include the addition of approximately 34 acres. The lands added to the boundary would remain under the ownership of the Brownsville Community Foundation (Foundation), Brownsville, Texas. The Foundation and the National Park Service (NPS) would co-manage and administer the lands added to the boundary through a cooperative agreement. There would be no acquisition costs associated with the boundary expansion and we estimate NPS's management, administrative, interpretive, resource protection, and maintenance costs to be approximately $200,000 annually. Additional infrastructure improvements would include an ADA accessible trail, a visitor parking lot, trail and pavilion benches, the resaca overlook, interpretive panels and replica cannons, an NPS sign, a security gate, and utilities at an estimated cost of $360,000.

The land proposed for addition to the park is known as 'Resaca de la Palma', a National Historic Landmark. Located approximately four miles south of the existing park boundary and in the Heart of the City of Brownsville, Texas, the land is closely connected to Palo Alto Battlefield National Historic Site, the only unit in the National Park System to commemorate the Mexican War, both historically and culturally.

Resaca de la Palma is the site of the second battle of the U.S. War with Mexico. The battle proved decisive for American forces and forced Mexican troops back across the Rio Grande River. The site is hallowed ground for many, including descendents of more than 214 individuals from the United States and Mexico who lost their lives at this site on May 9, 1846. After the battle, many visitors to Palo Alto and Resaca de la Palma viewed the land as having been transformed by the bloody sacrifices made there. That sentiment remains today and many residents of Brownsville believe that both of the battlefields should be preserved to honor the memory of the soldiers who fought and died there.

Although the original battlefield at Resaca de la Palma extended over hundreds of acres, today only 34 acres remain undeveloped. In essence, Resaca de la Palma represents an oasis, surrounded by a developing city. In addition to its rich cultural heritage, these 34 acres provide habitat for migratory and resident birds and small

mammals. The battlefield site also represents a typical but disappearing landscape of the Rio Grande delta and conserves native chaparral, prairie, and brush.

Resaca de la Palma is easily accessible to community members and visitors to the area. The 34 acres included in this boundary adjustment also represent a rare community green space that will be preserved. Existing structures include an interpretive trail and exhibits, a covered shelter, and a viewing platform overlooking the resaca, the literal translation of which is: the dry river bed of the palms.

The National Park System includes many successful examples of philanthropic efforts that have added immeasurably to the preservation of our nation's natural and cultural treasures. The partnership between the NPS and the Foundation to comanage Resaca de la Palma is another successful example of this type of effort. Many hours have been donated toward preserving Resaca de la Palma by board members, the park, and individuals in the community. Additionally, several private and public organizations have donated time and money to ensure Resaca de la Palma remains protected and accessible to visitors. These include the Boy and Girl Scouts of America, the City of Brownsville, the Cameron County Sheriff Department, and the Texas Department of Transportation.

The Palo Alto Battlefield National Historic Site 1988 General Management Plan proposed including Resaca de la Palma within the park's administrative boundary. This legislation would achieve that goal. However, without this legislation, the NPS would be limited in its ability to interpret, maintain, or manage the Resaca de la Palma area for future generations.

We suggest one amendment to S. 3011. On page 2, lines 13 and 14, the correct map information is: "entitled Palo Alto Battlefield NHS Proposed Boundary Expansion, numbered 469/80,012, and dated May 21, 2008."

That concludes my statement. I would be happy to answer any questions that you or other members of the subcommittee might have.

S. 3113

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today to present the Department of the Interior's views on S. 3113, a bill to reinstate the Interim Management Strategy governing off-road vehicle (ORV) use at Cape Hatteras National Seashore (Seashore), North Carolina, pending the completion of an ORV management plan and issuance of a final rule for ORV use. The Interim Management Strategy was adopted on July 13, 2007 by the National Park Service to provide resource protection guidance in areas subject to ORV use. The bill would make inapplicable the consent decree that implements a settlement agreement modifying this Interim Management Strategy, to which all parties involved in a lawsuit agreed just three months ago.

The Department supports allowing public use and access at Cape Hatteras National Seashore to the greatest extent possible while ensuring protection for the Seashore's wildlife, including the federally protected species that are the focus of present concern, for this and future generations of park visitors. Because we believe that the April 30, 2008, consent decree will accomplish this objective better than the original 2007 Interim Management Strategy for the period until a final ORV plan and rule are adopted, the Department cannot support S. 3113.

Background on Protected Species and ORV Management at Cape Hatteras

Beach driving, also known as ORV use, predates the 1937 authorization of the National Seashore and has become a popular method of access for recreational pursuits such as swimming, fishing, and water sports.

Executive Order 11644 (1972), amended by Executive Order 11989 (1977), requires the National Park Service to issue regulations on the designation of specific trails and areas for ORV use based upon resource protection, visitor safety, and minimization of conflicts among uses of agency lands. The Executive Order directs that these "[a]reas and trails . . . be located to minimize harassment of wildlife or significant disruption of wildlife habitats." Furthermore, ". . . whenever [the agency] determines that the use of off-road vehicles will cause or is causing considerable adverse effects on . . . wildlife (or) wildlife habitat, [it shall] immediately close such areas or trails to the type of off-road vehicle causing such effects until such time as [it] determines that such adverse effects have been eliminated and that measures have been implemented to prevent future occurrence." In response to the Presidents' direction, the National Park Service promulgated the regulation at 36 C.F.R. § 4.10, which requires the Park Service to designate, by special regulation, ORV use areas and routes in compliance with Executive Order 11644. In 1978, the Park Service drafted an interim ORV management plan for Cape Hatteras National Seashore but never finalized it. In 1973 and 1990, the Park Service drafted ORV regulations for the Seashore but never promulgated them.

To date, the National Park Service has not met the requirements of its own regulation. However, subsequent to a feasibility assessment process which queried numerous stakeholder groups, in December 2007 the Secretary of the Interior established a negotiated rulemaking committee under the Federal Advisory Committee Act (FACA) to aid the Service in the development of an ORV management plan and special regulation to meet the requirements of 36 C.F.R.§ 4.10. The committee, which has met five times thus far in 2008, is making progress toward this goal. The committee is scheduled to meet again in September, October, November, and December 2008. Under the April 30, 2008, consent decree, the ORV management plan must be completed by December 31, 2010, and the special regulation by April 1, 2011.

The Seashore is the breeding site for many species of beach-nesting shorebirds and waterbirds, including the federally-listed threatened piping plover, the state-listed threatened gull-billed tern, and a number of species of concern including the common tern, least tern, black skimmer, and the American oystercatcher. All of the above species have experienced breeding population declines at Cape Hatteras over the past 10-20 years. For example, in 1989 the Seashore had 15 breeding pairs of the federally threatened piping plover. By 2001-2005, the Seashore experienced only 2-3 pairs attempting to nest each year. The numbers of colonial waterbird nests on the Seashore have declined from 1,155 nests in 1999 to 217 nests in 2007. Individual colonial waterbird species have experienced the following reduction in nests on the Seashore from 1999 to 2007: gull-billed tern, 103 nests to zero; least tern, 306 nests to 196; common tern, 440 nests to 19; and black skimmer, 306 nests to 2. American oystercatcher numbers on the Seashore have declined from 41 breeding pairs in 1999 to 22 breeding pairs in 2007.

While a complex array of variables including weather events and predation contribute to these declines, human disturbance is certainly a factor, reflecting the inherent conflict resulting from the fact that peak visitor demand for access to key breeding sites, which are also popular fishing sites, occurs at approximately the same time as the primary period of wildlife breeding activity. The overall trend of declining numbers and the low numbers for specific species (piping plover, gull-billed tern, common tern, and black skimmer) at Cape Hatteras National Seashore has been of particular concern, because the National Park Service by law and policy is committed to preventing impairment of park resources, and preserving and restoring the natural abundance, diversity and distribution of native animal populations and ecosystems in which they occur in units of the National Park System.

In July 2007, the National Park Service approved an Interim Protected Species Management Strategy and Environmental Assessment for the Seashore. This Interim Management Strategy provides guidance for the protection of beach-nesting shorebirds and sea turtles, and a threatened beach plant species, until a long-term ORV management plan and regulation can be developed. Meanwhile, in consultation with the negotiated rulemaking committee that was established in December 2007, the Service is working on the development of a long-term ORV management plan and environmental impact statement.

In October 2007, Defenders of Wildlife and the National Audubon Society, represented by the Southern Environmental Law Center (Plaintiffs), filed a complaint in the U.S. District Court for the Eastern District of North Carolina challenging the Interim Management Strategy. In December, the complaint was amended to include the U.S. Fish and Wildlife Service as co-defendant based on Endangered Species Act claims related to its biological opinion. Additionally, two local counties, Dare and Hyde, and the Cape Hatteras Access Preservation Alliance, which is a coalition of local ORV and fishing groups, were granted intervenor status by the court. All of these entities are members of the negotiated rulemaking committee.

On February 20, 2008, the Plaintiffs filed a motion for a preliminary injunction requesting the court to direct the National Park Service to completely close six key breeding sites (Bodie Island Spit, Cape Point, South Beach, Hatteras Spit, North Ocracoke, and South Ocracoke) to ORV use on a year-round basis consistent with the 2005 management recommendations provided to the Park Service by scientists from the U.S. Geological Survey (referred to as the "USGS protocols.") These six sites are also the most popular fishing areas that are traditionally accessed by ORV users.

In April 2008, the Plaintiffs, Federal defendants, and intervenors jointly filed a proposed consent decree with the U.S. District Court to implement a settlement reached by the parties, which the court issued on April 30. Reaching this settlement prevented a complete year-round shutdown of ORV access to the six popular fishing areas. The consent decree is not expected to affect the fall or winter fishing season. It will also allow many areas of the beach to remain open to recreational use, even during the breeding season.

The consent decree provides for increased resource protection during the breeding season, while allowing for continued ORV access to the six key sites during the non-breeding season. It addresses individual species concerns and specifies buffer sizes and types, timing restrictions, and monitoring efforts to protect beach-nesting bird species, including piping plover, American oystercatcher, and four species of colonial waterbirds; and three species of federally protected sea turtles. It settles all claims raised in the lawsuit and does not set a precedent for the long-term ORV management plan or the regulation.

Compared to the Interim Management Strategy, the consent decree includes larger, non-discretionary buffer distances to protect beach-nesting birds once breeding activity is observed. It also includes a new prohibition on night driving on seashore beaches from 10:00 p.m. until 6:00 a.m. during the sea turtle nesting season. The consent decree does not directly mandate an outright closure of the six popular fishing areas. The National Park Service had to close these areas earlier this summer, however, to comply with the consent decree's criteria for determining buffer distances once breeding activity was observed. These areas are being reopened as breeding activity concludes. We are working hard to keep the public informed of beach access status.

Many sections of beach have remained open to ORV and pedestrian access during the breeding season. As of July 17, 2008, of approximately 66.6 total miles of Seashore beaches, 26.1 miles were open to ORVs and pedestrians, an additional 25.5 miles were open to pedestrians only (totalling 51.6 miles open and accessible to pedestrians), 3.7 miles were "open to pedestrians" but access was not practical, and 11.3 miles were closed to ORVs and pedestrians to protect breeding and nesting areas.

Preliminary Results of Resource Protection Measures Taken in Accordance with the Consent Decree

Although the breeding season is not yet completed, it appears that actions taken under the consent decree have been beneficial for resource protection. Under the consent decree, the Seashore has experienced an increase in the number of breeding pairs of piping plover from 6 pair in 2006 and 2007, to 11 pairs in 2008. As of July 19, 2008, there were 83 sea turtle nests on the Seashore compared to 49 nests last year at this time.

S. 3113

S. 3113 would reinstate the Interim Strategy for ORV use at the Seashore and declare the consent decree inapplicable. A return to managing the Seashore under the Interim Management Strategy would result in a reduction in the size, frequency, and timing of the buffers protecting federally and state listed species, and a likely reduction in the increase in nesting activity observed in 2008.

We reiterate our commitment to providing for everyone's enjoyment of Cape Hatteras National Seashore's wonderful resources to the greatest extent possible while ensuring protection of park resources, including federally protected species, for this and future generations. We strongly believe that completion of the long-term ORV management plan and special regulation is the best way to involve all interested parties, including the general public, and meet the Service's responsibilities under the Endangered Species Act, National Park Service Organic Act, Cape Hatteras National Seashore enabling act, Migratory Bird Treaty Act, and other applicable laws. Through this process, the National Park Service will determine how to provide appropriate resource protection and reasonable visitor access at the Seashore. While we continue to implement the consent decree, we are actively working with all interested stakeholders in the development of the regulation and plan, and we look forward to continuing to work with the subcommittee, the local communities, and the involved stakeholders as these processes move forward.

Mr. Chairman, that concludes my testimony. I would be glad to answer any questions that you or other members of the subcommittee may have.

S. 3148

Mr. Chairman, thank you for the opportunity to appear before you to present the views of the Department of the Interior on S. 3148, a bill to modify the boundary of the Oregon Caves National Monument, and for other purposes.

The Department supports the intent of S. 3148 as consistent with the General Management Plan (GMP) for the park but recommends deferring action on the bill to give us the opportunity to explore ways to maintain continuity and interagency coordination on issues related to forest health and recreational opportunities.

S. 3148 would adjust the boundary of the Oregon Caves National Monument to include the addition of approximately 4,070 acres to enhance the protection of the

resources associated with the monument and to increase public recreation opportunities. The lands that would be added are currently managed by the U.S. Forest Service as part of the Siskiyou National Forest.

In 1907, the Secretary of the Interior withdrew approximately 2,560 acres for the purposes of establishing a national monument. The 1909 presidential proclamation establishing Oregon Caves National Monument included only 480 acres. The monument was managed by the U.S. Forest Service until its administration was transferred to the National Park Service in 1933. The remaining withdrawal outside of the monument is administered by the USFS as part of the Siskiyou National Forest. This bill restores these lands to the monument boundary.

There would be no acquisition costs associated with the boundary expansion and while a formal estimate has not yet been established, we anticipate National Park Service's management, administrative, interpretive, resource protection, and maintenance costs could be approximately $300,000–$750,000 annually.

The explorer Joaquin Miller extolled "The Wondrous marble halls of Oregon!" when speaking about the newly proclaimed Oregon Caves National Monument in 1909. Oregon Caves is one of the few marble caves in the country that is accessible to the public. This park, tucked up in the winding roads of southern Oregon, is known for its remoteness, the cave majesty, and the unusual biota. The park is located in the Siskiyou Mountains and is part of a bioregion that has among the nation's highest biodiversities of vascular plants and animals—more than is found even in the tropics. The high rate of biodiversity is due to the diverse temperatures, moisture regimes, climates, bedrock, and productivity. The serpentine caves, cliffs, streams, springs and granitic formations seem to be just the right size for diversity—not so large that rare plants will continue to propagate, but not too small that extinction is high or migrants cannot find it.

The stream flowing from the cave entrance is a tributary to a watershed that empties into the Pacific Ocean. There are no human-made obstructions that would prevent salmon migration, which makes this the only cave in the National Park Service with an unobstructed link to the ocean.

The caves are nationally significant and a favorite visit for school kids and travelers alike. They remain alive and healthy because of the watershed above them. The park recognized this when developing the 1998 GMP and accompanying Environmental Impact Statement. The plan recommended the inclusion of the watershed into the park to provide for better cave protection and to protect the surface and subsurface hydrology and the public water supply. Because of changes in the recreational use of the lands since that time, additional discussions with the USFS are warranted.

S. 3148 would designate approximately 7.6 miles of these waterways as wild, scenic, or recreational under the Wild and Scenic Rivers Act, including the first subterranean designated waterway in the country, the River Styx, which flows through the caves. This designation provides no additional protections to land and water resources.

S. 3148 also provides authority for the Secretary to protect the water quality—in the caves and for public consumption—and to administer the lands in accordance with current laws and regulations. The Secretary is also directed to carry out ecological forest restoration activities that would establish a fire regime, manage revegetation projects, and reduce the risk of losing key ecosystem components. The land that this bill would transfer is categorized by the U.S. Forest Service as condition class 3—high risk of fire. Most of it is also designated as Late Successional Reserve under the Northwest Forest Plan. We understand that the Forest Service is currently working on a multi-year effort to reduce fuels under a comprehensive forest plan which is intended to help restore the appropriate role of fire in the ecosystem, which in turn would benefit monument resources that are at risk from fire and fire suppression damage.

Section 7 of S. 3148 provides for voluntary relinquishment of grazing leases or permits by permittees to the Secretary of the Interior for authorized grazing on BLM-managed lands within the Billy Mountain Grazing Allotment. Under the bill, the Secretary is required to accept the donation of those permits or leases from grazing.

The Billy Mountain Grazing Allotment is located 15 miles from the OCNM boundary, and the proposed legislation does not identify a clear link between this allotment and the monument. This grazing allotment has been designated under the Medford Resource Management Plan, and subsequent changes in designation are possible through the land use planning process if land and resource data indicate that grazing should no longer be supported on this allotment.

The BLM is opposes this provision. However, the BLM also recognizes the value of working cooperatively and collaboratively with local stakeholders to fulfill its multiple use mission on BLM lands.

While the transfer of these lands to the National Park Service would increase interpretive and educational opportunities for visitors, the Department finds it important to acknowledge and bring to the committee's attention a current recreational activity that would be affected by enactment of this legislation. Hunting is allowed by the U.S. Forest Service on the lands in question. As currently drafted, the legislation would extend the monument boundaries in a manner that prohibits continuation of hunting on these lands. The Department supports continuation of the diverse and traditional recreation opportunities on these lands

To insure issues affecting the current forest health activities and recreational opportunities on the lands are adequately considered, we recommend the committee defer action on the legislation at this time. We will continue our discussions with the U.S. Forest Service on these matters.

Should the committee decide to move ahead on the legislation, the Department recommends one technical amendment to the language involving the transfer of the land from one Federal agency to another.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions that you may have.

Suggested technical amendment to S. 3148

On page 5, line 14, after "transfer" insert "administrative jurisdiction of"

S. 3158

Mr. Chairman, thank you for the opportunity to appear before you today to present the views of the Department of the Interior on S. 3158, to extend the authority for the Cape Cod National Seashore Advisory Commission.

The Department strongly supports enactment of S. 3158, which would amend Section 8(a) of Public Law 87-126 to extend the life of the 10-member Cape Cod National Seashore Advisory Commission (commission) from 2008 until 2018. The Administration transmitted a similar proposal to Congress on May 19, 2008.

The commission was authorized in 1961, as part of the national seashore's enabling legislation and began operation in 1966. It has been legislatively and administratively reauthorized several times. The commission was last reauthorized for a ten-year period by Public Law 105-280 and is set to expire on September 26, 2008.

The commission is an exemplary example within the National Park System of a partner in cooperative land stewardship. Its purposes are to advise park management on questions relating to private land ownership and occupancy inside the boundaries of the national seashore, and on the management of recreational activities. Membership consists of one representative from each of the six lower cape towns, two representatives from the Commonwealth of Massachusetts, one representative from Barnstable County, and one representative of the Secretary of the Interior.

Cape Cod National Seashore, located in eastern Massachusetts, was authorized by Public Law 87-126 in 1961, and established in 1966 with a unique pattern of land ownership and management. The six lower cape towns, from whose lands the Cape Cod National Seashore was carved, retain ownership of numerous parcels within the park including ponds, beaches, parking lots and roads. In addition, more than 600 parcels inside the park are privately owned. Under a unique landowner arrangement, sometimes referred to as the "Cape Cod Formula," these parcels are expected to remain in private hands. However, activities on these lands can have profound effects on protected resources within the national seashore, creating a need for constructive and creative dialogue among landowners and park managers.

The Cape Cod National Seashore Advisory Commission is a valuable asset that enhances communication between park managers and local communities and has established an excellent reputation as a facilitator of vital public/private dialogue. Frequent use of subcommittees dedicated to the exploration of specific questions allows local opinion leaders to remain involved. At the same time, it permits numerous parties to have direct access to park management through dozens of hours of consultation that park staff would be otherwise unable to support either individually or in public hearings.

The commission's state and local representatives participate actively, and they strongly support its continuation. The cost of administering the Commission is minimal, approximately $7,000 annually, and is covered by the park's operating budget.

Mr. Chairman that concludes my prepared remarks. I would be happy to answer any questions you or other members of the subcommittee may have.

S. 3247

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior on S. 3247, a bill to provide for the designation of the River Raisin National Battlefield Park in the State of Michigan.

At this time, the Department recommends deferring action on S. 3247. Our recommendation does not detract from the significance and importance of this battlefield site and the historical events associated with this major engagement of the War of 1812. We believe that the special resource study and the national historic landmark nomination currently underway should be completed so a determination can be made if the site is nationally significant and is both suitable and feasible to be designated as a unit of the National Park System.

S. 3247 directs the Secretary of the Interior to accept the donation of real property from willing landowners in Monroe or Wayne Counties, Michigan, relating to the Battles of the River Raisin and their aftermath. If sufficient acreage to permit efficient administration is donated, the Secretary shall designate the acquired land as a unit of the National Park System. The new unit would be known as the "River Raisin National Battlefield Park."

Public Law 109-429, signed by President Bush on December 20, 2006, authorized the Secretary of the Interior to complete a special resource study of sites relating to the Battles of the River Raisin on January 18 and 22, 1813 and their aftermath. The study would provide alternatives for the appropriate way to preserve, to protect, and to interpret these sites and resources. Those alternatives would include recommendations on whether the area could be included as a new unit or part of an existing unit of the National Park System, or if the Federal government is the most appropriate entity to manage the site.

The National Park Service has begun work on the special resource study and preliminary evaluation indicates that the site would qualify as a national historic landmark. There is intact archaeological evidence of the site; and archaeologists within the National Park Service's Battlefield Protection Program say that if the archaeology is preserved, the site has impressive integrity as a battlefield.

We believe the study process should be allowed to continue in tandem with the national historic nomination. With public involvement, these two efforts will provide needed information to determine the best path for preservation and interpretation of the battlefield. We expect both to be completed in 2-3 years from now.

The battles of the River Raisin were among the largest and most tragic engagements of the War of 1812. They were fought where the River Raisin enters Lake Erie at Frenchtown, or present day Monroe. Only 33 of the 934 American soldiers who fought in the battles escaped death or capture. The massacre of wounded soldiers by Indians on January 23, 1813, shocked people throughout the Northwest Territories. This was later known as the "Massacre of the River Raisin."

The River Raisin was left a desolate, nearly abandoned settlement for eight months following the massacre. It was liberated on September 27, 1813, when Colonel Richard M. Johnson's Kentucky cavalry, led by men from the River Raisin, rode into the settlement. Although the British could not return, destruction was so severe that the River Raisin settlement remained desolate and impoverished for five years after the battle.

Until recently, the site of the main battlefield was occupied by an abandoned paper mill and listed as a brownfield site. However, the city of Monroe has received $1 million in grants and loans from the Clean Michigan Initiative and the Michigan Department of Environmental Quality to remove the structures and mitigate any polluted soils. An archaeologist monitored the removal and cleanup activities at the site, which has recently been transferred to public ownership.

That concludes my testimony. I would be happy to answer any questions you or other members of the subcommittee may have.

S. 3226

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you to present the views of the Department of the Interior on S. 3226, a bill to rename the Abraham Lincoln Birthplace National Historic Site in the State of Kentucky as the "Abraham Lincoln Birthplace National Historical Park".

The Department supports enactment of S. 3226, as we believe that the term "national historical park" is a more appropriate designation for the Abraham Lincoln Birthplace site than its current designation. This bill is based on an Administration legislative proposal that was transmitted to Congress on May 8, 2008.

Abraham Lincoln, one of our most revered Presidents, was born February 12, 1809, in a one-room log cabin on the Sinking Spring Farm near Hodgenville, Kentucky. This site, where the Lincoln family lived until 1811, was established as the

Abraham Lincoln Birthplace National Historic Site in 1916. This 116-acre site features a memorial building that preserves an early 19th century Kentucky cabin, symbolic of the one in which Lincoln was born.

In 1811, the family lost title to their Sinking Spring Farm and moved ten miles away to 30 leased acres in the Knob Creek Valley. It was here that young Abraham first attended the 'Blab Schools,' so named because the children recited their lessons aloud. It was also here that a third child was born to the family, Thomas Lincoln, Jr., who survived only a short time. The Lincolns lived at Knob Creek Farm until 1816, when they moved to Indiana. Public Law 105-355, enacted in 1998, authorized the acquisition of Knob Creek Farm, and the 228-acre parcel of land was donated to the National Park Service in November 2001. This acquisition added a second unit to the Historic Site.

Because the Historic Site now has two non-contiguous sites, its 2006 General Management Plan recommends seeking legislation to change its name to "Abraham Lincoln Birthplace National Historical Park," which would make the name consistent with other parks that have historic resources at multiple sites.

This legislation proposes a name change only. Costs associated with the name would be minimal and would only involve changing the park name on signs, letterhead, and brochures.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions that you or members of the committee may have.

Senator AKAKA. Thank you very much, Mr. Wenk.

Mr. Holtrop.

STATEMENT OF JOEL HOLTROP, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. HOLTROP. Mr. Chairman, Senator Burr, thank you for the opportunity to present to the subcommittee the perspective of the Department of Agriculture on S. 3148, the Oregon Caves National Monument Boundary Modification. This bill would do three things.

Transfer approximately 4,070 acres of land from the Rogue River-Siskiyou National Forest to the Oregon Caves National Monument.

Designate six segments of river as part of the National Wild and Scenic Rivers System.

Provide for the termination of grazing use on a Forest Service managed grazing allotment adjacent to the monument.

The intent of these actions is to enhance protection of resources associated with the Oregon Caves National Monument and to increase public recreation opportunities in and around the monument. We applaud these intentions and share these goals. However we believe that this bill would not accomplish these goals.

A similar expansion proposal has been a part of the Oregon Caves National Monument General Management Plan since 1998. Since that time, the Forest Service and Department of Interior have not been jointly considering land status changes. The long standing policy of USDA and DOI is to avoid unilateral proposals that would change the status of lands.

Instead the approach has been to conduct a joint study fully open to public participation. Moreover, long standing direction from both Departments has been for mutual support and cooperation in management of lands under each jurisdiction. I want to assure you the Forest Service is fully committed to cooperative and mutually supportive management.

Now I'd like to talk briefly about a commitment to cooperation in resource protection on these lands. The land managers of the Rouge River-Siskiyou National Forest currently work very closely

with managers of the Oregon Caves National Monument on resource issues that cross boundaries. A primary goal of both the Forest and the Monument is to maintain and protect cave resources, hydrologic resources, watersheds and view sheds.

Critical landscapes are currently managed by interagency cooperation. These resources not only extend beyond the current monument boundary, but also extent well beyond the proposed expansion area. A great example of working to enhance resource protection across boundaries is the Rogue River-Siskiyou's commitment to improving forest health by addressing hazardous fuels.

The majority of the proposed expansion area is designated as late successional reserve, LSR for short, as defined under the Northwest Forest Plan. The LSR managed by the Forest Service within the expansion area is in fire condition Class Three, high risk of damaging, perhaps catastrophic wildfire. This danger is very real. This same ranger district experienced a very large fire in 2002, the Biscuit Fire, that burned more than a half million acres.

Currently the Rogue River-Siskiyou National Forest is using commercial harvesting in a coordinated multi-year effort to reduce fuels around the monument boundary and across the larger watershed and surrounding landscape. Some of the revenue from commercial treatments will be used to reduce the cost of fuel treatments on acres that can't be conducted commercially. Some of this revenue will be returned to the State of Oregon to support local schools and road maintenance.

The Forest Service is fully committed to providing a wide range of public outdoor recreational opportunities on this landscape. Visitors to National Forest lands in the area enjoy horseback riding, camping, backpacking and hiking as well as hunting and fishing. The Forest Service does and will work with the National Park Service and the local community to make the most of the recreational opportunities on and around the monument.

However if the bill is enacted as written, hunting will be prohibited from the proposed expansion area. The legislation directs the Secretary of Agriculture to accept any donation of a grazing permit by the permit holder for the Forest Service grazing allotment. If this donation is receiving, grazing would end on the entire allotment.

Regardless of what happens to this particular allotment. The Forest Service believes that grazing is an environmentally compatible use within this portion of the Rogue River-Siskiyou National Forest. We also believe that livestock grazing on public range lands continues to be an important and appropriate use of these lands.

Ranching contributes to the economic vitality of rural communities. It's tightly bound to the cultural identity of the West and provides for open space values on the private lands associated with public grazing. Wherever possible, we at the Forest Service want to ensure policies help to keep working ranches in operation and the land whole in the best tradition of conservation.

In closing we believe that commitment on the part of the Forest Service and National Park Service to actively cooperate in management is the best and most effective means to enhance resource protection and recreational opportunities across this landscape. To that end, we request the committee defer action on this proposal

pending further coordination. Mr. Chairman, this concludes my statement.

[The prepared statement of Mr. Holtrop follows:]

PREPARED STATEMENT OF JOEL HOLTROP, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE, ON S. 3148

Thank you for inviting me to testify on S.3148 the Oregon Caves National Monument Boundary Modification. The intent of the legislation is to enhance protection of resources associated with the Monument and to increase public recreation opportunities. To achieve these goals the bill would transfer approximately 4,070 acres of land from the Rogue River-Siskiyou National Forest to the Oregon Caves National Monument; it would designate six segments of rivers within the boundaries of the proposed transfer as part of the National Wild and Scenic Rivers system; and it would provide for possible termination of grazing use on a Forest Service-managed grazing allotment, a portion of which is located within the proposed boundary of the Monument.

The Department of Agriculture (USDA) does not believe that either of the bill's primary purposes, enhanced protection of resources or increased public recreation opportunities, would be effectively achieved by its enactment. We believe that interagency coordination is the best and most effective means not only to enhance resource protection and recreational opportunities but also, and perhaps more importantly in the long run, to increase the participation of local communities, governments, and interest groups in Federal land and resource planning activities. To that end, we request that the committee defer action on this proposal pending further coordination between the Forest Service and the National Park Service.

By way of background, the Oregon Caves National Monument is comprised of an area of approximately 480 acres located in the Siskiyou Mountains of southern Oregon. S. 3148 would expand the Monument boundary, through a land transfer to the Secretary of the Interior, to include approximately 4, 070 acres of land that are currently in the Rogue River-Siskiyou National Forest.

In order to better illustrate the Department's position, I would like to take this opportunity to discuss in greater detail a number of the bill's specific proposals as well as the current status of cooperative and mutually supportive management between the Rogue River-Siskiyou National Forest and the Oregon Caves National Monument.

Expansion Proposal

Section 4 of the bill would direct the Secretary of Agriculture to transfer the proposed expansion area to the Secretary of the Interior, and to adjust the boundary of the Rogue River-Siskiyou National Forest to exclude the transferred land. The 1998 Oregon Caves National Monument General Management Plan, developed through the public NEPA process, recommended a similar boundary expansion. No coordinated study or formal dialogue between the Departments (beyond that provided under NEPA during development of the 1998 plan) has taken place in the intervening period.

The longstanding policy of USDA and DOI is to avoid unilateral proposals to change the status of lands. Instead if land change status is to be considered, the Departments' approach has been to conduct joint study, fully open to public participation. Moreover, longstanding direction has been for mutual support and cooperation in management of lands under each jurisdiction. The U.S. Forest Service is fully committed to cooperative and mutually supportive management across our respective jurisdictions.

Protection of Resources

The land managers of the Rogue River-Siskiyou National Forest and the Oregon Caves National Monument currently work very closely together on areas of mutual interest. The Forest Service and National Park Service managers mutually support the following three specific goals:

1. Maintaining and protecting cave resources, hydrologic resources, watersheds, and view sheds. Critical landscapes, including cave resources and watersheds, are managed by interagency collaboration. These resources, and the need to manage them in a cooperative manner, not only extend beyond the current Monument boundary but also extend well beyond the proposed expansion area. Mere expansion of the Monument boundary would do little to further enhance resource protection of these landscapes and resources.

2. Improving forest health by addressing hazardous fuels. The majority of the proposed expansion area is designated as "Late-Successional Reserve" (LSR) as defined under the Northwest Forest Plan. These areas are intended to serve as habitat for late-successional and old-growth related species. A majority of the LSR landscape within this watershed, and the larger surrounding landscape managed by the Forest Service, is in fire condition class 3—high risk of damaging, perhaps catastrophic, wildfire. Currently the Rogue River-Siskiyou National Forest is using commercial harvest in a coordinated, multi-year effort to reduce fuels, both around the immediate vicinity of the Monument and across the larger watershed and landscape. The Rogue River-Siskiyou National Forest plans for approximately 1550 acres of fuels treatment projects within the proposed expansion area. Four hundred and forty acres will be treated over the next several years. Of those acres, approximately 100 acres will be treated by commercial harvest with volume estimated at 560 thousand board feet and an appraised value of approximately $168,000. The remainder will be treated noncommercially. These treatments are designed and implemented to help restore the historic role of fire in this ecosystem and will help ensure that the forest attributes intended for the LSR, including bigger, older, more fire resistant trees, remain intact. To that end, we fully endorse the intent of section 6 of the proposed legislation to have forest restoration activities continue on the proposed expansion area. The hazardous fuel challenge in this region -and the danger of catastrophic fire-crosses all jurisdictions and is one we all must work together to address.

3. Minimizing any potential impacts from harvest, grazing, mining, and road construction. The Forest Service is fully committed to its multiple-use mission on National Forest System lands. Sustainable timber harvesting, grazing, and special forest products harvesting, as well as providing for a diversity of recreation opportunities, including hunting and fishing, help support the local economy. Returned receipts to states from commercial activities on National Forest lands play an important role supporting local public infrastructure, including schools and roads.[1]

On the National Forest lands that surround the Monument, timber harvesting, grazing and special forest product harvesting (i.e. bear grass, firewood, mushrooms, etc.) are allowed only if they meet resource objectives, as described above. Road management is limited to maintenance and reconstruction activities; no new roads are planned to be built within the area. Moreover, interagency collaboration provides additional oversight of these types of multiple-use activities.

Expanding and improving tourism and recreational opportunities

Current recreation on the portion of the National Forest proposed to be transferred includes horseback riding, hunting and fishing, gathering, camping, backpacking, and hiking. Interagency coordination maintains access to a full range of recreational opportunities which enhances the experience of both Monument and National Forest visitors. Executive Order 13443, issued in August 2007, directs the managers of national parks, forests, and other public lands, consistent with agency missions, to "facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat." If the bill is enacted, we understand from the National Park Service that hunting would be prohibited from the 4070 acre proposed expansion area. The Forest Service is fully committed to working with the National Park Service and the local community to provide for and to enhance a full spectrum of public outdoor recreational opportunities.

Relinquishment and Retirement of Grazing Permits

Section 7 of the proposed legislation would direct the Secretary of Agriculture to accept any "donation" of a grazing permit by the permit holder for grazing on the Forest Service managed Big Grayback grazing allotment, and if such a donation is received, ensure an end to grazing on the entire allotment. Under this legislation, only a small portion of the Big Grayback allotment would become part of the Monument, and it is not clear how permanently ending grazing on a large area of land outside the Monument will further the legislation's purposes of enhancing resource protection and recreation opportunities on the Monument.

The Forest Service believes that grazing is an environmentally compatible use within this portion of the Rogue River-Siskiyou National Forest. Livestock grazing on public rangelands has been and continues to be an important and appropriate

[1] 16 U.S.C. 500 directs 25% of receipts from a National Forest to be returned to the state where the National Forest is located; the state then distributes to the county where the National Forest is situated for public schools and roads as the state may prescribe.

use of our public lands and is important to the economic vitality and cultural identity of many communities. We recognize that most ranchers are good stewards of the land, and that they are essential contributors to retaining rangelands as open space and working lands across the Nation. The United States is losing important working rangelands to development all across the Nation. The loss of open space results in fragmentation of the rangelands into smaller, more isolated patches. The loss of open space affects our air, water, and vegetation, and degrades wildlife habitat; increasingly these former rangelands are developed into part of the wildland/urban interface. Development of open space is driven by a multitude of social and economic factors, some of which are beyond the mission or ability of the Forest Service to address. However, for our part, we want to ensure that Forest Service policies help to keep working ranches in operation and the land whole, in the best tradition of conservation.

The permit holder's family has historically held permits on this allotment since 1937. The current permit was issued 2002 and will expire in 2012. A revised management plan for the allotment was issued in February, 2008 following an Environmental Assessment that was completed in October, 2007. The revised plan has not yet been issued, pending an appeal resolution under the National Environmental Policy Act (NEPA).

Absent a voluntary waiver of the permit by the permit holder, the Forest Service generally only retires grazing permits through the public land use planning processes. The current permit holder may waive the permit at any time. If the permittee waives the permit back, the Rogue River-Siskiyou National Forest currently has the discretion to utilize the land within the parameters of the Forest's Land Management Plan. Options for use of the land include issuing the permit to a new holder if the base acres requirement is met, holding the allotment vacant, or retiring the allotment. We note that if the legislation is enacted and the permit is not waived, the permit on the National Forest portion of the allotment, beyond the proposed expansion area, would continue as a valid use. Further, the Forest Service would not be responsible for enforcement of livestock exclusion, including fence construction and range improvements, on the portion of the allotment in the proposed expansion area, since that land would be transferred to the Secretary of the Interior.

We have other concerns with section 7. For example, section 7 does not indicate how the allotment would be managed should the permittee opt not to relinquish the permit, or in what order the transfer of the land and the waiver of the permit would occur. In addition, while section 7(a) would require a permanent end to grazing on the allotment if the permit is "donated," section 7(b) indicates that a portion of a grazing permit could be donated. We also have concerns with some of the terminology in section 7. For instance, one example is the use of the term "donation", a concept that is not applicable to Forest Service grazing permits. The Forest Service uses the term "waiver" to describe a permittee's voluntary relinquishment of a grazing permit.

Consequently, the Forest Service opposes this provision. However, the Forest Service also recognizes the value of working cooperatively and collaboratively with local stakeholders to fulfill its multiple use mission on Forest Service lands.

Wild and Scenic Rivers

Section 5 of the proposed legislation provides for the addition of six river segments to the National Wild and Scenic Rivers System (NWSRS). The Siskiyou National Forest analyzed all tributaries to the Illinois River on National Forest System lands for eligibility for inclusion in the NWSRS as part of a 1989 settlement agreement to an appeal of the Land and Resource Management Plan. None of the four rivers included partly or entirely in the current Monument expansion proposal were found to meet the criteria for eligibility at that time. The Forest Service would suggest that, at minimum, the segments within the proposed expansion area be re-evaluated for their eligibility for the NWSRS.

Thank you for the opportunity to testify on this legislation. I would be pleased to answer any questions you may have.

Senator AKAKA. Thank you very much, Mr. Holtrop.

I would like to begin with a question for Mr. Wenk regarding S. 3247, the River Raisin National Battlefield bill. I understand that the Park Service believes that the site and its history are significant. However, and you did state in your testimony, you would like the opportunity to complete the suitability study to determine the best way to preserve and interpret the battle and battlefield and

you did mention in your testimony that you think it will take about two to 3 years to complete the study.

My only question is, "Why is it going to take that long?"

Mr. WENK. Mr. Chairman, the typical study for a new area study or special resource study of the National Park Service typically takes 2 to 3 years and costs approximately $300,000 to do that. We did launch the study in April of this year. The first public meetings are scheduled for October of this year.

There is reason to believe based on preliminary work that's been done at the National Historic Landmark Study with the city of Monroe, that it is nationally significant or has national significance. The question of suitability and feasibility can only be answered by going through the complete study. That's just, sir, the time that it takes to get a study done.

Senator AKAKA. Thank you for the explanation. I would like to ask you a question regarding S. 3113, a bill regarding off-road vehicle use in the Cape Hatteras National Seashore. If this bill is enacted into a law and the court decree is overturned what do you see as the most significant, on the ground impact?

Mr. WENK. I think there's two ways to look at the impact, sir. One of the ways is to look at the effects on the natural resources, the endangered species. We know that under the consent decree that we had an increase in the number of nesting pairs of endangered species, the piping plover and of the fledglings from those nestings there.

We know we've had an increase in other species that are protected either by the Federal Government or under state government. We also know that there's been an increase in the amount of nests of the turtles. So one side is that we, if we were not to continue with the consent decree, we may see, some of those gains not being able to be sustained.

On the other hand if it was rolled back there would be more beach space or beach access that would be available. The setbacks that are required under the consent decree are greater in distance from nesting pairs from fledglings than they would be under the consent decree. So there is a difference in the amount of beach access at particular times of year.

I might say that currently 3 of the 6 fishing areas are at least partially open. We expect that all six will be open in September, and that the consent decree will not affect the fall and winter fishing seasons at Cape Hatteras.

Senator AKAKA. Thank you. Mr. Wenk, I would like to ask you about S. 3148, Oregon Caves National Monument Boundary Expansion. I understand that it is the Administration's position generally, to oppose the transfer of lands from the Forest Service to the National Park Service. However, can you tell me from the Park Service's perspective whether or not the land issued here would be suitable for addition to the monument?

Mr. WENK. Mr. Chairman, in 1998 and 1999 there was a general management plan done with considerable public involvement and what that general management plan looked at was how the ecology of the cave and their environments, including the Lake Creek and Cave Creek watersheds, could be offered additional protections. In addition to the monument's water supply, protection of the source

of that supply which is on these proposed additions, would offer additional protection to the viewsheds from the monument's developed areas and the monument's trails would be further enhanced.

So, we believe there are further protections that are included within there. Therefore they are suitable.

Senator AKAKA. Let me now ask for questions from my colleague, Senator Burr.

Senator BURR. Thank you, Mr. Chairman. I would also ask unanimous consent to send additional questions to our witnesses because I will focus on Hatteras, but I do have questions on other things.

Senator AKAKA. No objection. They will be included.

Senator BURR. Dan and Joel, thank you for being here. Dan, I'm going to focus on you and let Joel off the hook. As it relates to the Cape Hatteras National Seashore, during the time in which the Interim Management Plan was followed, did the National Park Service comply with the terms of the formal biological opinion?

Mr. WENK. We did comply with the reasonable and prudent measures that were within the terms of the conditions of that original 2006 biological opinion. However, we did fail to meet some of the performance measures that were contained in there. Therefore, we had to re-engage in negotiations with the Fish and Wildlife Service on those terms and measures.

Senator BURR. During the court approved agreement time that it's been in place, which is just under 3 months if I remember. Has there been any increase in beach traffic anywhere else because of the limitations that have been put on Hatteras?

Mr. WENK. Are you saying any other place within the National Park System or within different segments of the beach? I want to make sure I'm answering your question.

Senator BURR. Given that there have been limitations placed that didn't exist before on beach traffic, it would be all from the seashore area.

Mr. WENK. I'm not aware that there's any increased traffic off of the beach area. I do know that on 1 day over the Memorial Day weekend, we had a situation with beach traffic in terms of concentration of the ORV traffic that we had to actually sort of, if you will, allow beach traffic, monitor or control the traffic through an area because of the size of the open space. But that only happened on 1 day.

I can tell you, sir that the amount of area closed in general, has been very close to the same under the Interim strategy or under the consent decree. The issue obviously serves where it's closed in terms of the total miles on the beach.

Senator BURR. So for 2008 has the visitation of the Hatteras National Seashore—is it up or is it down?

Mr. WENK. It's down about 15 percent.

Senator BURR. What's the average for the Park Service in total?

Mr. WENK. In total, I don't know. I did look at some numbers in preparation for this.

Senator BURR. It's down 1.2 percent. I'll save you looking it up.

Mr. WENK. I do know Cape Lookout is down 18 percent. I know that Cape Cod is 2 percent. Regarding seashores, Padre Island is

down. As are other islands, Assateague, Cumberland and Fire Island.

Senator BURR. Do the others fall within the framework of what the Park Service totally is down. But my question gets to the heart of the fact that there's something that's unpredictable about outer seashore. It's not just affected the visitation of Hatteras.

It's affected the visitation of Lookout and of other areas. Senator Dole put this incredibly well that part of the balance we have to look at from a standpoint of our side is what's the economic impact. Could this decision be economically devastating to those in the area? A 14.5 percent reduction in visitation, a larger loss of economic business at Lookout, down the Island is a significant impact when you're talking about the period that truly is the money making time of this area of North Carolina.

You gave a statistic. I don't question the statistic. That's the number of fledglings off the nest. I interpreted you to insinuate that this was the direct result of this new strategy, of this rule in place.

Now this rule has been in place for 3 months. Can you honestly make that assessment based on a 3-month period?

Mr. WENK. Sir, the only thing I can tell you is that the difference between 2007 and 2008. I cannot tell you if that's a trend that can be sustained or will be sustained. I just can tell you in terms of the observation. This was what was observed in 2007. This is what's observed in 2008.

Senator BURR. By the same?

Mr. WENK. It's a fact.

Senator BURR. By the same token you can't tell me if the double digit decline in visitation is an aberration or it's just a continuation.

Mr. WENK. That is correct.

Senator BURR. Ok. I thank you. Thank the chairman.

Senator AKAKA. Thank you very much, Senator Burr. Now I'd like to call on Senator Craig for any comments or questions he may have.

Senator CRAIG. Thank you very much, Mr. Chairman. I think in light of what Senator Burr's concerns are, gentlemen, I'm always frustrated when we see the restriction of OHV use on land intended for recreational use. We try to designate for purposes of resource value and resource balance.

At the same time we certainly designate properties that are for certain types of use. Then to step in and start restricting that use additionally, to me, denies Americans a right to enjoy their natural heritage in many ways. Certainly OHVs allow for a greater number of our people to enjoy our Nation and what it has to offer.

The economic consequences of these kinds of activities are real. We all know there are types of resources that properly managed can utilize those. There are others properly managed shouldn't have them on it.

I think I understand that. I would hope that that would be true in the situation that Senator Burr is speaking to. In that sense I think S. 3113 which is the legislation you're dealing with, Richard, as it relates to the interim plan for National Parks and in this case beach use.

Also, Mr. Chairman, there's another piece of legislation S. 3148 that deals with boundaries on the Oregon Caves National Monument to include about 4,000 acres of forested lands. This would increase the size of that monument by ten fold from its current 480 acres. In these areas, I know that my colleagues from Oregon have some frustration about it.

But grazing plays a typical role in ranching. Ranchers cannot afford, I think, to compete with environmental organizations that have large accounts for funding their purposes. I found that time and time again where we, in creating public policy really have to become the reasonable moderator. That's something that I think is tremendously important.

In the West that I represent environment values are awfully important along with grazing, all kinds of recreational activities. I'm always cautious when I see overly restrictive designations in areas that probably, I would find or most would find it hard to justify, when in fact the resource itself has been designated or the one that we're focused on designating.

Also, one of the things that I think we're finding increasingly important out West as it relates to access and all of that is in a balance so that we can get in to fight fires and deal with the increased intensity of these fires in a way that allows our management the flexibility of doing that.

Anyway those are some of my frustrations I think on these two pieces of legislation that are before the committee today along with several others. I'll approach those with due caution. Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator Craig. I want to thank our two witnesses on this panel very much for being here today. We will keep the record open for any further statements or questions that we may have, that we'll submit to you.

Thank you very much.

Senator CRAIG. I would also ask unanimous consent that my full statement be included in the record.

Senator AKAKA. Without objection it will be included in the record, Senator Craig.

[The prepared statement of Senator Craig follows:]

PREPARED STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

Restricting OHV use on land intended for recreation use is restricting the right that every American has to enjoy our natural heritage. OHV's allow for a greater number of people to enjoy what our nation has to offer.

We must also consider the economic consequences-when the major attraction of a small town is a beach, it doesn't help to shut it down.

While I understand the importance of keeping America's public lands peaceful and pristine.

I don't think that OHV use would detract from this, in fact, it could increase visitation as it diversifies the activities one can partake in at various sites.

It seems to me that were the residents of an area given the option of protecting a threatened species and recreating vs. protecting a species or recreating, they would go with the first option.

Opinions are divided over the importance of the some oceanic creature's habitat and recreation on the beaches.

In some cases, the voices of the locals are being suppressed in favor of the more outspoken, though not necessarily correct, and structured organizations with more resources at their disposal.

Many times these organizations are regionally or nationally based entities that do not have a stake in the local community.

It is not only the locals who enjoy recreating on the federal lands. Visitors from all over the United States face disappointment as more and more of their land is designated as critical habitat.

How can we determine at this point whether or not a plan that has been implemented for less than a year (from June 13, 2007-April 2008) has resulted in success?

Environmentalists claim that the decline in shorebird population is due to the OHV usage which is unsubstantiated due to the lack of information.

The "decline" could be a result of a variety of factors. To consider the results inconclusive after one season is inappropriate.

STATEMENT ON S. 3148

Grazing plays a pivotal role in ranching. Ranchers cannot afford to compete with environmental organizations that have large amounts of funding at their disposal. It's important to ensure that buyouts are fair and not placing the ranchers at a disadvantage.

Ranchers should not be forced to give up private land needed for grazing in order to expand federal land holdings.

Another concern has been over thinning and restoration in the forests around Oregon Caves, which would be transferred from the Forest Service to the Park Service.

Should the forest be neglected, Oregon and neighboring states could face an increase of intense wildfires as a result.

The transfer of power is also a cause for concern. Undoubtedly the Forest Service has a different focus than the Park Service, which could lead to more a focus on the Oregon Caves while the forests become dilapidated.

A third concern has been over hunting on Park Service lands, which are generally off limits to hunting.µ Expanding the boundary will push hunters back, and they are generally opposed to locking up more land.

Hunting has the potential to fuel tourism. Restricting hunting rights even further is unfair to residents who rely on the patronage hunters can bring.

Considering the land was originally managed by the Forest Service, hunters have a reasonable expectation to not have their lands curtailed by a related agency.

Senator AKAKA. I would like to call up the second panel.

The Honorable Warren Judge, Chairman of the Dare County Board of Commissioners; Derb Carter, Director of the Carolina Office for the Southern Environmental Law Center; Coline Jenkins, President of the Elizabeth Cady Stanton Trust; and, William Braunlich, President of the Monroe County Historical Society.

I want to thank all of you for being here today to testify before the committee. I want to tell you that we appreciate your coming. Some of you have traveled from out of town. We appreciate your time and effort.

Your testimonies will certainly help the committee. I just want you to know that following your testimony you will be subject to questions, and also to ask you to please limit your remarks to no more than 5 minutes. Your complete statements will be included in the record along with any other materials you may submit.

Commissioner Judge, will you please proceed?

STATEMENT OF WARREN JUDGE, CHAIRMAN, BOARD OF COMMISSIONERS, DARE COUNTY, NC

Mr. JUDGE. Good afternoon and thank you, Senator Akaka, Senator Burr and Senator Craig. I'm Warren Judge, Chairman of the Dare County Board of Commissioners. On behalf of the 33,000 people who call Dare County their home and six million people who visit Dare County and the Outer Banks every year, it is my honor to appear before you to seek your support for S. 3113 to return the management of the Cape Hatteras National Recreational Area to the Park Superintendent.

I've attached supporting materials by outside counsel Holland and Knight.

The National Park Service created the Cape Hatteras National Seashore in 1937. In 1952, in an effort to alleviate the concerns of the people of Hatteras Island after taking miles of privately owned lands, Conrad Wirth, the Director of the Park Service sent an open letter to the people of the Outer Banks assuring them that there will always be access to the beach for all people whether they are local residents or visitors. His letter went on to acknowledge that the people who had lived in the area for generations would be responsible for caring for the tourists that would arrive to the newly created seashore and that these communities would enjoy the prosperity created by the Park.

Until April of this year, Director Wirth's vision for the Park has been carried out. For decades the National Park Service has balanced the rights of all Americans to access the seashore with the need to protect the Park's resources. In April of this year, special interest environmental groups put an end to the National Park Service's successful and accepted management principles.

As a result of a lawsuit and under the threat of an injunction closing even larger portions of the seashore, a consent order was issued by U.S. Federal District Court Judge, resulting in the closure of significant portions of the seashore to human access including the most popular swimming areas in the seashore and the traditional and world renown fishing areas. Special interest groups were relentless in their pressure on the park and the management in their effort to close the seashore. These special interest groups have no practical sense and advocate the removal of people from the Cape Hatteras National Recreational Area.

Contrary to Director Wirth's acknowledgement that and I quote, "Man is an integral part of nature and a very important consideration of designing solutions in dealing with nature." Senators, this an issue of access for all people to their favorite place in the recreational area, the backside beaches and tidal pools at Oregon Inlet or for Moms and Dads a great place to take their young children to experience the oceanside out of the wave zone. Cape Point is world renown for fishing. There is no better place in the world to drum fish.

Cape Point is where the Gulf Stream and the Labrador Current collide. This phenomenon brings surfers from all over the world. If you surf Hawaii and if surf Australia, you will surf Cape Point.

This is an issue of how heritage and our culture. It is about our people. Generations of Hatterasmen who are descendants of shipwreck victims. It is about the Migdett's, Burrus', Couch's, Dillon's, all who for generations have owned and operated family businesses on Hatteras Island.

There are hundreds of stories that I could share with you today about people whose businesses, as a result of this court order, have declined in some cases by as much as 50 percent since April, even as we are on the prime part of our season. Senators, there are no factories in Dare County. There are no corporate headquarters. We are hundreds of small business men and women.

We go to work everyday to provide for ourselves and to serve as hosts to millions of vacationers as they come to Dare County and the Cape Hatteras National Recreational Area. Many of them eke out a living and are content to do that for the opportunity to live

and to enjoy the outdoors that Hatteras Island provides. Government should not take that away. Government should do all that it can to preserve this way of life.

These same men and women that I have spoken about are the very ones who care for the environment and the beauty of the Cape Hatteras National Recreational Area. You will find them cleaning the beaches or guiding and protecting turtle hatchings. They'll cherish the Park's natural resources.

These are the same resources that attracted them to Dare County and attract the visitors upon whom all of our livelihoods depend. They, too want to protect these resources, but do not believe it should be done without thought of human impact. The Interim Management Plan that was adopted in 2007 worked. The birds and turtles were protected and the people had access to the recreational area.

The people of Hatteras Island understood and accepted the plan. It was developed by the National Park Service in conjunction with the U.S. Fish and Wildlife Service. It gave Park Managers the ability to manage.

That ended when those unwilling to balance interests, who are single minded in their pursuits filed legal action to obtain their goals without thought to the impact on small communities and to the working people who live in those communities. It should now be restored while we work together to come up with a permanent plan that accomplishes these goals. The people of Hatteras Island and Dare County are counting on you to help them to keep the promises made by those before you.

Please help us preserve our culture, our history, our way of life. Please support S. 3113. Thank you for this opportunity to appear before you today.

[The prepared statement of Mr. Judge follows:]

PREPARED STATEMENT OF WARREN JUDGE, CHAIRMAN, BOARD OF COMMISSIONERS, DARE COUNTY, NC

Thank you Senator Akaka (Mr. Chairman), I appreciate the opportunity to be here today. It is an honor and a privilege to represent the 33,000 people who call Dare County, North Carolina their home and the 6 million people who visit Dare County and the Outer Banks every year.

I am here today on behalf of those people to ask for your support of S3113 to return the management of the Cape Hatteras National Recreational Area to the Park Superintendent. I have attached supporting material by outside counsel, Holland and Knight.

The National Park Service created the Cape Hatteras National Seashore in 1937. In 1952, in an effort to alleviate the concerns of the people of Hatteras Island after taking miles of privately owned lands, Conrad Wirth, the Director of the Park Service, sent an open letter to the people of the Outer Banks assuring them that "there will always be access to the beach for all people, whether they are local residents or visitors." His letter went on to acknowledge that the people who had lived in the area for generations would be responsible for caring for the tourists that would arrive to the newly created Seashore and that these communities would enjoy the prosperity created by the Park. Until April of this year, Director Wirth's vision for the Park has been carried out. For decades the National Park Service has balanced the rights of all Americans to access the Seashore with the need to protect the Park's resources.

In April of this year, environmental groups put an end to the National Park Service's successful and accepted management practices. As a result of a lawsuit and under the threat of an injunction closing even larger portions of the Seashore, a consent order was issued by a U.S. Federal District Court judge resulting in the closure of significant portions of the Seashore to human access, including the most popular

swimming areas in the Seashore and the traditional and world renowned fishing areas. Special interests groups, in particular National Audubon and the Defenders of Wildlife, were relentless in their pressure on the Park and the management in their efforts to close the Seashore. These special interest groups have no practical sense and advocate the removal of people from the Cape Hatteras National Recreational Area contrary to Director Wirth's acknowledgment that "man is an integral part of nature and a very important consideration of designing solutions in dealing with nature".

Senators, this is an issue of access for all people to their favorite place in the Recreational Area. Have you ever been to Oregon Inlet? It is a first class location to surf fish, and has some of the best family swimming beaches you will ever find. The back side beaches and tidal pools offer moms and dads a great place to take their small children to experience the ocean outside of the wave zone. Cape Point is world renowned for fishermen; there is no better place in the word to drum fish. Cape Point is where the Gulf Stream and the Labrador Current collide. This phenomenon brings Surfers from all over the world. If you surf Hawaii and Australia, you will surf Cape Point. South Beach, too, is a world class beach and known the world over. You do not visit Hatteras Island without spending a day on South Beach.

This is an issue of our heritage and our culture. It is about our people; generations of Hatterassmen who are descendents of shipwrecked victims. It is about two brothers, Stocky and Anderson Midgett, who operated a bus from Oregon Inlet to Hatteras Inlet delivering supplies and people up and down the Island—the Beach was the highway. This is about John Couch, a second generation family business owner, who has provided services for visitors. It is about Allen Burrus a five generation family business owner. Allen's family has owned and operated a Grocery Store in the same location since 1866. Allen's grandfathers watched as the Federal Government took their land for the Cape Hatteras National Seashore Recreational Area, and promised them that they would always be able to hunt, fish, and have access to the ocean. It is about Carol Garris, a wife and mother who with her husband had the American Dream, to own their own business. They worked hard and were successful. When the Consent Degree closed many miles of beach, their business was devastated. Not only is their business in jeopardy, but they are facing personal financial ruin. This is about Carol Dillon, a 79 year old woman, a native of Buxton, who has operated the Outer Banks Motel just north of Cape Point for 50 years. Carol was at the Public Meeting in the early 1950's when Director Conrad Wirth promised the people of Hatteras Island and Dare County that taking their land and making it a National Recreational Area was in their best interests. The land would be preserved forever for all to enjoy.

There are hundreds more of these faces that I can share with you today. These are the people whose businesses, as a result of a Court's order, have declined by as much as 50% since April, even as we are in the prime part of our season. Senators, there are no factories in Dare County; there are no Corporate Headquarters. However, we are as American as you can be. We are hundreds of small businessmen and women; from charter boat captains to commercial fisherman, from fishing tackle stores to gift shops; from motels and cottages to rental homes; from variety stores to eco sports outlets. We go to work everyday to provide for ourselves and to serve as hosts to millions of excited vacationing visitors as they come to Dare County and the Cape Hatteras National Recreational Area for the times of their lives. Many eke out a living and are content to do that for the opportunity to enjoy the outdoors that Hatteras Island provides. Government should not take that away. Government should do all that it can to preserve this way of life.

These same men and women that I have spoken about are the very ones who care for the environment and beauty of the Cape Hatteras National Recreation Area. You will find them cleaning the beaches as they organize beach sweeps to remove litter and trash that is harmful to birds; sitting up all night waiting for a nest of turtle eggs to hatch and then guide them safely to the ocean protecting them from their natural predators on land. These same people have more knowledge of all the birds and nests on Cape Hatteras than any special interest group spokesman that will come before you. The Interim Management plan that was adopted in 2007 worked, the birds and turtles were protected and the people had access to the Recreational Area. The people of Hatteras Island understood and accepted the plan. It gave Park Managers the ability to manage. That ended when those, who are unwilling to balance interests, who are single minded in their pursuits, filed legal action to obtain their goals without thought to the impact to small communities and to the working people who live in those communities.

In a minute, you will hear from the attorney who represented those environmental groups in their efforts to close the seashore's beaches. He will no doubt tell you about his interpretation of the law, and about the correctness of his client's ac-

tions, about the failures of the National Park Service, and even provide you with statistics that he says support his view. Though other lawyers and biologists disagree with his opinions and statistics, he will not tell you that, nor will he tell you about the impact of his and his client's actions on the people of my community. While he may not care about the people of Hatteras Island and Dare County, these same people do care about the resources he says he is trying to protect. These are the same resources that attracted them to Dare County and attract the visitors upon whom all of our livelihoods depend. We too want to protect these resources, but do not believe it should be done without thought of the human impact. The Interim Management Plan provided the balance that we seek. It was developed by the National Park Service in conjunction with the U.S. Fish and Wildlife Service. It protected the resources of the Park and the interests of the community. It gave the National Park Service the flexibility to continue doing that. It should be restored while we all work together to come up with a permanent plan that accomplishes these same goals.

The people of Hatteras Island and Dare County are counting on you to help them, to keep the promises made by those before you. Please help us preserve our culture, our history, our way of life. Please support S3113.

[Resolution, background paper, and attachment 1 have been retained in subcommittee files.]

Senator AKAKA. Thank you very much, Honorable Judge. Now we will hear from Derb Carter. Will you please proceed?

STATEMENT OF DERB S. CARTER, JR., ATTORNEY, SOUTHERN ENVIRONMENTAL LAW CENTER, CHAPEL HILL, NC

Mr. CARTER. Mr. Chairman, Senator Burr, I'm Derb Carter with the Southern Environmental Law Center in Chapel Hill, North Carolina. Thank you for the invitation today to present our views on S. 3113. We represented the National Audubon Society and Defenders of Wildlife in the lawsuit that led to the consent decree that's now the subject of this legislation.

For the reasons that I will summarize, that are discussed in more fully in our written testimony, we ask the subcommittee to oppose S. 3113.

The consent decree requires the Park Service to implement specific management measures on Cape Hatteras National Seashore to protect wildlife until a final ORV management plan and special regulation is put in place. The consent decree was a product of negotiations between all parties to the lawsuit, Dare County, Hyde County, the Cape Hatteras Access Preservation Alliance, the Coalition of ORV groups, the National Park Service and of course my clients, Defenders of Wildlife and the National Audubon Society. All parties signed a consent decree and recommended to the court that it be entered, which the court did.

The Senate should honor this agreement and settlement negotiated in good faith by the parties to the lawsuit and approved by the court. As our beaches and shorelines have been developed, sea turtles and several species of water birds and shore birds have little place left to breed and nest except areas we have set aside for them, such as Cape Hatteras National Seashore. Congress has wisely chosen to preserve national seashores as a part of our National Park System to leave them unimpaired for future generations to enjoy.

The management measures to protect wildlife on the seashore required by the consent decree are the moderate protection recommendations of Department of Interior scientists that were requested by the National Park Service. We believe this peer reviewed scientific recommendations are the best scientific informa-

tion available on protection of these nesting birds and sea turtles. The preliminary results from implementation of these management measures under the consent decree are very encouraging as previously discussed by the Park Service.

The season is not yet over, and 99 sea turtles have pulled up on the beaches at night to nest. Only 82 nested on the seashore during the entire year last year.

Federally threatened piping plover breeding pairs and fledged chicks nearly doubled. Colonial waterbird numbers are up. One species black skimmer, which disappeared from the seashore last year returned to nest this year. In short, the management numbers required by the consent decree are working to protect and restore the wildlife on Cape Hatteras National Seashore.

While the temporary closures of areas for breeding birds have restricted access to some parts of the seashore beach. The vast majority has remained open to beach goers. Much has remained open to ORV users.

I was on Cape Hatteras point on Saturday. Currently approximately nine miles, of the 67 miles of seashore beach is closed for resource protection. Much of that closure will begin to come down and by the fall all of it will come down and the beaches will be fully open. Over 53 miles of the seashore beach are open and accessible to beach goers. Over 27 miles are available for ORV use.

On July 4th the National Park Service reported 2,557 vehicles on Cape Hatteras National Seashore beaches. To our knowledge no ORV has been denied access to the beach since the consent decree was entered. There's a lot of beach available for all users. Even sharing some of that beach with the wildlife that has little other place to go.

It also appears that many users are enjoying the beaches of Dare County. The Dare County Visitor Bureau reports that visitation measured by occupancy at hotels and rental homes was up 6.3 percent in May, the first month of the consent decree compared to May 2007 despite the sagging economy and high gas prices. As Senator Burr mentioned the drop in visitation to the seashore of 14 percent, we're aware of that figure. But it's also interesting to note that the drop in visitation to the seashore was 20.2 percent prior to the consent decree and has decreased to 10 percent since the consent decree was entered.

Let me conclude on a personal note. I've visited and driven on the beaches of Cape Hatteras National Seashore for 30 years to enjoy some of the best birding and fishing on the East Coast as many others have. I've observed the dramatic increase in vehicles and general use of that beach. I've also observed the dramatic declines in wildlife that has occurred during that period of time.

I agree entirely with Senator Burr that Cape Hatteras is a very unique and special place and a national treasure for all of our citizens. I believe the management measures in the consent decree provide much needed and appropriate protections to the seashore's wildlife. While allowing access for families, fishermen, water sport enthusiasts and ORV users and should remain in place until final ORV and management regulation is put in place.

I appreciate the opportunity to be here today and present these comments and look forward to any questions you may have.

[The prepared statement of Mr. Carter follows:]

PREPARED STATEMENT OF DERB S. CARTER, JR., ATTORNEY, SOUTHERN ENVIRONMENTAL LAW CENTER, CHAPEL HILL, NC, ON S. 3113

My name is Derb S. Carter, Jr. I am an attorney with the Southern Environmental Law Center in Chapel Hill, North Carolina. We represented the National Audubon Society and Defenders of Wildlife in the litigation that resulted in the consent decree that is the subject of Senate Bill 3113. This testimony is submitted on behalf of the National Audubon Society, Defenders of Wildlife, The Wilderness Society, and the Southern Environmental Law Center. Because the consent decree provides overdue protection of the natural resources of Cape Hatteras National Seashore and allows for appropriately managed off-road vehicle ("ORV") use, we oppose Senate Bill 3113, legislation that would mandate a return to management practices that were resulting in declines and disappearance of wildlife from the Seashore.

SUMMARY

On April 30, 2008, Dare County, Hyde County, an alliance of off-road vehicle advocacy groups, the National Park Service, the National Audubon Society, and Defenders of Wildlife entered a consent decree in federal court requiring the National Park Service to implement certain wildlife protection measures on Cape Hatteras National Seashore ("Seashore") until it fulfills a more than thirty-year old obligation under federal law to adopt a final ORV management regulation. Senate Bill 3113, if enacted, would nullify this consent decree, which was agreed to by all parties and approved by the court, and would instead reinstate previous management guidelines that resulted in declines and disappearance of wildlife on the Seashore. We urge this committee and the Senate to oppose any effort to enact this legislation.

The consent decree implements the recommendations of Department of the Interior scientists to protect wildlife species on Cape Hatteras National Seashore until a final ORV plan and regulation is adopted. The species management measures include temporary closures to prevent disturbance of birds during the critical nesting season and restrictions on night driving to protect nesting sea turtles. These measures are necessary to halt the precipitous declines of species on the Seashore. Preliminary monitoring results from the National Park Service are encouraging, and all species appear to be benefiting from the management measures required by the consent decree. In addition, the Department of the Interior and National Park Service are required to protect and preserve the Seashore and its wildlife. This consent decree is intended to bring the agency into compliance with its legal mandate regarding wildlife while it completes its work to comply with mandates to manage ORV use.

The species management requirements of the consent decree have not unreasonably restricted use of the Seashore. Residents and visitors are familiar with seasonal ORV prohibitions for resource protection and in front of the seven villages where ORV use is prohibited during the summer for families to enjoy sunbathing, swimming, and other nonvehicular activities.

Cape Hatteras National Seashore has approximately 67 miles of beaches. As of July 24, of the 67 miles of beaches on the Seashore, the area temporarily closed to ORV and pedestrian use for natural resource protection was 9.1 miles. In contrast, over 53 miles of beach are open and available for families to enjoy on foot at the Seashore. Similarly, 26.8 miles of the Seashore are available for ORV use. ORV users have taken advantage of these areas; on July 4, 2008, 2,557 vehicles used Seashore beaches.

The consent decree will remain in effect until the National Park Service adopts a final management plan and rule through a negotiated rulemaking process. It requires that the National Park Service publish the final ORV management regulation by April 2011. The consent decree makes clear that the final plan will replace the management requirements in the consent decree and the requirements in the consent decree are not binding on the negotiated rulemaking or the negotiated rulemaking committee.

BACKGROUND

In 1972, President Nixon issued Executive Order 11644 requiring federal land management agencies to publish regulations for all federal lands designating ORV areas and trails and ensuring ORV use does not harm natural resources.[1] National

[1] Exec. Order No. 11644, 37 Fed. Reg. 2,877 (Feb. 8, 1972).

Park Service regulations prohibit ORV use in national parks and seashores unless and until parkspecific ORV regulations are published.[2] While other national seashores have complied with the requirement to issue plans and regulations for ORV use,[3] Cape Hatteras has not.

In 2007, the National Park Service issued an "interim plan" for species management on the Seashore which in most respects simply reduced previous management of species to writing. In the decade prior to the "interim plan," protected colonially nesting waterbirds on Seashore beaches declined 86% and threatened piping plovers declined from 14 pairs in 1996 to 6 pairs in 2007.[4] The first year of the "interim plan," 2007, was one of the worst bird breeding seasons on record and two colonial waterbird species failed to successfully nest on the Seashore beaches at all.[5] Unsuccessful nesting attempts by threatened and endangered sea turtles exceeded successful nesting.[6] As a result, the Park Service exceeded the amount of incidental taking authorized under the Endangered Species Act for threatened piping plovers and threatened or endangered sea turtles on the Seashore.[7]

In October 2007, the National Audubon Society and Defenders of Wildlife filed a lawsuit against the National Park Service, challenging the "interim plan" for species management on the Seashore.[8] The organizations were concerned about the continuing decline of species on the Seashore and the fact the "interim plan" failed to implement the sciencebased management recommendations from Department of the Interior scientists. Dare and Hyde Counties and an alliance of ORV advocacy groups intervened in the lawsuit on the basis that they represented "local governments, ORV enthusiasts, recreational anglers, and ORV service providers . . . the parties that will be most immediately and directly affected by the outcome of this case."[9] On April 30, 2008, the U.S. District Court for the Eastern District of North Carolina approved a consent decree, agreed to and recommended to the court by all parties including the intervenors; it addressed driving on the beaches of Cape Hatteras National Seashore and the protection of wildlife there until a final ORV management plan is adopted.

CAPE HATTERAS NATIONAL SEASHORE CONSENT DECREE

The consent decree requires the National Park Service to publish a plan and regulations designating areas or trails for ORV driving on the Seashore, as required by federal law. The regulations must be published no later than April 1, 2011. In addition, to address declining wildlife populations, the consent decree requires that the National Park Service implement measures to protect breeding birds and sea turtles from disturbance until a final ORV management plan is adopted.

The parties to the consent decree are Dare County, Hyde County, Cape Hatteras Access Preservation Alliance, the National Park Service, the Department of the Interior, the National Audubon Society, and Defenders of Wildlife. The Cape Hatteras Access Preservation Alliance is an umbrella organization that includes the Outer Banks Preservation Association, the Cape Hatteras Anglers Club, and the North Carolina Beach Buggy Association.[10] All parties in the lawsuit supported the consent decree and recommended that the court approve it.

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[2] 36 C.F.R. § 4.10(a).

[3] Cape Cod National Seashore, Assateague Island National Seashore, Gulf Islands National Seashore, Fire Island National Seashore, and Padre Island National Seashore have regulations managing ORV use. See 36 C.F.R. §§ 7.65, 7.67, 7.20, 7.12, and 7.75. Cumberland Island National Seashore, Canaveral National Seashore, and Point Reyes National Seashore all prohibit off-road vehicles entirely. See http://www.nps.gov/cuis/planyourvisit/hours.htm; http://www.nps.gov/cana/faqs.htm; http://www.nps.gov/pore/parkmgmt/upload/lawsandpolicies—compendium2005.pdf. Of the ten national seashores, only Cape Hatteras National Seashore and Cape Lookout National Seashore have failed to enact regulations managing ORV use.

[4] Declaration of Walker Golder ¶ 5, filed in Defenders of Wildlife, et al. v. National Park Service, et al, Feb. 20, 2008 (summarizing North Carolina Wildlife Resources Commission data on Cape Hatteras National Seashore bird populations).

[5] Id.

[6] NATIONAL PARK SERVICE, CAPE HATTERAS NATIONAL SEASHORE: 2007 ANNUAL TURTLE REPORT 5 (2007) (reporting 82 nests and 115 false crawls during the 2007 season).

[7] See Letter from Pete Benjamin, U.S. Fish & Wildlife Service, to Mike Murray, National Park Service (April 24, 2007) (amending the U.S. Fish & Wildlife Service's biological opinion evaluating the interim plan and prescribing performance measures, including that the sea turtle nest to false crawl ratio be less than 1:1).

[8] Together, Defenders of Wildlife, The National Audubon Society, and SELC have over two million members and supporters total, with more than 60,000 members and supporters in North Carolina.

[9] Mem. of P. & A. in Supp. of Dare County, et al. Motion to Intervene in Defenders of Wildlife, et al. v. National Park Service, et al. 1, Nov. 28, 2007.

[10] Cape Hatteras Access Preservation Association website, http://capehatterasapa.org/.

That unanimous support for the consent decree was the result of extensive negotiations among all parties and detailed consideration of all affected interests. When asked by the court whether the counties and ORV coalition supported the consent decree, their attorney responded, "There have been intense negotiations between the parties here. Our clients have participated in those negotiations in good faith. A settlement has been worked out that is, I think, in nobody's mind a perfect solution. We believe that we participated in the process in good faith and we join in asking the court to enter the consent decree."[11] The commissioners of both counties held public meetings and voted to approve the settlement, and the ORV coalition similarly met and authorized their attorney to sign the consent decree. Similarly, the Park Service stated, "The agreement reached between the NPS and the other parties to the lawsuit is a creative solution that addressed a tough issue. This well thought out plan will serve as an example of how we fulfill our responsibilities and meet the needs of all parties involved."[12] National Audubon Society and Defenders of Wildlife also recommended approval of the consent decree.

WHAT DOES THE CONSENT DECREE REQUIRE?

The consent decree requires that the National Park Service provide places for federally and state protected birds and sea turtles to nest on the Seashore during the breeding seasons—generally April to July or August for birds and May to November for sea turtles. ORV use is restricted at historic bird breeding sites in the spring to provide disturbance-free areas that allow the birds to set up territories or colonies and to nest. The pre-nesting areas still allow ORV use of the inlets and Cape Hatteras Point. During the months of the year before the establishment of pre-nesting closures on March 15 and after the completion of the bird and sea turtle breeding, resource management closures do not limit ORV use of the ocean beaches of the Seashore.

If birds do begin to nest in the pre-nesting closures or other areas outside these prenesting closures, buffers are established around the nesting areas to prevent disturbance. The species-specific disturbance buffers are based on the "moderate protection recommendations" from peer-reviewed reports prepared by scientists in the United States Geological Survey (a part of the Department of the Interior) at the request of the National Park Service and on the recovery plan for the Atlantic Coast population of the threatened piping plover developed and issued by the U.S. Fish and Wildlife Service.[13] Those reports were based on a thorough review of the best-available science. Depending on where the nesting occurs, ORV corridors and/or pedestrian access may or may not be affected by the buffers. The scientifically determined disturbance buffers may limit ORV and/or pedestrian use of an area until breeding is completed.

Sea turtles, which primarily nest and hatch during the night, are protected under the consent decree by closure of the beaches to ORV use from 10 p.m. to 6 a.m. May 1 through September 15 and a requirement for permits, driver education, and light restrictions from September 16 through November 15. These restrictions are also based on the best-available science, including the United States Geological Survey recommendations.[14]

EFFECTS OF THE CONSENT DECREE ON VISITORS TO THE SEASHORE

Under the consent decree, only those areas used by breeding birds and areas immediately surrounding sea turtle nests are closed to ORV use during daylight hours.

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[11] Consent Decree Hr'g Tr. 45:9-14, April 30, 2008. Despite this representation in federal court that they negotiated and supported the consent decree, CHAPA and its member organizations have sought to override the agreement they crafted and joined through this proposed legislation. CHAPA has listed instructions and posted a sample letter to encourage its members to support this legislation. The Outer Banks Preservation Association, the North Carolina Beach Buggy Association, and the Cape Hatteras Anglers Club have similarly advocated for their members to support this legislation overturning the agreement they entered into.

[12] Press Release, National Park Service, Agreement Reached to Preserve Wildlife and Recreation Opportunities on Cape Hatteras National Seashore (May 1, 2008).

[13] See e.g., UNITED STATES GEOLOGICAL SURVEY, MANAGEMENT, MONITORING, AND PROTECTION PROTOCOLS FOR COLONIALLY NESTING WATERBIRDS AT CAPE HATTERAS NATIONAL SEASHORE, NORTH CAROLINA 13 (2005)(recommending 100m to 200m buffers for different colonial waterbirds); UNITED STATES FISH AND WILDLIFE SERVICE, PIPING PLOVER (CHARADRIUS MELODUS) ATLANTIC COAST POPULATION REVISED RECOVERY PLAN 192-194 (1996)(recommending buffer distances for pedestrians and ORVs).

[14] UNITED STATES GEOLOGICAL SURVEY, MANAGEMENT AND PROTECTION PROTOCOLS FOR NESTING SEA TURTLES AT CAPE HATTERAS NATIONAL SEASHORE, NORTH CAROLINA (2005).

Breeding closures are removed when birds complete nesting and chicks fledge. Turtle nest closures are removed after the nest has hatched. As the breeding seasons for birds and turtles progresses and then winds down, the total area opened or closed to ORV use changes in response to breeding and nesting activity. This approach ensures that scientifically supported protections are put in place when needed to protect wildlife. In addition, this approach requires extensive monitoring and management of resources in order to make beaches available to vehicles quickly after turtles hatch or chicks fledge. An alternative approach, also recommended by Department of Interior scientists, is to close to ORV access key nesting areas around the inlets and Cape Point year-round.

To date, resource closures under the consent decree have only affected small stretches of the Seashore's beaches. Cape Hatteras National Seashore has approximately 67 miles of beaches. On July 24, 2008, 9.1 miles were temporarily closed for natural resource protection; 53.3 miles of Seashore were open to pedestrians; and 26.8 miles were open to ORV traffic. Cape Point, though temporarily closed during to protect piping plovers, was opened to pedestrian access on July 22, 2008.[15]

The size of some closures is, in part, a result of vandalism of buffer fencing. The National Park Service has documented four separate incidents of vandalism of resource closures. Two of those acts of vandalism occurred on Hatteras Island[16] and two occurred on Bodie Island.[17] In each instance, the first act of vandalism triggered a 50 meter buffer expansion and the second act of vandalism resulted in expansion a 100 meter buffer expansion.

Moreover, the two holiday weekends that have taken place under the consent decree appear to have been successful for tourism in the area. According to the local online newspaper, the Island Free Press, the usually busy Memorial Day weekend "was, well, like any other holiday weekend on Hatteras and Ocracoke" despite the "unprecedented beach closures."[18] This trend continued through the Fourth of July weekend; the Park Service reported 2,557 vehicles were on Seashore beaches on July 4th.[19] The Island Free Press stated, "There are beaches open to off-road vehicles on Hatteras and Ocracoke islands—despite the impression that some folks have that all beaches are closed down. Even through the July 4 holiday weekend, there was room on those open beaches for anyone who wanted to drive to the ocean's edge."[20]

EFFECTS OF THE CONSENT DECREE ON WILDLIFE ON THE SEASHORE

It is too early in the first breeding season under the consent decree to have a complete data set, but preliminary results from the National Park Service's weekly Resource Management Reports are encouraging. By the last week in July, piping plovers had increased from 6 breeding pairs in 2007 to 11 pairs in 2008, an 83% increase for this threatened species.[21] Fledged piping plover chicks nearly doubled from 4 to 7 during the same period, the highest number of fledged piping plover

[15] OUTER BANKS GROUP, NATIONAL PARK SERVICE BEACH ACCESS REPORT FOR JULY 24 2008 (2008) ("July 24 Beach Access Report").

[16] Press Release, Outer Banks Group, Second Act of Vandalism of Shorebird Closure Fencing (May 19, 2008), at http://www.nps.gov/caha/parknews/second-act-of-vandalism-of-shorebird-closure-fencing.htm.

[17] Press Release, Outer Banks Group, A Deliberate Violation of Resource Protection Area for Least Tern Colony with Chicks and Nests (July 28, 2008), http://www.nps.gov/caha/parknews/a-deliberate-violationof-resource-protection-area-for-least-tern-colony-with-chicks-and-nests.htm.

[18] Irene Nolan, Dodging the bullet on Memorial Day Weekend, ISLAND FREE PRESS, May 19, 2008, http://www.islandfreepress.org/2008Archives/05.19.2008-DispatchesFromTheBeachfront.html.

[19] Irene Nolan, New dispatches from the beachfront: Access update, getting smart about beach driving, manners and laws, and July 4 report, ISLAND FREE PRESS, http://www.islandfreepress.org/2008Archives/07.11.2008-ShootingTheBreezeNewDispatchesFromTheBeachfront.html. This level of ORV activity indicates that there has been little to no effect on overall ORV use of the beach, with the busiest holiday weekends in previous years reportedly approaching only 2,200 vehicles. Notice of Intent (NOI) To Prepare a Draft Environmental Impact Statement (DEIS) for an Off-Road Vehicle Management Plan (ORV Management Plan) for Cape Hatteras National Seashore, NC, 71 Fed. Reg. 71552 (Dec. 11, 2006).

[20] Irene Nolan, New dispatches from the beachfront: Access update, getting smart about beach driving, manners and laws, and July 4 report, ISLAND FREE PRESS, http://www.islandfreepress.org/2008Archives/07.11.2008-ShootingTheBreezeNewDispatchesFromTheBeachfront.html.

[21] OUTER BANKS GROUP, NATIONAL PARK SERVICE RESOURCE MANAGEMENT WEEKLY FIELD SUMMARY REPORT FOR JULY 24, 2008 1 (2008) ("July 24 Resource Report").

chicks on the Seashore since 1998.[22] American oystercatchers, which declined 42% between 1999 and 2007, were down one pair this year to 21 breeding pairs on Seashore beaches, but at least 20 additional oystercatchers were present, some of which appeared to be paired.[23] Oystercatchers have equaled last year's total of 10 fledged chicks, with up to 7 more possible, which raises the hope that the oystercatcher breeding population will continue to recover in coming years.[24] The overall number of nesting colonial waterbirds has increased, and black skimmers are nesting again on Seashore beaches, after failing to nest at all last year.

Additionally, the number of successful sea turtle nesting attempts has increased to 92 so far in 2008, up from 82 all of last year. As of July 24, there have been 92 successfully laid sea turtle nests and only 82 unsuccessful nesting attempts,[25] reversing last season's ratio under the "interim plan" when the number of unsuccessful nests, 115, far exceeded the number of successful nests, 82.[26] Based on these preliminary indicators, all species appear to be benefiting from the management measures required by the consent decree. However, due to the steep population declines over the last decade, it will take more than one or two years of proper management for beach nesting birds to recover fully at the Seashore.

ECONOMIC EFFECTS OF THE CONSENT DECREE

As with environmental effects, it is too early to assess the economic effects, if any, of the restrictions on beach driving. Approximately 2.5 million visitors come to the Seashore each year. A 2008 government-contracted study concluded that 2.7 to 4% of these visitors are ORV users.[27] That study also estimated that 9% of the visitors to the Seashore would return more often if driving were restricted on the beaches.[28]

The Dare County Visitors Bureau reports that visitation during May 2008 (the first month of the consent decree) as measured by occupancy of motels, cottages, and other accommodations, was 6.31% higher than May 2007, a greater increase in visitation than the average increases for May over the past five years.[29] This increase in visitation occurred despite a sagging economy and record high gas prices.

The National Park Service reports a drop in visitation this year to Cape Hatteras National Seashore of 14.5% through June 2008 as compared to the same period last year.[30] This reflects an overall drop in visitation to the entire national park system this year. However, the drop in visitation to Cape Hatteras National Seashore this year prior to implementation of the consent decree (January-April) was 20.2% compared to a 10% drop after implementation of the consent decree. Visitation at nearby Cape Lookout National Seashore, unaffected by the consent decree, has dropped 35% through June 2008 compared to the same period last year.[31] Accordingly, the consent decree appears to have had little to no negative effects on tourism.

PARK SERVICE NEGOTIATED RULEMAKING TO ADOPT A FINAL ORV MANAGEMENT PLAN

In January 2008, the Department of the Interior established an advisory committee representing diverse interests and charged with recommending a proposed final ORV management plan to the National Park Service. The consent decree does not restrict or undermine this process. The lawsuit that led to the consent decree challenged the ongoing management of wildlife on the Seashore under the interim plan and sought to halt the decline and disappearance of birds on the Seashore during the time it will take for a final ORV plan—the focus of the negotiated rulemaking—to be adopted. According to the Park Service, it will take three years to go through rulemaking to adopt a final ORV plan. At that time, as the consent decree states, the final plan will replace the management requirements in the consent decree. By its terms, the consent decree is not, nor could it be, binding on the negotiated ruling.

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[22] Declaration of Walker Golder Attachment 7, filed in Defenders of Wildlife, et al. v. National Park Service, et al, Feb. 20, 2008.

[23] OUTER BANKS GROUP, NATIONAL PARK SERVICE RESOURCE MANAGEMENT WEEKLY FIELD SUMMARY REPORT FOR JUNE 18, 2008 2 (2008).

[24] See Id.

[25] Id. at 3.

[26] NATIONAL PARK SERVICE, CAPE HATTERAS NATIONAL SEASHORE: 2007 ANNUAL TURTLE REPORT 5 (2007).

[27] INDUSTRIAL ECONOMICS, INC., ECONOMIC ANALYSIS FOR CRITICAL HABITAT DESIGNATION OF THE WINTERING PIPING PLOVER 2-14 (2008).

[28] Id. 2-17.

[29] OUTER BANKS VISITORS BUREAU, GROSS OCCUPANCY SUMMARY 1994-2007, www.outerbanks.org/pdf/Gross__Occupancy__Summary__receipts.pdf.

[30] http://www.nature.nps.gov/stats/

[31] Id.

CAPE HATTERAS IS A NATIONAL PARK SYSTEM UNIT

Cape Hatteras was established as the nation's first national seashore to be managed by the National Park Service in 1937. The enabling legislation creating the Seashore states

> Except for certain portions of the area, deemed to be especially adaptable for recreational uses, particularly swimming, boating, sailing, fishing, and other recreational activities of a similar nature, which shall be developed for such uses as needed, the said area shall be permanently reserved as a primitive wilderness and no development of the project or plan for the convenience of visitors shall be undertaken which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing in the area.[32]

Neither "off-road vehicles" nor driving on the Seashore beaches are mentioned in any legislation creating the Seashore. In 1940, Congress passed a bill that authorized hunting on the Seashore and added the words "Recreational Area" to the name of the Seashore, but did not change the basic mandates for the park and did not address the use of ORVs.

The obligation of the Park Service to protect the natural resources of the Seashore is unaffected by its designation as a "National Seashore" instead of a "National Park," because under the General Authorities Act, Congress mandated all units of Park System be managed under a unified system.[33] The Seashore is managed by the National Park Service under the congressional mandates of the National Park Service Organic Act. In that Act, Congress declared that the primary purpose of the Seashore is "to conserve the scenery and the natural and historic objects and wildlife therein and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations."[34] Moreover, National Park Service management policies governing the Seashore recognize that "when there is a conflict between conserving resources and values and providing enjoyment of them, conservation is predominant."[35]

Protection of the natural resources on national parks and seashores to leave them unimpaired for future generations is, and should be, paramount. The consent decree strikes the appropriate balance in addressing conservation and recreation interests and provides much needed protection to wildlife on The Seashore until a final ORV management plan is adopted.

CONCLUSION

In sum, all parties and interests agreed in open court to the terms of the consent decree augmenting the terms of the "interim plan" until such time as the National Park Service adopts a final ORV management plan, and a federal court approved it. As the statistics above show, the slight increase in the portions of the beach that have been closed to ORV use under the consent decree has had only a negligible impact, if any, on tourism and on the numbers of ORVs using the Seashore. At the same time, however, the closures have had a strikingly positive effect on the success of the endangered and threatened species that live and breed at Cape Hatteras. We ask, therefore, that this Committee oppose Senate Bill 3113 and leave the consent decree in place.

[Graphics have been retained in subcommittee files.]

Senator AKAKA. Thank you very much for your statement. Now we will hear from Coline Jenkins. Please proceed.

STATEMENT OF COLINE JENKINS, PRESIDENT, ELIZABETH CADY STANTON TRUST, GREENWICH, CT

Ms. JENKINS. Thank you Chairman Akaka. It is an extreme pleasure for me to be here. I'm very appreciative that you brought this legislation forward to this hearing. I also thank Hillary Rodham Clinton, Senator Clinton, for her leadership in bringing this bill forward.

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[32] 16 U.S.C § 459a-2.
[33] 16 U.S.C. §§ 1, 2-4.
[34] 16 U.S.C. § 1.
[35] National Park Service Management Policies 1.4.3 (2006).

I am Coline Jenkins Sahlin. I'm a resident of Old Greenwich, Connecticut and President of the Elizabeth Cady Stanton Trust. I'm also the great, great granddaughter of Elizabeth Cady Stanton.

Elizabeth Cady Stanton was one of America's foremost leaders in the women's suffrage movement. In 1848, she publicly called for the women's right to vote. Later in 1878, she appeared before the Senate Committee on Privileges and Elections.

In 1892, she appeared before the House Committee Judiciary Committee. I do have a graphic from that period showing her appearing, which I'd like to share with you. At both hearings she supported the passage of the women's suffrage and the expansion of women's rights.

Today I come here before you in support of Senate bill 1816, the creation of a women's rights history trail, its inclusion on the National Registry and its support by State Historic Preservation Offices across the whole Nation. Back in the 1800s, when Elizabeth appeared before the Senate and the House, the committee members had a different set of fish to fry than what we discuss today. They were struggling with the issues of Nation building.

Were we, as Nation, going to extend rights to 51 percent of the population, women, or were women particularly those married, to lack fundamental legal rights as dictated by the traditions of English common law. Since women were American citizens, Stanton argued. They also should enjoy all rights including the ultimate right of citizenship, the right to vote.

Stanton would never live to see these rights enshrined in the Constitution. She died in 1902. As we all know the 19th amendment was passed in 1920.

My mother, Rhoda Barney Jenkins was born 1 month before the passage of the 19th amendment. She died last summer on the eve of August 25, the day that Congress granted women the vote 87 years earlier. My mother's life is a measurement of women's rights progress.

This bill is crucial and necessary in honoring our Nation's history. We cannot understand the present without understanding our past. The struggle to gain full citizenship for women is called America's Bloodless Revolution. It is a war unlike most American wars.

The Women's Rights Bloodless Revolution lasted 72 years rather than the typical 4 years. The first cannon shot of this revolution was fired with words in 1848 at the first Women's Rights Convention in Seneca Falls, New York. The first shot was the public reading of the Women's Declaration of Sentiments. It was modeled after the Declaration of Independence written by Thomas Jefferson, 72 years earlier.

At this first Women's Rights Convention, Elizabeth Cady Stanton rose to the dias and spoke these words. "We hold these truths to be self-evident that all men and women are created equal. That they are endowed by their creator with certain inalienable rights among them are life, liberty and the pursuit of happiness."

More than 125 years later, I went to my great grandmother's house, sorry, my great, great grandmother's house in Seneca Falls in the early 1970s. By then her house had been acquired by a pri-

vate foundation. While in Seneca Falls I decided to go to the site of the first Women's Rights Convention at the Wesleyan Chapel.

When I arrived it was obvious, the Chapel had been converted into a laundromat. One would never know that this building was the birthplace of a blueprint that led to one of America's greatest bestowal of democratic freedoms in its history. A blueprint that enlarged the freedoms of the 51 percent of the population by touching on voting rights, access to higher education and professions as well as other freedoms.

In my mind I heard the voice of my great, great grandmother saying, "it's a wonder the republic has done as well as it has when it has used only half of its resources." When I inserted my quarters into the washing machine, I said to myself this is amazing. I, an American citizen, am washing my dirty clothes in one of America's historically, most significant sites.

It was the equivalent of putting a laundromat inside Independence Hall at Philadelphia. I knew then it was a matter of time before America would wake up and honor this site and other sites tied to women's rights.

During the past 40 years since my visit to Seneca Falls, I have witnessed the creation of many milestones. Including the establishment of the Women's Rights National Historical Park, which is one of seven parks of the 391 units in the Park System that is specifically dedicated to commemorating some aspect of women's history. I have also, in Seneca Falls, witnessed the establishment of the Women's Hall of Fame, the McClintock House where the Declaration of Sentiments was written and the Hunt House where the tea party was at which that revolution was fomented.

Both of these sites are in the National Park. This is the epicenter of the expansion of American democracy. What's important is the Park Service did not spend a dime on acquiring any of these sites. Furthermore the bill before you has no authority for land acquisitions, so it's an inexpensive good buy.

The crowning moment came for me in 1998, which was the 150th anniversary of the first Women's Rights Convention. Who would imagine this celebration that the celebration of legal rights would attract 20,000 people in 1 day to a National Park? This is a personal pleasure that such a dry subject as legal rights became a rock star.

Now there exists a marvelous synergy between these National Park buildings and adjacent sites, the Harriet Tubman home, the Susan B. Anthony house. These are owned by non-profits, but they're open to the public. So today with the passage of this bill we link these sites with other sites across the Nation where women made history and we will ensure that women's rights history will not evaporate or become a site of a laundromat.

The significance of women's history is captured by Edith Mayo, Curator Emeritus of the Smithsonian, the political history division of the Museum of American History. Curator Emeritus Mayo said, "Women need to see themselves as actors and participants in American history. There is a very crucial connection between being visible with your history and empowering yourself in the present and in the future." The same can be said for all Americans as our society is based on "E pluribus Unum."

Specifically the bill before you, 1816, builds on this belief. I support three principle aspects. One is the auto route that goes across upper New York State that tells the history of the epicenter of the Women's Rights Movement. This would include signage, maps, educational books, etc.

The second part I support is surveying, evaluating and nominating women's rights history properties to the National Registry of Historic Places. This would give a nationwide, overarching project called the National Women's Rights History Project Registry.

Senator AKAKA. Ms. Jenkins, would you please summarize your statement?

Ms. JENKINS. I'd be delighted to do that. In conclusion this is one of the greatest honors of my life to address you, the representatives of we, the people. Thank you very much.

[The prepared statement of Ms. Jenkins follows:]

PREPARED STATEMENT OF COLINE JENKINS, PRESIDENT, ELIZABETH CADY STANTON TRUST, GREENWICH, CT

I am Coline Jenkins, a resident of Old Greenwich, Connecticut, and the president of the Elizabeth Cady Stanton Trust. I am the great-great granddaughter of Elizabeth Cady Stanton.

Elizabeth Cady Stanton was one of America's foremost leaders of the women's suffrage movement. In 1848, she publicly called for women's right to vote. Later, in 1878, she appeared before the Senate Committee on Privileges and Elections. In 1892, she appeared before the House Judiciary Committee. At both hearings, she supported the passage of women's suffrage and the expansion of women's rights.

Today, in this hearing of the Senate Subcommittee on National Parks, I come before you in support of Senate Bill 1816—the creation of a women's rights history trail, its inclusion in the National Registry, and its support by state historic preservation offices across the country. Back in the 1800's, when Elizabeth appeared before both the Senate and the House, the committee members had bigger fish to fry. They were struggling with the issues of nation building. Were we, as a nation, going to extend rights to 51% of the population—women—or were women, particularly those who married, to lack fundamental legal rights, as dictated by the traditions of English common law?

Since women were American citizens, Stanton argued, they also should enjoy the ultimate right of citizenship—the right to vote!

Stanton would never live to see that right enshrined in the Constitution with the passage of the 19th Amendment in 1920. My mother, Rhoda Barney Jenkins, was born one month before its passage; she died last summer on the eve of August 25, the day Congress granted women the vote 87 years earlier. My mother's life is a measurement of women's rights progress.

This bill, too, is a crucial and necessary step in honoring our national history. We cannot understand the present without understanding our past. The struggle to gain full citizenship for women is called "America's Greatest Bloodless Revolution." It was a war unlike most American wars. The women's rights bloodless revolution lasted 72 years. The first cannon shot of this revolution was fired with words in 1848 at the First Women's Rights Convention in Seneca Falls, New York. The first shot was the public reading of the women's Declaration of Sentiments. It was modeled on the Declaration of Independence, written by Thomas Jefferson, 72 years earlier in 1776. At this first Women's Rights Convention, Elizabeth Cady Stanton rose to the dais to speak these words:

> We hold these truths to be self-evident, that all men AND WOMEN are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness.

More than 125 years later, I visited my great-great grandmother's home in Seneca Falls, in the early 1970s. By then her house had been secured by a private foundation. While in Seneca Falls, I decided to also visit the site of the first Women's Rights Convention, held at the Wesleyan Chapel. Upon arrival, it was obvious the chapel had been converted into a laundromat. From outward appearances, one

would never know this building was the birthplace of a blueprint that led to the greatest bestowal of democratic freedoms in the history of the United States. A blueprint that enlarged the freedoms of 51% of the population by touching on voting rights, access to higher education and professions, as well as other freedoms. In my mind, I heard the voice of Elizabeth Cady Stanton, saying, "It is wonderful the republic has done as well as it has when it has used only half of its resources."

When I inserted my quarters into a washing machine, I said to myself, this is amazing that I, a citizen of the United States, am washing my dirty clothes in one of America's most historically significant sites. I realized the neglect of the building was the equivalent of putting a laundromat inside Independence Hall at Philadelphia. I knew then, it was a matter of time before America woke up to honor this site and other important sites. As my clothes were spinning, my consciousness was rising.

During the past forty years, since my first visit to Seneca Falls, I have witnessed the creation of many milestones there, including the establishment of Women's Rights National Historical Park, one of seven parks, out of 391 units in the National Park system, that is specifically dedicated to commemorating some aspect of women's history. I have witnesses the establishment of The National Women's Hall of Fame. I have witnessed the purchase of the M'Clintock House, where the Declaration of Sentiments was written; and the Hunt House, where revolution was fomented with talk and a teaspoon. Both houses are parts of Women's Rights Historical National Park. The list of milestones in Seneca Falls goes on and on in the campaign to breathe life back into the people and places that made this an epicenter of the expansion of American democracy.

It's important to note that the park service did not spend a dime on acquisition of these sites. Furthermore, the bill before you has no authority for land acquisition.

A crowning moment for me came in 1998 at the 150th Anniversary of the first women's rights convention. Who would imagine that the celebration of legal rights would attract 20,000 people in just one day to this national park? What a pleasure to see such a dry subject—legal rights—become a rock star.

Now there exists a marvelous synergy between these national park buildings and neighboring sites, such as the Harriet Tubman Home and the Susan B. Anthony House, both owned by non-profits and open to the public. Today, with the passage of this Bill, we link these sites to others across the nation, where women made history. We will ensure that women's rights history will not evaporate.

The significance of women's history is captured by Edith Mayo, Curator Emeritus of the Smithsonian—The Political History Division of the Museum of American History. Curator Mayo said, "Women need to see themselves as actors and participants in American history. ...There is a very crucial connection between being visible with your history in the past and empowering yourself in the present and the future." The same can be said for all American citizens, as our society is based on "*E pluribus unum*."

The specifics of Senate Bill 1816 build on this belief.

This bill authorizes the Secretary of the Interior to establish a commemorative trail in connection with the existing Women's Rights National Historical Park. It would create an auto route across upper New York State that would link other properties historically and thematically associated with the struggle for women's rights. Practically speaking, the auto route will include uniform signage, maps, educational handbooks, interpretive guides and websites. This legislation does not authorize any land acquisition, but it links sites, both privately and publicly owned. The legislation would assure that all sites on the tour have verifiable connections to the expansion of women's rights.

The second piece of this legislation recognizes that, while upper New York State is the site of the first phase of the struggle, the national as a whole granted women their rights. Thus the second piece of the legislation would authorize the Secretary of the Interior to make annual grants for up to five years to assist State historic preservation offices in surveying, evaluating and nominating women's rights history properties to the National Register of Historic Places. This Registry would thus become the foundation of an overarching project called "The National Women's Rights History Project National Registry."

As an aside, many states have already amassed information, on a parallel course with this proposed legislation, such as Arizona, which has an excellent web site called The Arizona Women's Heritage Trail; www.womensheritagetrail.org. Other states have been active in documenting women's history. This relatively inexpensive legislation will help fuel tourism in your states of Hawaii, North Carolina, North Dakota, Tennessee, Louisiana, Wyoming, Colorado, Alabama, Arkansas, Oregon, Vermont and Montana—all states packed with women's rights history.

Regarding Bill S-1816, the Secretary of the Interior will authorize the update of the existing website, "Places Where Women Made History." The website currently provides travel itineraries based on geographic areas and themes related to women's rights. Finally, authorization would be given to make matching grants and give technical assistance to governmental and non-governmental entities to develop interpretive and educational programs.

In closing, testifying before Congress is one of the greatest privileges of my life. Women did not start out as equal citizens, but our system of government enabled them to achieve that status with its guaranteed rights of free speech, assembly, and the right to petition government. It enabled my great-great grandmother to come before Congress; it has given me the honor of coming before you, the representatives of "We, the People." Yet I leave with a warning. The 19th Amendment, which was called the "Susan B. Anthony Amendment," was introduced 41 years to Congress before it was passed. That is a very long time to wait.

I encourage you to pass Bill S-1816 before the close of the 110th Congress that I understand adjourns in late September. If not, I will return, for as Susan B. Anthony said, "Failure is impossible!"

Senator AKAKA. Thank you very much for your statement. Now we'll hear from Mr. Braunlich. Please proceed with your statement.

STATEMENT OF WILLIAM H. BRAUNLICH, PRESIDENT, MONROE COUNTY HISTORICAL SOCIETY, MONROE, MI

Mr. BRAUNLICH. Good afternoon, Chairman Akaka. My name is William H. Braunlich and I'm privileged to serve as President of the Monroe County Historical Society. I thank you for this opportunity to speak on behalf of the River Raisin Battlefield legislation and the citizens of Monroe County, Michigan.

This past Saturday on July 26, 2008, the community of Monroe, Michigan was extremely honored to have the U.S. Secretary of the Interior, Dirk Kempthorne as our featured speaker at Monroe County Community College. The occasion was very special, the ceremonial signing and transfer of Plum Creek Bay from the County of Monroe to the citizens of the United States of America. This 126 acre parcel of property was owned by the County of Monroe and the County Board of Commissioners realized that this unique wildlife habitat belongs rightfully to all of the citizens of this country and should be included in the magnificent and growing Detroit River International Wildlife Refuge.

Through the inspirational leadership of our Congressman John D. Dingell, that property transfer was made and represents the genius of natural resource conservation through voluntary contribution. Today as President of the Monroe County Historical Society and as an elected trustee of Monroe County Community College, I'm proud to speak on behalf of another tremendous community collaborative and proposed contribution. Namely Monroe's effort to properly share our resources and transfer to the citizens of the United States of America our most precious, historical asset, the sacred soil of the battles and the massacre of the River Raisin.

I'm joined today by Mark Worrel, honorable Mayor of the city of Monroe and other leadership representatives from our community Jean Guyor, Gerald Welch and Michael Meyer. Each of them joins me on behalf of their stakeholder organizations in urging you to consider this legislation favorably.

What the community of Monroe recognizes and has recognized for a very long time is that our 1812 battlefield and its compelling story does not belong just to our city or our county or even the

great State of Michigan. It belongs properly to the people of the United States of America.

So, Chairman Akaka, we got it for you. The Battlefield. The River Raisin Battlefield is yours for the asking.

We stand ready to host another signature event in Monroe. Transfer the deeds without charge to the citizens of this country and celebrate its incorporation into the constellation of National Parks in the United States.

As Senator Levin has indicated, throughout the sweep of American history there have been the battle cries that represent galvanic moments in the national psyche, moments when horrific events have eliminated doubts about the stakes and the need for military action. Remember the Maine. Remember the Alamo. Remember Pearl Harbor.

Remember the Raisin, although now but a faint historical whisper in the minds of many was a rousing call to action in January of 1813. Americans were stunned and enraged to learn that a force of almost 1,000 Americans was brutally decimated and that only 33 escaped death or capture.

U.S. newspapers called the incident, the River Raisin Massacre. Thousands of young men in the Northwest Territory responded to the call to take back Detroit, to take back Mackinac, to take back Michigan and the Great Lakes from British control. That call was heeded with steadfast American determination and grit and yes, lives.

America succeeded decisively in the Battle of Lake Erie and in the Battle of the Thames and brought the war to a close in the Great Lakes Theater. Remember the Raisin was the battle cry which inspired Americans to action and it should be recognized, remembered and commemorated with our other powerful national battle cries.

We're very proud to inform you, Chairman Akaka, that through a powerful funding partnership, over $5.1 million has been extended for battlefield acquisition, environmental remediation, archeological investigation, academic scholarship and other related activities. We've educated ourselves about our own frontier history. I can tell you that we've been immeasurably enriched by the process. Now, we stand ready to share that history and that sacred soil with the citizens of this Nation and the world.

Chairman Akaka, the River Raisin Battlefield is yours for the asking. Thank you.

[The prepared statement of Mr. Braunlich follows:]

PREPARED STATEMENT OF WILLIAM H. BRAUNLICH, PRESIDENT, MONROE COUNTY HISTORICAL SOCIETY, MONROE, MI, ON S. 3247

The community of Monroe, Michigan, respectfully submits that the River Raisin Battlefield meets, and in many ways exceeds, the established criteria of national significance, suitability, and feasibility for inclusion in the National Park System. In fact, the War of 1812 River Raisin Battlefield represents a theme, site and resource not already adequately represented in the National Park System. And, as a tremendous bonus to the citizens of the United States of America, the proposed River Raisin National Battlefield Park is located in Monroe County, Michigan, the gateway county to the great state of Michigan. By way of explanation, the proposed River Raisin National Battlefield Park is located between Toledo, Ohio and Detroit, Michigan and is but a stone's throw from I-75, the major traffic artery in the state of Michigan. The proposed River Raisin National Battlefield Park will be linked by walking trails to one of the most beautiful and frequented state parks in the Michi-

gan State Park System—Sterling State Park—and is also extremely close to Plum Creek Bay on Lake Erie, recently donated by the County of Monroe to the Detroit River International Wildlife Refuge. Thus, visitors will have easy access to a splendid trifecta of War of 1812 history, exquisite natural habitat and beautiful Lake Erie shoreline—a National Battlefield Park, an International Wildlife Refuge and a Michigan State Park.

Who are we? The Monroe County Historical Society is a Michigan Non-profit 501C3 Charitable Organization established in 1938 and governed by a fifteen person board of directors. The Society's mission is to collect, preserve, share and celebrate Monroe County History through innovative exhibits, programs, publications and support of the Monroe County Historical Museum and River Raisin Battlefield Museum.

The Society has been at the forefront of the River Raisin Battlefield Project during the past decade and has funded numerous battlefield initiatives dedicated to acquisition of the battlefield, environmental remediation of the site, archeological research, academic scholarship, and educational programming. The Society's objective is to foster a broader awareness of the national significance of the River Raisin Battlefield site and a deeper appreciation of the important historical role that Frenchtown (now Monroe) played in the history of North America. The Society has been joined, at every step of the way, with committed partners from the City of Monroe, Port of Monroe, County of Monroe, Monroe County Community College, the State of Michigan, and the United States Government. To date, the grants, loans and in-kind contributions committed to the River Raisin Battlefield project from federal, state, local and non-governmental organizations exceeds 5.1 million dollars.

This past January of 2008, the Monroe County Historical Society commissioned Dr. G. Michael Pratt of Heidelberg College to chair a multi-disciplinary team of historians, archeologists and academicians to draft a nomination of the River Raisin Battlefield as a National Historical Landmark. The Society desired to compliment, assist, support and accelerate the study by the National Park Service and provide technical, historical and archeological data for inclusion of the River Raisin Battlefield as a National Historic Landmark and as a prospective unit of the national park system. Representatives of the National Park met with members of the National Historic Landmark Nomination team in April of 2008 and the River Raisin Battlefield was toured by the Secretary of Interior on Saturday, July 26, 2008. The progress on the River Raisin Battlefield Project has been impressive and substantial.

The Monroe County Historical Society has also commissioned Brian Dunnigan, Interim Director of the world famous Clements Library, to author a monograph on the national significance of the battles and massacre of the River Raisin. Brian Dunnigan's monograph is attached and incorporated into this written statement in favor of the River Raisin Battlefield legislation before the Senate National Park Subcommittee. By way of background, Brian Dunnigan is a highly recognized and noted Michigan historian and author and also serves on a National Park advisory committee. Brian Dunnigan's Statement on the National Significance contributes greatly to the academic scholarship on these important historical events and our contemporary understanding of American formative history on the Northwest frontier.

We respectfully submit the following attachments* for consideration by the US Senate Subcommitee on National Parks:

1. "Statement of National Significance, River Raisin Battlefield" authored by Brian Leigh Dunnigan, Interim Director, Head of Research and Publication, Curator of Maps, William L. Clements Library, University of Michigan, Ann Arbor, Michigan (4 pages);
2. "The River Raisin Monuments at Monroe, Michigan," by John M. Buckley, 141—154 [Volume 15 / 1906 / No. 2] (14 pages);
3. "Monroe County Historical Society Funds Nomination of River Raisin Battlefield as National Historic Landmark—Press Release of February 15, 2008 (7 pages).

We are thrilled to report that through a tremendous community collaborative, we have assembled the core parcels of real estate, both by donation and by purchase. The River Raisin battlefield parcels are held in readiness by the Port of Monroe, City of Monroe, County of Monroe and the Monroe County Historical Society. The industrial intrusions into the battlefield site have been almost completely removed and the natural environment is being restored and reclaimed.

* Documents have been retained in subcommittee files.

What the community of Monroe recognizes, and has recognized for a very long time, is that our 1812 Battlefield and its compelling story does not belong just to our city, or our county or even our great state of Michigan. It belongs to the people of the United States of America. Thus, we stand ready to transfer the River Raisin Battlefield to the citizens of the United States of America and to celebrate its incorporation into the National Park System. We are confident that the energy and commitment of our community, as displayed during the past decade of work on the battlefield project, will make this a successful and celebrated inclusion into our National Park System and the perfect way to commemorate the upcoming 200th anniversary of the War of 1812.

Senator AKAKA. Thank you very much, Mr. Braunlich for your statement. I want to add my welcome to the Mayor and members of Monroe County's Historical Society who are present here.

Mr. Braunlich, the Park Service's testimony states that Congress should delay action in designating the River Raisin National Battlefield Park until the special resource study is completed. The standard procedure is to wait until the study is finished. You've heard that it might take 2 to 3 years before that occurs.

Can you tell us why you believe it is necessary to go ahead and designate the national battlefield before the study is done?

Mr. BRAUNLICH. I'm happy to respond to that, Senator Akaka, because I think our community has achieved a critical mass of support. The battlefield parcels are owned by the Port of Monroe, city of Monroe, County of Monroe and the Monroe County Historical Society. At this point all of those organizations stand ready to make conveyance of their respective parcels.

You know, I respect the National Park Service's typical study times and profiles and protocols. I think that there has been substantial and meaningful progress in that study. We're extremely confident that ultimately the question of suitability and feasibility will be answered in the affirmative.

But I think what the National Park Service failed to recognize is that the upcoming bicentennial, it has created just a wave of support for this initiative. We need to capitalize on that support and use it to good advantage. The community, I mean, I don't think any of us are going to be around for the tercentennial, but this bicentennial has really captured the imagination and support of the community.

There's not any question about feasibility. More than 40 acres is ready to be transferred to the United States. As far as suitability, the property has been environmentally remediated and almost all of the industrial intrusions into the site have been removed. So I respect the standard protocol and standard times, but I do think there are exceptional times to recognize the support and the opportunity and to seize the moment.

So I think that's the best response to the National Park Service concern.

Senator AKAKA. Ok. Thank you very much for your response.

Ms. Coline Jenkins, the National Park Service has recommended deleting the two grant programs authorized in S. 1816 condemning that the new grant programs duplicate existing State and Federal authorities. In your view, why are these grant programs necessary?

Ms. JENKINS. First, I think they're necessary because women's history, women's rights history, women's heritage is playing catch up with other types of histories. I do not see any problem with di-

verting resources to this catch up operation. This is an operation that's nationwide.

It affects all 50 States. It's trying to work with highly qualified organizations, the State historical preservation offices, to inventory, evaluate and list properties. The Senator who was recently here talked about its reasonable to moderate public policy. This is the time to moderate public policy.

We have had public policy that has favored one type of history. Now it's a good idea to perhaps bring 51 percent of the population into the story of history. These grants look at two types.

They look at sites, but they look at material related to sites. The grants make it possible. So I strongly support having the grants.

Senator AKAKA. Thank you very much.

Ms. JENKINS. Thank you.

Senator AKAKA. May I call now on Commissioner Judge and ask you—my understanding is that the County was involved in negotiating the consent decree, and agreed to it. If this is correct, can you explain why you are now supporting legislation to overturn the consent decree?

Mr. JUDGE. In December 2007, Mr. Chairman, we had asked a court to recognize Dare County as an intervener in the lawsuit between the Defenders of the Wildlife, National Audubon and the National Park Service, Department of Interior. The judge granted that. However we were not a player at their table until a hearing on April 4th in U.S. District Court when the judge scolded the plaintiffs and defendants for negotiating behind closed doors and not being open to the public.

It was only after that hearing that they paid some attention to us. But it was even later than that when they finally invited us to the table. But not to negotiate, to tell us, to tell us what it was going to be.

We had our county attorney, assistant county manager in Raleigh at the negotiations. They sent them home. After we released a press release telling that the negotiations had broken off, it was only then that they called us back.

It was 4:30 one afternoon when they gave us an ultimatum. That ultimatum was either accept this by 5 o'clock or it will go forward into court. The threat to Dare County was that the seashore would be closed down completely until negotiated rulemaking ran its course.

Negotiated rulemaking is not scheduled to be completed until December 31, 2010, with implementation by April 1, 2011. Sir, we can't afford to have our economy battered the way it's been battered since April 30th that long. We've already had businesses reporting greater than 50 percent declines. It's been economically devastating to us.

Yes, we signed the document. We signed it under great duress. We were not happy with it. We felt it was the lesser of two evils.

Senator AKAKA. Thank you for your explanation of why you supported legislation to overturn the consent decree.

Mr. Carter, the Park Service has established an advisory committee to help the agency complete a long term ORV management plan for the seashore. It is my understanding that the committee membership represents all the diverse stakeholders interested in

the seashore. My question to you is do you think, with the advisory committee's help, the Park Service will be able to complete a long term management plan that is acceptable to everyone?

Mr. CARTER. Senator Akaka, the Secretary of the Interior did establish in January a negotiated rulemaking committee composed of various stakeholders who had a variety of interest in the National Seashore. That group has been meeting frequently. There are a variety of views presented.

The charge to that committee is to come up with and recommend to the Park Service an ORV management plan for the seashore. That can designate routes for ORV use, the types of vehicles that can be used and of course a consideration and that is the protection of resources on the seashore. We're involved in that process.

Our clients are a part of that stakeholder group. The counties are involved. The ORV groups are involved.

We're optimistic that a plan can be developed with input from that committee and that the Park Service can come up with a proposal that will both allow reasonable access and use and ORV use of the seashore while at the same time, protecting the natural resources on the seashore.

Senator AKAKA. I thank you very much for your responses, each of you. Again, I want to thank you for testifying this afternoon before this committee. Your testimony has been very helpful.

Before we close today I want to let you know that some members of the committee who were not able to be here may submit additional questions in writing. If we receive any questions, we will forward them to you and ask you to respond so that we may include both the questions and the answers in the official hearing record.

Again I want to say thank you. It's going to help us with our moves on these bills. I thank you again, this panel, because you have responded to and have given us feelings of your groups and all the people you represent as well.

Ms. JENKINS. Yes.

Senator AKAKA. So again, thank you very much. This hearing is adjourned.

[Whereupon, at 4:05 p.m. the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSES OF WILLIAM H. BRAUNLICH TO QUESTIONS FROM SENATOR BURR ON S. 3247

Question 1. Is any of the land proposed for designation by S. 3247 under imminent threat of development if the battlefield park is not established soon?

Answer. Senator Burr, you are expressing an appropriate and continuing MAJOR concern for all of us involved in this tremendous community collaborative—-because the truth is that several or all of the significant battlefield parcels could be sold to third parties and developed in ways which are incompatible with the overall project. In fact, the prior owner of the largest battlefield parcel (Homrich Inc.) had been approached by a number of potential purchasers who were interested in the battlefield site for residential, retail, and other developments. That's why it's so very important to "seize the moment" and "lock in" the formal donation of the properties to the citizens of the United States of America. Otherwise our incredible momentum could be lost and the political winds could shift (at the City of Monroe, County of Monroe, Port of Monroe and Monroe County Historical Society) and the opportunity for the optimal acquisition, development and interpretation of the River Raisin Battlefield could be permanently destroyed.

I have been involved with this project for almost 12 years and I don't think the stars and planets will align again this way for the optimal development of the battlefield. All of the major stakeholders in the project stand ready to make conveyance of their respective parcels to the citizens of the United States of America. However, time is of the essence. The threat to the River Raisin Battlefield would become imminent at the slightest suggestion that a major economic development project was under consideration at this site. In light of the economic woes of our local community and the State of Michigan, the River Raisin Battlefield, which is extremely near to all of the transportation modalities, may look quite enticing to developers. Such an economic development proposal would generate a true and imminent threat to the acquisition, study, development and proper intrepretation of the River Raisin Battlefield site.

Question 2. Was any of the suitability and feasibility study completed prior to National Park Service involvement? If so, how much and is it being used to expedite the study process?

Answer. There has been a considerable body of work by a number of academicians, historians, archeologists, and historic preservationists during the past decade and PRIOR to the NPS study. At Congressman Dingell's request, the NPS had been to several meetings of the RR Battlefield prior to the commencement of the special resource study. Further, to support, assist, compliment and accelerate the NPS special resource study, the Monroe County Historical Society commissioned a formal National Historic Landmark (NHL) nomination through Dr. Michael Pratt of Heidelberg College, and asked our NHL team to promptly assemble all of the available materials and get the NPS everything they need regarding the site. It may not be politically correct to say so, but I believe our NHL team is doing the rigorous historical and archeological spade work and thus, tremendously "facilitating" the NPS study.

In the words of Dr. Ted Ligibel, director of Eastern Michigan's University's Historic Preservation Program and a key member of our NHL River Raisin Battlefield team: "We are reviewing war records from the British government from 1812-1814; taking testimony from those with knowledge of the site; reviewing newspaper ac-

counts and reading first hand accounts from people who were there. We are leaving no stone unturned." I would hasten to add that all of this work by Dr Ligabell and the other team members is being generously paid for by the Monroe County Historical Society is being transmitted to the National Park Service free of charge.

Question 3. What was the size of the original battlefield and how much of the site is still available for designation and interpretation as a battlefield park?

Answer. I would have to defer to our NHL team to answer the question about the "original size" of River Raisin Battlefield because that question requires certain assumptions about the time, location and scope of the series of activities on the River Raisin Battlefield. I can say with certainty, however, that the combined acreage of the proposed donations to the US government (approximately 40 acres) incorporates the most important, desirable and historically significant land for designation and interpretation as a battlefield park. To be specific, the proposed donation of land includes the acreage where the original settlement of Frenchtown was located and where the majority of fighting occurred.

RESPONSES OF COLINE JENKINS TO QUESTIONS FROM SENATOR BURR

ON S. 1816

Question 1. Will the proposed commemorative trail have any impact on private property?

Answer. Sites would be listed on the trail only with permission from property owners. There is no land acquisition authority in this bill and no land acquisition would be sought. Many of the likely sites are currently owned by government or nonprofit institutions.

Question 2. Do you envision a visitor center for this trail at some point or does a suitable venue already exist to serve as an information center for the trail?

Answer. The trail would be administered by Women's Rights National Historical Park in Seneca Falls and Waterloo, NY (established by PL 96-607). A comprehensive visitor center exists in the Park that would serve as the information center for the trail.

Question 3. How many individual sites would become part of the commemorative trail and how many of those are currently owned by the Federal government?

Answer. While criteria for listing on the trail would need to be developed, preliminary assessment found that roughly 30-35 sites may be listed on this commemorative trail. Of those sites, two are owned by the Federal government and are under the stewardship of the National Park Service—Women's Rights National Historical Park in Seneca Falls and Waterloo, NY and Eleanor Roosevelt National Historic Site in Hyde Park, NY.

Question 4. Will it become necessary for the Federal government to purchase or lease any land or structures to establish the Women's Suffrage Commemorative Trail?

Answer. No, there is no Federal land acquisition or any lease requirements involved in the establishment and operation of the trail.

RESPONSES OF WARREN JUDGE TO QUESTIONS FROM SENATOR BURR

ON S. 3113

Question 1. How has use of Cape Hatteras changed under the court-approved agreement versus the interim management plan?

Answer. Decades of the tradition of going to the beach at Oregon Inlet, Cape Point, South Beach and Hatteras Inlet were disrupted from the first of May until the end of July. Today, Oregon Inlet is still closed to people. This has been a psychological and cultural shock to thousands of residents and visitors alike. While there are some beaches open for people to use in front of the Villages and other areas of the Seashore, the areas listed above are world renowned and are the favorite of all users. The closed beaches were the most heavily used under the interim plan. It is important to point out that there are very few accesses to the seashore in the National Seashore Recreational Area; closing down these four areas has had a dramatic impact on access. While there are other choices for recreation where there are open areas, the closures alter the prime uses of the Cape Hatteras National Seashore Recreational Area.

Question 2. Has the Cape Hatteras area experienced any economic impact as a result of the court-approved agreement being implemented?

Answer. Yes, there has been economic impact from the closures. Statistics are just now being complied by Dare County with respect to occupancy and meals tax revenue. In May the motel segment of the lodging industry was down 4.2%, In June the motel industry was down 7.6%, campgrounds were down 19.3%, cottages courts were down 8.7%. On an individual basis, I will share the records of one very prominent business in Buxton, the Red Drum Tackle Shop. The owner reports the following decline in sales: May—17%, June—35%, July—23% and for the first 13 days of August—17%. Many other businesses are reporting the same type of decreases. It is important to understand that the motels, campgrounds, and cottage courts are lodging businesses that operate on a day of arrival or 24 to 72 hour window for cancellations. In other words, you can cancel your reservations for any reason within the cancellation window that your reservation was made under. The visitors who use these accommodations were able to react to the closures and cancel their trips and receive refunds of their deposits. The rental home industry, on the other hand, is one that requires full payment months in advance and the visitors who reserve these accommodations have no recourse to a refund should they want to cancel. As a result, the rental home visitors had no choice but to honor their reservations despite the closures or lose their money. Dare County is concerned how the closures, which this year caught thousands of these rental home visitors off guard, will affect next year's reservations and rentals of these homes. If this group of visitors elects not to come to the Seashore because of the beach closures, as the more transient visitor did this season, the negative economic impacts will be even more dramatic.

Question 3. Have you heard from any of your colleagues in the neighboring counties of Hyde, Currituck and Carteret? What impacts have they experienced since the court-approved agreement has been in place?

Answer. We have not heard from anyone in Carteret County. Currituck County Commissioners share our concerns and will share data with us as they are able to compute results. Hyde County sent the following statement:

> Hyde County supports balanced use of our public lands so that they can be enjoyed by residents and guests while supporting natural habitat. That balance is critical to sustaining our economy, our culture and the beauty of our area.
>
> Facing the loss of all use of the beaches this spring and summer, Hyde County endorsed the ORV beach closure settlement in April 2008. It was the right decision at the time but Hyde County needs help returning balance to the jobs/culture-birds/turtles teeter-totter.
>
> The impact of the settlement was quick and bad for the people of Ocracoke who depend upon spring tourism. Shortly after the ORV beach closure settlement was signed on April 30, the National Park Service shut down parts of the beaches and then fully closed large areas along the north and south ends of Ocracoke. Despite normal weather without major storms, Hatteras to Ocracoke ferry passenger counts were DOWN over 11% in June DOWN 9.4% in July.
>
> After being named "Best Beach" in May 2007, it would be a logical assumption that all the 2007 positive advertising would cause Hatteras-Ocracoke ferry passenger traffic to be UP in 2008, but that is not the case. It is impossible to know the damage of the constant rattle of beaches closure press articles but anecdotal evidence has been seen in numerous emails from visitors.
>
> We have heard reports from environmental groups that more birds and turtles nested this summer. That wonderful success may have NOTHING to do with the ORV beach closure settlement. Rather, we have enjoyed a summer free of most normal storms. Also, Hyde County has been told that last winter the National Park Service had an extensive trapping program of fox, raccoons and feral cats—all of which enjoy the eggs and hatchlings of birds and turtles. We have no data about the extent of the NPS trapping program nor its potential impact on the number of birds and turtles.
>
> Hyde County supports enhancement of our natural resources, strengthening our economy, and maintaining our special culture. We hope that Congress will restore balance to an equation that is now seriously off-kilter by adopting a reasonable approach to maintaining public use of Ocracoke beaches.

Question 4. Has there been any increase in beach traffic in other areas since the court-approved agreement has been followed?

Answer. No, we have not experienced any increase in traffic in any other areas of the County. The closure areas were the major areas in Dare County for ORV use. There are few other choices for this user group. There is a direct correlation in loss

of business in the northern beach area with the closure of Oregon Inlet. Oregon Inlet and Bodie Island Spit are in the National Seashore Recreational Area; this area is north of the Inlet and used more by residents and visitors who stay in the beach towns, on Roanoke Island or the mainland.

RESPONSES OF DANIEL N. WENK TO QUESTIONS FROM SENATOR WYDEN

Question 1. You testified on the need for further discussions with the Forest Service, which has called for further study of the boundary modification. However, didn't the NEPA-compliant 1998 General Management Plan for the Oregon Caves National Monument already address this issue and come out recommending an expanded boundary?

Answer. Section 4 of the bill would direct the Secretary of Agriculture to transfer the proposed expansion area to the Secretary of the Interior, and to adjust the boundary of the Rogue RiverSiskiyou National Forest to exclude the transferred land. A comprehensive General Management Plan ((IMP) and accompanying Environmental Impact Statement were completed for Oregon Caves National Monument in 1998. The GMP and Record of Decision recommended that 3,410 acres be transferred from the U.S. Forest Service to the National Park Service to protect the Lake Creek and upper Cave Creek watersheds, the public water supply, and the foreground and middle ground viewsheds as seen from the Monument. S. 3148 would transfer 4,070 acres, including the 3,410 acres that were recommended for addition in the GMP and about 650 acres that were not evaluated in the GMP. Further, although the major portion of the expansion proposal, which was developed in compliance with NEPA, has been a part of the Oregon Caves National Monument GMP since 1998, no coordinated study or formal dialogue between the Departments has taken place in the intervening period.

Question 2. How much did your NEPA review and preparation of the General Management Plan cost?

Answer. It cost $60,000 to develop the GMP and Environmental Impact Statement.

Question 3. Is your Management Plan still valid or are you planning on revoking it?

Answer. The 1998 GMP, which recommended a 3,410 acre boundary expansion, is valid.

Question 4. Can you please provide a copy of the General Management Plan EIS, as well as any modifications made to it or proposed to be made to it?

Answer. An electronic copy of the GMP has been provided to the committee and Senator Wyden's office. There have been no amendments to the GMP and none are currently planned.

Question 5. How is your testimony, which appears to be a shift from the 1998 General Management Plan—which recommends expansion—consistent with the Centennial Challenge, which seeks to expand and enhance National Parks, and the Park's own 2007 Centennial Strategy document which lays out a goal of providing further education on the plan to expand the boundary?

Answer. The National Park Service testimony indicates support for the intent of S. 3148, consistent with the GMP for the park, but recommends that action be deferred to allow for further interagency consultation. The testimony is also consistent with the park's Centennial Strategy, which encourages educating park partners, the US Forest Service, and local communities about the importance of protecting the park's water resources and scenic viewsheds.

Question 6. How would further study avoid duplicating past process, paperwork and expense already undertaken to review the issue of boundary expansion?

Answer. We do not believe that further study is necessary at this time. However, we believe that it would be beneficial to explore ways to maintain continuity and interagency coordination on issues related to forest health and recreational opportunities.

Question 7. My understanding is that every National Park has a fire management plan and an officer assigned to it and that the recent fires in California have shown that National Park Service lands have responded well in slowing down advancing fires because they have been well managed to withstand these fires. Can you detail for me what experience the National Park Service has in managing lands for fire resiliency?

Answer. The National Park Service wildland fire management and resource management programs work collaboratively to support NPS Management Policies and unit-specific goals and objectives for how wildland fire will be managed. The goal of wildland fire management is to restore and maintain fire-adapted ecosystems

while protecting life, property and resources from adverse effects of fire. NPS has been successful across the nation in managing lands in all sizes of units by applying fire and managing unplanned fires on those lands to restore and maintain fire-adapted ecosystems. That success has been predicated upon having a fire management plan with clear direction, good science to understand the natural process, supportive management staff, an understanding public, and experienced fire management staff to implement necessary actions.

Wildland fire is one of nature's major change forces, similar to floods and winds. Fire is a natural part of the landscape in fire-adapted ecosystems. Our ability to manage it is dependent upon the condition of the land prior to the event. The NPS philosophy is to do active adaptive management to keep the landscape in balance so that recovery from disturbance will be part of the natural process and require minimal intervention.

Question 8. What fire and forest restoration activities have been undertaken by the Park Service in the Oregon Caves National Monument?

Answer. The National Park Service has engaged in mechanical methods of thinning to reduce fuel loading at Oregon Caves National Monument. Prescribed fire has also been used.

Question 9. What is the precedent regarding hunting on National Monuments? Can you identify any policies regarding this issue and whether there are National Monuments with hunting allowed?

Answer. Hunting is permitted only in units of the National Park System where it is specifically authorized by federal law. Of the units where sport hunting is authorized, none are designated national parks. Most NPS units where hunting is authorized are designated national preserves, national recreation areas, national seashores/lakeshores, or national rivers. Hunting is only authorized in two national monuments managed by NPS: Hagerman Fossil Beds National Monument and Grand Canyon-Parashant National Monument (which is jointly managed by NPS and BLM).

Question 10. What experience does the National Park Service have on fencing out non-native animals?

Answer. The National Park Service has extensive experience with fencing out non-native animals. For example, fencing is used at Haleakala National Park to exclude feral pigs and goats to allow the restoration of native ecosystems and to protect endangered species. At Pinnacles National Monument, fencing is being used to exclude feral pigs, and at Grand Canyon National Park and other western parks, fencing is routinely used to exclude domestic cattle and sheep.

Question 11. Can you please provide a list of other instances where there are Wild and Scenic River designations within National Parks or National Monuments?

Answer. Below please find a list of NPS-managed wild and scenic rivers within a designated national park or a designated national monument. In addition to this list, the NPS also manages wild and scenic rivers within other types of units of the National Park System such as national recreation areas and national scenic riverways; NPS also manages some stand-alone wild and scenic rivers, such as the Farmington National Wild and Scenic River.

State	River	Park Unit
Alaska	Alatna	Gates of the Arctic National Park
Alaska	Aniakchak	Aniakchak National Monument and National Preserve
Alaska	Chilikadrotna	Lake Clark National Park and Preserve
Alaska	John	Gates of the Arctic National Park
Alaska	Kobuk	Gates of the Arctic National Park and Preserve
Alaska	Mulchatna	Lake Clark National Park and Preserve
Alaska	Noatak	Gates of the Arctic National Park
Alaska	North Fork Koyukuk	Gates of the Arctic National Park
Alaska	Salmon	Kobuk Valley National Park
Alaska	Tinayguk	Gates of the Arctic National Park
Alaska	Tlikakila	Lake Clark National Park
California	Kern River	Sequoia National Park/Kings Canyon National Park
California	Kings River	Sequoia National Park/Kings Canyon National Park
California	Klamath River	Redwood National Park
California	Merced River	Yosemite National Park
California	Tuolumne River	Yosemite National Park
Colorado	Cache la Poudre River	Rocky Mountain National Park
Montana	Flathead River	Glacier National Park
Texas	Rio Grande River	Big Bend National Park

Question 12. Can you provide me a copy of all the correspondence between the National Park Service and the Forest Service regarding the potential contamination of the Caves' drinking water supply from grazing?

Answer. Electronic copies of the correspondence have been provided to the committee and to Senator Wyden's office.

RESPONSES OF DANIEL N. WENK TO QUESTIONS FROM SENATOR BURR

In the absence of a rule for off-road vehicle use at Cape Hatteras, the National Park Service completed a biological assessment, obtained a formal biological opinion from US Fish and Wildlife Service, and prepared an interim management strategy that addressed threatened and endangered species and allowed for public access.

Question 13a. During the time in which the interim management strategy was followed, did the National Park Service comply with the terms of the formal biological opinion?

Answer. NPS complied with the "Reasonable and Prudent Measures" and with the "Terms and Conditions" of the original August 2006 Biological Opinion (BO); however, in 2007 NPS failed to meet performance measures that were established in the March 2007 amended BO. (See next answer for details.)

Question 13b. Did any taking of threatened or endangered species beyond what is allowed by the biological opinion occur while the interim management plan was in place?

Answer. The take of a threatened or endangered species did not occur beyond what was allowed under the 2006 BO; however, NPS exceeded the incidental take allowed under the amended 2007 BO.

The original August 2006 130 expected that an undeterminable level of incidental take of breeding and migrating piping plovers and of all species of sea turtles would occur under the interim strategy. The BO also stated that the incidental take would be difficult to detect for multiple reasons, including: 1) breeding adults may be scared away or prevented from nesting; 2) dead young are easily covered by sand

or carried away by waves or predators and may not be detected; and, 3) not all nests may be detected over the 55 miles of seashore.

In response to the 2006 BO, NPS developed performance measures, which the U.S. Fish and Wildlife Service adopted in an amended 130 in March 2007. Six performance measures were specified:

1) Number of breeding pairs of piping plover (4 or more);
2) Number of piping plover nests (3 or more nests or 75% of the total number of pairs);
3) Number of chicks fledged per nest (1 chick per nest);
4) NPS would develop a systematic monitoring program for wintering piping plover;
5) The ratio of false crawls to sea turtle nests would not exceed 1:1, which is the ratio that has been observed on undisturbed beaches; and
6) The number of sea turtle nests on Cape Hatteras National Seashore (Seashore) would equal or exceed 10 percent of the past five-year average number of sea turtle nests in North Carolina.

In 2007, NPS met performance measures 1, 2, 4, and 5, but failed to meet 3 and 6. There were 11 piping plover nests, but only 4 chicks fledged (the target was 11). The ratio of false crawls to sea turtles nests was 1.39: 1 (114 false crawls to 82 nests). As a result, NPS initiated and completed re-consultation with the Fish and Wildlife Service during the winter of 2007-08.

Question 13c. How long has the court-approved consent decree been in place? Has there been any increase in beach traffic within the park and adjacent areas since the consent decree has been followed?

Answer. The consent decree was approved by the court on April 30, 2008 and went into effect immediately. Implementation of the measures in the consent decree has resulted in larger and earlier closures at key breeding sites and a reduction in the total amount of area open for access compared to 2007. In general, we are seeing a redistribution of traffic from closed areas to open areas. However, we do not have a good system for counting vehicles on the beach, so we do not know how the numbers compare to years previous to operating under the consent decree.

Question 13d. How does management of Cape Hatteras differ under the interim management plan versus the consent decree?

Answer. Under the interim strategy, NPS established "prenesting areas" at key piping plover breeding sites by April 1 and surveyed 66 miles of ocean, inlet, and sound shoreline from March 15—September 15 for bird breeding activity. NPS also patrolled over 55 miles of ocean shoreline daily from May 1—September 15 to survey for sea turtle nests and conducted law enforcement patrols of beaches, primarily during daylight hours, to enforce beach driving and resource protection requirements. After the prenesting areas were in place, whenever bird breeding behavior was observed or chicks had hatched on any Seashore beach, NPS implemented, expanded or modified the resource protection closures based on buffer distances identified in the interim strategy. Resource protection closures were removed when breeding activity concluded. In 2007, NPS staff implemented 389 such management actions (closures, modifications, or closure removals).

Under the consent decree, NPS must establish the prenesting areas by March 15 and increase the frequency of monitoring at six key sites to daily through July 15. When subsequent bird breeding activity is observed on any Seashore beach, NPS implements buffer distances identified in the consent decree, which are larger than those identified in the interim strategy. The buffers must he installed around observed breeding activity within 8 daylight hours, and around nests and chicks within 6 daylight hours. The consent decree buffer distances are based on management recommendations for the Seashore that were prepared in 2005 by U.S. Geological Survey scientists, and are as follows:

Species	Breeding Behavior/Nest (m)	Unfledged Chicks (m)
Piping plover	50	300 pedestrian (1000 ORV)
Least Tern	100	200
Other colonial waterbirds	200	200
American oystercatcher	150	200

The consent decree also established a new prohibition on night driving from 10 p.m. to 6 a.m. from May 1—November 15 to protect and improve sea turtle nesting,

except that night driving may be allowed from September 15—November 15 with an educational permit.

Question 13e. How many times did the National Park Service start and stop the preparation of an off-road vehicle management rule-making since the requirement was imposed by Executive Order in 1972 and what was the basis for stopping each time?

Answer. ORV plans and regulations were attempted but not completed twice each. In 1978 NPS prepared a draft interim ORV management plan for the Seashore. The planning process apparently stalled at the Regional Office and the plan and environmental compliance were never completed. ORV management was also addressed in a 1980 local "plan" (or local policy) for the North District of the Seashore; however, it did not meet the planning and NEPA compliance requirements needed in order to be considered a formal plan. In 1973 and 1990, the Seashore submitted draft regulations through the NPS Southeast Regional Office to the Washington Office. The regulations were not promulgated. It is not clear to us why any of these actions were not completed.

Question 13f. How has the annual visitation for Cape Hatteras changed each year in the past 5 years and can you point to any specific factors that contributed to the change? How does that compare with visitation across the entire national park system as a whole during the same time?

Answer. The yearly counts for visitation at Cape Hatteras National Seashore over the past 5 years are as follows:

2007—2.237 million
2006—2.125 million
2005—2.261 million
2004—2.208 million
2003—2.661 million

There was a relatively significant drop from 2003-2004 (about 17%), We know that there was a lot of storm activity, including Hurricane Isabel in the late summer and fall of 2004 that affected visitation that year. We do not know the reasons for the numbers changing since then, but it is common to have fluctuations in visitation, and often there are many different factors that contribute to the change.

Yearly counts for visits to all units of the National Park System are as follows:

2007—275,581,547
2006—272,623,980
2005—273,488,751
2004—276,908,337
2003—266,099,641

A significant factor in the change in total NPS visitation from 2003 to 2004 was the opening of the World War [I Memorial, which drew more than 5 million visitors in 2004.

Question 13g. The NPS testimony states: "Although the breeding season is not yet completed, it appears that actions taken under the consent decree have been beneficial for resource protection. Under the consent decree, the Seashore has experienced an increase in the number of breeding pairs of piping plover from 6 pair in 2006 and 2007, to 11 pairs in 2008. As of July 19, 2008, there were 83 sea turtle nests on the Seashore compared to 49 nests last year at this time." The consent decree was approved by the court on April 30, 2008. (i) When did the piping plover breeding season begin in 2008 and when does it end? (ii) flow long is the incubation period for the piping plover and how many clutches does a nesting pair produce per year? (iii) How long from the time of hatching does it take for a piping plover to become reproductively viable? (iv) How can you he certain that an increase in piping plover breeding pairs is the result of the consent decree when a complete reproductive season has not occurred under the decree; is it possible that more birds than usual survived the winter and were available to nest in 2008 for reasons unrelated to the consent decree? Please answer the same questions for the sea turtle.

Answer. Piping plovers are present at the Seashore throughout the entire year with breeding typically beginning between mid-March and mid-April. It is difficult to determine if birds present on the beach during the spring are breeding birds or wintering migrants traveling to breeding grounds further north. In 2008, the Seashore observed its first evidence of breeding, a nest scrape, on April 4 at Cape Point. The end of breeding season is variable and dependent upon the nesting and fledgling success of early season nests. Typically, the breeding season ends late August. This year the last piping plover chick fledged on July 12, but in 2007 the last chick fledged on August 14. The average incubation period for piping plovers is 26 days and plovers typically produce one clutch per year if they are successful; however,

depending on various conditions such as storm events, tidal flooding, and predators, plovers may re-nest numerous times until they are successful or the breeding season ends. Piping plovers are generally reproductively viable in 1-2 years.

Sea turtles nest at the Seashore during the summer months with hatchling emergence occurring in the late summer and fall months. Typically nesting begins in mid-May and continues until nests hatch by late October. In 2008, the Seashore documented its first sea turtle nest on May 18; as of August 29, the Seashore has had 112 nests. The incubation period for sea turtle nests is highly dependent upon the temperatures of the eggs, which can be affected by daily temperatures, tides, storms, humidity, depth of the nest, and placement of the nest on the beach. Incubation periods average 60 days, but can range 48-100 days. Sea turtle species at the Seashore typically lay 4-5 clutches each season depending on body condition, environmental factors, and threats. It is generally thought to take about 35 years for a sea turtle to become reproductively viable.

It is possible that this year's nesting success for piping plovers and sea turtles is due to multiple factors, not just the consent decree. Animal populations fluctuate as a result of many factors, including genetics, prey availability, suitable and available habitat, environmental conditions, storm events, natural and man-made disturbances, and predators. All of these factors, which can occur during migration, breeding, and nesting stages, influence the success of a particular species. Determining a definitive cause-and-effect relationship between nesting success and the management requirements under the consent decree would require a comprehensive approach to species use of the Seashore and the associated influences affecting them, necessitating study over a number of years.

ON S. 3148

Question 14a. S. 3148 would increase the size of Oregon Caves National Monument by more than 10-fold. What changes in manpower and funding requirements does the National Park Service anticipate because of that increase?

Answer. NPS anticipates it will cost approximately $300,000 to $750,000 per year to administer the new lands, including management, administration, interpretation, resource protection, and maintenance. The range in this estimate is due to the uncertainties of what actions will be necessary on these lands to meet the ecological forest restoration program required by Section 6(b) of the bill.

Question 14b. How many acres of National Park Service land throughout the US include grazing permits and approximately how many AUMs (Animal Unit Months) are involved?

Answer. As of FY 2004, NPS had grazing at 31 units of the National Park System, totaling 1,580,000 acres and 71,000 AUMs.

Question 14c. What are the National Park Service policies for managing grazing permits and if S. 3148 is enacted, will the existing grazing management plan remain in place until the permits have been relinquished?

Answer. NPS policies prohibit grazing except 1) as specifically authorized by statute; or 2) as required by a reservation of use right arising from the acquisition of a tract of land; 3) as required in order to maintain a historical scene; or 4) as carried out as part of a living exhibit or interpretive demonstration; or 5) as used to achieve resource conditions as part of an integrated pest management (IPM) plan. Grazing is only allowed where it does not cause unacceptable impacts on park resources and values.

Under S. 3148, 1,263 acres of the approximately 24,000 acre grazing allotment would be transferred to the National Park Service. The NPS would continue to work with the US Forest Service to administer the existing grazing allotment until such time as the permit expires or the allotment is retired.

Question 14d. How much of the land involved in this proposed expansion is in private ownership and have any of the owners objected to this proposal?

Answer. There is no private land involved in the proposed expansion.

Question 14e. We have heard Senator Smith and his concern about the Park Service perhaps not maintaining the grazing permit holder's grazing rights if the permit is not bought out. Can you tell me why you think the Park Service is better qualified to manage these permits than say the Forest Service or the Bureau of Land Management?

Answer. Oregon Caves National Monument has worked alongside the Forest Service in its planning and implementation of the Grayback allotment and would continue to do so if this small portion of the allotment were to be transferred to the monument.

Question 14f. The Oregon Cave National Monument is a fairly small Park Service unit isn't that correct? Do you have sufficient budget and personnel to undertake

the fuels treatments (i.e., logging, thinning, controlled burns) that will need to be done to the land your agency would acquire as a result of this bill?

Answer. Oregon Caves National Monument is relatively small for a unit preserved for its natural resources. The park works closely with Forest Service in developing and implementing its fire management plan, which has included conducting fuel treatment projects and prescribed fire within the existing monument boundary. One of the reasons that we request that the committee defer action on S. 3148 is so that we can coordinate with the Forest Service to determine how best to accomplish the fuels treatment that will be necessary on the lands in question,

Question 14g. Will hunting be allowed to continue on these lands if they are transferred to the Oregon Cave Monument?

Answer. It is against NPS policies to allow hunting except where specifically authorized by law. One of the reasons we request that the committee defer action on this bill is so that we can coordinate with the Forest Service to determine how best to continue to provide a wide range of recreational activities to monument and forest visitors.

ON S. 3247

Question 15a. When does the National Park Service anticipate completing the suitability and feasibility study for River Raisin Battlefield Park?

Answer. At this point, we anticipate concluding the study by the summer of 2010. The study is being coordinated closely with the national historic landmark (NHL) nomination also currently under development. This coordination is necessary in this case as criteria for NHL designation is applied in determining whether or not the property is nationally significant, the first criterion of a special resource study. This means that, to some extent, the study schedule is dependent on the timing of the evaluation of the NHL nomination. The soonest that the first level of evaluation for the NHL, nomination will occur is the spring of 2009.

Question 15b. How common is it to designate a new unit of the national park system without first completing a study?

Answer. It is not very common for Congress to designate a new unit without the National Park Service first completing a special resource study. We have found that Congress relies heavily on the information provided in a completed study, including recommendations for the boundary and any special authorities needed, to help shape legislation designating a new unit. The National Park Service considers the information gained by a special resource study essential to establishing a sound unit, which is why NPS typically asks Congress to defer action on legislation designating a new unit until the study of the site has been completed.

Question 15c. Has the National Park Service encountered any issues in the course of the study that might lead to a negative recommendation for designation?

Answer. The National Park Service has just begun work on the special resource study and does not have sufficient information on any issues to provide either a negative or positive recommendation for designation.

Question 15d. Has the National Park Service found any compelling reason in the course of the study to justify designation before the study is completed?

Answer. No. Having both a completed special resource study and a NHL nomination would provide information necessary to make an accurate determination on whether the site is nationally significant and suitable and feasible to be designated as a unit of the National Park System, as well as whether administration by the NPS would be the best management option.

ON S. 1816

Question 16a. How many other instances has Congress authorized a grant program to be administered by the Department of the Interior without a funding ceiling?

Answer. We are not aware of any grant program administered by the NPS that does not have an authorized funding ceiling.

Question 16b. Has the National Park Service completed a study of the proposed "Women's Suffrage Commemorative Trail" and what was the outcome of the study?

Answer. NPS completed a feasibility study that was transmitted to Congress in January 2004. The final report concluded that while there are a large number of sites associated with the struggle for women's suffrage in the Northeast, a trail from Massachusetts to Buffalo was not viable. It found a large concentration of sites in the corridor from roughly Syracuse to Rochester, New York. Seneca Falls and Waterloo, where the nation's first women's rights convention was planned and held in 1848, lie in the center of this concentration. The study found that a "Votes for Women" History Trail, a vehicular tour route connected to Women's Rights National

Historical Park, could link sites associated with the struggle for women's suffrage to support the recognition, promotion, and protection of properties connected to women's rights history.

Question 16c. How many sites would be associated with this trail and how many of those are existing units of the national park system?

Answer. Based on a preliminary assessment, there may be roughly 30-35 sites on the trail. Two of the sites, Women's Rights National Historical Park and Eleanor Roosevelt National Historic Site, are NPS units. Many of the sites on the trail would be National Register-listed properties or national historic landmarks. Specific criteria would be developed for sites to be considered for inclusion on this trail.

ON S. 2093

Question 17a. Has any other entity conducted any type of assessment of the rivers that could he incorporated into a NPS study?

Answer. Yes, the State of Vermont has been assessing non-point agricultural runoff issues in the Missisquoi basin and is developing a management plan to address those issues in conjunction with local communities and partners, including the Environmental Protection Agency and the Missisquoi River Basin Association. NPS has met with local and state contacts and are in agreement that this ongoing planning and assessment work would be incorporated into the Wild and Scenic River study.

Question 17b. How many suitability and feasibility studies is the NPS currently authorized by Congress to conduct and how many of those are for wild and scenic rivers?

Answer. There are currently 34 studies pending for new units, heritage areas, rivers and trails. Of the 34, three are currently underway for wild and scenic rivers:

- New River in West Virginia and Virginia
- Lower Farmington River in Connecticut
- Taunton River in Massachusetts.

ON S. 2535

Question 18a. How much land is involved in this boundary adjustment and how much of it is in private ownership?

Answer. There are 261 acres involved in this boundary adjustment. Of this acreage, 198 acres are owned in easement or fee by a non-profit land conservation organization, the Open Space Institute, with another non-profit land conservation agency, Equity Trust, having fee ownership of 101 of those acres. The remaining 63 acres are owned by three private owners.

Question 18b. Have any property owners within the proposed expansion area objected to being included within the boundary?

Answer. Currently none of the property owners within the proposed expansion area object to being included within the boundary. In the original proposed boundary expansion, there were two property owners who indicated that they did not wish to be included in the boundary change at this time, so their properties (totaling 70 acres) were removed from the proposed boundary expansion.

Question 18c. How will the National Park Service use the property that is proposed for acquisition?

Answer. The majority of the land, approximately 173 acres, will remain under private ownership and management and will continue to be farmed. Sections of these lands that were part of Van Buren's original farm, and which still retain original landscape features from Van Buren's tenure, will become accessible to visitors which will help them to gain a better understanding of Lindenwald. Approximately 25 acres that would be donated in fee would provide additional options for locating operational structures and visitor facilities so they would not impact the cultural landscape.

ON S. 2561

Question 19a. Approximately how many sites would be included in the Cold War Theme Study if this bill is enacted?

Answer. We do not know right now how many sites would be looked at. There are thousands of places that have an historical association with the Cold War, but only a very few will be of exceptional national significance and have a high degree of integrity, two characteristics they would need to qualify for NHL designation.

Question 19b. Are any of the sites for potential study currently active military sites?

Answer. We do not know if any of the sites are currently active military sites. That is something we would determine as we begin to look at the most significant Cold War sites.

Question 19c. What role would DoD have in the proposed theme study?

Answer. The legislation specifies that consideration should be given to the inventory of sites and resources associated with the Cold War that was done by the Defense Department pursuant to the 1991 legislation which established the DOD Legacy Resource Management Program [Section 8120(b)(9) of Public Law 101-511]. We would be drawing from work DOD has already done to identify these resources. In addition, the study calls for the Secretary of the Interior to consult with the Secretary of the Air Force on the study. Thus, we would ensure that we had the input of Air Force personnel as we frame the study and identify resources.

Question 19d. Have any prior studies of Cold War sites been conducted and what were the findings and recommendations?

Answer. The Air Force conducted a special resource study of the Minute Man Missile site in South Dakota as part of the Legacy Resource Management Program prior to Congress' designation of the site as a unit of the National Park System in 1999. The Air Force also conducted historical studies on a number of other individual facilities, such as flight training centers and communication and command centers. However, there has not been a study of the kind proposed by this legislation—a study that would look at Cold War resources in a systematic and comprehensive manner.

Question 19e. What is the estimated cost of the proposed study and how long will it take to complete?

Answer. Typically, National Historic Landmark theme studies are estimated to cost between $250,000 and $400,000. The proposed study could take 3-5 years to complete, depending on the completion of current and pending studies already authorized by the Congress.

ON S. 3011

Question 20a. What is the existing land area of the Palo Alto Battlefield National Historic Site and how much acreage will this bill add?

Answer. The current acreage of the park is approximately 3,408 acres, of which approximately 1,315 acres are federally owned. S. 3011 would add 34 acres.

Question 20b. How does the National Park Service intend to use the land acquired as a result of this legislation?

Answer. The land would be added to the boundary of the park but may not ever be owned by NPS. The Brownsville Community Foundation, which owns the property, has proposed an administrative building for the site. If built, the foundation would use part of the building and NPS would use part of this building. If the land is acquired by the park, it would be interpreted along with the rest of the park as part of the American-Mexican war.

Question 20c. How much of the proposed expansion area is privately owned and have any owners objected to the boundary adjustment?

Answer. The entire 34 acres are owned by the not-for-profit Brownsville Community Foundation, which wants the land to be included within the park boundary.

ON S. 3226

Question 21a. What is the estimated cost associated with changing the name of this site?

Answer. The only costs would be those associated with changing the name on signs, brochures, and other materials, which would be minimal.

Question 21b. Do you anticipate any budget increase or change in personnel as a result of this name change?

Answer. No. The costs would be absorbed in existing budgets. There would be no impact on personnel.

ON H.R. 5137

Question 22a. The current authorization for New River Gorge National River says hunting may be allowed. Has the National Park Service taken any steps to prevent hunting that would cause hunters to be concerned?

Answer. No. Hunting has been allowed at New River Gorge since the area was designated as a unit of the National Park System in 1978. The park's 1982 GMP determined that hunting was an appropriate activity, and since that time, NPS has permitted hunting on lands owned and administered by NPS, except in areas of developed recreational facilities for reasons of public safety.

Question 22b. Is there any reason why hunting should not be allowed in New River Gorge National River?

Answer. No. NPS is cognizant of the importance of hunting to the local community as well as the ecological implications of hunting within New River Gorge. For both reasons, hunting has been determined to be appropriate at New River Gorge National River.

Question 22c. What has transpired since the New River Gorge National River was established as a park unit that would cause concern for future hunting opportunities?

Answer. NPS has allowed hunting at New River Gorge since its inception in 1978. In 2004, since NPS was about to begin a new GMP for the park, NPS decided to include National Environmental Policy Act (NEPA) compliance related to hunting in that document. As part of the NEPA compliance. NPS is considering alternatives for hunting within the park. Three of the action alternatives would continue or enhance hunting in the park, and one is a no hunting" alternative. NPS has determined that the "no hunting" alternative must be included in the plan in some form to ensure that the requirements of NEPA are adequately met. When the draft GMP is released for public review, it will include a preferred alternative stating the NPS' position on continued hunting at New River Gorge.

ON S. 3158

Question 23a. When was the Cape Cod National Seashore Advisory Commission first authorized and why is this reauthorization necessary?

Answer. The Commission was first authorized in 1961 when the park was established. The Commission is an important partner to the park, providing information on issues related to private land ownership and occupancy, and on management of recreational activities.

Question 23b. How many members are on the Cape Cod National Seashore Advisory Commission, how long a term do they serve, and how frequently do they meet?

Answer. There are 10 members, appointed by the Secretary, who serve for a two-year term. The Commission meets five to six times a year.

Question 23c. How many national park units currently have an advisory commission/board and how long do such commissions generally remain in existence once formed?

Answer. There are 20 currently authorized federal advisory commissions for national park units, and several more that are associated with the National Park Service but not a specific park unit. As indicated by the list below, many of have an indefinite authorization, while others have a termination date. Some are established to provide advice on a range of issues; other for a very specific purpose. Advisory commissions established for general purposes for units of the National Park System are often authorized by Congress for an initial ten-year period and later extended for an additional period of time.

NATIONAL PARK SERVICE ADVISORY COMMISSIONS

Commissions with no termination dates
Boston Harbor Islands National Recreation Area Advisory Council
Big Cypress National Preserve Off-Road Vehicle Advisory Commission
Cedar Creek and Belle Grove Nation Historical Park Advisory Commission
Committee for the Preservation of the White House
Gettysburg National Military Park Advisory Commission
Jimmy Carter National Historic Site Advisory Commission
National Park of American Samoa Advisory Board
Native American Graves Protection and Repatriation Review Committee
NPS Subsistence Resource Commission—Aniakchak National Monument
NPS Subsistence Resource Commission—Denali National Park
NPS Subsistence Resource Commission—Gates of the Arctic
NPS Subsistence Resource Commission—Cape Krusenstern National Monument
NPS Subsistence Resource Commission—Kobuk Valley National Park
NPS Subsistence Resource Commission—Lake Clark National Park
NPS Subsistence Resource Commission—Wrangell-St. Elias National Park
Mary McLeod Bethune Council House National Historic Site Advisory Commission
Preservation Technology Training Board
Tall Grass Prairie National Preserve Advisory Committee
Wekiva River System Advisory Management Committee

Commissions with termination dates	Termination date
Acadia National Park Advisory Commission	Sept. 25, 2026.
Captain John Smith Chesapeake National Historic Trail Advisory Council	May 21, 2018.
Chesapeake and Ohio National Historical Park Commission	Jan. 8, 2011.
Denali National Park and Preserve Aircraft Overflights Advisory Council	Sept. 21, 2013.
Flight 93 Advisory Commission	Completion of monument.
NPS Concessions Management Advisory Board	Dec. 31, 2008.
Selma to Montgomery National Historic Trail Advisory Council	Dec. 14, 2008.
Route 66 Corridor Preservation Advisory Committee	Aug. 10, 2009.
Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore	Jan. 2, 2010.

Commissions with expired authorizations/legislation pending to reauthorize	Termination date
Cape Cod National Seashore Advisory Commission	Sept. 26, 2008.
Delaware Water Gap Recreation Area Citizens Advisory Commission	Oct. 31, 2008.
Kaloko-Honokohau National Historical Park Advisory Commission	Nov. 12, 2006.

RESPONSES OF DERB S. CARTER, JR., TO QUESTIONS FROM SENATOR BURR

ON S. 3113

Question 1. How was the interim management plan deficient and why was it necessary to develop a court-approved agreement?

Answer. As more fully explained in the Amended Complaint in the federal lawsuit entitled Defenders of Wildlife et al. v. National Park Service et al.,[1] the Interim Plan failed to meet the National Park Service's obligation pursuant to Executive Orders 11644 and 11989 and 36 C.F.R. § 4.10. These executive orders and the regulation require the National Park Service to adopt a special regulation to manage off-road vehicle use on the Seashore and protect natural resources from the adverse impacts of off-road vehicle use. Further, the Interim Plan violated the National Park Service Organic Act ,[2] the Cape Hatteras National Seashore enabling legislation,[3] the Migratory Bird Treaty Act,[4] and the Endangered Species Act[5] because it failed to protect the wildlife of the Seashore. Its primary weaknesses included:

- Initiating pre-nesting closures on April 1, rather than March 15, increasing the level of disturbance for birds seeking to establish territories and court mates.
- Limiting monitoring for territorial and breeding behavior. The frequency of monitoring under the Interim Plan was not sufficient because it allowed significant time periods to pass between observations, ensuring that territorial and breeding behavior would not be observed by Park staff and that buffers would not be implemented to protect breeding birds.
- Establishing disturbance buffers that were too small, had no scientific basis, and did not meet the minimum recommendations of the USGS scientists. Adequate buffers are vital to bird courtship, breeding, nesting, and chick rearing.
- Granting substantial discretion to the National Park Service to decrease protections for wildlife. In previous years, Park Service exercise of this discretion has consistently favored ORV use over resource protection, putting wildlife in harm's way. As Steve Harrison, former Chief of Resource Management at Cape Hatteras National Seashore, explained in his sworn declaration, "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."[6]
- Failing to impose any restrictions specifically on night driving, which can disturb nesting sea turtles.

Because of these deficiencies, and the Interim Plan's express reliance on previous management strategies, it was clear that the wildlife population declines observed over the last decade at the Seashore would continue under the Interim Plan. Specifically, experts on the species managed under the Interim Plan stated that:

- "[T]he 2007 Interim Plan will not provide for the recovery of the piping plover population at Cape Hatteras National Seashore, and does not acceptably reduce the risk of human-caused injury or mortality to nests or chicks."[7]
- "Under the 2007 Interim Plan, there is a risk that there will not be a viable piping plover population in place when the long-term ORV management plan is enacted."[8]
- "[T]he 2007 Interim Plan is inadequate in its ability to provide the type of protection required by piping plovers and colonial ground nesting waterbirds at CAHA."[9]
- "Without adoption of management at the highest level of protection it is likely that piping plovers and the other shoreline inhabiting waterbird species will not continue to breed at Cape Hatteras for much longer in the future."[10]

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[1] Case number 2:07-CV-45-BO (U.S. Dist. Ct. for the Eastern Dist. of N.C.).
[2] 16 U.S.C. § 1 et seq.
[3] 16 U.S.C. §§ 459-459a-10.
[4] 16 U.S.C. §§ 703-712.
[5] 16 U.S.C. 1531-1544.
[6] Declaration of Steven Harrison, filed in Defenders of Wildlife, et al. v. National Park Service, et al., ¶ 19 (Jan. 17, 2008).
[7] Declaration of Dr. Jonathan Cohen, filed in Defenders of Wildlife, et al. v. National Park Service, et al., ¶ 9 (Dec. 12, 2007). Dr. Cohen was the piping plover expert hired by the United States Geological Survey to provide proposed management plans for Cape Hatteras National Seashore.
[8] Id. ¶ 14.
[9] Declaration of Dr. Francesca Cuthbert, filed in Defenders of Wildlife, et al. v. National Park Service, et al., ¶ 8 (Dec. 13, 2007).
[10] Id. ¶ 11.

- "[T]he 2007 Interim Plan is inadequate for protecting Piping Plovers and their eggs and chicks from disturbance or direct mortality caused by recreational activities, especially ORVs."[11]
- "Failure to implement more effective protection, beginning with the 2008 breeding season, will continue to impede progress toward recovery of this local population, and will not reduce the current risk that breeding Piping Plovers will be extirpated from the Seashore."[12]
- "If current management practices continue for the next two to three years, piping plovers will most likely disappear as a breeding species from Cape Hatteras entirely and the populations of colonially nesting waterbirds and American oystercatchers will be drastically reduced if not also eliminated."[13]

It was necessary to develop the Consent Decree to address these shortcomings of the Interim Plan, to prevent the loss of additional native species from the Seashore before a final ORV management plan is approved, and to ensure that a final management plan is adopted by creating an enforceable timetable for its development. In 2007, both gull-billed terns and black skimmers failed to nest on the Seashore beaches. The scientific evidence available indicated that several other species risked being eliminated from the Seashore under the Interim Plan. The Consent Decree corrects these faults by using a scientifically supported foundation for the protection of species. The extensive input from Dare County, Hyde County, and the Cape Hatteras Access Preservation Alliance in crafting the Consent Decree ensured that, even with this scientific basis, the Consent Decree appropriately considers all uses of the Seashore and accommodates those uses.

Question 2. Cape Hatteras National Seashore Off-Road Vehicle Use (S.3113): Has there been any increase in beach traffic in other areas of the park or adjacent beaches since the court-approved agreement has been followed?

Answer. The National Park Service is in the best position to answer this question. We understand that the Park Service is keeping track of the numbers of visitors to Cape Hatteras National Seashore generally as well as the number of ORVs driving on its beaches at certain locations, but we are not aware of any place that it has regularly published either those numbers or a breakdown of how many vehicles are using each section of beach. There has been little to no decrease in the numbers of ORVs using the beaches in general, and that there has been at least an occasional increase in the total number of vehicles on the Seashore.[14] As we previously testified, the Park Service reported that 2,557 vehicles were on Seashore beaches on the July 4th, 2008, holiday,[15] whereas the busiest holiday weekends in previous years reportedly approached only 2,200 vehicles.[16]

The noteworthy fact regarding the location of beach driving is that beach driving has been managed in such a way as to keep ORVs away from areas only as long as necessary to ensure the success of wildlife breeding by allowing safe courting, breeding, nesting, hatching, and fledging.

Question 3. Is your organization concerned about threatened and endangered species in other public beaches in the Outer Banks? Are you aware of any plans for additional legal action?

Answer. National Audubon Society, Defenders of Wildlife, The Wilderness Society, and the Southern Environmental Law Center are all concerned about the welfare of threatened and endangered species wherever they may live and breed. We are aware that populations of threatened and endangered species, including many of the same species as those that live on Cape Hatteras National Seashore, live elsewhere in North Carolina's Outer Banks, including on Cape Lookout National Seashore. We have focused our attention on those populations living in Cape Hatteras National Seashore because those populations were suffering the greatest declines and because, according to the government's own scientists and the applicable federal laws, there was an obvious mechanism for the Park to protect the species and reverse the declines. That mechanism has been memorialized in the Consent Decree.

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[11] Declaration of Scott Melvin, filed in Defenders of Wildlife, et al. v. National Park Service, et al., ¶ 18 (Jan. 8, 2008).

[12] Id. ¶ 22.

[13] Declaration of Dr. Erica Nol, filed in Defenders of Wildlife, et al. v. National Park Service, et al., ¶ 19 (Dec. 18, 2007).

[14] Irene Nolan, New dispatches from the beachfront: Access update, getting smart about beach driving, manners and laws, and July 4 report, ISLAND FREE PRESS, http://www.islandfreepress.org/2008Archives/07.11.2008-ShootingTheBreezeNewDispatchesFromTheBeachfront.html.

[15] Id.

[16] Notice of Intent (NOI) To Prepare a Draft Environmental Impact Statement (DEIS) for an Off-Road Vehicle Management Plan (ORV Management Plan) for Cape Hatteras National Seashore, NC, 71 Fed. Reg. 71552 (Dec. 11, 2006)

Regarding other litigation, we aware of a lawsuit entitled Friends of the Earth et al. v. United States Department of the Interior, case number 05 CV 2302 (RCL),[17] which was brought in the U.S. District Court for the District of Columbia in 2005. The groups that I represent were not party to that lawsuit. Dare County, Hyde County, and the Cape Hatteras Access Preservation Alliance were, however, intervenors in that lawsuit, in much the same posture as in the case involving Cape Hatteras. That case involved the National Park Service's duty to manage off-road driving at other national parks and seashores, including Cape Lookout. We understand that a settlement has been reached in that case. We also understand that Dare County, Hyde County, and the Cape Hatteras Access Preservation Alliance, represented by some of the same lawyers as in the Cape Hatteras case, informed the court that they did not object to that settlement.[18]

Regarding future litigation, we have no current plans to initiate litigation regarding protection of endangered and threatened species from ORVs in other areas of the Outer Banks. We are aware, however, that the District of Columbia federal district court has retained jurisdiction over litigation initiated by Dare County, Hyde County, and the Cape Hatteras Preservation Alliance, through which they challenged the designation of critical habitat for wintering piping plovers on Cape Hatteras National Seashore, requiring status updates from the U.S. Fish and Wildlife Service.[19] Warren Judge, Chairman of the Dare County Board of Commissioners, has indicated that the county may challenge the Fish and Wildlife Service's recent re-designation of critical habitat.[20] We are also aware that ORV interest groups have indicated an ongoing commitment to using litigation as a means to address their dissatisfaction with beach driving limits at Cape Hatteras.[21]

Question 4. In your testimony you state: "By the last week in July, piping plovers had increased from 6 breeding pairs in 2007 to 11 pairs in 2008, an 83% increase for this threatened species. Fledged piping plover chicks nearly doubled from 4 to 7 during the same period, the highest number of fledged piping plover chicks on the Seashore since 1998." The consent decree was approved by the court on April 30, 2008. (i) When did the piping plover breeding season begin in 2008 and when does it end? (ii) How long is the incubation period for the piping plover and how many clutches does a nesting pair produce per year? (iii) How long from the time of hatching does it take for a piping plover to become reproductively viable? (iv) How can you be certain that an increase in piping plovers is the result of the consent decree when a complete reproductive season has not occurred under the decree; is it possible that more birds than usual survived the winter and were available to nest in 2008 for reasons unrelated to the consent decree?

Answer. (i) It is difficult to definitively state when the piping plover season began and ended. The first documented closure for breeding piping plovers, other than prenesting closures, was announced on May 5.[22] The last piping plover chick fledged

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[17] Press Release, National Parks Conservation Association, Conservation Groups Settle Lawsuit with National Park Service, Protection National Parks from Illegal Off-Road Vehicle Use (May 22, 2008) available at http://www.npca.org/media_center/press_releases/2008/orv_052208.html.

[18] Notice of Settlement, filed in Friends of the Earth, et al. v. U.S. Dept. of the Interior, et al., (May 01, 2008); Joint Motion for Entry of Judgment, filed in Friends of the Earth, et al. v. U.S. Dept. of the Interior, et al., (May 23, 2008).

[19] Cape Hatteras Access Preservation Alliance v. U.S. Dep't of the Interior, 344 F. Supp. 2d 108, 136-37 (D.D.C. 2004). See Federal Defendants' Second Status Report on Progress on Remand, filed Dec. 20, 2007.

[20] The minutes of the May 19, 2008 Dare County Board of Commissioners' meeting state that Warren Judge commented that the county "will have to revisit the issue in court." The Dare County Board of Commissioners' Minutes: May 19, 2008, available at http://www.co.dare.nc.us/BOC/Minutes/2008/OM051908.pdf.

[21] http://www.ncbba.org/legalfund.html (stating, "The North Carolina Beach Buggy Association needs help now, more than ever, to fund the legal battles we are facing now and will face in the immediate future. We are committed to free and open access to the beaches of Cape Hatteras National Seashore Recreational Area."); http://capehatterasapa.org/forum/forum—topics.asp?FID=8 (showing Cape Hatteras Preservation Alliance's ongoing efforts to raise legal funds, and stating, "There are several pro-active projects that CHAPA is working on and I will share more with you, when they are ready for announcement, but these things take funds to be able to do."); http://www.capehatterasanglersclub.org/index.php?option=com—content&task=view&id=22&Itemid=46 (stating, "The purpose of [the Cape Hatteras Access Preservation Alliance] is to provide a venue through which OBPA can join with other like-minded user groups to preserve and defend through negotiation or litigation against any effort by any person, group, organization, or government agency to ban or restrict vehicular or other access to the beaches (ocean and sound side) of the Cape Hatteras National Seashore.")

[22] Press Release, Outer Banks Group, National Park Service, NPS Announces First Major Closures under the Consent Decree (May 5, 2008).

on July 15.[23] The last remaining nest failed on July 20, 2008.[24] This span approximates the generally accepted breeding season for piping plovers, which typically begins in March and runs through mid-August.[25]

(ii) Piping plover incubation ranges from 25-29 days.[26] A pair may re-nest multiple times if previous clutches are destroyed, but rarely do so after chicks hatch.[27]

(iii) Piping plovers have been known to breed as young as one year of age, but the frequency at which they do so is unknown.[28]

(iv) A range of factors can influence breeding success including habitat availability, weather conditions, predation, and human disturbance. At the Seashore, the National Park Service is implementing management strategies to address predators and human disturbance. While there is no way to be sure that the Consent Decree is the sole reason for this year's breeding success for piping plovers, the success of piping plovers, American oystercatchers, sea turtles, and other species is not unexpected. The Consent Decree is based primarily on the "moderate protection" protocols created by USGS scientists and recommended to the National Park Service. Those scientists predicted that implementing the "moderate protection" protocols would decrease the disturbance of target species on the Seashore. While it is too early to make a final judgment on the effectiveness of the Consent Decree, that decreased disturbance may be responsible for the improved results from this year's breeding season.

Survival rates of wintering plovers could affect the number of breeding pairs of piping plovers on the Seashore, but we are not aware of any evidence demonstrating that the survival rate of wintering birds leading into this breeding season was higher than normal. Further, if winter survival is responsible for the 83% increase in breeding pairs of piping plovers on Cape Hatteras Seashore, one would expect to see similar increases in the southern population of piping plovers at other locations. However, based on preliminary monitoring, the number of breeding pairs at nearby Cape Lookout National Seashore merely remained essentially the same, with 45 breeding pairs in 2007 and approximately 45-46 breeding pairs in 2008.

RESPONSES OF JOEL HOLTROP TO QUESTIONS FROM SENATOR WYDEN, ON S. 3148

Question 1. The Park Service has been proposing expanding the boundary of the Oregon Caves Monument since the 1930's, and, as you noted in your testimony, the original withdrawal proposal envisioned a larger Monument, but in the Forest Service testimony isn't this Administration reversing decades of policy by its unprecedented criticism of efforts to create an expanded boundary for the Oregon Caves monument?

Answer. The Presidential Proclamation (No. 876, July 12, 1909) designating the Oregon Caves National Monument identified an area of approximately 480 acres of the Siskiyou National Forest to be managed as a national monument. This area was managed initially by the Forest Service and since 1933; it has been managed by the National Park Service. Since 1933, the Forest Service has worked closely with the National Park Service to ensure that management of the surrounding national forest lands is compatible with management objectives for the monument. Watershed protection, enhanced recreation opportunities, fire suppression and hazardous fuels management are some of the more important areas in which we have mutual interests with the National Park Service.

In 1985, the National Park Service inquired about the possibility of transferring the management and operations responsibilities for the Oregon Caves National Monument to the Siskiyou National Forest. At that time, a joint team of both agencies addressed the issues. Following those discussions, the National Park Service reorganized to have the Oregon Caves National Monument manager report to the manager at Crater Lake National Park.

Forest Service staff provided comments on the draft environmental impact statement associated with 1998 Oregon Caves Management Plan that recommended en-

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[23] OUTER BANKS GROUP, CAPE HATTERAS NATIONAL SEASHORE RESOURCE MANAGEMENT WEEKLY FIELD SUMMARY; JULY 17 TO JULY 23, 2008 (BODIE ISLAND, HATTERAS, AND OCRACOKE DISTRICTS) at 1 (2008).

[24] Id.

[25] U.S. GEOLOGICAL SURVEY, MANAGEMENT AND PROTECTION PROTOCOLS FOR THE THREATENED PIPING PLOVER (CHARADRIUS MELODUS) ON CAPE HATTERAS NATIONAL SEASHORE, NORTH CAROLINA 4 (2005).

[26] Id. 4.

[27] Id.

[28] U.S. FISH & WILDLIFE SERVICE, PIPING PLOVER (CHARADRIUS MELODUS) ATLANTIC COAST POPULATION REVISED RECOVERY PLAN 5 (1996).

larging the monument. At that time, staffs from both agencies exchanged correspondence and consulted on a number of topics related to the monument plan and mutual objectives for managing the monument and the surrounding national forest.

The Forest Service continues to be cooperative with and supportive of the Superintendent and staff at the Oregon Caves National Monument. The recent Forest Service testimony is aligned with a longstanding policy of intergovernmental cooperation, including the agreement and conservation policy established January 31, 1963, between the Secretaries of the Department of Agriculture (USDA) and the Department of Interior (DOI).

Question 2. The Forest Service was provided an opportunity to comment and did in fact provide comments to the 1999 General Management Plan. I have reviewed some of the correspondence submitted providing those comments and notes of actions the National Park Service undertook to be responsive to those comments. Why doesn't that constitute adequate interagency consultation?

Answer. The planning process for the Monument's General Management Plan was conducted by the National Park Service. During that process, the Forest Service and the National Park Service staffs discussed a number of topics related to the proposed management plan. The topic of changing lands status to enlarge the monument did not evolve to the point where the agencies conducted a joint study with public participation to fully consider of the feasibility of transferring lands from the Forest Service to the Park Service administration. To date, there has been no joint study of this proposal employing a process as envisioned and directed by the 1963 agreement between the Secretaries of Agriculture and the Interior. If a change to land status is to be considered, joint studies, fully open to public participation are the rule since the 1963 agreement. Longstanding direction has been for mutual support and cooperation in management of lands under each jurisdiction. The Forest Service is committed to cooperative and mutually supportive management across jurisdictions.

Question 3. Can you provide a complete file of all comments the Forest Service submitted to the National Park Service for the 1998 General Management Plan?

Answer. The Forest Service comments on the draft environmental impact statement related to the Oregon Caves National Monument General Management Plan are attached in Exhibit 1.*

Question 4. Can you provide a complete file of all comments the Forest Service submitted to the National Park Service regarding transfer of land to the National Park Service?

Answer. The Forest Service comments regarding proposed boundary changes to the Monument are included in the attached Forest Service comments on the draft environmental impact statement related to the Oregon Caves National Monument General Management Plan. See Exhibit 1.

Question 5. Can you provide further explanation and documentation on the agency policy the Forest Service testimony cites regarding unilateral agency proposals?

Answer. The nearly half-century policy of USDA and DOI to avoid unilateral proposals to change the status of lands dates back to a joint USDA and DOI letter on "Jurisdictional Responsibilities in Managing Public Recreational Areas" sent to and endorsed by the President on January of 1963. See Exhibit 2.

Agencies may have different resource and recreation management objectives that lead them to emphasize different types of public recreation or adapt different techniques for resource protection. When one agency develops a management plan solely around its objectives, its management activities can disrupt patterns of legitimate recreational use, create additional management expenses, and even put certain resources at risk by affecting patterns of human use or natural processes. The USDA and DOI have long adhered to the 1963 agreement to ensure that neither inadvertently interferes with the other's mission and objectives for protecting natural resources and providing a wide range of recreational opportunities and public uses of federal lands.

Question 6. Over the years, I have heard a number of examples where there has been less than stellar interagency coordination and agreement on protecting the monument resources. There are a number of examples I have heard, including the Forest Service clear cutting right up to the Monument boundary—in the late 1980s a road collapse associated with a culvert in a clear-cut in the Lake Creek watershed caused the National Park Service to shut down the public water supply because the turbidity was so high that they couldn't treat it.

And it appears there has been a long history of National Park Service concern about grazing and in response the Forest Service increased the grazing. The Forest

* Exhibits 1–5 have been retained in subcommittee files.

Service even closed the gate on the park to block access to the forest because of the controversial Sugarloaf timber sale.

These examples seem to illustrate a failure of cooperation and protection of the Monument's resources. Can you detail and provide evidence of any special measures the US Forest Service has undertaken to further protect the natural resources and water supply of the Oregon Caves National Monument?

Answer. Forest Service personnel have worked closely with the Oregon Caves National Monument staff on a wide variety of natural resource and administrative issues over the years and coordinated on activities that have been of mutual interest to the public, the Forest Service and the National Park Service.

There is a Memorandum of Understanding for Fire Suppression and Mutual Aid: The Forest Service will aggressively respond to wildfire threats with coordinated suppression activities on the Monument. The local Forest Service District initial attack forces include two suppression engines, an 18 person helitack crew, and a type 2 helicopter. As needed, air tankers, smokejumpers, and additional fire resources are made available including foam capability for structure protection. This is especially important due to significant risks associated with only one access route to the Monument and a high loading of hazardous fuels in this area due to lower than natural fire recurrence.

The Wild Rivers Ranger District stores the Park Service fire suppression engine in a covered facility and maintains the Park Service suppression engine at no expense during the off-season.

In support of the Oregon Caves administrative needs, the Forest Service has permitted the building of communications equipment and facilities on national forest lands to facilitate the operation of the Oregon Caves Monument. During the past year, the Forest Service has provided the Monument employees unlimited access to the facilities at the Wild Rivers District Compound to facilitate phone and communication services during a time when the Monument experienced a failure in phone and computer services. Office space, computer access, and phone service was willingly provided for eight months without any fees being charged.

No clear cutting has occurred in the vicinity of the Monument boundary since the mid 1980's and none are planned. In regards to the "late 1980's road collapse associated with a culvert in a clear-cut in the Lake Creek watershed," there was a culvert failure and subsequent road fill slope failure on Forest Service Road 070 in 1997 when severe winter storms caused widespread flooding in Southwest Oregon. This culvert failure was not associated with a clear-cut, but was, however, directly below a high elevation natural meadow. In response to this culvert failure, the Forest Service closed and decommissioned a portion of this road which is located just outside the Monument's present boundary to prevent further risk of road failure and subsequent sedimentation. It should be noted that this action was consistent with the specific action described in the Oregon Caves National Monument General Management Plan (August 1999, page 20, action item 15).

The National Park Service and the Forest Service have had concerns about grazing in the Lake Creek watershed above the Monument's water intake. For a variety of natural resource related reasons, the Forest Service has reduced the number of permitted cattle in the Big Grayback Allotment from 200 head in 1937 to 70 permitted head of cattle in 2008. The new Big Grayback Allotment Management Plan that will be implemented in 2009 calls for 56 permitted head of cattle for the allotment.

The current staff on the Rogue River-Siskiyou National Forest is not aware of the specific details regarding the gate closure on the Monument to prevent access to the Sugarloaf Timber Sale area. However, coordination with the Monument staff to close this gate to maintain public safety in response to timber sale protest activity would have been consistent with Forest Service public safety policies in place at that time.

The Forest Service manages the lands surrounding the Oregon Caves National Monument to meet or exceed Oregon surface water standards. The Forest Service has undertaken and will continue to undertake a variety of special measures to further protect the natural resources and water supply of the Oregon Caves National Monument. Current special measures include protecting the Oregon Caves National Monument public water supply by excluding a 150 foot radius around the water intake from livestock grazing, reducing the numbers of permitted livestock use from 70 head to 56 head, reducing the livestock forage utilization levels in areas adjacent to the Oregon Caves National Monument (Bigelow Lakes Area), and authorizing the construction of a fence to prevent livestock from reaching the Bigelow Lakes area. These specific actions are fully described in the Environmental Assessment for the Big Grayback Allotment Management Plan (October 2007) and the Decision Notice and Finding of No Significant Impact for the Big Grayback Allotment Management

Plan (February 2008), and will be implemented as soon as a final decision is made pending resolution of an appeal by the permit holder. These documents can be accessed at the following internet site: www.fs.fed.us/r6/rogue-siskiyou/projects/planning/big-grayback-ea.shtml.

In addition, the Forest Service will continue to maintain the closure of Forest Service Road 070 consistent with the Oregon Caves National Monument General Management Plan (August 1999).

Question 7. Can you provide me a copy of all the correspondence between the National Park Service and the Forest Service regarding the potential contamination of the Caves' drinking water supply from grazing?

Answer. Enclosed in Exhibit 3 is official correspondence between the National Park Service and the Forest Service regarding the potential contamination of the Oregon Caves National Monument drinking water supply from grazing. The Forest Service manages the watershed to meet in-stream state water quality standards. The Monument has obtained permits from the State of Oregon granting approval for appropriation of surface water through construction of the diversion on Lake Creek for purposes of "domestic, hotel, and fire protection" and is responsible for treating the water to state drinking water standards.

Question 8. Can you please provide notices of violations issued on the Big Grayback Allotment?

Answer. Attached are notices of violations and related documents correspondence on the Big Grayback Allotment. Please see Exhibit 4.

Question 9. Can you please provide the Resource Management Plan direction on grazing in Research Natural Areas and Botanical Areas in the Big Grayback Allotment

Answer. The Big Grayback allotment on the Rogue River-Siskiyou National Forest encompasses portions of the former Rogue River and Siskiyou National Forests. Prior to consolidation, both the Rogue River and Siskiyou National Forest completed their respective Land and Resource Management Plans. These plans provide the following direction for range management in Research Natural Areas and Botanical Areas:

Siskiyou National Forest Land and Resource Management Direction for Range Management in Research Natural Areas

There are no Research Natural Areas within that portion of the Big Grayback Allotment located on the former Siskiyou National Forest.

Siskiyou National Forest Land and Resource Management Direction for Range Management in Botanical Areas

1. Livestock grazing shall be prohibited in Botanical Areas, except where such use is part of an existing allotment. Bigelow Lakes is the only recommended Botanical Area with an existing grazing allotment (Big Grayback Allotment, administered by the Applegate Ranger District of the Rogue River National Forest.) Cattle shall be prevented from reaching the Lakes area by a drift fence. The effects of grazing in the Bigelow Lakes basin shall be monitored and corrective action taken as necessary.

Rogue River National Forest Land and Resource Management Direction for Range Management in Research Natural Areas

1. Grazing may be allowed when the Director of the Forest and Range Experiment Station authorizes such a management practice as essential to maintain a specific vegetation type.
2. Where Research Natural Areas are located adjacent to or within grazing allotments, the boundaries will be marked and physical barriers constructed around the area to prohibit livestock entry, if needed.
3. Write range allotment plans to reflect management direction for all lands within the allotment boundary. Allotment planning procedures are documented in FSM 2210.
4. Develop Coordinated Resource Management Plans where possible and feasible to facilitate integrated resource management of range arid other resources, and between agencies, permittees and offer other landowners.

Rogue River National Forest Land and Resource Management Direction for Range Management in Botanical Areas

1. Livestock grazing will be controlled in order to benefit or maintain the botanical resource. This control can range from limited or no livestock grazing to seasonal adjustments to benefit target species. Forage utilization standards will be based on this direction.

2. Range improvements and vegetative manipulation will not be permitted unless they will benefit the botanical resource. No exotic species will be seeded or placed in botanical areas.

3. Provide fences and stock control devices when necessary to protect resource.

4. Provide annual permittee plans for livestock distribution and use patterns which reflect management direction.

5. Write range allotment plans to reflect management direction for all lands within the allotment boundary. Allotment planning procedures are documented in FSM 2210.

6. Develop Coordinated Resource Management Plans where possible and feasible to facilitate integrated resource management of range and other resources, and between agencies, permittees and other landowners.

All current grazing management on the Big Grayback Allotment conforms to this Land and Resource Management Plan direction. New grazing management as described in the Environmental Assessment, Decision Notice and Finding of No Significant Impact for the Big Grayback Allotment Management Plan Update will also conform to this Land and Resource Management Plan direction.

Question 10. Forest Service testimony cites concerns about fuel management and forest restoration, but my bill specifically includes language providing for forest management and the recent fires have illustrated the Park Service's capabilities in managing for fire. What are the specific concerns about the National Park Service's ability to perform fuel treatments and forest restoration?

Answer. The forest restoration and fuel treatment activities referenced in the Forest Service testimony that are planned for the 4,070 acres identified in S. 3148 are the result of a well-coordinated, multiyear planning effort involving local communities, governments, and interest groups as well as interagency coordination. As a result of these investments in planning and public involvement, the Rogue River-Siskiyou National Forest is now positioned to implement work that will achieve the forest restoration aims of S. 3148 as described in Section 6(b).

We fully support the need to conduct ecological forest restoration activities within the 4,070 acres identified in S. 3148 and believe that these fuel treatment and forest restoration activities can move forward in the most expedient fashion if these lands are maintained within the National Forest System. The longstanding involvement and familiarity of Forest Service personnel working on the forest and within the Pacific Northwest Region will ensure that the recreational values associated with these lands are provided for and ecological forest restoration goals are achieved in an efficient and effective manner.

Question 11. You discussed in your testimony that you have planned restoration and fuels reduction projects. Can you tell us what the priority of those thinning projects in the Rogue River Siskiyou National Forest is, what percentage of those projects has been completed and whether all funding has been secured to complete those projects?

Answer. The Forest Service has placed the highest priority on the restoration and fuels reduction projects planned for this area because they are within the wildland urban interface (WUI) and adjacent to the Oregon Caves National Monument. They are the highest priority for treatment on the Wild Rivers Ranger District as evidenced by the completion of NEPA planning efforts and ongoing implementation.

Approximately 142 acres have already been implemented. An additional 236 acres have NEPA planning completed with expectations of field implementation within the next five years (funding dependent); and 1550 more acres are planned for NEPA and field implementation over the next five or more years. These projects are thinning in lands clear-cut over 30 years ago. These are stewardship projects, and the proceeds will help fund additional fuel reduction efforts.

Question 12. Can you identify where significant amount of hunting occurs with in the lands proposed for transfer to the National Park Service?

Answer. The proposed expansion area is a favorite location for many local hunters and is traditionally used as a primary hunting opportunity for black-tailed deer and black bear. Hunting is generally dispersed throughout the proposed expansion area with concentrated use occurring along open ridge tops, meadows, and other unique wildlife habitat features. In addition, hunting is also concentrated in areas that are accessible by hiking along trails and roadways that are no longer open to motorized vehicles.

Question 13. Could you produce a map delineating these principal areas where hunting is more concentrated and where users would be most impacted?

Answer. Yes, the Forest Service can provide a fairly accurate map of these features, as indicators of areas where hunting would likely be more concentrated using

our GIS capabilities together with aerial photographs, and local expertise within 7-10 days of a request.

Question 14 Is the 1907 withdrawal of Monument lands still in effect? Can you please provide a copy of the withdrawal document with a citation of where to locate it? Can you provide a map indicating the extent of the withdrawal?

Answer. The Monument was withdrawn in 1907 by Secretarial Order, and then by Presidential Proclamation 876 of July 12, 1909, under the authority of the Antiquities Act. A copy of the proclamation and associated plat is in the attached Exhibit 5.

A "buffer" was withdrawn on 12/3/1963 by administrative withdrawal, which is still in effect (based on the Master Title Plat). It can be found on Public Land Order 3286, which gives a Federal Register citation of 28 FR 13308 (which was corrected by 29 FR 3010) Link to the Master Title Plat: http://www.blm.gov/or/landrecords/or/400s060wm01.pdf.

Link to the Historical Index lists all land actions by the Federal Government for Township 40 South, Range 6 West, containing the Monument: http://www.blm.gov/or/landrecords/or/400s060whwd.pdf.

RESPONSES OF JOEL HOLTROP TO QUESTIONS FROM SENATOR BURR

Question 15. How much of the expansion area is currently covered by grazing permits, how many permit-holders are involved, and how many AUMs are involved?

Answer. The proposed expansion area would include approximately 1,263 acres of the Big Grayback Allotment that is currently under a grazing permit. There is one permit holder and the current permitted cattle use on the Big Grayback Allotment is 70 head between June 1 and September 30 for a total of 280 animal use months (AUMs) authorized for the entire Big Grayback Allotment. The new Big Grayback Allotment Management Plan that will be implemented in 2009 calls for 56 permitted head of cattle for the allotment.

Question 16. How do the procedures for managing grazing on US Forest Service land differ from the procedures on National Park Service land?

Answer. Pursuant to regulations issued by the Secretary of Agriculture, the Chief of the Forest Service is authorized to develop, administer, and protect range resources, and permit and regulate grazing use of all kinds and classes of livestock on all National Forest System (NFS) lands and on other lands under Forest Service control. This authority extends to the national forests, national grasslands, and other lands administered by the Forest Service through lease, agreement, waiver or otherwise.

We defer to the Department of the Interior to provide specifics, but it is our understanding that National Park Service policies prohibit grazing except 1) as specifically authorized by statute; or 2) as required by a reservation of use right arising from the acquisition of a tract of land; or 3) as required in order to maintain a historical scene; or 4) as carried out as part of a living exhibit or interpretive demonstration; or 5) used to achieve resource conditions as part of a management plan. Grazing is only allowed where it does not cause unacceptable impacts on park resources and values.

The following information details the Statutory Authorities, Regulatory Authorities, Secretary of Agriculture Administrative Orders, Forest Service Policy for Range Management on National Forest System Lands AND Forest Service Objectives for Range Management on National Forest System Lands.

AUTHORITIES

Statutory Authorities

Authority to protect, manage, and administer the National Forest System, and other lands under Forest Service administration for range management purposes, emanates from the following acts:

1. Organic Administration Act of June 4, 1897 (Ch. 2, 30 Stat. 34, as amended; 16 U.S.C. 551).
2. Bankhead-Jones Farm Tenant Act, Title III, of July 22, 1937, Sections 31-33 (Ch. 517, 50 Stat. 525, as amended; 7 U.S.C. 1010-1012).
3. Granger-Thye Act of April 24, 1950, Sections 1,5, 7. 11, 12, 18, 19, (Ch. 97, 64 Stat. 82; 16 U.S.C. 571c; 16 U.S.C. 572; 16 U.S.C. 580d; 16 U.S.C. 580g; 580h; 16 U.S.C. 580k; 16 U.S.C. 580).
4. Multiple Use-Sustained Yield Act of June 12, 1960 (P.L. 86-517, 74 Stat. 215, 16 U.S.C. 528-531).
5. Wilderness Act of September 3, 1964, Section 4 (P.L. 88-577, 78 Stat. 890; 16 U.S.C. 1133).

6. National Environmental Policy Act of January 1, 1970 (P.L. 91-190, 83 Stat. 852; 42 U.S.C. 4321 (note), 4321, 4331-4335, 4341-4347).
7. Wild Horses and Burros Protection Act of December 15, 1971 (P.L. 92-195, 85 Stat. 649, as amended; 16 U.S.C. 1331-1340).
8. Forest and Rangeland Renewable Resources Planning Act of August 17, 1974 (P.L. 93-378, 88 Stat. 476, as amended; 16 U.S.C. 1601 (note), 1600-1614).
9. National Forest Management Act of October 22, 1976 (P.L. 94-588, 90 Stat. 2949, as amended; 16 U.S.C. 472a, 476, 500, 513-516, 518, 521b, 528 (note), 576b, 594-2 (note), 1600 (note), 1601 (note), 1600-1602, 1604, 1606, 1608-1614).
10. Federal Land Policy and Management Act of October 21, 1976, Sections 206, 310, 401, 402, 403, 404, (P.L. 94-579, 90 Stat. 2743, as amended; 43 U.S.C. 1716; 43 U.S.C. 1740; 43 U.S.C. 1751; 43 U.S.C. 1752; 43 U.S.C. 1753).
11. Public Rangelands Improvement Act of October 25, 1978 (92 Stat. 1803, 43 U.S.C. 1752-1753, 1901-1908).

Regulatory Authorities

Regulations relating to the range program which confer authority to the Chief Forest Service are:

1. Grazing and Livestock Use on the National Forest System, 36 CFR Part 222, Subpart A.
2. Management of Wild Free-Roaming Horses and Burros, 36 CFR Part 222, Subpart B.
3. Grazing Fees, 36 CFR Part 222, Subpart C.
4. Administration of Lands Under Title III of the Bankhead-Jones Farm Tenant Act by the Forest Service 36 CFR 213.
5. General Prohibition, 36 CFR 261, Subpart A.
6. Administrative Review Procedures, 36 CFR 251.80, Subpart C.
7. Wilderness-Primitive Areas, 36 CFR 292.7.

Secretary of Agriculture Administrative Orders

The Secretary of Agriculture sets forth responsibilities mandated by statutory authority through Departmental regulations and memorandums. Policy relating to range resources and coordination of range activities of the USDA agencies and other executive agencies, organizations, and individuals is included in the following:

1. Secretary's Administrative Order of August 1963, Administration of Lands Under Title III of the Bankhead-Jones Farm Tenant Act; Establishment of National Grasslands.
2. Departmental Regulation, Number 9500-5, dated April 21, 1988; Subject: Policy on Range.

POLICY

National Forest System

Basic policies for range management on National Forests and National Grasslands are to:

1. Use appropriate methods, such as grazing use by livestock or wild ungulates, prescribed fire, and mechanical or chemical treatments, for managing range vegetation.
2. Identify and inventory range resource values, including riparian, upland, and other critical areas to determine which areas meet or do not meet Forest land and resource management plan objectives.
3. Implement and monitor measures to restore and enhance plant diversity and productivity, water quality, and soil stability.
4. Enhance or maintain the habitat of threatened, endangered or sensitive species of plants and animals.
5. Determine suitability and potential capability for producing forage for grazing and browsing animals and for maintaining and enhancing habitat for fish and wildlife Management Indicator Species.
6. Consistent with Forest land and resource management plans, make forage available to qualified livestock operators from lands that are suitable for livestock grazing.
7. Issue term permits, generally for ten-year periods with appropriate terms and conditions, to allow use of range vegetation and promote stability for livestock enterprises.
8. Coordinate, cooperate and consult with grazing permittees and grazing associations, and other interested parties in the development of allotment management plans.

9. Emphasize permittee and association responsibility and accountability for meeting terms and conditions of permits, allotment management plans, and annual operating instructions.

10. Recover administrative costs of permit transactions initiated by the permittee.

11. Manage wild free-roaming horse and burro populations in a thriving ecological balance within established territories.

12. Manage noxious weeds, using integrated pest management techniques in close coordination and cooperation with adjacent landowners and agencies.

13. Use cost effectiveness in range vegetation management.

14. Optimize involvement of expertise within the Forest Service, from other agencies, organizations, permittees, and others in range vegetation management.

15. Integrate range management and resolve oonflicts through Coordinated Resource Management by promoting voluntary cooperation among agencies, groups and individuals responsible for range resources on other land ownerships (FSM 1531.12e).

OBJECTIVES

National Forest System

Objectives of the range management program for the National Forests and National Grasslands are:

1. To manage range vegetation to protect basic soil and water resources, provide for ecological diversity, improve or maintain environmental quality, and meet public needs for interrelated resource uses.

2. To integrate management of range vegetation with other resource programs to achieve multiple use objectives contained in Forest land and resource management plans.

3. To provide for livestock forage, wildlife food and habitat, outdoor recreation, and other resource values dependent on range vegetation.

4. To contribute to the economic and social well being of people by providing opportunities for economic diversity and by promoting stability for communities that depends on range resources for their livelihood.

5. To provide expertise on range ecology, botany, and management of grazing animals.

Question 17. Is anyone interested in acquiring the grazing permits and how long will the transaction take to complete?

Answer. We have not asked for applications, so we know of no other entity that meets the meet minimum qualification for base property and livestock ownership.

APPENDIX II

Additional Material Submitted for the Record

STATEMENT OF MARC BASNIGHT, STATE SENATOR, RALEIGH, NC, ON S. 3113

Mr. Chairman and Committee Members, thank you for this opportunity to submit a statement in support of S. 3113, introduced by Senators Dole and Burr: To reinstate the Interim Management Strategy governing off-road vehicle use in the Cape Hatteras National Seashore, North Carolina, pending the issuance of a final rule for off-road vehicle use by the National Park Service.

My name is Marc Basnight, and I serve as President Pro Tempore of the North Carolina Senate. Since 1984 I have had the honor of representing State Senate District 1, which covers North Carolina's northeastern region and the Outer Banks including the Cape Hatteras National Seashore. I appreciate this opportunity to share the concerns of the people I am honored to represent in the Senate, and to speak in support of this legislative effort to protect what has been a focal point of our community's culture, economy and coastal heritage for generations.

Back in the late 1930s, when the federal government was creating the recreational Seashore, Outer Banks residents and visitors were deeply concerned that government involvement would interfere with the public's enjoyment of and access to the beaches of Hatteras and Ocracoke Islands. It was an incredible relief that the Park Service and the Department of the Interior were willing to work so closely and cooperatively with the local community to address these concerns at that time—and ever since.

And it is both ironic and disheartening that the concerns and fears expressed half a century ago now have come true because of intervention from the judicial branch. The federal Consent Decree issued on April 30, 2008, is effectively breaking the Park Service's 1952 promise that ". . . there will always be access to the beach for all people, whether they are local residents or visitors from the outside." This legislation will restore that promise and put the management of the Cape Hatteras National Seashore back in the hands of the Park Service, which has worked so diligently and judiciously over the years to protect sensitive species while preserving beach access.

Beach driving and surf fishing are beloved local traditions and recreational opportunities that help people truly appreciate—and in turn, work to protect—our natural resources. The people who use this resource, in fact, are among our most conscientious stewards of the environment. In fact, outstanding beach access is a primary reason visitors choose to visit Hatteras. They come back year after year with their families to enjoy this unique opportunity and to teach their children the importance of caring for the environment.

With the Consent Decree in place, visitors don't know when and where they'll have access to the beach with their vehicle. While online sites provide some guidance, these closure areas are large and can change with little notice. Visitors worry that the fishing spot they have visited for the past 20 years will not be accessible, even if it was the day before. The economies of Hatteras and Ocracoke depend heavily upon fishing and tourism, and losing access to some of the nation's most premier surf-fishing spots has proven to be a devastating blow to our local community and economy—and to the prestige that Cape Hatteras gives North Carolina as a world-renowned destination for fishing and recreation. According to the Outer Banks Visitors Bureau, year-to-date meal and beverage receipts on Hatteras Island for 2008 are down 7 percent from last year during the same time period. Visitation to one of the Seashore's top attractions, the Cape Hatteras Lighthouse, saw a 15 percent drop in visits for April through June. The small businesses and families whose livelihoods depend on visitors are reeling from the effects of the Consent Decree. I expect that our state's overall economy will also feel some effects as well: Dare County generates more tourism dollars per capita than any other county in North Carolina.

Under circumstances defined in the Consent Decree, areas of Hatteras could be closed to ORV use for 1,000 meters on either side of a nest, which is 3,280 feet in two directions or over 1.2 miles. This is especially disconcerting when you consider that the Seashore is only 200 feet wide in some spots. Hatteras residents and visitors treasure this seashore and want to protect it because we have given them the privilege to experience it in a way they cannot experience other beaches. Before the Consent Decree, the Seashore has been managed by the National Park Service in a manner consistent with its mission, and should continue to be managed in that manner. The mission of the National Park Service is "to promote and regulate the use of the national parks which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired or the enjoyment of future generations."

Part of our National Park Service's mission is to be "guardian of our diverse cultural and recreational resources." Several of the Guiding Principles of the National Park Service also speak to their duty to protect ORV use on the Seashore:

- Productive Partnerships: Collaborating with federal, state, tribal, and local governments, private organizations, and businesses to work toward common goals
- Citizen Involvement: Providing opportunities for citizens to participate in the decisions and actions of the National Park Service
- Wise Decisions: Integrating social, economic, environmental, and ethical considerations into the decision-making process.

Ensuring that residents and visitors to Cape Hatteras National Seashore can enjoy the traditional uses of the area is the duty of the Park Service, not the court system. Beach access has always included vehicles—in fact, before we had roads built in the Outer Banks, the beaches were our roads. In 1952 the Park Service stated a clear intent to continue to allow vehicle access in the Seashore, specifically noting that "it will be necessary to establish certain regulations, such as to designate places for vehicles to get to the beach, in order to reduce sand dune erosion to a minimum . . ." Anyone who knows the Outer Banks knows that beach driving has always been part of our way of life.

The National Park Service's Interim Management Plan, developed with public input unlike the Consent Decree, is a balanced and sensible management plan based on the best science available. This plan will ensure reasonable ORV access that does not threaten delicate the nesting habitat of shorebirds and turtles—and will provide the best balance between man and nature until the National Park Service adopts final rules for the Seashore.

This legislation will restore the Park Service to its proper role in managing the Seashore and keep the federal government's promise to the people. On behalf of the countless visitors who enjoy our beaches, on behalf of the local businesses that are struggling so mightily to survive, on behalf of the conservationists who believe that to truly appreciate our natural resources you must have access to them, and on behalf of the people of the Outer Banks and North Carolina, I ask for your support of S. 3113.

I would like to express my appreciation to Senators Dole and Burr—along with Congressman Jones in the House—for introducing this important legislation, and to you, Mr. Chairman and all the committee members, for giving this matter the consideration it is rightfully due. Thank you so very much for allowing me to share my thoughts with you, and for all you do in your service to our great nation.

STATEMENT OF PHIL KROUSE, RANCHER, KROUSE RANCH INC., SOUTHERN OREGON, ON S. 3148

Chairman Akaka, Ranking member Burr, Members of the Subcommittee on National Parks, my name is Phil Krouse and I am a rancher in Southern Oregon. I would like to share my views regarding S. 3148, The Oregon Caves Monument Boundary Adjustment Act of 2008. I appreciate the Subcommittee allowing me to submit this statement for the record. The legislation before you today affects my family greatly. The grazing allotments in question, the Big Grayback Allotment in the Rogue River-Siskiyou National forest and the Billy Mountain Grazing Allotment managed by the Bureau of Land Management have been in my family for over 70 years.

I grew up on these ranges and alongside my grandparents and parents participated in something you only see in movies now days-cattle drives. In the process I grew to love these mountains and meadows. The names of ranchers who grazed cattle on these ranges: Oz Bigelow, Ed Kubli, Chester York, Orr Brown, Arian

Christiansen, and Mack McCarty read like a history book of this southern Oregon region. Oz Bigelow (Bigelow Lakes namesake) ran 800 head of cattle in this allotment that we now run 70. Over the years we have voluntarily decreased grazing herd size from our original permit of 200 head to the current 70.

In 1945 my grandfather Albert Krouse, my dad Francis Krouse, and five other men from the ranching community of Applegate, Oregon built the Krouse cabin at the bottom of the alpine glade on Grayback Mountain. The cabin was their only shelter while gathering and corralling the cattle. Not only did my family and I spend many happy days and nights in that cabin but countless hikers, and nature enthusiasts had the opportunity to enjoy this gem of Grayback; until it was accidentally burned down in 2001.

I have been lucky enough to have shared these ranges not only with previous generations of ranchers and family but also my son, two daughters and now my grandchildren.

The loss of these allotments will be detrimental to the operation of our ranch. We will no longer be able to have reprieve on the ranch land in order to grow hay therefore it will not be cost effective for ranch operations to continue to raise cattle on this scale. Cattle ranching has been the only income this ranch has had for the past 5 generations. This loss would force us into unknown financial endeavors; as a result this could mean the loss of our financial security, and way of life.

While I am willing to donate my grazing leases to the Federal Government in the best interest of the expansion of the Oregon Caves Monument, for the sake of my family and future generations, I must make sure that I am fairly compensated before I hand them over. I understand that federal dollars are not available for grazing buyouts, but I am aware that private buyouts are acceptable. I do, however, want to be sure that I am allowed to freely graze livestock on these allotments until I am ready to accept any deal from a private group that wants to buy me out. I am also aware that the regulations for grazing on National Park Service are a lot more stringent than what I have been working with on Forest Service (FS) and Bureau of Land Management (BLM) land. I would ask the Committee to protect me until I am ready to donate my leases and that the current FS and BLM grazing regulations continue to apply to my allotments.

I would like to close with some personal observations. For many people this buyout may seem to be about money, but I see it differently. To me and many other ranchers in the west, this is about preserving a way of life for future generations. I know that there has been and will continue to be many efforts to remove livestock from federal lands across the West. I urge the Committee to remember one simple thing. These Allotments help build rural communities and are part of the fabric of rural America. Farmers and ranchers are not the villains they are sometimes portrayed as being and they take great pride in producing the safest food supply in the world for Americans and many others around the globe. I urge you to be aware of this as you look at further buyouts of ranchers across the west, knowing that the retirement of these leases means less food being produced domestically and further reliance on imported food. We can't allow our food supply to become like our energy supply. Our fellow Americans deserve better.

I thank the Subcommittee for its consideration of my comments and I look forward to working with you.

STATEMENT OF DERB S. CARTER, JR., SOUTHERN ENVIRONMENTAL LAW CENTER, ON S. 3113

This supplemental testimony is submitted on behalf of the National Audubon Society, Defenders of Wildlife, The Wilderness Society, and the Southern Environmental Law Center, in order to supplement our testimony provided prior to the National Park Subcommittee hearing on July 30, 2008.

Because the Consent Decree was agreed to by all parties to the lawsuit in which it was entered, and because it provides overdue protection of the natural resources of Cape Hatteras National Seashore and allows for appropriately managed off-road vehicle ("ORV") use, we oppose Senate Bill 3113, legislation that would overrule the Consent Decree and mandate a return to management practices that were resulting in declines and disappearance of wildlife from the Seashore.

ADDITIONAL DATA

Since the National Park Subcommittee's July 30, 2008, hearing, various government entities have released additional data that supports the Consent Decree and militates against passage of Senate Bill 3113.

Effects of the Consent Decree on Wildlife at the Seashore

We previously reported that the number of successful sea turtle nesting attempts had increased to 92 as of July 24, 2008, up from 82 during all of 2007. As of August 6, there have now been 101 successfully laid sea turtle nests, tying the all-time high for at least the last 14 years.[1] As over two weeks are left in the nesting season, it is highly likely this year will set a new record for turtle nests.

Likewise, the number of fledged American oystercatcher chicks at the Seashore beaches has increased to 13 so far in 2008, up from 10 fledged chicks in all of 2007, and there are two chicks remaining which have yet to fledge.[2]

Once again, these preliminary indicators, along with those we reported in our initial testimony, show that all species appear to be benefiting from the management measures required by the Consent Decree.

Economic Effects of the Consent Decree

We previously testified that, according to Dare County's Outer Banks Visitors Bureau, visitation during May 2008 (the first month of the Consent Decree) was 6.31% higher than May 2007.[3] Dare County's Outer Banks Visitors Bureau has now released its latest statistics, and the trend has continued. Visitation during June 2008, as measured by occupancy of motels, cottages, and other accommodations, was 7.32% higher than in June 2007.[4] This continued increase in visitation occurred despite a still sagging economy and unrelenting high gas prices. Allen Burrus, Vice Chair of the Dare County Board of Commissioners, reports that his "small mom-and-pop grocery store" is "doing well" and that "[b]usiness is up."[5] Accordingly, the Consent Decree still appears to have little to no measured ill effect on local tourism.

Effects of the Consent Decree on Visitors to the Seashore

We previously reported that, of Cape Hatteras National Seashore's 67 miles of beaches, only 9.1 were closed to protect wildlife under the terms of the Consent Decree as of July 24, 2008; all other beach closures are the result of the usual seasonal and safety closures, unrelated to the Consent Decree or wildlife protection. As of August 7, 2008, the number of miles closed for wildlife protection has decreased to 7.9 miles under the Consent Decree, as bird chicks have fledged and turtle nests have hatched.[6]

In addition, even more of the current amount of beach closures has been caused by vandalism of fencing and other wildlife protection measures. There have now been six incidents of vandalism (up from the four incidents reported prior to the Subcommittee hearing); the first violation in an area results in a 50 meter increase in the size of a buffer and the second violation in the same area results in a 100-meter increase.[7]

Response to Warren Judge's Testimony

The parties to the Consent Decree—and the lawsuit in which it was entered—are Dare County, Hyde County, Cape Hatteras Access Preservation Alliance ("CHAPA"), the National Park Service, the Department of the Interior, the National Audubon Society, and Defenders of Wildlife. CHAPA is an umbrella organization that includes the Outer Banks Preservation Association, the Cape Hatteras Anglers Club, and the North Carolina Beach Buggy Association.[8] Contrary to Mr. Judge's testimony that implied to the contrary, all parties in the lawsuit participated in the ne-

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[1] The previous record was 101 in 2001. UNITED STATES GEOLOGICAL SURVEY, MANAGEMENT AND PROTECTION PROTOCOLS FOR NESTING SEA TURTLES AT CAPE HATTERAS NATIONAL SEASHORE, NORTH CAROLINA, 38 (2005). See also OUTER BANKS GROUP, NATIONAL PARK SERVICE RESOURCE MANAGEMENT WEEKLY FIELD SUMMARY REPORT FOR AUGUST 6, 2008 at 2 (2008).

[2] OUTER BANKS GROUP, NATIONAL PARK SERVICE RESOURCE MANAGEMENT WEEKLY FIELD SUMMARY REPORT FOR AUGUST 6, 2008 at 1 (2008). These figures exclude Green Island, which is not reachable by ORVs due to its location in the sound.

[3] OUTER BANKS VISITORS BUREAU, GROSS OCCUPANCY SUMMARY 1994-2007, www.outerbanks.org/pdf/Gross__Occupancy__Summary__receipts.pdf.

[4] Id.

[5] Ryan Hutchins, Outer Banks' tourism up in June despite economy, VIRGINIAN-PILOT, Aug. 4, 2008, available at http://hamptonroads.com/2008/08/outer-banks-tourism-june-despite-economy.

[6] OUTER BANKS GROUP, NATIONAL PARK SERVICE BEACH ACCESS REPORT FOR AUGUST 7, 2008 (2008).

[7] Press Release, Outer Banks Group, A Sixth Deliberate Violation of Resource Protection Area (July 31, 2008), at http://www.nps.gov/caha/parknews/a-sixth-deliberate-violation-of-resource-protection-area.htm.

[8] Cape Hatteras Access Preservation Association website, http://capehatterasapa.org/.

gotiations, supported the Consent Decree, and recommended that the court approve it on April 30, 2008.

In response to Chairman Akaka's question regarding how Dare County could justify supporting legislation to overturn the Consent Decree after agreeing to it, Dare County Commissioner Warren Judge testified to the Subcommittee that his county was "not a player at [the negotiating] table until a hearing on April 4 in U.S District Court," and that "it was even later than that when they finally invited us to the table—not to negotiate, to tell us—to tell us what it was going to be. We had our county attorney and assistant county manager in Raleigh at the negotiations and they sent him home. After we released a press release, telling that the negotiations had broken off, it was only then that they called us back. It was 4:30 one afternoon that they gave us an ultimatum and that ultimatum was either accept this by 5:00 or we will go forward into court and the—the—the threat to Dare County was that the seashore would be closed down completely until negotiated rulemaking ran its course." He concluded by stating that "Yes, we signed the document. We signed it under great duress" and by making the unsubstantiated claim that the county would suffer "economic[] devastati[on]" due to complete beach closures if it had not agreed to the Consent Decree.[9]

This testimony was misleading, unsubstantiated, and incorrect. First, complete closure of the entire Seashore beach was never demanded or threatened by any party to the lawsuit or as part of the negotiations that led to the Consent Decree. If Dare County had chosen not to join the Consent Decree, the government and environmental groups could have moved forward asking the court to accept it. Dare County and the other Intervenors could have then objected to the Consent Decree and appealed it if it was approved by the court. And even if the other parties had not reached an agreement and presented a consent decree to the court for approval, the court would have moved on to consider a pending motion for preliminary injunction which requested the ORV management protocols recommended as "moderate protections" by the government's scientists at the United States Geological Survey, not complete beach closure of the entire Seashore.[10] In sum, complete closure of the beach was not a threatened alternate outcome of the lawsuit when Dare County chose to approve the Consent Decree.

Moreover, Mr. Judge's assertion that Intervenors were not included in negotiations is false. Although Dare County and the other Intervenors were asked to submit a settlement proposal and invited to actively join the negotiations on numerous occasions beginning when their motion to intervene was first granted in December 2007, they, through their attorney, initially repeatedly, consistently, and affirmatively refused to submit a proposal. Dare County, Hyde County, and the CHAPA did receive written settlement proposals from the government and/or the environmental groups on or about December 20, 2007, February 28, 2008, April 2, 2008, and April 11, 2008. They commented on those settlement proposals in February, March, and April, and finally submitted their own initial settlement proposal on March 31, 2008.

The statements of Intervenors' attorney in court acknowledged this extensive involvement in settlement negotiations prior to the April 4 hearing. Contrary to Mr. Judge's testimony that Intervenors were not at the negotiating table before the April 4, 2008 hearing with Judge Boyle, Intervenors' counsel confirmed at that hearing that they "have been in discussions" and that there were "certain areas that we have of agreement."[11] This statement makes clear that not only were Intervenors involved in negotiations prior to April 4, they were in agreement on some elements of the negotiations. Moreover, by signing the Consent Decree, Dare County and the other Intervenors affirmed that it is a "fair, just, adequate, and equitable resolution" of the lawsuit.[12] As a result of these contradictions, Mr. Judge's response to Sen. Akaka's question cannot be taken at face value.

CONCLUSION

In sum, all parties and interests agreed in open court to the terms of the Consent Decree augmenting the terms of the "interim plan" until such time as the National

[9] Hearing on S. 3113 Before the Senate Committee on Energy and Natural Resources, Subcommittee on National Parks, 110th Cong. (2008) (oral statement of Warren Judge, County Commissioner for Dare County, North Carolina)

[10] 1Plaintiffs' Motion for Preliminary Injunction, filed on January 20, 2008, in Defenders of Wildlife et al. v. National Park Service et al., case number 2:07-CV-45-BO (U.S. Dist. Ct. for the Eastern Dist. of N.C.).

[11] Hearing on April 4, 2008, in Defenders of Wildlife et al. v. National Park Service et al., case number 2:07-CV-45-BO (U.S. Dist. Ct. for the Eastern Dist. of N.C.).

[12] Consent Decree at 3.

Park Service adopts a final ORV management plan, and a federal court approved it. As the statistics above and in our original testimony show, the slight increase in the portions of the beach that have been closed to ORV use under the Consent Decree has had little to no impact on tourism and on the numbers of ORVs using the Seashore. At the same time, however, the closures appear to have had a strikingly positive effect on the success of the endangered, threatened, and sensitive species that live and breed at Cape Hatteras. We ask, therefore, that this Committee reject Senate Bill 3113 and leave the Consent Decree in place.

STATEMENT OF GORDON ROBERTSON, VICE PRESIDENT, AMERICAN SPORTFISHING ASSOCIATION, ON H.R. 3113

Thank you for the opportunity to submit written testimony for the record regarding S. 3113, to reinstate the Interim Management Strategy governing off-road vehicle use in the Cape Hatteras National Seashore, North Carolina, pending the issuance of a final rule for off-road vehicle use by the National Park Service. The American Sportfishing Association (ASA) is the sportfishing industry's trade association, committed to representing the interests of the sportfishing industry, as well as America's 40 million recreational anglers. ASA also invests in long-term ventures to ensure the industry will remain strong and prosperous as well as safeguard and promote the enduring social, economic, and conservation values of sportfishing in America.

ASA urges members of the Subcommittee on National Parks and the Committee on Energy and Natural Resources to support S. 3113. The provisions of the Interim Management Strategy balanced the resource protection requirements for wildlife with reasonable access to the beaches for pedestrians and off road vehicles. However, the provisions of the Consent Decree are resulting in undue harm to the local community without any significant added benefits to the wildlife of the Seashore.

BACKGROUND

Presidential Executive Order 11644 of 1972 requires federal agencies permitting off-road vehicle (ORV) use on agency lands to make regulations for such use. However, a long-term ORV management plan was never finalized for Cape Hatteras National Seashore Recreational Area (CHNSRA), and in late December 2007 the Secretary of Interior Dirk Kempthorne approved the creation of a Negotiated Rulemaking Committee (Reg-Neg) to facilitate the development of the plan. The Committee consists of a variety of stakeholders and user groups of CHNSRA, including anglers, local business owners, environmental groups, tourism organizations, and homeowners, among others. ASA is also a member of the Reg-Neg.

In addition to the Reg-Neg, on June 13, 2007 the National Park Service (NPS) finalized an Interim Protected Species Management Strategy (Interim Strategy) to ensure that wildlife within CNHSRA would be protected during the creation of a long-term plan. This Strategy was developed via an open, public process that included public comment, an evaluation under the National Environmental Policy Act (NEPA), and a Section 7 Consultation under the Endangered Species Act (ESA).

It is important to note that the Reg-Neg was "sold" to community residents as a way to avoid litigation, and ground rules were finalized that specifically called for members to negotiate in good faith and to "voluntarily curtail using other means to influence the proposed regulations." All parties negotiated and verbally agreed to these rules, including the Southern Environmental Law Center (SELC), National Audubon Society (Audubon) and the Defenders of Wildlife (DOW), who all hold a seat on the Reg-Neg Committee.

On February 20, 2008, after a series of court filings, DOW and Audubon (Plaintiffs) filed an injunction that would essentially result in all ORV access, except for essential NPS vehicles, being prohibited on CHNSRA. As a result of this injunction, the Plaintiffs entered into negotiations with the Department of the Interior (DOI), to be joined later by Dare County as interveners. These negotiations resulted in a consent decree that was ultimately approved by Federal District Judge Terrence Boyle on April 30, 2008. The details of the Consent Decree are extensive and put in place protections for shorebirds that exceed the protections outlined in the Interim Strategy. This Consent Decree, which will remain in effect for three years until the NPS issues a final long-term ORV Management Plan, has resulted in substantial restrictions on traditional ORV access to key surf fishing spots in CHNSRA and an undue economic burden on the local economy with no remarkable added benefit to the local wildlife.

INTERIM MANAGEMENT STRATEGY VS CONSENT DECREE

Although the NPS' Interim Strategy was not a final rule, it provided stakeholders with all the procedural protections and opportunities of a final rule, addressing the requirements of the Executive Order and the appropriate regulations. For resource protection, these included:

- Year-round closure of areas historically occupied by nesting or wintering plovers and that currently include suitable habitat,
- Closure (to ORVs as well as to pedestrians and pets) of suitable breeding habitat through the breeding season,
- Establishment of a minimum 150-foot buffer around all nesting plovers,
- Expansion of closed areas once eggs hatch, and
- Monitoring to ensure that new closures are added or expanded as required by bird activity.

The Interim Strategy also regulated ORV use, addressing the requirements of the Executive Order through:

- Consolidation and designation of beach access routes
- Identification of a permitted ORV travel corridor on the beach
- Speed limits and license requirements for vehicle operators
- Protection of vegetation and sea turtle and bird nesting areas
- Designation of summer seasonal ORV closures in front of villages
- Signage to notify visitors of the above

The development and approval of the Interim Strategy was performed via an open, transparent process. As part of its development, the NPS conducted a NEPA Review (including an economic analysis), ESA Section 7 Consultation, and public comment period. The provisions of the Consent Decree were never subject to these reviews. There was no opportunity for public participation, comment, or input. And more importantly, while the provisions of the Consent Decree are based off of management protocols developed by the USGS, neither the Consent Decree nor the protocols have undergone any sort of evaluation under NEPA. Without this evaluation, part of which is to weigh the benefits of resource conservation measures with the costs imposed on local communities/economies, the citizens of CHNSRA have been denied their due public process.

The preliminary injunction filed by the Plaintiffs in early 2008 states that the Interim Strategy was inadequate. It even went as far as to state, "The first year of the 'interim plan,' 2007, was one of the worst bird breeding seasons on record." However, the Interim Strategy was implemented in mid-June, 3 months after the bird breeding season began. Therefore, since the Interim Strategy was not in place for a complete breeding season, it is not reasonable to place the blame of the 2007 breeding season on the Interim Strategy.

In reality, in the short time that the Interim Strategy was in place it did serve to adequately protect the shorebirds and sea turtles that breed in CHNSRA. It also served to set a foundation for a successful "pre-nesting" season in Spring 2008.

The piping plover, the bird at the heart of this controversy, is the only bird found on CHNSRA that is listed as federally threatened. North Carolina is positioned in the species' range such it is at the southern tip of the plover's breeding range and the northern tip of their wintering range. Therefore, the piping plover never was and never will be abundant in CHNSRA.

Also, the piping plover population on CHNSRA has always been dependent on weather—specifically hurricanes—and predation. According to NPS and FWS reports,[1] the recent dramatic decline in the number of breeding pairs of piping plovers in CHNSRA is due to eight hurricanes that hit the Outer Banks of North Carolina in nine years. In 1996, there were 14 breeding pairs; in 2004 there were three. However, no hurricanes have hit the Outer Banks since 2004 and the number of breeding pairs has slowly risen to six in 2007. Predators such as seagulls, crows, raccoons, and foxes also contribute to nest failure and juvenile mortality, since eggs and unfledged chicks are easy prey and a typical part of their diets. In 2008, the only juvenile plover mortality caused by human influences was during an NPS banding exercise.

In addition, due to the pre-nesting closures that were called for in the Interim Strategy and were put into place in March 2008, the foundation was set for the piping plovers to have a successful breeding season in 2008. In mid-July, the NPS de-

[1] Annual Fish and Wildlife Service Piping Plover Status Updates, Cape Hatteras National Seashore Annual Resource Management Reports, and Cape Hatteras National Seashore Resource Management Weekly Field Summaries.

termined that there have been 11 breeding pairs in the Seashore this year—one of the most successful years in 20 years. However, this success is due to the pre-nesting closures of the Interim Strategy, not the provisions of the Consent Decree, which was not signed until after the breeding birds were on the Seashore. In addition, the 2007 Interim Strategy allowed 67% of the breeding pairs to fledge a chick, as compared to 63% under the consent decree.[2]

Both the Interim Strategy and the Consent Decree also focus on the protection of colonial water birds (terns) and nesting shorebirds. While some have contended that there has been a dramatic decrease in the number of terns and black skimmers in CHNSRA, and that this decrease is due to ORV use, the fact is that these birds have chosen to nest on a dredge spoil island located in the sound within one quarter of a mile of Hatteras Village. This island offers more preferable habitat and is free of predators.

Finally, according the NPS, 22 pairs of American Oyster Catchers hatched 15 nests and 29 chicks. In 2008, 23 breeding pairs again hatched 15 nests and only 26 checks.[3] The American Oyster Catcher has strong site fidelity, meaning they tend to return to the same location each year to breed. Therefore, the 2008 breeding success is due to the resource protection measures provided by the Interim Strategy.

Both the Interim Strategy and the Consent Decree include provisions to protect nesting sea turtles. Loggerhead turtles, the only turtle nesting at CHNSRA in 2008, nest on average once every three years. Each turtle lays an average of five nests per season at about one hundred eggs per nest. While it's true that numbers are up this year—99 nests this year as compared to 82 in 2007—the increase cannot be attributed solely to the provisions of the Consent Decree. The number of sea turtle nests are up all over North Carolina, South Carolina, and Georgia as well. In fact, Pea Island National Wildlife Refuge, which is bordered both north and south by CHNSRA and not subject to the Consent Decree—has had a record number of nests this year.

IMPACT ON CHNSRA

Beach driving is a traditional use of the CHNSRA, predating the 1937 authorization of the National Seashore, and has become a popular method of access for recreational pursuits. The Consent Decree has resulted in unprecedented closures (and blocked access of "open" areas) of the most popular areas of the seashore to both ORVs and pedestrians, limiting access for all user groups including fishermen, kiteboarders, swimmers, birdwatchers and families. It prohibits night driving in summer, at the peak of the tourist season, and has also restricted pedestrian access. It should be noted that even if a section of beach might be deemed "open" for the purposes of comparing the amount of open area vs the amount of closed area, it might not be accessible to ORVs or pedestrians.

While the provisions of the Consent Decree will have less of an impact during the fall, the summer closures are significant and during the time the majority of vacationers visit CHNSRA, providing the greatest economic input for the community. Because the Consent Decree was never subject to a NEPA evaluation, an economic analysis was not performed to measure the potential impact on the local tourism-based economy. Many tackle shops and other businesses in CHNSRA have experienced a decrease in business activity of up to 40%. While hotel occupancy was initially up in May 2008 (the Consent Decree did not take effect until May 1, after visitors could obtain a refund for their hotel or rental property), it has fallen off through the summer months. In addition, while fishing license sales throughout the State of North Carolina have dropped an average of 39% since last year, license sales in Dare County has decreased by 50%. Dare County was the largest seller of saltwater licenses in 2007; they are now eighth in the state.[4]

SUMMARY

The NPS maintains, and ASA agrees, that ORV's must be regulated in a manner that appropriately addresses resource protection—including protected, threatened and endangered species—and potential conflicts among the various CHNSRA users. However, this was addressed by the development of the Interim Strategy, which the NPS failed to defend in the lawsuit. The end result is that Defenders of Wildlife

[2] Cape Hatteras National Seashore Resource Management Weekly Field Summary; July 17 to July 23, 2008

[3] Cape Hatteras National Seashore Resource Management Weekly Field Summary; July 17 to July 23, 2008

[4] North Carolina Department of Marine Fisheries and Wildlife Resources Commission, Coastal Recreational Fishing Licenses Sales Update.

and the National Audubon Society have accomplished through litigation what they pledged to work toward cooperatively toward in good faith with all stakeholders through the Reg-Neg.

The Consent Decree was essentially exempted from the official NEPA review process, and undermined NPS staff and their scientific data. It set a precedent that private interest groups can negotiate a settlement with the Administration, in absence of public input, to govern National Park management. This is to the detriment of the 1,000 residents of the seashore, whose livelihoods depend on beach access, and the millions of CHNSRA visitors.

S. 3113 will reinstate a management strategy that underwent the appropriate review process, restoring reasonable ORV and pedestrian access to CHNSRA while providing appropriate shorebird and resource protection. The enactment of S. 3113 will also provide relief for a community suffering economic consequences due to the Consent Decree. The Interim Strategy will provide ample protections for shorebirds until the final ORV Management Plan is complete and will help to save the economy and way-of-life of the Hatteras community—and the entire Outer Banks of North Carolina.

Thank you for the opportunity to provide testimony.

STATEMENT OF BRIAN LEIGH DUNNIGAN, INTERIM DIRECTOR, HEAD OF RESEARCH AND PUBLICATION, UNIVERSITY OF MICHIGAN, ANN ARBOR, MI

The battle cry "Remember the Raisin" made its way into American history and memory during the War of 1812. Like its better-known contemporary, "Don't Give Up the Ship," it had its origins in a United States defeat and was used to encourage American forces to rally for future victories. "Remember the Raisin" recalls events that transpired in and around the village of Frenchtown, or River Raisin, in Michigan Territory between January 18 and 23, 1813, comprising a pair of small but fierce battles and an incident in which the wounded of the defeated American force were attacked by Native American allies of the British. It was the latter occurrence, and the belief that it was encouraged by the British, that was to be remembered by the soldiers and civilians who took up the cry.

The River Raisin battlefield site is today in a condition that allows its designation and preservation as a National Historic Landmark for the special significance of what it represents about the War of 1812. The battles fought there in January 1813 were not particularly influential in changing the course or the direction of the war or even the military campaign on the southern margins of the Great Lakes. The significance of the site lies in its manifestation that the War of 1812 in the West actually constituted a pair of parallel conflicts, in which United States forces contended with the British and Canadians in a conventional war but were also involved in a full-scale and bitter wilderness conflict with the remaining organized Native American groups living east of the Mississippi River. The fighting represented the culmination of conflict in the Old Northwest between Indians and Euro-Americans that had been underway since the 1750s, and the War of 1812 was the last time that the native peoples of that vast region would fight effectively for their land and their independence.

The circumstances that caused a force of around one thousand US regulars and Kentucky militia to march into the village of Frenchtown (today Monroe, Michigan) in January 1813 resulted from efforts by United States forces to recover from the disastrous outcome of an attempt to invade British Canada from the Michigan Territory in the summer of 1812. This had ended in the loss of Forts Mackinac and Dearborn, an army, and Detroit, the territorial capital, and had exposed the frontiers of Ohio and Indiana Territory to attack by the British and their Native American allies. All of the surrenders of 1812 had been influenced by the real or perceived possibility that resistance might cause Native American warriors to take their revenge on hapless civilians, an implied threat that British leaders used to their advantage to ensure victory.

The fighting of January 18 (an American victory) and January 22 (a successful British-Indian counterattack) left some sixty-five American wounded, who were not removed to the British post of Malden with their fellow prisoners of war. These unfortunates and about thirty able-bodied comrades were sheltered in houses of the River Raisin settlement, where Native American warriors set upon them on January 23. It was a scenario that played to the worst fears of the American frontiersman—that his fate as a captive might be in the hands of a relentless and unmerciful native enemy.

The attack on the wounded at River Raisin and the implied collusion of the British by leaving the helpless prisoners unguarded and exposed presented a propa-

ganda opportunity that could be directed against both enemies of the United States in the western war. The British could be made to appear to have ignored the rules of "civilized" warfare, while the action of the Indians was exactly what most Americans expected and feared. A lurid contemporary print depicting the attack on the wounded makes the charge, through its visual details, that the British provided both scalping knives and liquor to fuel the atrocity. This implication harks back to the fighting in the Old Northwest during the 1790s when the British were accused of encouraging and supplying Native American resistance to the advance of the American frontier. In the event the message was not clear, the River Raisin print also includes a British flag waving above a nearby military encampment, although no red-coated soldiers are in evidence to intervene and save the wounded Americans.

The attack on the wounded at the River Raisin struck a special chord with the citizens of Kentucky and the frontier area north of the Ohio River. The call for vengeance inherent in "Remember the Raisin" set the tone for the fighting that took place in northern Ohio and Ontario during the military campaign of 1813. This culminated in an American victory at the Battle of the Thames, in October, and the death of the celebrated Shawnee leader, Tecumseh. Although Native American resistance was not crushed in this battle, the symbolic loss was considerable, and the peace treaty between the United States and Britain that ended the War of 1812 left them with no guarantees for the future.

The War of 1812 in the West was a very different conflict than that fought along the eastern seaboard and the northeastern border of the United States and British Canada. The conflict in the West included the additional component of widespread warfare with Native Americans—a continuation of the fighting that had wracked the region for the past sixty years. The War of 1812 would effectively end that long conflict and set the stage for the gradual extinguishing, over the next twenty-five years, of Indian land claims and the removal of many Native Americans beyond the Mississippi River.

The River Raisin battlefield site is highly significant as a reminder of the dual conflict represented by the War of 1812 in the West and its impact on the continued western expansion of the United States and the future of the Native American peoples of the region. It represents the symbolic culmination of the clash between American frontiersmen and Native Americans in the Old Northwest. No other site better represents this theme of American history, and its relevance is strengthened by the River Raisin's proximity to two other sites, Perry's Victory and International Peace Memorial, representative of the conventional war with the British, and Fallen Timbers, which represents the Indian wars of the 1790s.

STATEMENT OF J.W. "BILL" WADE, CHAIR, EXECUTIVE COUNCIL, COALITION OF NATIONAL PARK SERVICE RETIREES, ON S. 3113

Mr. Chairman and other distinguished Members of the Subcommittee, we ask that you accept this statement for the record, reflecting the views of the Coalition of National Park Service Retirees on the important topic of protecting resources and providing for visitor enjoyment at the Cape Hatteras National Seashore, North Carolina.

The Coalition now consists of 660 individuals, all former employees of the National Park Service, with more joining us almost daily. Together we bring to this hearing over 19,500 years of accumulated experience. Many of us were senior leaders and many received awards for stewardship of our country's natural and cultural resources. As rangers, executives, park managers, biologists, historians, interpreters, planners and specialists in other disciplines, we devoted our professional lives to maintaining and protecting the national parks for the benefit of all Americans—those now living and those yet to be born. In our personal lives we come from a broad spectrum of political affiliations and we count among our members six former Directors or Deputy Directors of the National Park Service, twenty-three former Regional Directors or Deputy Regional Directors, twenty-eight former Associate or Assistant Directors and over one hundred and fifty former Park Superintendents or Assistant Superintendents.

We are strongly opposed to S. 3113, which would reinstate the Interim Management Strategy governing off-road vehicle use in Cape Hatteras National Seashore, pending the issuance of a final rule by the National Park Service (NPS).

This proposed legislation, evidently promoted by very narrow special interests, would inappropriately and unnecessarily rescind a consent-decree agreed to by Defenders of Wildlife and the National Audubon Society; and Dare and Hyde Counties and the Cape Hatteras Access Preservation Alliance (an off-road vehicle group). The

decree safeguards wildlife, while still allowing visitors to fish, surf, drive on certain portions of the beach and enjoy other activities at the Seashore.

This proposed Bill is partisan legislative interference at its worst, and not only would overrule a legitimate judicial process, agreed to by both sides of the issue; but could negatively influence the established negotiated rulemaking process currently underway that has brought together many parties with interests in how the NPS ultimately manages off-highway vehicles and, at the same time, protects wildlife at the Seashore.

The National Park Service has been out of compliance with its legislated responsibilities for a number of years and is now making a determined effort to meet those requirements.

What is critically important here is that a final solution must be reached that will provide for the protection of several threatened species of birds and turtles for the enjoyment of Americans now and in the future; while still allowing for appropriate levels of other visitor uses in the Seashore. We believe that the legally derived consent decree ought to be allowed to stand and that the legitimate negotiated rulemaking process ought to be allowed to run its course, both without interference from legislation that represents only a very narrow set of interests. We believe this is the best process to meet the mission of the National Park Service at Cape Hatteras National Seashore.

STATEMENT OF FRANK M. FOLB, FRANK & FRAN'S THE FISHERMAN'S FRIEND, INC., AVON, NC, ON S. 3113

Thank you, Chairman Daniel K. Akaka and the committee for the opportunity to submit written testimony for the record in support of S. 3113.

I am Frank Folb, the 65 year old who is owner and Secretary/Treasurer of Frank and Fran's The Fisherman's Friend. My wife and I have been operating this retail fishing tackle store in Avon, NC for over twenty years. My wife and I have lived on Hatteras Island since August 1975 and my mother's family (the Miller family) goes back many generations on Hatteras Island. I am a present member of the Negotiated Rule Making Committee formed to advise the National Park Service in establish an ORV plan for the Cape Hatteras National Recreational Seashore. I represent Avon Property Owners Association where I was past president and now hold a director's position. (The association represents over 1800 property owners in Avon.) I am a member of the Outer Banks Preservation Association, and past director, since the mid 1970's, a member of the Cape Hatteras Angler's Club, the North Carolina Beach Buggy Association, and the American Sportfishing Association. Until recently, when this matter consumed every waking hour of my time, I was a member of four North Carolina Marine Fisheries Advisory Committees, a NC Sea Grant Committee and a Federal Fisheries Committee.

Over two years ago the National Park Service began taking applications for committee members of the Negotiated Rule Making Advisory Committee for implementing the Off Road Vehicle Plan mandated by President Nixon's 1972 Executive Order. At the interviews, we were told that we would be working from an even playing field and that all options would be considered that would be applicable under NEPA regulations. Meetings were held to consider facilitators for the meetings. Two workshops for potential committee members were held, and during these workshops the problem of the lawsuit instituted by potential members of the committee were discussed and the level playing field was discussed. At one of the meetings in Nags Head, NC I noted that although we would not be given Pea Island Wildlife Refuge as an area of consideration for routes and areas for Off Road Vehicles to be used that the area would be considered as a negotiating chip in future meetings. And finally, we were placed in the Federal Register for comment before being formally given positions by the Secretary of the Interior. From the first official meeting to present, no even playing field has been present due to the law suit and now due to its settlement. At the two court hearings on the suit, the judge showed adamant disregard for the intervener's comments and total belittling to the justice department's lawyers. At the April 4th 2008 hearing he questioned why the plaintiff wanted an extension when he was ready to give them injunctive relief then. At the April 30th 2008 hearing he washed his hands of the matter in giving them the consent decree after over thirty minutes of questioning, preaching and degrading of the whole process. The settlement was reached behind closed doors without comment from the public and it was based on questionable, non-peer reviewed science. The interim plan in place when the settlement was reached had gone through public review and a Section 7 was done by NPS and USFW.

As a member of the public and Negotiated Rule Making Committee, I felt that through the NEPA and our committee process that there were less restrictive options than the interim plan covered that could be implemented. The consent decree has destroyed the committees' ability to negotiate any balanced ideas less than its requirements. In fact, in an informal gathering of three members of the pro access committee members and two of the environment committee members that sit on a sub-committee for areas and routes for off road vehicles this summer during the break of formal full committee meetings on Tuesday July 22, 2008 it became apparent that the environmental members want more restrictive regulations than the present consent decree allows for the final plan.

Under the impending lawsuit and the implementation of the consent decree, my business has already suffered financial losses. In 2007 North Carolina's legislature instituted a fishing license that many feared would cause decreased revenue, but we had a very good year. Although in 2007 the fishing license was new and only warnings were issued, the NC Department of Marine Fisheries forecast for 2008 was that there would be higher sales this year. Dare County, who was the largest seller of fishing license in 2007 for the state and my business, have seen negative sales of licenses this year and they follow closely the decreases in business I have encountered. You may see the table taken from my business records below:

					% DECREASE
APRIL TOTALS	2008	$51,968.80	2007 **	$87,409.04	
APRIL FISHING LICENSE	2008	$10,417.00	2007 **	$16,668.00	37%
NET APRIL	*2008*	*$41,551.52*	*2007 ****	*$70,741.04*	*41%*
MAY TOTALS	2008	$90,327.52	2007 **	$106,369.82	
MAY FISHING LICENSE	2008	$14,739.00	2007 **	$ 17,911.37	17%
NET MAY	*2008*	*$75,588.02*	*2007 **	*$ 88,458.45*	*14%*
JUNE TOTALS	2008	$96,669.74	2007 **	$ 111,451.27	
JUNE FISHING LICENSE	2008	$16,659.00	2007 **	$ 19,292.42	13%
NET JUNE	*2008*	*$80,010.74*	*2007 **	*$ 92,158.85*	*13%*
JULY TO DATE	2008	$72,101.52	2007 **	$ 81,784.77	
JULY FSHNG LIC TO DATE	2008	$12,469.00	2007 **	$ 15,812.00	21%
NET JULY TO DATE	*2008*	*$59,632.52*	*2007 **	*$ 65,972.77*	*9%*

Many vacationers this year were unaware of the restrictions on their activities and others that did know would lose large deposits on homes they have rented this year. For this reason, 2009 will be much worse than this year. We have reduced our work force by two people this year and morale is bad. Had I sold my business two to three years ago when the market and economy were peaking I could have retired, but now with the economy reducing the value of my business by 20% and the consent decree reducing the business I would have difficulty selling the business for 50% of the offer I had two years ago. Our business is Fran and my retirement fund, but now that looks bleak.

Thank you again for the opportunity to submit written testimony.

STATEMENT OF FRANK M. FOLB, FRAN & FRAN'S THE FISHERMAN'S FRIEND, INC., ON S. 3113

I hope you will take the time to read this letter and the accompanying attachments I have put together. My family resides in Buxton, NC in the middle of Cape Hatteras National Recreational Seashore. We have lived on the island most of our lives and have been full time residents in Buxton, NC since 1975 when my mother passed away and we moved into my parent's residence. Our home is only a tenth of a mile from where she and past generations of her family now rest. My father moved to America from Lithuania inl 900 at the age of 8 to escape the poverty, persecutions, and terrors of that society with WW1 looming.

As I am sure you know, Cape Hatteras is synonymous with surf fishing and is widely considered the surf fishing capital of the East coast. To access the fishing areas, fishermen have for years utilized " Beach Buggys" 4x4 SUV vehicles. This access is eminently being threatened. For the last 12 weeks the best areas of the seashore have been closed during the peak spring fishing and visitor season. Closing these areas is the equivalent of closing Florida Keys waters during Tarpon season or blocking off the entrance to Magic Kingdom at Disney World. Thousands of fishermen make their annual spring pilgrimage to Cape Hatteras in quest of the spring fish runs and to enjoy summer beach activities. With the down turn in the economy Cape Hatteras is a relatively inexpensive drive to location that in the past has shown increases of visitors, however, this year National Park Service records show

a 17 percent plus decrease in visitation. This decrease is not related to the current price of gas. Just north of us the Wright Brothers Memorial is showing a slight 2 percent decrease in visitors.

We can have 4x4 SUV accesses to major surf fishing hot spots without threatening any bird life. Unfortunately no one uses the middle ground anymore. Every issue has an extremist these days and no good comes from it. These extremists I am referring to hide under the disguise of GREEN and have their own agenda which is threatening our islands heritage, way of life and economic well being. Under the present regulations provided by the Consent Decree, an area the size of three US Navy Super Carriers lined end to end as a radius fenced off for each nest with a hatched piping plover, allows no off-road vehicles or pedestrian access to the area.(See attached illustration.)*

Our island is being threatened by an all too familiar radical political movement called "environmentalism," that is plaguing the entire USA, and denying us of property and public land usage rights, and the individual right to participate fully in the policy-making of government agencies that affect our businesses and our traditional way of life. The particular organizations that have taken control of our community and caused great harm to our way of life and the economy are the Audubon Society, the Defenders of Wildlife, and the Southern Environmental Law Institute. Unlike these well funded special interest groups, our community citizens' group has very limited out of pocket funding, but never the less has fended off these groups in court actions for eight years spending nearly $1,000,000.00. These are moneys that we could have used for our health care and education of our children.

On April 30, 2008 Federal District Judge Terrence Boyle, allowed these groups, with the help of highly biased "green minded" officials in the Department of Interior in Washington, to settle a suit against the National Park Service, behind closed doors, without public comment or review. Many of my fellow citizens believe that the National Park Service officials in Washington went to these groups and said; "Sue us so we can get what we want on Cape Hatteras and we will roll over in court." The local concerned citizens group, Dare County, and Hyde County filed as interveners, but only through last minute acceptance in the negotiations were they able to salvage small concessions before the "settlement" was finalized by the court. The judge signed off on what is essentially a federal regulation contracted between radical environmental groups and the federal government where, in actuality, the federal government agrees to answer to these special interest groups for the next three years, ignoring scientific facts and the needs and desires of the general public. The interveners had no choice but to go along with the agreement or have the publicly accessible shoreline shut down completely. The court knew that and could have at least opened the settlement to include public hearings.

The stated reason for court approval of the "closure" provisions of the settlement was the protection and production of bird species. Two species of birds, neither of which are listed by the government as endangered, are specified in the settlement: the Piping Plover and the American Oystercatcher. The closure distances and provisions in the settlement are not based on published science; they are arbitrary.

Along the 60-mile park coast, only 7 piping plovers fledged this breeding season. The 15-year production rate for the piping plover is 0.66 chicks/pair. The Park Service today announced that this year's Piping Plover production level is 0.64. That rate is less than the rate when there was beach access by ORVs. Much is the same for the American Oystercatcher, out of 27 birds that hatched only 10 have fledged.

Most nests and hatched birds have been lost to predation, a few to storms, and one at the hands of a university researcher. This data suggests that ORVs do not reduce the productivity of birds and that previous park management programs (the interim strategy) has been effective at protecting birds.

The shutdown of the park beaches has been a tremendous insult to the public. It is waste of public resource at an outrageous cost to the local community, county, state and federal government. The consent decree is "bad public policy" to the point of being a "public nuisance" as illustrated below:

- The public has been deprived of public participation and park access rights. Particularly affected are the disabled and elderly members of our society who cannot get to the beach even on foot.
- The consent decree has created enormous public anxiety and outrage. The closures policy has been the catalyst for threats of physical violence, public disobedience, slander, and vandalism. It has contributed to a distrust of government and unnecessary tensions between citizen groups.

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*Attachments have been retained in subcommittee files.

- Park Service professionals have been stripped of their prerogatives to make judgment calls and deal reasonably and equitably with the public they are sworn to serve.
- Especially disturbing, the consent decree establishes a policy of retaliation and punishment for the general public when violations of the consent decree occur. Every time there is an act of vandalism, the Park Service is required, without any management discretion, to significantly extend boundaries and widen non-access areas.
- Visitor habits and plans are changing. Hundreds of trips to the Outer Banks have been canceled or redirected to other parts of the country because of actual or threatened beach closures
- The decree has produced significant economic harm to small family businesses. For some businesses, revenues are down 50% or more and some employees have been laid off. Gas station, restaurant, and motel revenues are down.
- Risks of ORV and pedestrian accidents have increased as ORVs and pedestrians are forced into smaller areas.
- On certain days, there is an absence of public parking and unclear direction and access to the shore line.

We need your committee's help! What can you do? I have some ideas, but being a small fish in a large sea of bigger, smarter fish I defer to the expertise of my countries legislators. My ideas are as follows:

1. We want the park returned to the full control of the US Park Service who by profession will answer to the needs of the public. A federal judge is not qualified to manage a national park. Make the legislation (Sen. Bill 3113) stronger by going back and reviewing the enabling legislation. There you will find that Cape Hatteras National Recreational Seashore was set up for the people first in its design and management. (Investigate the interveners file and its attachments filed in the lawsuit against National Park Service that resulted in this bill.)
2. Hold congressional hearings on the matter of conflict of political interests and investigate the appearance of preferential treatment and special consideration for environmental organizations by senior management of National Park Service, Department of Interior, and US Fish and Wildlife Service.
3. Investigate the blocking of rebuilding a bridge over Oregon Inlet which has received the same mistreatment as the public access issue is receiving now. These environmental activists groups are also putting the public at great risk by delaying the construction of the much needed Bonner Bridge. The current bridge is rated at an extremely dangerous category 2 on a scale of 100. It is the only evacuation route from a hurricane prone island that during hurricane season may have tens of thousands of visitors in addition to twenty thousand full time residents.
4. Pass Sen. Bill 3113 out of committee and get it passed to enable local NPS the ability to retake control of the seashore and allow time for Negotiated Rule Making and NEPA to properly put in place an ORV plan.

STATEMENT OF JEFFREY A. GOLDING, RESIDENT OF BUXTON, NC, ON S. 3113

I wish to thank the committee for the opportunity to submit written testimony for the record in support of S. 3113. As a knowledgeable and concerned citizen, I feel it is my civic duty to make timely comment and to respectfully request that you pass S. 3113 out of committee and allow a vote by the Senate.

When Congress established Cape Hatteras National Seashore Recreation Area (CHNSRA) in 1937 its intent was to permanently provide for all Americans a unique area for their enjoyment and use. For years now, those of us who utilize this unique resource have been under assault by a variety of environmental special interest groups who would deny us access, but not themselves. They have tried compaction studies attempting to show that ORVs' were damaging the beach. Only to find their data lost when it rained or a storm occurred. They have filed lawsuit after lawsuit in federal court claiming harm and inadequate protection for the birds and turtles that nest here. And in each case, where evidence was heard from both sides in the court, they were sent packing. Quite simply, their claims were refuted by sound science and law. All of this was at the expense of the American taxpayer. What occurred April 30th, 2008, in Judge Terrence Boyle's court changed everything.

It's the Piping Plover that has become the "poster child" for these groups. The plover is a relative newcomer to CHNSRA. Every bird study conducted between 1900 and 1959 show that it was not until 1960 that the first birds arrived in the

Park. Plovers nest independently of one another and not in colonies. They neither feed nor care for their young from the moment they hatch. They nest in areas that are subject to frequent overwash and frequently lose nests as a result. This has already occurred at CHNSRA in the 2008 breeding season, and not just with plovers. Predation has also taken its toll this year.

The Piping Plovers that nest at CHNSRA are part of the Atlantic breeding population which is considered "threatened", not endangered. It is very important to understand that CHNSRA is on the extreme Southern edge of the Plovers breeding range which accounts for the historically low numbers within the Park. Most Plovers nest well north of the Park, from Virginia's Eastern Shore to Newfoundland, Canada; with the majority of nesting occurring mid-range.

I am an individual who has utilized this resource, this National Seashore Recreational Area, for almost three decades. And, like many, I am very familiar with this beach system—predicting structure changes, overwash, and the like comes as second nature. Collectively, we possess more first hand knowledge of the workings of the beaches and the wildlife at CHNSRA than any environmental group in existence. This has actually been proven in the field on more than one occasion. It is, therefore, no surprise that an Alberta, Canada Plover study contains the following statement: "human presence in an area can be a very effective form of predator deterrence." (USFW 2000) Interesting as well is a statement by Tim Gallagher, editor-in-chief of Living Bird magazine, published in the spring 2000 edition; "But the large number of people always present at beaches does have a remarkable taming effect on birds." This reflects what we see daily as we visit our cherished beaches.

There are 21 documented ORV related plover deaths in the entire United States. Twenty of these were committed by federal vehicles. In the 47 years prior to the Consent Decree, not one single plover death can be attributed to an ORV user in this Park. One hundred percent of plover mortality at CHNSRA has been a result of either storms or predation. A far cry from the 24 Piping Plover nests the Army Corps of Engineers destroyed recently in the name of floating two barges of alfalfa pellets down a tributary of the Missouri River.

The Defenders of Wildlife (DOW), National Audubon Society, and the Southern Environmental Law Center (SELC) would have one believe that none of which I write in these pages is true—though it's all in the public record.

The Consent Decree deals also with other birds such as Black Skimmers, Common Terns, Least Terns, Gull-billed Terns, Wilson's Plover, and American Oystercatchers. None of whom are threatened or endangered. The Consent Decree treats them as though they are, and at additional taxpayer expense. It also deals with the variety of sea turtles that occasionally nest on the Park's beaches though now requiring full beach closures, unlike the Interim Strategy.

Some "Inconvenient Truths" for DOW, Audubon and SELC include: Under the Interim Strategy (IMS) the 2007 nesting season was the most successful Plover breeding season in over 20 years. Currently, under the Consent Decree, a single Plover chick is given enough beach area to cover the decks of three U.S. Navy Super Carriers, the largest warships on earth (1000m). As such, in most American communities, a convicted child molester can live closer to a public school than a fisherman and his family can get to a plover.

On a positive note, the Atlantic Piping Plover population is fast approaching the 2000 nesting pair's figure that makes them eligible for de-listing as threatened. The most recent counts show 1700 nesting pair. Just four years ago, the most accurate estimate was 1400 pair. This represents a rather dramatic increase in breeding pairs in a very short period. And by some recent estimates, the Atlantic Piping Plover will reach the 2000 nesting pair figure in approximately three years. Unfortunately, at the cost of even more taxpayer dollars, de-listing the Atlantic Plover population is probably going to be challenged in court.

The environmental groups also claim a substantial drop in Black Skimmer and Gull-billed Tern numbers. What they don't want you to know is that the bird count for the 2007 season shows a better than 20% increase in numbers. They know very well that the birds chose to nest on a newly re-created dredge spoil island, Cora June Island, which is within sight of the Park. In a survey of colonial waterbirds released by N.C. Wildlife Resource Commission in February 2008, in which Walker Golder, attorney for Audubon, plaintiff, and member of Negotiated Rulemaking participated, the Commission writes:

> An outstanding success story can be found on Cora June Island, located near Hatteras Inlet. This island disappeared during Hurricane Isabel in 2003 but was rebuilt in spring 2007 during a dredging project by the U.S. Army Corps of Engineers. Only months after rising from the sea, the island was home to one of the largest mixed tern/black skimmer colonies in the

state with good numbers of nesting adults that successfully fledged hundreds of chicks.

The recent survey, which was conducted in spring 2007, is one of 10 complete coast-wide surveys conducted since the late 1970s to monitor population trends, distribution of colony sites and nesting habitat conditions. Data gleaned from the surveys help biologists make management and conservation decisions and prioritize research. The next water bird survey is scheduled for 2010.

Never mind that environmental groups have sued to stop the creation of additional spoil islands which would provide substantial new habitat for the very birds they profess the need and desire to protect.

In addition, they would prefer you to believe that night time driving on the beaches at CHNSRA disorients sea turtles. Hence the ban imposed by the Consent Decree. But they would have you ignore Pea Island National Wildlife Refuge, the northern 22 miles of beach on Hatteras Island. At Pea Island NWR, there is no beach driving and less than a dozen lights visible from the sea. Very few pedestrians frequent these beaches due to the difficulty in accessing them. And yet Pea Island has no greater turtle nesting success than ORV accessible beaches, but does have more false crawls, aborted nesting attempts, than the open beaches. They would also have you ignore the fact that Plovers don't nest there either, in spite of the excellent beach conditions.

Under the Consent Decree, if a turtle nests within the relatively minute portion of beach that's still accessible by ORV, the Park Service is required to establish virtually the same nest enclosure as established within the Interim Strategy. Beach users may drive by, park by and fish by this clearly marked 10' by 10' enclosure at will. Until, that is, September 15th. On that date, the Consent Decree imposes full beach closures in addition to the procedures outlined in the IMS, making those areas impassable by vehicle or pedestrian. This is absurd and arbitrary. The Consent Decree clearly states that if a nest is approaching its anticipated hatch date (pre-September 15) NPS is to follow the same procedures outlined in the IMS, not including full beach closures. Which means that in spite of the additional "path" NPS constructs to funnel the hatchlings to the sea, the beach immediately outside this small closure is still accessible to both pedestrian and ORV use. So why is September 15th , the "magic" day for full beach closures under the Consent Decree? Because this is an arbitrary date by which perhaps some of the bird closures will have been reduced and the Consent Decree finally allows for "permitted" night driving. This is a thinly veiled maneuver to continue to prevent ORV access to the beach. If it was ok for me to drive by or park and fish right next to the closure on the 14th, it should be just fine on the 15th.

They don't want you to know that at the best of times ORV users can only access less than 30% of the beaches at CHNSRA and that their "12% of the beaches affected" figure assumes 100% ORV access. This has not been true for many, many years. The truth is that well over 90% of the beach is currently closed either directly or by default. Areas bounded on both sides by closures are inaccessible even though they are technically open. They prefer to focus on ORV's but the current closures prohibit pedestrian use as well. No entry means just that.

It is, I think, ironic that as I labor over this communication, Defenders of Wildlife have just sent their members an e-mail dated June 15th, 2008 that describes success as a result of the Consent Decree. "Since some of the most sensitive areas were closed to vehicles, birds like the piping plover and the American oystercatcher have been bouncing back."

Plover numbers are almost the same as they were last year under the IMS. I don't know about the American Oystercatchers (AMOY) yet except for the nest on the Pamlico Sound side of HWY 12 between Frisco and Hatteras villages. There, less than 150' from the 55 MPH traffic, in plain sight, an AMOY pair feeds their young and raises them to fledge quite happily.

They also write, "The emergency plan was developed to be flexible, with temporary closures that can be lifted and reopened to vehicles once wildlife is no longer using certain areas. Already, some areas have been reopened this season."

This ignores the rash of immediate closures that followed the April 30th signing of the Consent Decree. Because of the Consent Decree, anyone with a cell phone can call NPS, report bird activity and the Park Service is required to close the area for weeks at a time. All of the areas that have been reopened as of 6/26/08 were initially closed due to inaccurate and perhaps false observation.

They would rather you didn't think of them as parties to the lawsuit that has prevented the replacement of the Bonner Bridge, Cape Hatteras' lifeline and only over ground hurricane evacuation route; a bridge with a safety rating of 4 out of 100.

The bridge in Minnesota that collapsed in 2007, killing many, was rated at 27. Since when do we so blatantly condone risking the loss of human life? The environmental groups have already announced that if the new bridge is attempted they will sue.

The Consent Decree is an obvious attempt at changing a National Seashore Recreation Area into a private wildlife refuge. Which has so far, been successful at the cost of untold taxpayer dollars. Remember that the plaintiffs are consistently reimbursed their legal fees and expenses by the already strapped Park Service and DOI. You must also consider the cost of constant monitoring, flying in and housing of unneeded special event teams, additional, extensive new signage, additional vehicles, law enforcement and infrastructure.

The impact of the Consent Decree on the economies of the villages bounded by the Park has been astounding. I know this first hand as it cost me my job. Conditions under the Consent Decree continue to fester as more Americans and foreign visitors discover that the experience they expected when they arrived at CHNSRA has been almost entirely compromised. Thousands have already cancelled their reservations or vowed not to return. And yet both the environmental groups and United States Fish and Wildlife Service continue to utilize the arguably inept Voglesong study as the foundation of their economic and visitor usage statements in spite of a government funded peer review that deems the study essentially worthless. The esteemed panel also regarded the data and its collection methods so flawed that further review of that data would be a waste of time.

Dr. Michael A. Berry served as any Army officer in Vietnam in the 1960s. After returning to civilian life, he earned a doctorate in public health and worked in the U.S. Environmental Protection Agency, where as a senior manager and scientist, he served as the deputy director of National Center for Environmental Assessment at Research Triangle Park in North Carolina. During his 28-year career with EPA, he had extensive interactions with environmental organizations, local governments, the federal courts, U.S. Congress, universities world-wide, and institutions, such as the National Academy of Sciences, the World Health Organization, and the North Atlantic Treaty Organization. For more than 20 years, Berry, who lives in Chapel Hill, taught public health, environmental science, and business and environment courses at the University of North Carolina. He is currently a writer and part-time consultant, specializing in the evaluation of environmental quality and human health effects, environmental management strategies, and policy.

He writes,

> There has been no opportunity for public participation, comment, and input with regard to this new ORV regulation. For any environmental regulation issued by the federal government, citizens have the right of public review and comment as provided by the Federal Administrative Procedures Act. Under the Federal Advisory Committee Act, citizens also have a right to know about and attend federal government meetings, especially when those meeting involve special-interest organizations trying to influence the government. Under the Freedom of Information Act, citizens have a right to obtain all unclassified information, such as scientific information and correspondence with special-interest parties, that is held by the federal government.

The Consent Decree has changed the very nature of the Park. Though the environmental groups claim to want to preserve CHNSRA for future generations, I fail to see the value of a National Park that remains inaccessible during the spring, summer and fall, when the majority of Americans that visit the Park take their vacations at this time. And if USFWS gets their way by declaring CHNSRA critical wintering habitat for Great Lakes and Great Plains plover populations, though they openly admit they have no idea where the wintering birds originate, this will include the late fall and winter months as well.

Preservation has been, so far, successful without court intervention and a draconian Consent Decree. What choice did Dare and Hyde counties and the various beach access groups have other than to consent? It came down to either accepting an agreement that they had no voice in and hoping for the best or face certain closure and the enormous economic impact that it would spawn.

A Federal Judge is bound by law to render a fair decision based upon the merits of the evidence presented before the Court. But Judge Boyle declared his intention to provide the environmental groups exactly what they sought without hearing any evidence from either point of view and precluded the intervening parties, Dare, Hyde, OBPA, CHAPA and others from entering any evidence at all. This occurred within the first few minuets of the February 2008 scheduling conference. During a later hearing, in spite of being charged by law to consider the economic impact of the proposed closures within the Consent Decree Judge Boyle repeatedly declared

his lack of knowledge and understanding of CHNSRA, the villages contained therein, and signed the decree anyway. His obsession with closing Ramp 4 (Bodie Island Spit) as related in the transcripts of the April hearing is baffling. What the negotiations between the environmental groups and DOI promulgated can only honestly be referred to as a Decree of Forced Consent.

CHNSRA was established first and foremost as a National Seashore Recreational Area. This is blatantly obvious when one reads the enabling legislation formulating and forever establishing the Park.

Dated August 17, 1937 (50 Stat. 669), provides in part:

> Sec. 4. Except for certain portions of the area, deemed to be especially adaptable for recreational uses, particularly swimming, boating, sailing, fishing, and other recreational activities of similar nature, which shall be developed for such uses as needed, the said area shall be permanently reserved as a primitive wilderness and no development of the project or plan for the convenience of visitors shall be undertaken which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing in this area . . .

On June 11th, 2008, Senators Elizabeth Dole, Richard Burr and Representative Walter B. Jones introduced S. 3113 and H.R. 6233. These bills, if enacted, would put aside the Consent Decree and return CHNSRA to policy and operation governed by the IMS. This would effectively take management decisions out of the hands of a few special interest groups and return it to the professional scientists and staff of NPS at the savings of millions of taxpayer dollars over the life of the Consent Decree.

Already these groups assail the media and their members with tales of doom were these bills signed into law. Some claim that Congress has no business even dealing with this matter. I beg to differ. Congress established this Park for the American People as a whole and provided us with a place we have fought hard to preserve as the unique and dynamic place that Hatteras is; or was. For years, most of us have lived by the motto of the Outer Banks Preservation Association, "Preserve, Protect, Not Prohibit." For example, to this day NPS does not employ "beach clean-up crews". We do this at our own time and expense. This hardly represents a user group with a penchant for environmental abuse.

Congress reserved the right to change the nature of an established National Park for itself. And so there is no question as to whether these bills should be co-sponsored and enacted.

16 U.S.C. Section 1a-1 states, "The authorization of activities shall be conducted in the light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress."

Surely this applies to forced closures as that constitutes an activity as well. Non-governmental organizations have taken over scientific management of a national park, an activity (Consent Decree) not sanctioned by Congress in spite of the obvious "derogation of the values and purposes for which these various areas have been established".

Furthermore, the Federal Executive Branch Policy governing the selection, establishment and administration of National Recreation Areas by the Recreation Advisory Council circular, dated March 26, 1963 states:

Within National Recreation Areas, outdoor recreation shall be recognized as the dominant or primary resource management purpose. If additional natural resource utilization is carried on, such additional use shall be compatible with fulfilling the recreation mission, and none will be carried on that is significantly detrimental to it.

I therefore urge every member of the Senate and House of Representatives to co-sponsor and foster these bills into law. Sound science and the weight of law should never be substituted for supposition and misleading statements.

Please help return our National Seashore Recreation Area to the true stewards of this resource.

Authors Note: 6/28/2008

I stated earlier that I was unaware of the current American Oystercatcher numbers at present. According to the most recent available NPS resource management field report, at this point in time last year the AMOY American Oystercatcher had attempted 41 nests and had 17 active or hatched nests. At this point in 2008, they have attempted 33 nests but have only 16 active or hatched nests. With the extensive closures, this can in no way be blamed on ORV drivers. This completely refutes

the claims of the aforementioned environmental groups' press releases that the AMOY is some how miraculously "bouncing back" as a result of no ORV traffic.

STATEMENT OF OREGON HUNTERS ASSOCIATION, WILSONVILLE, OR

We are writing on behalf of the 11,000 member Oregon Hunters Association (OHA). We would like to express our opposition regarding the legislation that would add approximately 4,000 acres to the Oregon Caves National Monument (Monument) in southwest Oregon by transferring land from the U.S. Forest service to the National Park Service. It is our understanding that the original act creating the monument carefully considered what was needed to protect the Oregon Caves. The upper portion of the Cave Creek watershed holding the caves is included in the 400-acre monument. The proposed acres are in the neighboring Lake Creek watershed. The proposed addition would increase acreage of the monument by over ten times.

The lands adjacent to the Monument are popular for deer and bear hunting, and for upland bird and turkey hunting. According to the Oregon Department of Fish and Wildlife during the year 2007, 5,505 deer, fall bear and fall/spring turkey hunters spent 39,155 days hunting in the Applegate Management Unit. We believe that taking away land from the Applegate Management Unit will in fact have an effect on hunters having access to this unit.

In addition to the hunting issue, this particular acreage constitutes a much higher percentage of the " high-quality" deer and bear habitat in the Applegate Unit, especially the portion that lies in Josephine County. The area is high elevation alpine meadow habitat that holds far more game than the lower elevation lands that have become choked with brush since forest management has been halted on Federal Lands.

It is the opinion of OHA that this land transfer will have an adverse impact on hunter opportunity because of limited access to the Applegate unit, which will have an effect on the area's economy that is dependent on hunter dollars and will also have an adverse impact on the habitat that sustains the wildlife in this area.

It is for these reasons: hunter access to a very valuable hunting area, the economic impact of the area and habitat loss that OHA is opposed to this land transfer.

STATEMENT OF DAVID A. PERRY, EMERITUS PROFESSOR, OREGON STATE UNIVERSITY, ON S. 3148

My name is David Perry. I am an emeritus professor of ecosystem studies and ecosystem management from Oregon State University. I currently reside in Oregon's Illinois Valley. Thank you for the opportunity to submit testimony on this matter.

I strongly support expansion of the Oregon Caves National Monument Boundary as specified in S. 3148.

The Caves themselves are geologically unique and attract large numbers of visitors each year. As such, they provide a focal point for the development of an expanded tourist industry in the Illinois Valley, which is still recovering economically from the sharp reduction in timber revenues during the 1990's.

The Caves are located in one of the more scenic and botanically rich areas of the United States. The Monument currently has a few heavily used hiking trails, and expansion of the boundaries will allow for more which will almost certainly be well used. Polls taken at the Monument show that 75% of visitors would stay longer if there was more hiking available. People who view the caves and stay to hike will spend longer in the Illinois Valley, benefiting the local economy.

Currently, the grazing lease adjacent to the Monument is contaminating the water supply. The rancher has been in negotiations with KS Wild and has agreed to retire the lease without a fight if the Boundaries are adjusted. There are no losers if the lease is retired, and 80,000 people per year with an uncontaminated water supply makes for a lot of winners.

There is some concern that forest fire hazard won't be dealt with if the NPS takes over the land. In fact, the NPS seems more likely to address this problem than the USFS, which doesn't have the funds or personnel to deal with the many fuels reduction needs elsewhere on their lands.

I summary, I wholeheartedly support expansion of the Monument boundaries. It is a positive step for the Illinois Valley.

STATEMENT OF SUSAN BONDESEN & BRIAN BARTON, WILLIAMS OR, ON S. 3148

We are writing to express our strong support for support for the Oregon Caves National Monument Boundary Adjustment Act of 2008 (S. 3148). We agree that too little protection exists for this important asset that enriches the natural environment here as well as the local economy. Please seriously consider passing the expansion contained in S B. 3148. It will benefit all Americans as well as Oregonians.

STATEMENT OF MICHAEL A. BERRY, ON S. 3113

I wish to thank the committee for the opportunity to submit written testimony for the record in support of Senate Bill 3113. As a knowledgeable and concerned citizen, scientist, retired public administrator and university educator, I feel it is my professional and civic duty to make timely comment and to respectfully request that you pass Bill 3113 out of committee and allow a vote by the Senate.

I am a senior citizen of the United States, residing at 16 Charrington Place, Chapel Hill, North Carolina, 27517. I hold the following degrees: Doctor of Philosophy in Public Health from the University of North Carolina at Chapel Hill; Master of Science in Management from Duke University's Fuqua School of Business; both Bachelor and Master of Science degrees in Mathematics from Gonzaga University. I am a combat veteran of the Viet Nam War and a retired Lieutenant Colonel, Army Engineers. In my civilian life, I retired from the US Environmental Protection Agency in 1998 after a 27-year career with that agency. For over 22 years, I served as the Deputy Director of the National Center for Environmental Assessment at Research Triangle Park, NC. During my EPA career I had extensive interactions with foreign, state, and local governments; the federal courts; US Congress; universities world-wide; institutions to include the National Academy of Sciences, the World Health Organization, and the North Atlantic Treaty Organization; the major environmental organizations; private industry and trade associations. For more than 20 years, I was an adjunct or full-time faculty member at the University of North Carolina where I taught environmental science and management courses in the Department of Environmental Sciences and Engineering, the Kenan-Flagler Business School, and Environmental Studies Program. I have in-depth knowledge of environmental sciences, especially those related to human health; and the federal environmental statutes, programs, and policies.

I wish to state clearly for the public record that I have been for the past four decades and remain today and forever in the future, professionally committed to protection of the environment. I am primarily concerned with environmental conditions that affect the health and well-being of humans and with the conservation of natural resources that are essential components of a healthy environment. Given the ever changing environmental conditions brought about by growing human populations and expanding regional and global economies, effective environmental management is more essential now than ever before, but never at the expense of violating human and Constitutional rights.

Responsible environmental management uses sound science and professional judgment that balances the human needs and rights of people with the needs to manage and sustain natural processes.

As a public health and environmental management professional, I will always place the health and well-being of humans first and I will never accept a political philosophy that suggests people are less important than other species. Increasingly, "environmentalism" places species ahead of humans. Sadly, this new-age philosophy has crept deeply into our political process. Humans should never be completely shut out or deprived of their environment so that other species should prevail or dominate. With a good understanding of science—knowledge of how the environment works—humans can make rational decisions and manage conditions so as to connect with their environment and at the same time provide for the existence of other species.

The consent decree and settlement that Senate Bill 3113 is designed to overturn is properly criticized as "legislating and managing from the bench." Because of the current consent decree and closures, the public is being pushed out and denied access to its treasured environment in which it too has a rightful place. The public is being denied a role and opportunity to suggest ways that an environment that it cherishes deeply can be effectively managed. The federal government, specifically the federal judiciary, and Departments of Interior and Justice, has failed in its duty to protect the Constitutional rights of the public to have a say in the management of its park environment.

It is not the prerogative of a federal court to give exclusive decision-making and management rights to three well funded environmental activist organizations so as

to dictate how the general public and local community will access public land, in this case Cape Hatteras National Sea Shore, which has a guarantee and tradition of certain usage rights, including the right to access the beach with a motor vehicle (ORV).

Traditionally, federal courts interpret and render opinions on the law and protect citizen rights as spelled out in the Constitution or the federal statutes. It has been long recognized that Congress and the courts do not have the technical knowledge or resources to manage national parks. That is why Congress established the National Park Service. Park Service professionals are responsible for making technical judgments and management decisions concerning the peoples' park.

The park management formula laid out in the consent decree is a new public policy. This new park policy was put together, in a rush, in about 10 days, behind closed doors, without any open discussion of scientific fact, explanation and justification of environmental management strategies, and consideration of the many needs and desires of the general public.

In this court-approved settlement, the federal government agrees to respond to the dictates of three non-governmental special interest groups for the next three years. These environmental organizations answer to no one. Citizens cannot even challenge the Park Service or these non-governmental groups about this management policy. Essentially this consent decree takes the "Cape Hatteras National Recreational Sea Shore and turns it into a national maternity ward and nursery for 5 bird species and turtles.

Every legitimate public policy in our democratic society is based upon the Constitution. Public policy is intended to provide for the public good and the rights of persons, which begins with the protection of citizens and promotes conditions that enhance social well-being. Citizens have a right to be a part and have a say in the formulation of governmental policies that affect their lives. However, in this consent decree, we have public policy created by dictum; the public was simply directed to behave in special new ways without benefit of comment or review.

In addition, the consent decree appears to grant special rights to species overlooking the fact that the Constitution grants rights only to persons. There is nothing in the Constitution that grants any right to a bird or turtle.

Only the Congress of the United States can change this situation.

In the April 30 court hearing, the judge acknowledged about five different times the need for public participation and review, but then, at exactly 1 hour into the hearing, he completely set aside any public concern or comment, and signed off on the settlement. The Outer Banks community interveners had no choice but to go along with the agreement or have the beach shut down completely. The court knew that and could have at least opened the settlement to include public hearings or directed the Park Service to promulgate a final management plan by a certain date.

This consent decree is a classic example of how not to formulate environmental policy. It is good example of why good public policy must always be transparent, provide for public review and comment. The formulation of good policy takes thoughtful planning and organization, time for citizen interaction and review, including science review, much along the lines of what is currently being attempted with the regulation-negotiation process for a final ORV plan initiated by the National Park Service at the end of last year.

No reasonable person doubts the need of an ORV management plan for the National Sea Shore especially in the face of regional population growth and improved highway systems onto the Outer Banks of North Carolina.

After many years of Department of Interior foot-dragging, an ORV regulation-negotiation process was launched earlier this year. Under the direction of a highly experienced and professionally competent park superintendent, the National Park Service went out of its way to encourage public participation in ORV management for the Park.

The environmental activist organizations, who now control a large portion of the park through consent decree, agreed months ago to take part, along with dozens of other citizen stakeholders, in a highly visible process of good faith regulation-negotiation. The primary purpose of the regulation-negotiation process is to provide factual information to the Park Service for an effective ORV management plan, provide equitable consideration of all citizen groups, and avoid costly litigation. Through their litigation, while sitting as major participants of the negotiation process, the environmental activists violated their agreement and indicated beyond any doubt they have no intention of good faith negotiation.

Within the recent judicial review, no consideration was given to the desirability and benefits of a publicly transparent regulatory negotiation process or the breach of agreement and inequity of the lawsuit. The court has sent a very clear message that it does not care what the public thinks or has to offer in terms of the effective

management of the national park. This is an insult to citizens who have taken the time and their personal resources to attend and observe the regulation-negotiation meetings, sit at the table to negotiate in good faith, provide factual information and constructive comment to the Park Service.

The consent decree has been shown to be "bad public policy" to the point of being a "public nuisance."

The public has been deprived of public participation and park access rights. The public has been denied access to a park and shoreline it owns. Particularly affected now and in the future are the disabled and elderly members of our society who cannot get to the beach even on foot.

The consent decree has created enormous public anxiety and outrage. This new policy has been the catalyst for threats of physical violence, public disobedience, slander, and vandalism.

Park Service professionals, many having years of specialized training and experience and decades of faithful public service, have been stripped of their professional prerogatives to make judgment calls and deal reasonably and equitably with the public they are sworn to serve.

The consent decree has contributed to a distrust of government. Government officers are forced to arm themselves and enforce laws that they themselves find as disturbing and unreasonably constraining as the public.

There are unnecessary tensions between citizen groups. Persons who have some legitimate special interest in bird or nature watching, or simply walking or sitting on an ORV free region of the shoreline, are now viewed as the enemy of the ORV or surf-fishing public.

Especially disturbing to me as a citizen soldier of this nation is that the consent decree establishes a policy of retaliation and punishment for the general public when violations of the consent decree occur. Every time there is an act of vandalism, the Park Service is required, without any management discretion, to significantly extend boundaries and widen non-access areas. This serves no practical management need and is simply a "punishment", much along the lines of what I have personally observed and fought against in a police state on foreign shores. So as to prevent further denial of beach access, citizen groups have been forced to reach into their own pockets to offer substantial amounts of reward money for the identification of and conviction of those who break the law as dictated by the consent decree.

Visits to the National Park and Outer Banks community are down. Visitor habits and plans are changing. Already hundreds of trips to the Outer Banks have been canceled or redirected to other parts of the country because of actual or threatened beach closures

The local economy has been adversely affected by the consent decree. Already this policy has produced significant economic harm to small family businesses. For some businesses, revenues are down 50% or more and some employees have been laid off. Gas station, restaurant, and motel revenues are down. Some longtime residents of the island are planning to relocate.

Risks of ORV and pedestrian accidents have increased as ORVs and pedestrians are forced into smaller areas. On certain days, there is limited public parking and unclear direction and access to the shoreline. The judge himself predicted this in the April 30 hearing.

Damages to sensitive sectors of the Park environment will increasingly occur as ORVs and pedestrian traffic are channeled into smaller regions of the Park, overrunning the carrying capacity of those sectors of the ecosystem.

The closure provisions of the settlement are not based on well-established science.

The congress and the federal courts have repeatedly directed and ruled that before the government promulgates environmental regulations, there must be a hard look at the scientific basis for those rules. This administrative process principle is the "Hard Look Doctrine." The science is "environmental criteria."

For the federal government to justify the need for resource management such as that found in the consent decree there must be a basis in recognized and published science. In this consent decree, there is a clear and gross absence of well-established scientific information underpinning all technical aspects of the closure rule.

There is no peer-reviewed science to support the claims of species loss as the result of ORV traffic. That claim is not verified. Environmental activists have claimed the loss of species due to ORV traffic on the beach through press releases.

That is not the way credible science is presented or reviewed.

The court accepted that claim without open court hearing and examination of expert witnesses.

Given the significant economic consequences and beach access loss to the public, prior to restrictive regulation, our federal government owes the public an answer to the following questions about the factual and scientific basis:

- What are the studies, science and protocols used as the basis for the regulation and its technical content?
- Who are the specific authors of those science-based materials and who do they work for and represent—government, universities, environmental activists groups?
- What is the area of expertise and what are their qualifications as researchers?
- Where can the public acquire the raw or original data used to create the criteria or science base?
- Were the studies on which the criteria based peer reviewed or published?
- Who were the independent peer reviewers?
- Where are written copies of their review findings?
- What protocols were used to collect the data and were they ever peer reviewed?
- Where, when, and how were the data collected?
- What quality control system and statistical analysis process was used in data collection and presentation?

Questions like these are always asked in open public science review before an environmental regulation as significant as this one is imposed upon the public.

Congress should consider mandating that the National Academy of Sciences review the technical basis for park access closures such as those in the consent decree.

The protection and production of bird species was the stated and widely proclaimed justification for court approval of the "closure" provisions of the settlement.

Two species of birds, the Piping Plover and the American Oystercatcher, neither of which are listed by the government as endangered, are specified in the settlement.

Data published by the federal agencies, prior to the consent decree, suggests that the piping plover is "recovering" on a regional and national basis. Data in no way suggests that additional beach closures at the Cape Hatteras National Seashore are essential for the recovery of the bird. The data indicate that piping plover populations everywhere are not in decline, as is repeatedly stated by special interest environmentalist organizations. Piping plover populations are growing or have at least stabilized even in the most extreme and remote regions of their range. The number of birds observed in recent times indicates that conservation efforts, without the consent decree, are working.

Data collected and published by the Park Service in recent weeks in no way support the claim by environmentalists that ORVs reduce the productivity of birds. In fact, the data suggest that the Cape Hatteras National Seashore Interim Management Plan, prepared with public input and review in 2005, published in the federal register, has been effective at protecting birds and natural resources.

The Interim Management Plan was set aside by the court and replaced by the consent decree and settlement that mandated closures. The closures of recent months have been of exorbitantly high cost to the public but have not contributed to an improvement in species production or safety.

Along a 60-mile park coast, only seven piping plovers fledged this breeding season when beaches were closed to the public. The 15-year production rate for the piping plover is 0.66 chicks/pair. On July 25, 2008, the Park Service announced that this year's Piping Plover production level is 0.64. This year's rate is less that the rate when the Interim Management Plan was in effect and there was beach access by ORVs and pedestrians. Much is the same for the American Oystercatcher, out of 27 birds that hatched only 10 have fledged.

The huge closure distances in the settlement keep pedestrians and ORVs out of nesting areas. At the same time, the closures also provide for the proliferation and increased free movement of predators. In effect, the closures encourage predation. The majority of nests and hatched birds this closure season have been lost to predation, a few to storms, one at the hands of a university researcher. None has been lost to ORVs.

For the reasons I have presented in this testimony, I respectfully request that the committee send Senate Bill 3113 to the full Senate to be voted upon and return full management of Cape Hatteras National Sea Shore to the National Park Service.

STATEMENT OF JOSEPH VAILE, KLAMATH-SISKIYOU WILDLANDS CENTER, LEE HIPPY, CLEAN AIR & WATER, INC., DAVE WILLIS, SODA MOUNTAIN WILDERNESS COUNCIL, JOSH LAUGHLIN, CASCADIA WILDLANDS PROJECT, ERIK FERNANDEZ, OREGON WILD, ON S. 3148

Thank you for this opportunity to offer written testimony before the Subcommittee on National Parks of the Senate Committee on Energy and Natural Resources Committee concerning S. 3148, the Oregon Caves Boundary Adjustment Act

of 2008. S. 3148 would expand the Oregon Caves National Monument, designate Cave Creek and its tributaries as a unit of the National Wild and Scenic Rivers System and also provide tremendous ecological and economic benefit through the permanent retirement of the Big Grayback and Billy Mountain grazing allotments.

An expanded Oregon Caves National Monument (OCNM) would (1) include the surface drinking water supply for the 80,000 visitors annually; (2) protect additional surface and subsurface natural resources for current and future generations of Americans; and (3) provide local rural economic development opportunities.

BACKGROUND ON THE OREGON CAVES NATIONAL MONUMENT

The OCNM is a 480-acre national monument located in the botanically rich Siskiyou Mountains. The monument is important to the economy and identity of the local area; the nearest town is named Cave Junction after the Oregon Caves. Despite being the second smallest unit (in area) of the National Park System, OCNM receives about 80,000 visitors annually,. Oregon Caves is the only cave system in the nation with its particular geologic history. It is one of the few marble caves in the nation available for public tours and is longest tour cave west of the Continental Divide. The cave tour route, with its twists, turns, climbs, descents, narrowness and length is one of the most adventurous cave tour routes in North America.

A perennial stream, the "River Styx," (an underground portion of Cave Creek) flows through part of the cave system. The cave ecosystem provides habitat for numerous plants and animals, including some state sensitive species such as Townsend's big-eared bats and several cave-adapted species of arthropods found only on the national monument. While the 1909 proclamation that established the national monument focused on unique subsurface resources, the significance of the land surface above the cave must not be overlooked. Surface processes, especially through the exchange of air, water and food, closely influence many of the geological and biological processes within the cave.

Recent discoveries indicate that this network of caverns possesses a significant collection of Pleistocene aged fossils, including jaguar and grizzly bear. Grizzly bones that were found in the cave in 1995 were estimated to be at least 50,000 years old—the oldest known from either North or South America. The monument preserves an excellent example of the Siskiyou Mountain's primeval forest: an area with one of the highest percentages of endemic plants in the country.

THE NEED TO ADJUST THE BOUNDARIES

When the OCNM was established in 1909, the small rectangular boundary was thought to be adequate to protect the cave. Through the years, scientific research and technology has provided new information about cave ecology, how it is influenced by its surface environment and related hydrological processes. The current 480-acre boundary is insufficient to adequately protect this cave system and its unique contributions to local economies and our national heritage. The National Park Service proposed expansion numerous times, first in 1939, again in 1949 and most recently in 1999. Most of the boundary adjustments proposed in S. 3148 are part of the 1998 General Management Plan for the monument when the National Park Service deemed the greater Lake Creek watershed suitable for inclusion in the OCNM.

INCREASING VISITATION AND ADVANCING COMMUNITY DEVELOPMENT

The boundary adjustment proposed in S 3148 is needed for several reasons.

A larger monument would increase the monument's visibility and attractions. This could lengthen visit time of the OCNM leading to economic development in local communities. The average visit to OCNM is only 2.5 hours, and the most common question is, "What can we do after the cave tour?" Economic models indicate that if the 2.5-hour average visit were extended to a one-day visit, local businesses would significantly benefit from added tourist dollars. (Personal communication with Craig Ackermann, Superintendent, OCNM, February 20, 2007.) The OCNM is surrounded by excellent outdoor opportunities including hiking, horseback riding, and bird-watching. Adjacent recreation opportunities should be protected within the OCNM boundaries, and marketed along with cave tours. In addition nearby Forest Service campgrounds would be incorporated into the monument.

The four trails within the current OCNM range from 0.7-3.3 miles. A number of longer trails around the monument offer visitors stunning views. Most of the trails weave in and out of the present OCNM boundary, and some connect with larger hiking trail systems including the Boundary and Pacific Crest Trails, giving hikers access to the Red Buttes Wilderness, Bigelow Lakes, Mt. Elijah (named for Elijah Davidson, the first Euro-American to see the Oregon Caves), and other popular areas.

Located in the Siskiyou Mountains of southern Josephine County, OCNM offers great potential for one of the state's most struggling economic communities by nurturing a budding tourism and recreation economy. According to a 1994 Illinois Valley Tourism Assessment developed for the Oregon Economic Development Department, Oregon Caves is a "centerpiece attraction" for the tourism industry in the Illinois Valley area.

Highway 199, stretching the length of the Illinois Valley, is a popular travel route between Redwood National Park and Crater Lake National Park, as well as a corridor for visitors that travel from the cultural center of Ashland to visit the Pacific Coast, as well as the OCNM. Surveys conducted in southwest Oregon and northern California describe visitors to this region to be primarily families taking a short vacation from the metropolitan areas of Portland, Seattle, Sacramento, San Francisco, and southern California (Smokejumper Base Interpretive Plan, undated).

Highway 199 has an annual traffic load of about one million vehicles. In 1992, the state estimated that 289,000 vehicles, about one third of the vehicles traveling Highway 199, represented tourist traffic. Surveys conducted at OCNM indicate that average daily spending per tourist group is $90. These numbers indicate that more than $26 million in tourism dollars pass through the Highway 199 corridor annually (Letter to Oregon Tourism Commission from OCNM Chief of Interpretation Roger Brandt, 18 April 2004). Compared to neighboring northern California counties, where tourism dollars per tourist group range from $95-$154 (Sheffield, Emilyn, 1998. Northern California Scenic Byway Network Newsletter, Chico, California), Josephine County clearly has room for economic development in this sector.

A 1995 survey of visitors at the OCNM found that the top reasons for travel were viewing scenery, doing something with the family, and to learn more about nature. (Rolloff, David, Rebecca Johnson, and Bo Shelby, 1995). Similar studies have found that people come to Oregon to indulge in their interest in outdoor recreation, nature experiences and historic sites (Brandt, 2004).

FUELS REDUCTION AND FOREST MANAGEMENT

It has been implied that fuels reduction or other forest thinning operations would not occur in the adjusted OCNM boundaries (see the Statement for the Record of Joel Holtrop, Deputy Chief, National Forest System of the U.S. Forest Service). We strongly disagree with this assessment. The National Park Service has a very active fire management and fuels reduction program on units where fire management is an issue. In fact, there is evidence that the National Park Service is more equipped and better funded to carry out fuels reduction projects in a timely and efficient manner due to larger budgets.

Broadly, we agree with the Forest Service that fire and fuels issues are extremely important on the 1.8 million acres Rogue River-Siskiyou National Forest. However, the OCNM boundary adjustments area (4,070 acres), only constitutes 0.23% of the forest area, an immaterial portion of the landscape to affect fire behavior. We do agree that the Forest Service and Park Service should continue collaborating on fire and fuels reduction projects in this area and we support section 5(b) of the S. 3148 regarding forest restoration as long as it is consistent with the National Park Service's Organic Act.

We also strongly disagree with Mr. Haltrop's characterization of the efforts of the Forest Service in the OCNM area. We are very familiar with and support of these efforts by the Forest Service, but the facts presented by Mr. Haltrop are incorrect. Through a collaborative effort with support from the very organizations providing this testimony, the U.S. Forest Service produced the East Illinois Young Managed Stands project. This project looked at a 70,000-acre project area and identified approximately 4,000 acres for treatment. Only 100 acres were identified in the OCNM expansion area. No other treatments have been specifically identified to date.

Moreover, the Forest Service has not yet determined if a timber sale or stewardship contract for this project will be utilized for this single thinning unit. A stewardship contract would not produce any revenue to the Treasury. Thus, it is premature for Mr. Haltrop to offer figures of the revenue that the Treasury or local counties would receive. This timber has not been appraised, laid out, offered for bid, contracted, sold or awarded. With the declining timber market due to housing slow downs, many sales on the Rogue River-Siskiyou National Forest are not producing bids and many. While the Forest Service has plans to move forward with thinning in this single unit—which, again, we support—there are no immediate plans as Mr. Haltrop implies, nor would this single project solve all of the fire and fuels issues in the OCNM. We are convinced that the Park Service could perform the necessary management activities to restore the forests to more natural fire and fuel conditions on this small portion of the landscape.

GRAZING AND EQUITABLE COMPENSATION

KS Wild is also supportive of the provision the bill to provide for the donation of a Forest Service grazing permit and a Bureau of Land Management grazing lease. The Rogue River-Siskiyou National Forest's Big Grayback Grazing Allotment (17,703 acres) overlaps about half of the 4,070-acre OCNM expansion area. National Park Service regulations would prohibit continued livestock grazing in the expanded national monument. Currently livestock that use the Big Grayback Grazing Allotment tend to concentrate in the Bigelow Lakes area, a designated botanical special interest area.

Continuing to grazing livestock on the remainder of the Big Grayback Grazing Allotment is problematic for several reasons. First, as noted, livestock concentrate in the Bigelow Lakes area. Second, there are two other designated botanical areas (Miller Lake, 588 acres; Grayback Mountain, 591 acres) and the Oliver Matthews Research Natural Area, where livestock grazing occurs, contrary to the purpose of the protective designation. In addition, there are 3,553 acres of Riparian Reserves, where livestock need to be limited. Parts of the allotment are also in the Sucker Creek Key Watershed for salmonid recovery. Finally, much of the allotment is in the Kangaroo Inventoried Roadless Area.

Additionally, surface water sources used for the OCNM potable water supply are located on national forest land. Water is piped to park facilities where it is treated. Actions affected drainage in the national forest—upslope from the monument—have the potential to impact the monument. Activities such as mining, logging, grazing and stock use, have the potential to contaminate the OCNM water resources (OCNM General Management Plan, 1999, 8).

The 4,758-acre Bureau of Land Management Billy Mountain Grazing Lease is on the on the Ashland Resource Area of the Medford District BLM, approximately 3/4 of a mile south of the town of Applegate in Jackson County, Oregon. The grazing allotment is leased by the same rancher that leases the Forest Service's Big Grayback Grazing Allotment. The allotment is next door to the rancher's base property. He uses the BLM allotment in the spring and the Forest Service allotment in the summer.

The Billy Mountain Grazing Allotment includes the Enchanted Forest, a grove of oak, pine and maple, and a popular hiking trail. The allotment is interspersed with private land and there have been several complaints over the years by landowners dismayed by livestock on their property. Billy Mountain also includes habitat for the federally protected Gentner's fritillary (Fritillaria gentnerii), a member of the Lily family. This rare plant is found in the Applegate Valley in and near allotment. Its growing season includes the period when livestock may be using the allotment.

Expansion of the national monument makes continued grazing of the Big Grayback Grazing Allotment very problematic, which therefore makes continued grazing of the Billy Mountain Grazing Allotment also problematic. Conservation interests (specifically Klamath-Siskiyou Wildlands Center) and rancher Phil Krouse have an understanding in which Mr. Krouse will received compensation from KS Wild in return his donation of his federal grazing permit and lease to the federal government, as provided in the legislation.

In the spring of 2008, the Forest Service issued a decision to continue grazing on the Big Grayback Grazing Allotment for 10 years. While not reducing the amount of livestock grazing for the allotment, the decision requires investments in fences and changes in management to prevent overgrazing of Botanical Areas and to evenly distribute livestock. To comply with its own forest management plan, the Forest Service requires a 1/4-mile fence must be built in the Bigelow Lakes area.

Fencing Bigelow Lakes is controversial from the standpoint of both conservation and ranching interests because not enough of the botanical area will be fenced, fences are expensive, often fail and do not last. Fencing is a bad solution because of the high initial cost ($7,030/mile according to the Forest Service), as well as the high ongoing maintenance costs. Fences in forests and deep snow require endless maintenance; they don't always work and are always an impediment to wildlife. The agency places additional requirements on the permittee to keep livestock out of certain areas.

COSTS OF GRAZING

Both the ecological and fiscal costs of various alternatives to continue livestock grazing on the Big Grayback allotment are such that the best and least costly option is to simply buyout the grazing permit and not spend tax dollars endlessly to build and maintain fences.

The annual income to the federal treasury from the Forest Service grazing permit and the BLM grazing lease is $118.13. The cost of preparing the Environmental As-

sessment to update the Big Grayback Grazing Allotment is at least $100,000. On average, the Forest Service and BLM lose $12.26/AUM and $7.64/AUM respectively, (GAO, 2005. Livestock Grazing: Federal Expenditures and Receipts Vary, Depending Upon Agency and Purpose of Fee Collection) or an average of $8,174.80 annually. Based on the simple analysis above, the taxpayer would save an estimated $8,056.68 annually, by not grazing livestock in the two allotments.

HUNTING

The expansion of the Oregon Caves National Monument by 4,070 acres from 480 acres to a total of 4,550 acres would result in an end of hunting pursuant to federal National Park System policy. This reduction in bear hunting opportunities is insignificant.

The reduction of hunting area is insignificant. The proposed monument expansion is 4,070 acres, which is:

- 0.55% of the 746,593 acres public (federal, state and county) land in Josephine County.
- 0.48% of the 848,395 acres of land in the Oregon Department of Fish and Wildlife's Applegate (#28) Wildlife Management Unit (all land between California border, US 199 and I-5). Most of this land is open to hunting.
- 0.23% of the 1.8 million-acre Rogue River Siskiyou National Forest in Josephine, Jackson and Curry Counties, all of which is open to hunting except campgrounds, etc.

This minor amount of bear hunting area is unnecessary as there are fewer bear hunters and more bears are being killed.

The number of Oregon bear hunters has declined 21% from an all-time high of 36,893 in 2001 to 29,077 in 2006. Yet, during the same time period, the number of bears killed increased 76% to 668 from 379 ("Oregon General Bear Season and Harvest Summary" in 2007 BIG GAME STATISTICS, Oregon Department of Fish and Wildlife, Salem).

STATEMENT OF ALAN FRONT, SENIOR VICE PRESIDENT, THE TRUST FOR PUBLIC LAND, ON S. 3247

I appreciate the opportunity to express the support of The Trust for Public Land for S.3247, a bill introduced by Senators Carl Levin and Debbie Stabenow providing for the designation of the River Raisin National Battlefield Park in Michigan as a unit of the National Park System.

The Trust for Public Land (TPL) conserves land for people to enjoy as parks, gardens, and natural areas, ensuring livable communities for generations to come. Since 1972, TPL has helped protect more than 2.1 million acres of land in 46 states, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada. Among the many land conservation projects we have worked on are historic sites such as Morristown National Historical Park, Chickamauga-Chattanooga National Military Park and Monocacy National Battlefield, whose protection ensures that our nation's unique history can be experienced by generations young and old, well into the future.

S. 3247 would authorize the Secretary of the Interior to work with willing donors of land in Monroe and Wayne counties in Michigan to acquire sufficient lands to create the River Raisin National Battlefield Park. Once established, the park will be only the second national park unit in the state's Lower Peninsula and within a short distance from the population centers of Detroit and southeastern Michigan.

The national battlefield park would commemorate the Battle of the River Raisin in January, 1813, during the War of 1812. Out of the hundreds of American participants in the battle during a campaign to retake Detroit from the British, only 33 escaped death, injury, or capture. The defeat became a rallying cry for the rest of the war, which eventually assured American independence and sovereignty.

There is a pressing need to protect lands whose history relates to the War of 1812 period. In 1996 Congress accurately found that "the historical integrity of many Revolutionary War sites and War of 1812 sites is at risk because many of the sites are located in regions that are undergoing rapid urban or suburban development." Nearly half of the 697 Revolutionary War and War of 1812 sites studied in a National Park Service report delivered to Congress in September 2007 have already been lost. This vital legislation would ensure that a part of that heritage would be saved for future generations before it too is lost.

We are pleased, Mr. Chairman, that your subcommittee is examining this legislation today and support the efforts of Senators Levin and Stabenow to protect our

nation's heritage lands. A companion bill, HR 6470, introduced by Congressman John Dingell, is currently under consideration by the House Natural Resources Committee and we hope that Congress can move to final passage of this legislation during the 110th Congress.

I thank you again, Mr. Chairman, for this opportunity to provide testimony in support of designating the River Raisin National Battlefield Park in Michigan.

STATEMENT OF A RESIDENT OF SOUTHWEST OREGON, ON S. 3148

I wish to urge the Committee to quickly report S. 3148 to the House with a recommendation for passage. As a resident of southwest Oregon, I am deeply concerned for the future of the Oregon Caves National Monument. The Monument at present is vastly too small, at 480 acres, to provide meaningful protections for the Monument's watershed and the plants and animals it supports.

At the time of the Monument's establishment in 1909, far less was known about the science of ecosystem management, and the need to protect full ecosystems, not just individual features or species. The OCNM does not currently operate as anything resembling such a complete ecosystem within the present boundaries, and it therefore remains extremely vulnerable to impacts from cattle grazing and mining claims. Recognizing this issue, the Park Service has proposed a boundary expansion several times, most recently in 2000, and yet OCNM remains in its original, nonfunctionally small configuration.

The southwest Oregon region has one of the greatest diversities of plant species in North America, but it does not currently enjoy protection commensurate with that significance. An expansion of OCNM would help to provide for that protection, and would address the immediate problem of cattle grazing in the watershed that drains to the cave system. This legislation would transfer 4,070 acres to the OCNM from the Forest Service. The land will enjoy far greater protection in the custody of the Park Service, as Forest Service lands remain vulnerable to development and mismanagement.

Again, I urge the Committee to expedite the passage of S. 3148 to the full House with a favorable report. Thank you.

STATEMENT OF PAUL F. TORRENCE, WILLIAMS, OR, ON S. 3148

I wish to state my ardent support for the Oregon Caves National Monument Boundary Adjustment Act of 2008 (S. 3148). As you are aware, this valuable geological and ecological treasure presently consists of only 480 acres. This is not nearly enough to preserve the cave insofar as the surrounding and contributing watersheds are subject to activities such as cattle grazing that lead to substantial degradation of water quality. Insofar as Oregon Caves is a major economic boon to our area and are such an incredible natural resource, I hope the Senate will look favorably upon approval of SB 3148, embodying this minimal expansion previously recommended by the National Park Service.

Thank you for this opportunity to comment on legislation vital to the economic and ecological health of our region here in Southern Oregon.

STATEMENT OF THE AMERICAN FOREST RESOURCE COUNCIL, PORTLAND, OR, ON S. 3148

Thank you for the opportunity to submit the American Forest Resource Council's (AFRC) testimony on S. 3148, the Oregon Caves National Monument Boundary Adjustment Act of 2008.

AFRC represents approximately 90 forest products manufacturers and forest landowner companies in the west and the majority of the mill capacity in the Pacific Northwest. Our mission is to promote sustainable forest management on our federal and public lands. Many of our members have their operations in rural communities adjacent to the federal forests of the Rogue-Siskiyou National Forest where the Oregon Caves expansion is proposed. The management on these federal forest lands ultimately dictates not only the health of the forests, but also the health and mere existence of forest products companies and, in turn, the economic health of local communities. AFRC members are proud to provide thousands of quality, family-wage jobs. We are also committed to being part of the solution to restore our public forests while providing Americans with quality wood products and renewable biomass energy.

AFRC has several concerns with this bill, but the most alarming is the potential harm to life and property if action is not taken to reduce the fuel loads in the proposed Oregon Caves expansion area. The area in question, the Oregon Caves National Monument and the proposed expansion area, is located in a box canyon with only one access road. This road dead-ends in the "box" of the canyon and is the only exit out of the canyon. Were a wildfire to start in this area, not only would the Oregon Caves area be at risk, but also the lives of many tourists who visit the Oregon Caves in the summer—coincidentally during the fire season. As elected officials and Oregonians continue to discuss the need to address Oregon's declining forest health and introduce federal legislation addressing the issue, we would be remiss to ignore the potentially dangerous situation in the Oregon Caves area.

The Oregon Caves expansion area is similar in nature to areas that burned in the 2002 Biscuit Fire. The proposed expansion would transfer 4,080 acres of dry, mixed conifer forests in the Rogue-Siskiyou National Forest to the National Park Service (NPS). Forests in this area historically had a very frequent fire return interval (10-50 years) before fire suppression became prevalent. Due to decades of fire suppression, the forests proposed in this expansion have hazardous fuel loads that put them at the highest risk of catastrophic wildfire—condition class III.

If or when fires start in this area, it would be nearly impossible to keep them as ground fires and they will almost surely turn into high severity crown fires similar to many areas burned in the Biscuit Fire. The Biscuit Fire burned 499,965 acres, mostly on the Wild Rivers Ranger District of the Rogue-Siskiyou National Forest, which is the same ranger district for the proposed Oregon Caves expansion. Half of the Biscuit Fire burned at high severity, killing at least 75% of the vegetation in its path. Further, roughly three-quarters of the area that burned was designated wilderness or roadless in which fire had been suppressed for decades and fuel loads were in the condition class III category. Density management and fuels reduction work must be done in this area to prevent unnaturally severe catastrophic forest fires and protect life and property.

Thankfully, the Forest Service has taken the necessary steps to plan treatment in these areas. More than half of the acres in this proposal are included in one of two Environmental Assessments that approve density management and fuels reduction work, the East Illinois Valley EA or the Plantation Thin EA (see attached projects map). This means that these acres have been approved through the NEPA process, with no appeals or litigation, to be managed to improve forest health and reduce fire hazard. The NEPA work has already been paid for and the Forest Service is ready to move forward with work in these stands. These treatments are desperately needed in the proposed Oregon Caves expansion to lower the fires regime condition class from condition class III, where the fire regime has been substantially altered from natural (historical) ranges. If these treatments do not happen and a wildfire occurs, these stands would be at a high risk of losing key ecosystem components due to dramatic changes in one or more of the following: fire size, intensity, severity, and landscape patterns.

It's also important to note that 2,740 acres of the proposed 4,080 acres included in the Oregon Caves boundary modification proposal is classified as "Late Successional Reserves" or "LSRs" under the 1994 Clinton Northwest Forest Plan. These areas were set aside to create future late-successional forests (generally what most folks would think of as "old growth" forests) for late succession species, such as the Northern Spotted Owl. Fuels reduction and density management treatments, like those contemplated for portions of this area, were specifically envisioned under the Plan to speed the development of these characteristics while making stands more fire resilient to avoid stand replacing wildfire events.

The American Forest Resource Council believes the Forest Service is best suited to manage the 4,080 acres proposed for transfer to the National Park Service. Historically and given the mission of both agencies, the Forest Service has the authority, ability and know-how to manage the forest appropriately by reducing the risk of catastrophic wildfire through fuels reduction while also helping to speed the creation of late-successional habitat. If the Congress deems that the 4,080 acres in question must be transferred to the NPS, AFRC believes at least a 10 year transition period should be legislated. This would allow the Rogue-Siskiyou Forest time complete the much-needed density management and fuels reduction projects that have already been through the NEPA process. Furthermore, AFRC believes the NPS should be given direction to continue to perform density management and fuels reduction treatments as needed in this area to maintain forests in an acceptable fire regime condition class into the future. Most importantly, this area must be treated to protect the monument and the many tourists that visit this beautiful part of Oregon.

Thank you for the opportunity to submit written testimony.

The Monroe Evening News

FULL SPEED AHEAD ON BATTLEFIELD PLAN (EDIT)

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Adding Monroe's River Raisin Battlefield to the national parks system wouldn't just benefit the Monroe area. It would benefit all Americans, furthering their love and understanding of U.S. history.

That is the point area supporters of the battlefield proposal tried to hammer home in a hearing Wednesday before a Senate subcommittee.

The hearing was called on short order and well ahead of schedule. No doubt the strong support of U.S. Rep. John D. Dingell, D-Dearborn, and Michigan's U.S. senators, Carl Levin and Debbie Stabenow, helped. And perhaps Secretary of the Interior Dirk Kempthorne, who had his ear bent by local supporters while in Monroe County on other business last week, lent his support, too.

We're grateful for the expedited hearing. Still, it would have been nice to see the same sense of urgency among representatives of the national parks system at last week's hearing. They recommended that action on the battlefield proposal be put off, possibly for two or three years, until a special resource study can be completed.

Excuse us ... two or three years?

That could be a problem. The 200th anniversary of the War of 1812 is just four years off. The Massacre of the River Raisin took place in 1813.

Four years from now, if Americans are fired up about the bicentennial, they might just want to see key battle sites while on vacation. Some of them, in fact, might be stoked for a visit here after touring Gettysburg or other Civil War battlefields during the 150th anniversary of that celebration.

But what will those visitors find here?

If Washington sticks to the timetable laid out by the bureaucrats, the nation may miss a crucial opportunity.

Naturally, the feds will want to conduct some studies. But what happened here in January, 1813, is no secret.

At that time, what was then called Frenchtown was occupied by Canadians, British soldiers and their Native American allies. A band of 600 American troops forced them out. But a few days later the British counterattacked, retaking the settlement and forcing Americans to retreat. And injured Americans left behind by the British later were slaughtered by the Indians.

That massacre sparked outrage. The resultant rallying cry "Remember the Raisin!" helped inspire Americans in the subsequent battles of the war. In last week's hearing, Sen. Levin and William H. Braunlich, president of the Monroe County Historical Society, drew a comparison to the cry "Remember 9/11" that sprang up after the Sept. 21 terrorist attacks.

Much of the spadework for a national park at the battle site already has been done—literally as well as figuratively. More than $5 million already has been spent on land acquisition, environmental cleanup, archaeological probes and other efforts. As Mr. Braunlich noted, 40 acres already are under title to public or nonprofit agencies, all of which are prepared to transfer title to the federal government.

Another War of 1812 battle site, Fort McHenry in Baltimore, already is part of the national park system. The fort's survival of a fierce British naval bombardment inspired "The Star Spangled Banner." In addition to the fort, there is a visitors' center with a gift shop and a small auditorium, a statue and a swath of green next to the water suitable for picnics. The River Raisin Battlefield doesn't have a fort or a national anthem behind it. It does have a visitors' center and auditorium. But it is historically important and surely worth a modest upgrade by the feds before the bicentennial. Local supporters want to make it a gift to the American people. Washington ought to accept the gift in a timely manner.

STATEMENT OF HON. LES AUCOIN, ASHLAND, OREGON, ON S. 3148

I am writing in support of the Oregon Caves National Monument Boundary Adjustment Act of 2008 (S. 3148), introduced by former colleague, Senator Ron Wyden.

The National Park Service recognized the unique ecological and hydrological resources of the Oregon Caves when the Oregon Caves National Monument was established in 1909. In the years that followed, many recognized that these resources required a larger boundary than the 480 acres covered under the inaugural designation. Unfortunately, repeated recommendations over the decades to expand the boundary were fruitless—including, I am sad to note, my own terms in Congress.

I am pleased that Senator Wyden has given us an opportunity to finally give this natural treasure the protection it warrants.

In 1939, Monument staff recommended a boundary expansion to conserve the upper Lake Creek watershed, to provide greater recreational opportunities such as hiking and horseback riding, and to protect the geological and botanical features, and views of the rugged Siskiyou Mountains, one of the most unusual ranges in the lower 48 states.

When that recommendation was unsuccessful, another boundary expansion was proposed in 1949. An interagency committee comprised of U.S. Forest Service, Bureau of Land Management and the National Park Service sent a memorandum to the NPS Regional Director that stated, in part, "In 1936 an extension of Oregon Caves National Monument would have been highly desirable and far-sighted; in 1949 it has become urgent."

Now comes this most recent recommendation for expansion, which was in the NPS' General Management Plan of 2000.

Clearly the time is past due to expand the Monument boundary from its current miniature 480 acres to an ecologically-based boundary that would protect the entire Cave Creek watershed. The relationship between the terrestrial surface and the caves cannot be overemphasized, yet it was barely understood, if at all, in 1909. Surface processes and the exchange of air and water closely influence cave ecology. If we want to protect the Oregon Caves in perpetuity, we must protect its watershed and the landscape above them.

There are many extraordinary attributes of the Oregon Caves National Monument, including the longest marble cave open to the public west of the Continental Divide, the underground River Styx, unique geology, globally significant botanical diversity and a valued collection of Pleistocene aged fossils, including jaguar and grizzly.

In addition to the ecological and geological value of the Oregon Caves, the Monument provides an important economic engine for rural communities in Josephine County. The Monument is a destination for nearly 100,000 visitors a year, and is a critical source of revenue for local businesses in Cave Junction and the greater Illinois River Valley. An expanded Monument, well timed with its centennial anniversary celebrations, would bolster visibility and visitation in an area that benefits greatly from tourism.

I am happy to see that S.3148 includes a provision to retire the grazing allotment in the watershed, which has caused water quality concerns, including contamination of the Monument's drinking water supply, for decades.

As a resident of southwest Oregon and a former Member of Congress who represented Oregonians for 18 years, I encourage the committee to advance this legislation as soon as possible.

STATEMENT OF LARRY HARDHAM, PRESIDENT, CAPE HATTERAS ANGLERS CLUB, ON S. 3113

Thank you and members of the subcommittee for the opportunity to submit written testimony for the record. My name is Larry Hardham, president of the Cape Hatteras Anglers Club since 1999. The Cape Hatteras Anglers Club has just over 1000 members (current on their dues) residing in 26 states. Many of our members live here on the Outer Banks and have volunteered for years in beach clean-ups, interpretive programs and as lighthouse docents here at the Cape Hatteras National Seashore. I personally have over 1000 volunteer hours with both Cape Hatteras National Seashore and Pea Island National Wildlife Refuge (PINWR).

I write you to express the concern of our membership about the effects of the court ordered decree and a request to return control of the Cape Hatteras National Seashore (CHNS) back to the National Park Service (NPS) and its Interim Strategy via Senate Bill 3113.

The United States Congress authorized the Cape Hatteras National Seashore Recreation Area in 1937 and 1941. The NPS has seen fit to drop Recreation Area from the name of the seashore without Congressional approval. Vehicular access to beach areas has been and is allowed due to the long distances from the few parking areas at the Seashore and has become required by visitors (especially the handicapped and elderly citizens). In 1978, through a public process an Off Road Vehicle (ORV) Plan was developed, but NPS never followed through with a listing in the Federal Register and we were left in non-compliance with two Executive Orders. CHNS implemented an Interim Protected Species Strategy in 2007 which also went through a very public process with an Environmental Assessment, and was issued a Biological Opinion by USF&W and a Finding of No Significant Impact by the

NPS. Also in 2007, a Negotiated Rule Making Committee was formed to develop an ORV Plan for CHNS and comply with the 35 year old Executive Orders. In early 2008, several members of the Negotiated Rule Making Committee (Defenders of Wildlife and National Audubon Society represented by a third member Southern Environmental Law Center) brought a law suit against NPS and USF&W based on the lack of an ORV Plan and the perceived lack of protection of sea turtles and selected birds under the Interim Strategy. The resulting court ordered decree imposed extremely large closures (such as 1000 meters on either side [or the equivalent total of over 21 football fields] of a piping plover chick where the Piping Plover Recovery Plan suggests only 600 meters), unwarranted night closures and closure expansion penalties for closure violations. The court ordered decree was issued without a public process, without considering the true economic impacts to the eight villages located within CHNS, the surrounding communities or NPS costs and manpower required for implementation.

Please consider that the "only 12 miles of beach" closed (as these three environmental groups refer to this summer's closures) are the most popular beaches in the Seashore and accommodated growing numbers of birds and limited public access under the Interim Strategy in 2007. In fact, according to USF&W the reproductive success in the entire state of North Carolina for piping plovers in 2007 was "one chick fledged for every four (4) pair of nesting adults"[1] while at CHNS under the Interim Strategy four (4) chicks fledged from six (6) pair of nesting adults[2] or a significantly higher rate than the entire state.[3] The Interim Strategy allowed for recreation closer to nesting areas. Breeding pairs of American Oystercatchers increased in 2007 as compared to 2006 from 23 to 24[4] but went down again in 2008 to 23.[5] More Oystercatcher chicks fledged in the three year period ending in 2007 than the prior two three year periods.[6] North Carolina Wildlife Resource Commission (NCWRC) reported that an island (Cora June Island) only one quarter of a mile behind Hatteras Village "was home to one of the largest mixed tern/black skimmer colonies in the state with good numbers of nesting adults that successfully fledged hundreds of chicks."[7] Populations of gull-billed terns, common terns and black skimmers are down in the state and the seashore, but these three environmental groups have claimed that these populations of birds on this nearby island "do not count" because the island is not technically within the boundaries of CHNS. This does not make sense, is poor birding and biased bad science.

The court ordered decree was signed late in the day on April 30, 2008 and piping plover adults were already at CHNS and in fact had started nesting.[8] NPS data indicates that the eleven breeding pairs that ultimately nested at CHNS in 2008 were already here on April 30th and were a result of successes last year. The 2007 Interim Strategy allowed 67%[9] of piping plover breeding pairs to fledge a chick but this year under the court ordered decree only 64%[10] of breeding pairs fledged a chick.

This nesting season found even more black skimmers than last year reproducing on the spoil island (Cora June Island) one quarter of a mile behind Hatteras Village. Neither the NPS nor the NCWRC counted birds, nests or chicks on Cora June Island in 2008 but photos show the island to be covered with adult birds and chicks.

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[1] U.S. Fish & Wildlife Service "Field Notes Volume 2, Number 5 Fall/Winter 2007" page 11 at www.fws.gov/nc-es.

[2] Cape Hatteras National Seashore Resource Management Field Summary week of August 10-16, 2007.

[3] U.S. Fish & Wildlife Service "Field Notes Volume 2, Number 5 Fall/Winter 2007" page 11 at www.fws.gov/nc-es.

[4] Slide presentation given to Negotiated Rule Making Committee by Ted Simons, Department of Zoology, North Carolina State University Raleigh, NC on June 17, 2008.

[5] Cape Hatteras National Seashore Resource Management Field Summary week of June 19-25, 2008.

[6] Slide presentation given to Negotiated Rule Making Committee by Ted Simons, Department of Zoology, North Carolina State University Raleigh, NC on June 17, 2008.

[7] N.C. Wildlife Resources Commission News Release: www.ncwildlife.org/news__stories/pg00__NewsRelease/020408__waterbird__survey.htm.

[8] Cape Hatteras National Seashore Resource Management Field Summary under heading of Piping Plover Observations for weeks of April 3-April9, 2008 through June 19-25, 2008.

[9] Cape Hatteras National Seashore Resource Management Field Summary week of August 10-16, 2007.

[10] Cape Hatteras National Seashore Resource Management Field Summary week of July 17-23, 2008.

In 2007 twenty-four (24) breeding pairs[11] of American Oystercatchers hatched 15 nests and 29 chicks.[12] In 2008 twenty-three (23) breeding pairs hatched 15 nests and only 26 chicks.[13] Thus the court ordered decree produced fewer breeding pairs and fewer chicks from the same number of nests. This result was in spite of significantly larger closures which prevented recreational use of the beaches involved. Some closures were even put in place for pairs that never nested due to the fact that they were not of breeding age.

According to CHNS Resource Management Weekly Field Summary; July17, 2008 to July 23, 2008 there have been 92 sea turtle nests laid and 82 false crawls at Cape Hatteras National Seashore producing a false crawl to nest ratio of 0.89:1. This is a good ratio but higher than that at CHNS in six of the last ten years. One of the goals of the Interim Strategy Biological Opinion is for this ratio to be under a 1.3:1. The court ordered decree imposed a ban on night time driving between 10:00 PM and 6:00 AM in an effort to reduce false crawls using the undocumented assumption that ORV headlights cause false crawls at the Seashore. Not only are there no eye witness reports of headlights at the sites of false crawls at CHNS, but at least 24 of last year's false crawls were inside the Cape Point piping plover closure[14] (where no human activity is allowed day or night). The false crawl to nest ratio at CHNS for the last ten years (1998-2007) is 0.94:1 which is under the accepted normal ratio of 1:1.[15] This ten year ratio at CHNS of 0.94:1 is even lower than that of Cape Lookout National Seashore (0.95:1)[16] and CHNS has eleven miles of village ocean frontage, three ocean piers and far more visitors. Furthermore, Pea Island, which is the northern 13 miles of Hatteras Island, and has no ORV use, day or night or pedestrian use at night, had more false crawls than nests last year and as of July 21, 2008[17] has a higher false crawl ratio this year (0.94:1) than here at the CHNS. The assertion that night time ORV use causes false crawls at the CHNS is just not born out by the facts. The 92 nests laid at CHNS so far this year is more than last year but nesting activity all along the coast of NC has also increased, and in fact Pea Island has more nests as of July 21, 2008 than it has had since 1995.[18] In summary, the court ordered decree is not responsible for a lower false crawl ratio or more nests in 2008.

According to the NPS visitation website[19] the total recreation visits at all NPS facilities through June 2008 are down 1.20% while visits at CHNS are down 14.5%. Such a reduction in the numbers of visits equates to economic losses, loss of jobs and tax revenue for local, state and federal governments. The Outer Banks has been fairly immune to downturns in the economy in the past, and thus the decrease in visitors this year has been dramatic and many businesses feel that it will get worse in the next two years if the court ordered decree remains in effect.

As you can see the increases in fledged chicks of all species or sea turtle nesting has not been produced by the court ordered decree and the economy has been very negatively impacted. With this in mind please vote for Senate Bill 3113 and allow the Cape Hatteras National Seashore to again be managed by the National Park Service and not the courts.

Thank you.

[Charts have been retained in subcommittee files.]

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[11] Slide presentation given to Negotiated Rule Making Committee by Ted Simons, Department of Zoology, North Carolina State University Raleigh, NC on June 17, 2008.

[12] Cape Hatteras National Seashore Resource Management Field Summary week of August 3-9, 2007.

[13] Cape Hatteras National Seashore Resource Management Field Summary week of July 17-23, 2008.

[14] Cape Hatteras National Seashore 2007 Sea Turtle Annual Report page 13 under caption: False Crawls

[15] Cape Hatteras National Seashore 2007 Sea Turtle Annual Report page 8 and 2005 and 2006 Annual Reports

[16] See Chart #2 attached

[17] Personal communication from Dennis Stewart, Chief Biologist, Pea Island national Wildlife Refuge

[18] Personal communication from Dennis Stewart, Chief Biologist, Pea Island national Wildlife Refuge

[19] www.nature.nps.gov/stats

STATEMENT OF DARE AND HYDE COUNTIES, NC AND THE CAPE HATTERAS ACCESS PRESERVATION ALLIANCE, ON S. 3113

LAWRENCE R. LIEBESMAN,[1] PARTNER, HOLLAND AND KNIGHT LLP

We are outside counsel to Dare and Hyde Counties, North Carolina, and to the Cape Hatteras Access Preservation Alliance ("CHAPA") (collectively "Intervenors") in Defenders of Wildlife et al. v. National Park Service, No. 2:07-cv-00045 BO (E.D.N.C. Apr. 30, 2008). The following information supplements the July 30, 2008 testimony of Warren Judge, Chairman, Dare County Board of County Commissioners on S.3113. Our submission today is also intended to address comments of those opposed to the bill.[2]

1. Intervenors Dare County, Hyde County, and the Cape Hatteras Access Preservation Alliance reluctantly signed the Consent Decree as the "lesser of two evils"

While it is true that the Counties and CHAPA signed the consent decree on April 30, 2008, it is a mischaracterization to call that signing a "willing" participation. When caught "between a rock (the consent decree) and a hard place" (the uncertainty of an injunction), any reasonable group will take the lesser of two evils—and that is exactly what the Intervenors did by reluctantly signing on to the consent decree.

To understand Intervenors' dilemma, you must first understand the context in which the consent decree was entered. Prior to the filing of the lawsuit by Plaintiffs, the federal judge who entered the consent decree stated in two written opinions that as a result of an executive order entered by President Nixon, driving in the Cape Hatteras National Seashore ("Seashore") was illegal until an off-road vehicle ("ORV") management plan was implemented by the National Park Service ("NPS").

Based upon those findings, Intervenors were faced with the prospect of the entire Seashore being closed until the negotiated rulemaking process is completed in 2011. With the underlying possibility of a total Seashore closure, Plaintiffs filed suit in October, 2007, and then began negotiating with the NPS on the terms of an injunction for the Seashore. Even after the court permitted Intervenors to intervene in the suit, they were not provided with the full settlement proposals exchanged between Plaintiffs and NPS until the basic framework of an injunction had been agreed upon by the Plaintiffs and the NPS. In reality, Intervenors only first saw the actual proposed consent decree at the "eleventh hour".with literally a few days left before the decree was to be filed with the court and after the other parties had been negotiating "behind closed doors" for weeks. Intervenors protested the secretive nature of the negotiations to the court at the preliminary injunction hearing: "Our real concern, unfortunately, is that we feel that most recently we've been cut out of what we think have been ongoing settlement discussions . . . ." Hearing on Mot. for Prelim. Injunct., Tr. at 17 (Apr. 4, 2008). Indeed, on Friday April 18, the day that the proposed decree was to be filed with the court, the Government only gave Intervenors thirty minutes to agree to changes worked out between the Government and Plaintiffs regarding buffer distances; if not, the decree would be filed without them and would include buffer distances three times larger than in the Interim Plan approved in July 2007 after a lengthy public process. If the Intervenors refused to sign, they would be faced with the worst-case possibility of the court closing the entire Seashore. At best, if the court accepted the decree proposed by the Government and Plaintiffs—with the significantly greater buffer distances—the Intervenors faced having to challenge the decree in court—a "daunting" prospect, given that the NPS had refused to contest Plaintiffs' request for a preliminary injunction and the court's apparent inclination to issue such an injunction.

Thus, Intervenors, representing the interests of the people and organizations most affected by the closures, decided to sign a decree that was essentially negotiated without any meaningful public input and was the lesser of all evils; Intervenors simply could not take the risk of a full Seashore closure. The result was summed up by Allen Burrus, Vice Chairman of the Dare County Board of Commissioners: "Am I happy with this plan? No." (Apr. 16, 2008), available at http://www.co.dare.nc.us/Announce/CHORV/BeachDrivingProposal.htm.

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[1] Lawrence R. Liebesman is a Partner in Holland & Knight's environmental practice and has over 30 years experience as an environmental lawyer and litigator including 11 years as a Senior Trial Attorney at the Justice Department's Environment and Natural Resources Division. He is the co-author of the Endangered Species Deskbook published by the Environmental Law Institute.

[2] See, for example, Testimony of Derb Carter on Senate Bill 3113, Southern Environmental Law Center (July 30, 2008)("Carter Test.").

2. Scientific studies do not prove that the Interim Plan was harmful to wildlife

Opponents of S.3113 would have the subcommittee believe that previous NPS management, including the Interim Plan, combined with ORV use was the root cause of all wildlife population fluctuations. See, e.g., Carter Test. at 3 (July 30, 2008)(first year of Interim Plan "was one of the worst bird breeding seasons on record"). This Subcommittee should know that experts refute those assertions.

In a detailed statement filed with the court, Intervenors' biologist Lee Walton stated that "all measures of nesting success recorded by the National Park Service was better for the last 3-year average when compared to the previous 13-year average. I believe that the recent success of piping plovers on Cape Hatteras is due to the implementation of beach closure similar to the protective measures" in the Interim Protected Species Management Strategy. Walton Dec., Summary at 8 (Mar. 12, 2008)(Attachment 1). Predation and weather losses are the most importance factors regulating population increase and nest success at the Seashore. Id.

As Mr. Walton noted, the Atlantic Coast population of the threatened piping plover, for example, has more than doubled and has averaged a 5% annual population increase between 1986 and 2007. Walton Dec. at ¶ 10. NPS data show that piping plover numbers are increasing in North Carolina. Id. at ¶ 11. For other colonial waterbirds, it appears that the populations are neither trending upward or downward but, rather, simply shifting to nearby shoals and islands. Id. at ¶ 16.

3. In issuing the Interim Plan, the NPS took into account the United States Geological Survey Protocols and properly balanced those Protocols with other legal and practical considerations

Opponents of S.3113 claim that the restrictions in the consent decree "are also based on the best available science, including the United States Geological Survey ("USGS") recommendations." See Carter Test. at 5. These opponents neglect to mention that the Interim Plan's Finding of No Significant Impact/Environmental Assessment ("FONSI/EA") actually referred to those Protocols but noted that the NPS had to take into account broader policy goals.[3] Indeed, the Interim Plan was developed after a two-year investigative process that took into account the USGS protocols, public comments, the NPS's field experience during the 2006 breeding season, the U.S. Fish and Wildlife Service's ("FWS") Biological Opinion, NPS professional judgment, and other information. FONSI/EA at 4-5.[4] The FWS's issuance of a Biological Opinion, concurring with the Interim Plan under the Endangered Species Act, is especially noteworthy in that, as the expert federal agency, the FWS was in the best position to object to the Plan as not in compliance with the USGS protocols.[5] Further, the NPS has been implementing the conditions of the FWS Biological Opinion and has even been conducting renewed consultation to address FWS's issues. Yet Plaintiffs chose to litigate despite the ongoing orderly and scientific process underway between the NPS and FWS.

4. Recent biological data does not support the assertion that the consent decree is benefiting wildlife

Further, recent biological data does not support the claim by opponents of S.3113 that the consent decree is already having a positive effect of wildlife. Carter Test. at 6. We attach a letter from Larry Hardham, president of the Cape Hatteras Anglers Club that updates and supplements his comment letter of July 27, 2008, to Chairman Akaka (please see Attachment 2—additions to his prior letter are underlined). Mr. Hardham notes that any piping plover "success" was due to actions taken last year. That is, by April 30, the date the consent decree was signed, plover adults were already at the Seashore and had already established nests. Hardham Suppl. Letter at 3. Last year, under the Interim Plan, 67% of piping plover breeding pairs fledged a chick but this year under the court-ordered decree only 64% of breeding

[3] The FONSI on the Interim plan stated that "The USGS protocols were prepared under an interagency agreement for the Seashore by the U.S. Geological Survey (USGS). The USGS is the scientific research agency for the Department of Interior. The information and recommendations presented in the protocols represent the professional opinion of scientists that analyzed and interpreted the scientific data associated with protected species found at the Seashore. In addition to the Protocols, many other factors such as federal laws and mandates, NPS management policies, public input, practical field experience, and other scientific opinion were considered in the development of the strategy/EA." FONSI/EA at 5, n.2. (emphasis supplied).

[4] As Mr. Walton noted, "an enormous amount of effort was expended reviewing the scientific literature . . . studying the local seashore conditions and negotiating with agencies, user groups, and interested parties to develop this detailed plan." Walton Dec. at ¶ 19.

[5] Mr. Walton disputes the use of the USGS protocols for projected species, stating that it "is not biologically warranted and will not necessarily provide protective measures for piping plovers." Walton Dec. at ¶ 26. These protocols "do not consider changes in suitable habitat from year to year or if the habitat is occupied by piping plovers." Id.

pairs fledged a chick. Id. Further, Mr. Hardham notes that the slight increase in the number of fledged plover chicks this year was more likely due to the fact that the Seashore hired a full time trapper for predator control, rather than using the services of the U.S. Department of Agriculture trappers for several weeks as was done in 2007. Hardham Suppl. Letter at 3.

Despite the overall positive trends cited earlier, the American Oystercatcher and turtle have less-than-positive news. Last year, 24 breeding pairs of American Oystercatchers hatched 15 nests and 29 chicks with 14 nests lost to weather and predation; this year—after the consent decree—23 breeding pairs hatched 15 nests and only 26 chicks with 19 nests lost to weather and predation. Hardham Suppl. Letter at 3. "Thus, the court-ordered decree produced fewer breeding pairs and fewer chicks from the same number of nests. This result was in spite of significantly larger closures which prevented recreational use of the beaches involved." Id. For turtles, the consent decree has not led to a lower false crawl ratio or more nests in 2008. Id. at 4.

Mr. Hardham's supplemental letter also addresses the claim that the consent decree helped increase the numbers of nesting colonial shore birds such as black skimmers. Carter Test. at 7. He notes that "both common terns and black skimmers nested within the actual boundaries of [the Seashore] in 2008 but all of these nests were within the piping plover pre-nesting closures of the Interim Strategy or within least tern closures and thus their return to [the Seashore] can not be attributed to the Consent Decree." Hardham Suppl. Letter at 2.

Further, Plaintiffs incorrectly assume that the consent decree was necessary because ORV use and related public uses directly cause the decline in wildlife populations over the years. In fact, the data demonstrates that more plover chicks fledged on North Carolina beaches with heavier ORV use than on North Carolina beaches with light ORV use. Walton Dec. at ¶ 14.

5. The consent decree is having a negative effect on the area's economy

While Plaintiffs claim that the consent decree only affects "small stretches of the Seashore's beaches," Carter Test. at 5, the fact is that those small stretches include some of the "most popular beaches in the Seashore" and thus have impacts disproportionate to their size. See Hardham Suppl. Letter at 2. Tourism is suffering in part because vacationers have the impression that all beaches are closed down. In fact, the six most popular fishing areas in the Seashore—and arguably on the entire east coast—were shut down earlier this summer. Testimony of NPS Deputy Director Daniel Wenk (July 30, 2008). Bait and tackle shops and other businesses are reporting a sharp drop in sales. The Virginian-Pilot (Aug. 4, 2008), available at http://www.islandfreepress.org/2008Archives/08.04.2008-VirginianPilotEditorialSlamsLegislationWhatTheySaidAndWhatWeSay.html.

Even if it were shown that the consent decree has had no economic impact, the true measure will be next year's sales figures. Since this summer's vacation bookings were made long before the consent decree was signed, disappointed vacationers would have been unable to get out of their rental contracts. See Irene Nolan, Commentary: Virginian-Pilot editorial slams legislation: What they said and what we say, available at http://www.islandfreepress.org/2008Archives/08.04.2008-VirginianPilotEditorialSlamsLegislationWhatTheySaidAndWhatWeSay.html (Aug. 4, 2008). As Mr. Hardham notes, "Many of this year's cottage renters who became unhappy and disappointed due to the extensive consent decree mandated closures (which produced poor results and completely closed the most popular sites in the Seashore) may not return in future years." Hardham Suppl. Letter at 4.

Further, it is undisputed that there was a significant decline this year in visitation at the Seashore in June, the period when expanded closures were in effect. This decline was far greater than the overall decline at other NPS facilities during a comparable period. "According to the NPS visitation website, the total recreation visits at all NPS facilities through June 2008 are down 1.20% while visits at [the Seashore] are down 14.5%. Such a reduction in the numbers of visits equates to economic losses, loss of jobs and tax revenue for local, state and federal governments." Hardham Suppl. Letter at 4.[6]

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[6] Further, opponents of S.3113 cite to a 2008 government-contracted study concluding that 2.7 to 4 % of the approximately 2.5 million visitors to the Seashore are ORV users and that "9 % of the visitors to the Seashore would return more often if driving were restricted on the beaches." Carter Test. at 7. However, that data was taken from pages 2-14 and 2-17 of an unpublished study—the "Cape Hatteras National Seashore Visitor Use Study," by Dr. Hans Vogelsong (Aug. 2003)—that was discredited by peer reviewers as part of the ongoing Negotiated Rulemaking process. The peer reviewers stated that Vogelsong could not "provide a sound scientific basis for estimating ORV use at [the Seashore] or the economic impact of visitor spending asso-

6. The Interim Plan will protect the Seashore's interests better than the consent decree

The resources of the Seashore are more than its wonderful collection of birds, fish, and sandy beaches. Indeed, the Seashore encompasses the people whose towns and livelihoods have evolved along with the Seashore. Those people and towns survive on tourism, and tourism is driven by ORV use. As NPS Deputy Director Wenk correctly pointed out in his testimony before this Subcommittee, ORV use predates the 1937 authorization of the Seashore. Wenk Test. at 2. See also, Warren Judge Test. at 1-6 (tracing the legislative history that created the Seashore with an eye towards the recreational and commercial benefits historically enjoyed by the residents of the Outer Banks).

In fact, even the Seashore's Superintendent recognizes the financial strain that the consent decree has placed without clearly demonstrating that the decree has actually led to increased success rates for protected species. In a recent Coastland Times front page story, Superintendent Murray noted that "For the 2008 nesting season in the Cape Hatteras National Seashore, some critical numbers are up but it is impossible to attribute increases only to the implemented consent decree." Mary Helen Goodloe-Murphy, COASTLAND TIMES (Aug. 12, 2008); see Attachment 3. He then noted that "implementing the consent decree through August 6 has cost $316,117 above what would have been spent operating under the Interim Strategy. The Seashore will bring in another law enforcement team to help with Labor Day at an estimated cost of $37,000." Id.

Obviously, everyone cares about the Seashore's natural resources—especially the local citizens who ultimately make their living dependent upon its economic and environmental health. Maintaining public support and confidence is critical to achieving these goals. Unfortunately, the consent decree severely undermines critical local support achieved through the lengthy and open public process of adapting the Interim Plan. It has also imposed a substantial additional financial strain on the National Park Service without any demonstrable benefit to resources of the Cape Hatteras National Seashore.

STATEMENT OF BARBARA ULLIAN, GRANTS PASS, OR, ON S. 3148

INTRODUCTION AND BACKGROUND

I've lived and worked in southwest Oregon since 1947. I began hiking in the area of the Rogue River and Siskiyou National Forests encompassed by the Big Grayback Grazing Allotment and the area of the proposed expansion of the Oregon Caves National Monument in the 1960's. This is one of those special places that draw people from across the county and from many backgrounds.

The often-eloquent notes of appreciation left in the Mazama box—placed on Mt. Elijah's summit each season by the National Park Service staff—were evidence of this. The "box," a large plastic jar with paper and pencils, was an informal guest book for the mountaintop. Hikers wrote out their thoughts as they surveyed the 360-degree view of the wild country laid out before them. Most of the notes—left over several decades—were about the beauty of the area. Many also wrote in dismay or anger about the growing number of clearcuts in the watersheds below and the impacts of cattle grazing.

This beautiful high elevation land of peaks, forests and meadows is entirely suitable for inclusion into the National Park system as part of the Oregon Caves National Monument—to be restored and managed under the Park Service's conservation mandate. It's certainly not suitable "rangeland" as the Washington DC office of the National Forest Service would have you believe in their testimony (see below).

When I first began hiking the area there was a drift fence at the top of the watershed divide to prevent cattle from accessing the Lake Creek watershed and the springs and wet meadows above Bigelow Lakes that serve as the headwaters for Lake Creek, the Oregon Caves National Monument's drinking water source. The presence of the fence also provided a cattle-free respite for those hiking the high backcountry of the Siskiyou. Unfortunately, this ridge top fence was abandoned.

I've hiked on trails through the high mountain meadows, literally ankle deep in fine choking dust, which coated everything, because the cattle also used the trails. After long hot dusty stretches of trail, I've found that the cattle had fouled the only available clean water in miles—the cold springs emanating from the side of Craggy Peak—and churned the surrounding wet areas into a mud bog. When cross county

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ciated with ORV use." Jim Gramann, PhD, Summary of Reviewer Comments on Two Reports Analyzing ORV use at Cape Hatteras national Seashore at 2.

skiing in the Bigelow Lakes Botanical Area, I've had to avoid the meadows—where the best snow and views were—because of the dangerous tangle of downed wire drift fencing hidden beneath the snow. Even in the summer the un-maintained drift fence was a hazard. It didn't prevent the cattle from reaching the lake but did prevent recreationists from fully enjoying the area. The trampling, cow feces and flies, often made inviting shady areas above Bigelow Lakes inhospitable places to camp or rest. We camped on rock outcrops instead—where cows didn't go.

My photographs of the Bigelow Lakes Botanical Area and the Craggy Mountain Research Natural Area have been published and used in efforts to conserve the outstanding ecological, scenic and recreation values of this part of Klamath-Siskiyou Bioregion. I've also photographed the results of the Forest Service's "single-use" cut-slash-and-burn management of the watersheds and forests surrounding the tiny Oregon Caves National Monument. I'd be happy to provide the National Parks Subcommittee with photos, both demonstrating the overall beauty of the area and the deleterious effects of past Forest Service management.

Beginning in 1987, I've participated in Siskiyou National Forest and wild and scenic river planning processes, including the Siskiyou National Forest's response to American Rivers and Oregon Rivers Council's administrative appeal of the 1989 Siskiyou National Forest Plan referenced on the final page of Deputy Chief Joel Holtrop's written testimony. The settlement agreement for the appeal was signed in 1991. I have it and other documents describing the process still in my files (see additional information below).

I've cut and pasted from the National Park Service and National Forest Service's July 30, 2008 written testimonies, as submitted to the Subcommittee on National Parks of the Senate Committee on Energy and Natural Resources and highlighted their direct quotes. My response follows.

1. Big Grayback Grazing Allotment—Compatible Uses and the Siskiyou National Forest Plan

The Forest Service believes that grazing is an environmentally compatible use within this portion of the Rogue River-Siskiyou National Forest. (National Forest Service testimony)

Siskiyou National Forest Plan direction for Botanical and Research Natural Areas contradicts this statement. The area of the Big Grayback grazing allotment, which covers both Rogue River and Siskiyou National Forest lands, includes several Botanical Areas and a Research Natural Area (RNA). The RNA is known as Craggy Peak on the Siskiyou National Forest (SNF) side and Oliver Matthews on the Rogue River National Forest side. The Bigelow Lakes Botanical Area is entirely on the Siskiyou National Forest and managed under the SNF Plan's standards and guidelines. It is part of the area proposed expansion of the Oregon Caves National Monument. The Botanical Area is in the headwaters of Lake Creek, upstream of the Monument's sole source of potable water, used by both the visiting public and Park Service staff.[1]

CRAGGY PEAK RESEARCH NATURAL AREA

The Siskiyou National Forest Land and Resource Management Plan's (LRMP) management goal for Research Natural Areas is the "[p]reservation of naturally occurring physical and biological units where natural conditions are maintained . . . " Page IV-81. Domestic livestock grazing is prohibited in Research Natural Areas by the SNF LRMP. Page IV-82. Despite this, 19 years after the SNF LRMP was finalized, the Craggy Peak RNA is still grazed by the cattle of the Big Grayback allotment.

ELKHORN PRAIRIE—WHY GRAZING IS NOT A COMPATIBLE USE

The Big Grayback grazing allotment includes Elkhorn Prairie on the border of the Rogue River and Siskiyou National Forests. Elkhorn Prairie was reviewed for Research Natural Area designation during the SNF planning process. It's part of a larger area of high elevation cells around Craggy Peak. Cells are the basic units that must be represented in a natural area system. Cells in the Craggy Peak/Elkhorn Prairie area include: herb lands (grass balds), cold springs, green fescue meadows and red fir/white fir interface. Despite the fact that it filled needed cells, Elkhorn Prairie was "not recommended" as an individual RNA or as part of the Craggy

[1] Consolidated comments submitted on March 8, 2008 by the Pacific West Region of the National Park Service concerning the Rogue River-Siskiyou National Forest's Environmental Assessment for the Big Grayback Allotment Management Plan Update (on file with the author).

Peak RNA "because of the high degree of disturbance and domestic animal use." 1989 SNF Plan Final Environmental Impact Statement (FEIS), page F-2.

SISKIYOU NATIONAL FOREST BOTANICAL AREAS AND BIGELOW LAKES BOTANICAL AREA

The management goal for Siskiyou National Forest Botanical Areas is "to protect, preserve, and enhance the exceptional botanical features of these areas." SNF LRMP, page IV-87. The LRMP prohibits "livestock grazing" in Botanical Areas "except where such use is part of an existing allotment." Id. at page IV-88. The LRMP further states that the "Bigelow Lakes Botanical Area is the only recommended Botanical Area with an existing grazing allotment (Big Grayback Grazing Allotment . . .)." Id. at page IV-89.

Specific to the Bigelow Lakes Botanical Area, the SNF LRMP requires that cattle "shall be prevented from reaching the Lakes area by a drift fence" and requires that "[t]he effects of grazing shall be monitored and corrective action taken as necessary." Id. at page IV-89. The SNF Plan FEIS further explains the direction to monitor the effects of grazing on the Bigelow Lakes Botanical Area to specifically included the effects of grazing on botanical values:

> [The Bigelow Lakes Botanical Area] is within a grazing allotment (Applegate Ranger District). The impacts of grazing on botanical values needs to be assessed. Page F-35.

While the Rogue River-Siskiyou National Forest recently began monitoring "forage" levels in the Bigelow Lakes Botanical Areas, the agency has yet to fully monitor or "assess" the impacts of grazing on the "botanical values" of the Bigelow Lakes Botanical Area. Additionally, because the agency did not implement the required monitoring, no baseline of the botanical values present when the Bigelow Lake Botanical Area was designated have ever been established.

Therefore, current statements about the effects of grazing on the Botanical Area are meaningless. Species may have disappeared unbeknownst to the agency. Additionally, 19 years after the SNF LRMP required that cattle be prevented from reaching the Lakes Area by a drift fence, there is no fence and cattle are grazing the Lakes Area, the headwaters of the Oregon Caves National Monument's drink water source.

NATIONAL FORESTS, MULTIPLE USE AND COOPERATION

Consequently, the Forest Service opposes [section 7] ... However, the Forest Service also recognizes the value of working cooperatively and collaboratively with local stakeholders to fulfill its multiple use mission on Forest Service lands. (National Forest Service testimony)

The Forest Service's multiple-use mandate does not require that every acre of the forest be managed for every desired product or amenity. 16 U.S.C. § 531(a). The SNF LRMP's prohibition of grazing in Botanical and Research Natural Areas is evidence that the Forest's Service's multiple use mandate does not require grazing on every acre of the National Forest and in particular this high mountain area.

Additionally, under the Forest Service's Organic Act, National Forests were established, in part, to secure favorable conditions of water flows. 16 U.S.C §475. As noted above, the Lake Creek Watershed, including its headwaters in the Bigelow Lakes area, is the sole source for drinking water for the visiting public and staff at the Oregon Caves National Monument. The Forest Service has not worked cooperatively or collaboratively with the National Park Service to address their concerns about grazing of cattle in the watershed. This can be seen in the March 8, 2005 comments the National Park Service submitted to the RR-SNF on the 2005 Environmental Assessment for the update of the Big Grayback Grazing Allotment and the fact the Park Service was not named as a cooperating agency in either of the two recent RR-SNF's Environmental Assessment's on the Allotment update, despite the National Park Service's "special expertise" and concerns regarding the safety of the Monument's sole potable water supply.[2] 40 CFR § 1501.6. See also item #2.

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[2] The March 8, 2005 comments on the Rogue River-Siskiyou National Forest Big Grayback Grazing Allotment Update Environmental Assessment, submitted by the Pacific West Region of the National Park Service state that: "Currently, public water supplies for the [Oregon Caves National] Monument are obtained from surface water sources. Drinking water for the Monument visitors and staff is supplied by a diversion from Lake Creek approximately one and one-half miles to the northeast of the Monument boundary. "The watersheds above these diversions are managed by the USFS. Land use includes logging and cattle grazing, which create concern for future water quality impact to these water sources . . ." (emphasis in the original).

2. Lack of Interagency Coordination to Ensure Protection of the Oregon Caves National Monument's Public Drinking Water Source

The Department of Agriculture (USDA) does not believe that either of the bill's primary purposes, enhanced protection of resources or increased public recreation opportunities, would be effectively achieved by its enactment. We believe that interagency coordination is the best and most effective means not only to enhance resource protection and recreational opportunities . . . (National Forest Service)

If this statement were accurate, it would not have taken the Rogue River-Siskiyou National Forest 17 years to update the Big Grayback Grazing Allotment (Allotment), prepare an environmental assessment (EAs) and issue a decision notice (DN) and finding of no significant impact. Further, the EAs and DNs the RR-SNF did issue would have reflected the concerns of the National Park Service about cattle grazing in the watershed of the Oregon Caves National Monument's only viable potable water source—used by both public visitors and staff. Additionally, the Forest Service has yet to comply with the requirements of the 1989 Siskiyou National Forest Plan with regard to the Allotment in the Bigelow Lakes Botanical Area. The long history of the National Environmental Policy Act (NEPA) process concerning the Big Grayback Grazing Allotment, demonstrates a lack of concern for Park Service interests and a failure by the RR-SNF to coordinate with the National Park Service to ensure the safety of the Monument's drinking water supply.

In 1991 the Rogue River National Forest (RRNF) issued public notice that they would prepare an Environmental Assessment (EA) to update the Big Grayback Grazing Allotment (allotment) and began scoping. In 1995 the RRNF finally issued an EA for the update but no decision document was ever issued.

In 1998 the National Park Service finalized the Oregon Caves National Monument's General Management Plan. The NPS Plan included expansion of the Monument to encompass the Lake Creek Watershed, in part, to protect the Monument's only available domestic water source, which is on RR-SNF land. The allotment includes part of the Monument's proposed area of expansion, the Monument's potable water source and the watershed of that water source.

In 2003, the now combined Rogue River-Siskiyou National Forest (RR-SNF), began yet another scoping process for the still-not-updated allotment. In February of 2005 the Forest Service finally issued a second EA for the allotment update for public comment and in September of 2005 they issued a third and revised EA along with a Decision Notice and Finding of No Significant Impact. In other words, it took the agency 14 years to issue a decision on the proposal to update the Allotment.

More importantly, despite the National Park Service's considerable and well documented interest in its domestic water source and area of proposed expansion, the Park Service was not named as a cooperating agency in the EA to update the allotment. Moreover, the Forest Service's 2005 EA on the update of the Allotment and its Decision Notice failed to accurately represent the National Park Service's concerns about the Allotment and the safety of its public water supply. On March 8, 2005 the Pacific West Region of the National Park Service submitted consolidated comments on the EA for the Allotment update[3] to Erin Connelly, Applegate District Ranger of the RR-SNF stating that:

> . . . the NPS continues to strongly oppose the practice of allowing cattle access to the [Lake Creek] watershed due to the increased risk of introducing pathogenic organisms such as E. coli0157H:7 and Cryptosporidium parvum . . .
>
> The presence of grazing cattle within the Lake Creek watershed and NPS intake will allow an increased risk of human pathogenic organism to enter the Oregon Caves National Monument's drinking water supply (emphasis added) . . .
>
> Therefore it is highly probable that allowing grazing cattle within the watershed will increase the risk of introducing biological and more importantly pathogenic organisms into the Oregon Caves National Monument watershed (emphasis in original) . . .
>
> . . . any other alternative that allows cattle to access the Bigelow Lakes and Lake Creek area adjacent to the Monument's domestic water source does conflict with the proposed actions in the Oregon Caves National Monument General Management Plan (emphasis in original).

[3] The Pacific West Region of the National Park Service's consolidated comments include those of John Leffel, Public Health Consultant for the National Park Service, Pacific West Region—Seattle.

Despite the National Park Service's concerns about cattle grazing in the Lake Creek watershed, the RR-SNF selected alternative allowed the grazing of the watershed, with only a drift fence to that will purported prevent cattle from reaching the larger of the two Bigelow Lakes. In other words, the headwaters springs, creeks and the smaller of Bigelow Lakes are still subject to the cattle grazing.

3. Siskiyou National Forest's 1991 Wild & Scenic River Screening Process

None of the four rivers included partly or entirely in the current Monument expansion proposal were found to meet the criteria for eligibility at that time. The Forest Service would suggest that, at minimum, the segments within the proposed expansion area be re-evaluated for their eligibility for the NWSRS. (National Forest Service testimony)

The referenced wild and scenic river screening process undertaken by the Siskiyou National Forest (SNF) in 1991 was cursory and undertaken by the agency only upon an administrative appeal of its 1989 Forest Plan. Decision's regarding the eligibility of streams on the SNF have never subject to public review or challenge under the National Environmental Policy Act (NEPA). Moreover to this date, the Rogue River-Siskiyou National Forest has yet to complete the terms of the 1991 Settlement Agreement and prepare suitability studies for the few streams that the SNF Supervisor found eligible to be added to the National Wild and Scenic River System.[4] These suitability studies would have triggered a NEPA process on the decisions made by the Forest.

As per the June 1991 settlement agreement between American Rivers, Oregon Rivers Council and the Siskiyou National Forest, the Forest Service agreed to "evaluate for potential eligibility" the tributaries of the Illinois and other rivers on the Siskiyou National Forest.[5] The final settlement agreement was transmitted to Thomas J. Cassidy, Legal Council for American Rivers on or about July 15, 1991. The initial screening was scheduled for completion by the end of calendar year 1991.

Forest Service documents indicate that 425 streams were evaluated. The "screening process" was to be done by three ID teams of no fewer than 5 members each. Team members were asked to gather and review existing information prior to the first scheduled team meeting when they would discuss eight resource categories for each of the streams. Expectations were that teams 1 and 2 would complete the process (which included documentation) in two meeting days and team 3 within a day.

All process papers and final recommendations were due to the Forest Supervisor no later than July 26, 1991. Assuming that the screening process did not begin until the final settlement agreement was signed, the SNF allotted approximately eleven days for the initial screening of 425 tributary streams on the Siskiyou National Forest, which included evaluation and documentation of eight resources categories on each stream. The final decision on potential eligibility of the 425 streams was made by the Forest Supervisor.

Ultimately, the Forest Supervisor selected only twelve of the 425 streams as potentially being eligible for inclusion into the National Wild & Scenic River system. Additionally, two streams were to be re-evaluated for their eligibility. In later decisions, made between 1992 and 1994, the Forest Supervisor determined that 6 of the 12 potentially eligible streams were in fact eligible to become wild and scenic rivers. None of these decisions have been subject to review under the NEPA.

4. Fuels Reduction Projects in Proposed Monument Expansion Area

We understand that the Forest Service is currently working on a multi-year effort to reduce fuels under a comprehensive forest plan, which is intended to help restore the appropriate role of fire in the ecosystem, which in turn would benefit monument resources that are at risk from fire and fire suppression damage. (National Park Service).

Currently the Rogue River-Siskiyou National Forest is using commercial harvest in a coordinated, multi-year effort to reduce fuels, both around the immediate vicinity of the Monument and across the larger watershed and landscape. The Rogue River-Siskiyou National Forest plans for approximately 1550 acres of fuels treatment projects within the proposed expansion area. Four hundred and forty acres will be treated over the next several years. Of those acres, approximately 100 acres will be treated by commercial harvest with volume estimated at 560 thousand board feet and an appraised value of approximately $168,000. The remainder will be treat-

[4] The 1991 Settlement Agreement between American Rivers, Oregon Rivers Council and the Siskiyou National Forest (signed by John F. Butruille, Regional Forester for Region 6) states that "suitability studies will be target for completion by the end of fiscal year 1996." Copy of the settlement agreement is on file with the author of this testimony.

[5] Cave Creek is a tributary of Sucker Creek, which in turn is a tributary of the East Fork Illinois River.

ed non-commercially. These treatments are designed and implemented to help restore the historic role of fire in this ecosystem and will help ensure that the forest attributes intended for the LSR, including bigger, older, more fire resistant trees, remain intact. (National Forest Service testimony)

On August 17, 2007 a Decision Notice and FONSI were issued for the East Illinois Valley Managed Stand Project. The Environmental Assessment and Decision are on the Rogue River-Siskiyou National Forest (RR-SNF) website—http://www.fs.fed.us/r6/rogue-siskiyou/projects/planning/e-illinois-v-mg-stands-prj.shtml. The project proposes to treat approximately 3,000 acres of managed stands on Siskiyou National Forest lands. Part of the 3,000 acres is within the proposed Oregon Caves National Monument (OCNM) expansion boundaries. The Forest Service testified that:

> It's likely that the referenced 440 acres in the OCNM expansion boundaries is part of the East IV Project. The rest of the 1,000 plus acres referenced in the National Forest Service's testimony may be part of a future project.
>
> Rather than deferring the expansion of the OCNM boundaries, a "cooperative" agreement between the Park Service and Forest Service could be sought to permit the East IV Project to be implemented, while leaving restoration on the additional acreage for the Park Service to carry out. I don't believe there's anything that prohibits fuels reduction and forest restoration projects on newly acquired National Park Service lands. Indeed, the National Park Service has implemented fuels reduction projects in the forests of the OCNM.

5. Hunting

If the bill is enacted, we understand from the National Park Service that hunting would be prohibited from the 4070 acre proposed expansion area. (National Forest Service)

Almost the entire 1.8 million acre Rogue River-Siskiyou National Forest—minus the 4070 acres of the Oregon Caves National Monument expansion—will still be available for hunting. The only exceptions are areas where the discharging of firearms is prohibited due to safety concerns. These include established campgrounds, several high-use areas along several Wild and Scenic Rivers and across rivers and roads.

STATEMENT OF JOHN PATTERSON, PRESIDENT/CEO, MONROE COUNTY CONVENTION & TOURISM BUREAU, MONROE, MI, ON S. 3247

I am writing in support of S. 3247, the River Raisin National Battlefield Act, which would designate sites related to the Battles of the River Raisin during the War of 1812 as a unit of the National Parks System.

You have heard repeatedly the value of this property and its legacy to the communities of Monroe County, Southeast Michigan and our United States resulting from its prominent role in the War of 1812. I would like to offer additional testimony in support of this outstanding effort and this exceptional piece of our history.

Tourism is the #1 industry in Michigan and one of the most significant to our businesses, citizens and organizations here in Monroe County. Over 20 million visitors pass through Monroe County each year from throughout the nation and around the world, taking with them an impressive perspective of our community and wonderful experiences to share with family, friends and business associates. Nothing is more important or makes a greater impact, than the hands on "experiential" time they spend here.

In addition to the wonderful hands on promotional opportunities we have with these 20 million visitors and the impact we make on their lives during their time here, we enjoy the economic impact of their visits as well. It is estimated that tourism is a half billion dollar industry in Monroe County. With two major interstates passing through our County north and south and a major state highway dividing it east and west, intra county travel is both easy and desirable. Cabela's "The World's Foremost Outfitter" in Dundee, for example, on our western border and Lake Erie on our eastern border offer attractive destinations for travelers and citizens alike. Events like the Monroe County Fair that attracts over 150,000 during its weeklong run and the River Raisin Jazz Festival that attracts over 50,000 during its weekend, are examples of tremendous community events that continue to grow and add to our quality of life and attractiveness to visitors.

The magnitude of historic attractions in Michigan like The Henry Ford, Mackinac and others, attract millions of visitors as well. Our Monroe County Historical Museum (one of the finest Gen. George A. Custer exhibits in the nation), Navarre An-

derson Trading Post (Michigan's Oldest Residence) and the River Raisin Battlefield and others offer equal historic appeal in Monroe County. All this, makes the significance of the River Raisin National Battlefield a must for continued Economic & Cultural growth and development for the benefit of our Nation, our Great Lakes State(s) and our communities here in Monroe County. I urge you to support S.3247 and look forward to assisting with the promotion of "The River Raisin National Battlefield".

DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
Cave Junction, OR, November 15, 2007.

LINDA DUFFY,
Siskiyou Mountains District Ranger, Rogue River-Siskiyou National Forest, 6941 Upper Applegate Road, Jacksonville, OR.

DEAR LINDA, Thank you for meeting with me at the Grants Pass Interagency office to discuss the update for the Big Grayback Allotment Management Plan. As discussed. our current position is consistent with written comments submitted by the National Park Service (NPS) and U.S. Public Health Service for the initial environment assessment (EA). The proposed update change of moving the allotment boundary far enough so as to not cover the public water supply intake is minor and would not significantly affect compliance with allotment stipulations. It appears that there are no substantive modifications from the previous EA that would appreciably change overall potential impacts to the public drinking water supply. Therefore, the comments provided by the NPS for the initial environmental assessment are unchanged.

Although there is no evidence of movement of non-native Phytopthora lateralis (PL) via cattle, there is evidence for spread through non-human activity (bear wallow) in the allotment (reference paragraph 1. Page 111-47). This indicates transmission through livestock would be possible. The percentage of infected areas also is expected to substantially increase by the end of the century, thus increasing the likelihood of spreading PL to the Monument which at present is PL free.

Recently published studies from Texas A&M University indicate a prevalence of Leptospira bacteria occurrence nationwide in cattle herds. According to the study the bacteria is spread most frequently and efficiently through urine. There is a potential contamination of the Monument's public water and nearby surface water by the Leptospira species of the bacteria known in Oregon from cattle urine. The disease caused by this genus, leptospirosis, can cause severe intestinal pain and high fever in humans. It can be acquired by drinking contaminated water or by transmission through mucous membranes or open cuts. Although filters and chlorine treatment may prevent this disease from affecting users of the public water supply, the predominance of cattle feces and urine in areas that hikers from the Monument use to access upper Bigelow Lakes could pose a risk. Leptospirosis and ways to mitigate this potential impact were not addressed in this EA.

In the original analysis the presence of cattle on the Monument was not considered an issue as the last evidence of cattle trespass was at least four years prior. However, in the last two years cattle defecations have been found in the upper elevations of the Monument. This is of special concern to the NPS due to the presence of a plant association (willow/American sawwort) designated in Oregon as rare by the Oregon Natural Heritage Program. It is also one of the largest disjunct populations of Saussurea americana that has not been seriously degraded by cattle grazing (Rolle May, Personal communication 1993). Cattle readily use roads and trails and could find their way to this meadow via well-used park trails. Sausurea americana was listed in the update as a rare plant in the area covered by the allotment but potential effects from cattle on this plant and its association were not addressed in the EA.

We appreciate the opportunity to comment on this action and will continue to work closely with you and your staff to identify and mitigate potential impacts to the Monument's visitors and resources.

Sincerely,

CRAIG W. ACKERMAN,
Superintendent.

DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
Crater Lake, OR, August 17, 1996.

MARY L. SMELCER,
District Ranger, Applegate Ranger District, Rogue River National Forest, 6941 Upper Applegate Road, Jacksonville, OR.

DEAR MS. SMELCER: Thank you for considering our comments on the "The Big Grayback Allotment Management Plan Update—Environmental Assessment." Although the Big Grayback Environmental Assessment (EA)'s public comment period ended on October 28, 1995, we feel that new information in regard to Cryptosporidium merits additional comments.

I have enclosed a copy of a memorandum from Phillip Pollard expressing concern with potential Cryptosporidium contamination of our public water supply. Mr. Pollard is the U.S. Public Health Service consultant assigned to the Seattle office of the National Park Service's Pacific West Field Area. Mr. Pollard is concerned that selection of an alternative that does not exclude cattle from the Lake Creek watershed would represent a significant threat to our public water supply that could not be eliminated by our existing water treatment system.

Only alternatives 2, 4 and 5 address the impact of livestock grazing on Cave Creek below Bigelow Lakes, the area where the potential for water quality impacts (Cryptosporidium and turbidity) to the Oregon Caves water supply is highest. The Monument's resource management specialist and other staff members have made numerous trips along Lake Creek and to the Bigelow Lakes area from 1988 to 1996. During these trips it was observed that cattle were just as likely to be grazing alongside Lake Creek as to be grazing on the shores of the Bigelow Lakes. If successful, fencing of Bigelow Lakes only (Alternative 2) could increase impacts on Lake Creek by diverting cattle to that area.

Additionally, slope failures, possibly due to roads, occurred above Lake Creek in the early 1980s in the form of debris torrents and flows. This led to the temporary condemnation and shutdown of the public water supply for the Caves because of turbidity that reached two orders of magnitude above allowable levels for safe drinking water. The slope failures have moved a great deal of easily erodible sediment to Lake Creek. This material could be remobilized by cattle movement. Some of these areas have been reseeded with grasses that attract cattle. We have observed a correlation between periods of high turbidity in the Cave's water supply and the time when cattle have been seen grazing alongside Lake Creek.

The decision on The Big Grayback Allotment Management Plan Update—Environmental Assessment" should further consider potential impacts on public health. The presence or absence of Cryptosporidium in Lake Creek should be established. Common to all alternatives should be monitoring of Ctyptosporidium.

The National Park Service prefers all alternatives that would eliminate or greatly reduce the impacts of livestock on Lake Creek, including Alternatives 2, 4, and 5.

Sincerely,

CRAIG ACKERMAN,
Superintendent.

MEMORANDUM

To: Superintendent, Oregon Caves National Monument

From: Public Health Consultant, Pacific West and Alaska Field Areas

Subject: Protection of Watershed

July 10, 1996.

I have recently become aware that cattle grazing may be authorized by the Forest Service in the watershed from which the domestic water for the Oregon Caves National Monument public water system originates. As you know, the water source for this system is Bigelow Lakes which flows into Lake Creek. An intake is installed in Lake Creek, and water flows by gravity to the park water treatment plant. At the plant, water is filtered through a 50-micron automatic backwashing Filtomat prefilter, through a 25-micron automatic backwashing Filtomat intermediate filter, through a 5-micron cartridge polishing filter, and finally through a 3M giardia barrier filter bag. The treated water is continuously disinfected with chlorine, ,end then flows into storage and distribution. The potential of cattle in the watershed poses a significant threat to this public water system from contamination by cryptosporidium.

Cryptosporidium is a protozoan parasite that can live in the intestines of human and animals. The infection can be transmitted through person-toperson or animal-to-person contact, ingestion of fecally contaminated water or food, or contact with fecally contaminated environmental surfaces. In the environment, the organism is protected by an outer shell called an oocyst. Once ingested, the organism emerges from the shell and infects the lining of the intestine. Ingesting this organism causes an illness called cryptosporidiosis that results in symptoms such as diarrhea, nausea, vomiting, fever, headache, and loss of appetite. Diarrhea is usually watery and accompanied by abdominal cramping. There is no drug or treatment for this disease. People with healthy immune systems will recover on their own. People with HIV or AIDS, cancer and organ-transplant patients taking immunosuppressive drugs, and people with genetically weakened immune system are especially vulnerable. To these people, cryptosporidiosis is a life threatening disease.

An outbreak of cryptosporidiosis occurred in Milwaukee in 1993 causing illness in 400,000 people and death to approximately 100. This outbreak was traced to water from the municipal water plant that comes from Lake Michigan. An outbreak has also occurred in Medford that treats surface water from Big Springs. Cattle had been allowed in that watershed. Lntbreaks have also occurred in Clark County Nevada, in Georgia, in Washington, and Minnesota.

The public health community, and drinking water officials including American Water Works and state regulators, recommend a multiple barrier approach to keep oocysts out of tap water. this includes source water protection in the watershed, optimized treatment, and a sound distribution system. At ORCA we have optimized treatment with the 3M filter bag, which has been shown to effectively remove a large percentage of oocysts, and the ORCA distribution system has good integrity and is not susceptible to contamination. What remains, then, is to protect the entire watershed from which the source water flows.

I recommend you take appropriate measures to assure cattle are not allowed to graze in the Bigelow Lakes watershed.

PHILLIP F. POLLARD.

STATEMENT OF SEAN SMITH, REGIONAL DIRECTOR, NATIONAL PARKS CONSERVATION ASSOCIATION, ON S. 3148

On behalf of the National Parks Conservation Association (NPCA), I write in support of S. 3148—the Oregon Caves National Monument Boundary Adjustment Act of 2008 which was introduced by Senator Wyden.

In 1998, the National Park Service (NPS) completed a general management plan that calls for the expansion of Oregon Caves NM by roughly 3,400 acres. According to the Park Service the expansion will better protect the monument's cave hydrology, surface forest environment, public water supply and park viewsheds. S. 3148 will make that recommendation a reality.

The Oregon Caves NM expansion will better protect the monument's ecology and wildlife with little or no cost ro the federal government since no private lands need to be acquired. All land proposed for the monument expansion is already owned by the federal government within the Rogue River-Siskiyou National Forest. Transfer would merely require Congressional authorization.

The Oregon Caves expansion should also produce significant economic benefits for gateway communities. Research shows that national parks are huge economic engines, generating $4 in value for every one federal dollar invested in them. Park gateway communities have higher economic growth rates than non-park communities. The Oregon gateway communities of Cave Junction and Grants Pass will clearly benefit from the expanded national monument.

Oregon Caves National Monument is a northwest gem, and expansion of its boundaries as recommended by the Park Service management plan will make it an even better place for the public to learn, to enjoy and to be inspired. NPCA urges the committee's support of S. 3148.

STATEMENT OF SHANE JIMERFIELD, EXECUTIVE DIRECTOR, SISKIYOU PROJECT, GRANTS PASS, OR, ON S. 3148

The Siskiyou Project is a 501 (3) (c) public interest organization with 1,500 members that has been seeking protections for the Siskiyou Wild Rivers Area for the past 25 years. We have offices near Cave Junction, and in Grants Pass, Oregon. We proudly give support for the Oregon Caves National Monument Boundary Adjustment Act of 2008 (S. 3148). The Act will allow for better management of the area immediately surrounding the Oregon Caves National Monument by expanding the

boundary to encompass lands which provide water and ecological integrity to the current Monument. Additionally, it will designate Cave Creek and its tributaries as a unit of the National Wild and Scenic Rivers System and also provide tremendous ecological and economic benefit through the permanent retirement of the Big Grayback and Billy Mountain grazing allotments. The expansion is long overdue and is a logical way for the federal government to meet the changing needs of the American public.

The Oregon Caves national Monument (OCNM) is a destination for 80,000 visitors a year and is a critical source of revenue for local businesses in the Cave Junction area. The expansion would provide opportunities to better market the world class scenery, geologic wonders, historic buildings, and better manage the unique hydrology and plant diversity. Current "multiple use" management by the Forest Service cannot meet the needs of today's sophisticated tourists that expect "National Park" quality experiences when visiting areas managed by the Park Service.

The OCNM and proposed expansion area includes underground rivers, high elevation meadows and forests of rare flowering plants, sensitive wildlife, unique cave-adapted arthropods, and conifer and deciduous tree diversity. From the headwaters of Bigelow Lakes below Mt. Elijah to the campground at Cave Creek a true National Park quality landscape exists—a landscape worthy of considerable protection to ensure that future generations of Americans continue to enjoy its rare and remarkable values.

BIGELOW LAKES: A BOTANICAL SPECIAL INTEREST AREA

Above the Caves in the high Siskiyou Mountains are the Bigelow Lakes. Formed in a glacial cirque the lakes are surrounded by meadows and primeval forests. Ancient species of Brewer's Spruce and rare flowering plants inhabit the area as relics from the ice age. Due to its unique characteristics the area has been given special botanical area designation. However, the Forest Service has done little to manage for and protect this valuable resource.

The Park Service has a proven track record for managing natural areas. For example, a rare botanical, the California globe mallow, which grows in the area, requires periodic burning to germinate its seeds. The Park Service would be able to meet the plants needs with prescribed burning. Currently, the Forest Service emphasizes cattle grazing which is harmful to the plant and is contributing to the need to list the plant under the Endangered Species Act.

The expansion would open the door for Park Service nature tours in the upper Lake Creek watershed and evening presentations at Caves Campground that would better inform the American public about the role of fire in western forests, climate change, and the need to protect native plant diversity.

A small change administration authority would yield many benefits far into the future.

STATEMENT OF ALEXANDER BRASH, REGIONAL DIRECTOR, NATIONAL PARKS CONSERVATION ASSOCIATION, ON S. 2535

On behalf of the National Parks Conservation Association (NPCA), I write in support of S. 2535—the Martin Van Buren National Historic Site Boundary Revision Act which was introduced by Senator Clinton.

In 2003, the National ParkService (NPS) completed a Boundary Study that calls for the expansion of Martin Van Buren National Historic Site by approximately 261 acres. According to the Park Service, the expansion will allow the NPS to protect nationally significant resources and provide visitor access to the original home and farm of the eighth President of the United States. The expansion will also provide space not in the historic core for long overdue permanent facilities. S. 2535 will make the recommendations of the NPS Boundary Study and the wishes of the local communities a reality.

The Martin Van Buren National Historic Site expansion will preserve open space in a region where it is quickly disappearing and help tell the rich agrarian stories of our national heritage. Visitors will have access to the original Van Buren Farm, thus gaining a better understanding of President Van Buren and the significance of farming in American history. The land surrounding the Martin Van Buren National Historic site currently remains in its historic agricultural use, but is not yet interpreted for the public. The New York State Historic Preservation Office, The Open Space Institute, as well as the local community, support the boundary adjustment proposal.

The expansion of the Martin Van Buren National Historic Site demonstrates creative planning and collaboration to preserve a region's historic character in a way

that is compatible with modern growth and development. With the proposed expansion, most of the land will remain under private management and not be removed from the county tax base. The preservation of these cultural resources as national park land will benefit the local Town of Kinderhook, Columbia County, and New York State, where the economy, in part, is based on tourism. Research shows that national parks are huge economic engines, generating $4 in value for every one federal dollar invested in them. Park gateway communities have higher economic growth rates than non-park communities. The New York gateway communities of Kinderhook and Columbia County will clearly benefit from this expanded national historic site, financially as well as culturally.

Martin Van Buren National Historic Site is a northeastern national historic jewel and expansion of its boundaries as recommended by the NPS Boundary Study will make it an even better place for the public to learn, to enjoy scenic beauty and historic treasures, and to be inspired. NPCA urges the committee's support of S. 2535.

STATEMENT OF BILL MANDULAK, CHAIRMAN, COASTAL CONSERVATION ASSOCIATION NORTH CAROLINA, RALEIGH, NC

The Coastal Conservation Association North Carolina wants to correct a mistake in the letter we previously sent you. The recreational saltwater license sales drop for Dare County was correctly stated as 50% but the statewide drop in sales was incorrectly stated as 25%. The correct statewide drop in license sales was 39%. Dare County was the largest seller of saltwater licenses in 2007. They are now eighth in the state,

I apologize for the incorrect data.

STATEMENT OF RICHARD G. MICKA, MONROE, MI, ON S. 3247

The Subcommittee on National Parks and Parklands has scheduled a hearing on Senate Bill S. 3247 this Wednesday (7.30.08).

As Co-Chair for the Experiential Tourism Task Group, War of 1812 Bicentennial Steering Committee, Community Foundation of Monroe County, Michigan, and as a member of the Michigan Commission on the Commemoration of the Bicentennial of the War of 1812, I offer my support for this legislation.

As you know, the State of Michigan has been hit hard by the housing crisis and loss of manufacturing jobs. Our Governor, Jennifer Granholm, has created a "Transformation Initiative" that will place the State of Michigan on the path to economic recovery.

One of the planks in her platform is cultural economic development (CED). The creation of the RIVER RAISIN NATIONAL BATTLEFIELD PARK in Monroe and Wayne Counties, Michigan, provides a Community CED Readiness Initiative for both counties promising tourism-related jobs. One illustration of this point is the $17M investment by the State of Michigan at Sterling Sate Park on Lake Erie adjacent to the River Raisin Battlefield that attracts over one millino visitors a year. This is a $28M boost to the local economy on an annual basis for overnight visitation.

Finally, Senator Carl Levin has championed the NORTH COUNTRY NATIONAL SCENIC TRAIL. This legislation provides the missing link for that Park Service Initative. Monroe County, Michigan, is in a juxtaposition between two of the world's largest metropark systems—the Huron-Clinton Metropolitan Authority (Michigan) and the Toledo-Lucas County Metroparks (Ohio). The Park Service can play an important role in connecting these metropark systems through Monroe County which is the GATE WAY to Michigan and Michigan's only County on LAKE ERIE.

Both Monroe County and Wayne County have heritage resources that would benefit from the Park Service Rivers, Trails and Conservation Assistance Program. The Trail from the proposed Battlefield (150 acres) to Sterling State Park (1,200 acres) will be universally accessible, thanks to a grant from the Kellogg Foundation.

We need S. 3247 to sustain the momentum of the Governor's transformation initiative.

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