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A NEW RULE BALANCES WILDLIFE AND OFF-ROAD-VEHICLE USE ON A NORTH CAROLINA BEACH

CONGRESSIONAL LEGISLATION AND A PENDING CIVIL SUIT THREATEN THE FUTURE OF A NEW RULE THAT PROTECTS WILDLIFE AND ALLOWS VEHICLES ON CAPE HATTERAS NATIONAL SEASHORE.

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Five years ago tire tracks carved by recreational off-road vehicles traced a path of destruction over dead birds and demolished eggs. Today least tern chicks, nesting loggerhead sea turtles, and piping plovers are flourishing at North Carolina's [Cape Hatteras National Seashore](#). After a legal battle waged by [Audubon North Carolina](#) and [Defenders of Wildlife](#), represented by the [Southern Environmental Law Center](#), the National Park Service issued a new rule put into effect this past February that allows ORV access in certain areas within the seashore while also protecting sea turtles and birds. Yet despite this

initial compromise, pending congressional legislation and civil litigation could negate the park service's ruling, threatening bird species, other wildlife, and plants on the shore.

"Historically, Cape Hatteras National Seashore has been very important for birds that depend on the barrier islands for nesting, migratory stopovers, and wintering areas," explains Walker Golder, Audubon North Carolina's deputy director.

How to manage Cape Hatteras has been a conservation issue for decades. In 1972 President Richard Nixon issued an executive order requiring the Interior Department and the National Park Service to develop rules regulating ORV use on public lands for the purpose of protecting public safety, minimizing conflicts among land users, and protecting natural resources. President Jimmy Carter clarified the order five years later, saying federal agencies must close areas to ORV use whenever such use was adversely affecting natural resources.

In spite of the two executive orders, the National Park Service never finalized an ORV management plan for Cape Hatteras, relying instead on a draft interim plan developed in 1978.

But from what the Park Service has experienced in recent years, it is possible the draft was never finalized because of controversy and political pressure, explains Mike Murray, superintendent of the Cape Hatteras National Seashore. "ORV management at the seashore is a longstanding, emotionally charged, and highly polarized issue," he says. "There was resistance to portions of the 1978 draft plan, such as a proposed ORV permit requirement, just as there's resistance to the new plan and regulation. I can fully understand why it has been so difficult for the Park Service to complete an ORV management plan and special regulation at the seashore."

As the years passed, growing numbers of people drove on the fragile shores. And more ORVs meant more people in remote areas. Protection for birds decreased, as did breeding productivity, while disturbance increased. The seashore's bird populations began to decline. In 1992, 14 years after the NPS began managing the area based on the draft interim plan, only 12 piping plover breeding pairs made use of the shore. By 2003 that number dropped to two. Only one chick fledged that year (none fledged in 2002 and 2004). From 1995 to 2004 the number of common tern nests on the shore decreased 76 percent, from 739 to 180. By 2007 the number of terns and skimmers nesting on the seashore's beaches had reached historic lows. Indeed, black skimmers and gull-billed terns were absent as a nesting species that year.

"When we began to see problems, we began to work with the seashore to raise awareness of the issues and the need to protect birds on the beach," Golder says.

Because of this effort and to address a continuing decline in nesting bird populations, in 2006 the Park Service, after a yearlong feasibility assessment, issued an Interim Protected Species Management Strategy to provide resource protection guidance until a long-term ORV management plan and regulation could be developed.

"We commented repeatedly that the Interim Protected Species Management Strategy was inadequate," says Golder. "They did focus on piping plovers in 2007 but ignored other birds, sea turtles, science, and the recommendations of the U.S. Geological Survey."

"Unfortunately, the Interim Strategy did not even incorporate the measures that the government's own scientists identified as necessary to protect wildlife at the seashore," says Julie Youngman, senior attorney at the Southern Environmental Law Center. "The natural resources of Cape Hatteras were not

being protected for future generations.” Jason Rylander, senior attorney for Defenders of Wildlife, adds, “It was not a legally valid ORV management plan by any means.”

On October 18, 2007, Audubon and Defenders of Wildlife, represented by the Southern Environmental Law Center, sued the National Park Service, arguing that its governance of ORVs was inadequate. The Cape Hatteras Access Preservation Alliance, a pro-ORV lobbying group, and Dare and Hyde counties, where the seashore is located, intervened in the suit. After several months the parties agreed to implement another temporary but stricter science-based plan regulating ORV use on Cape Hatteras until the National Park Service finalized a formal ORV management regulation. Under these stricter protections, rare wildlife began to rebound, with several species breeding in record-setting numbers. In 2010, for instance, the seashore had 15 fledged piping plover chicks, 26 fledged American oystercatcher chicks, and 153 sea turtle nests. The court agreement also set a deadline for the final rule to be adopted.

After several years of study, research, and public participation, the National Park Service put its final regulation into effect this past February. The rule allows for year-round ORV beach access on 28 of the shore’s 67 miles while simultaneously protecting birds and other wildlife.

“We feel the final rule was very much a compromise,” says Heather Starck, executive director of Audubon North Carolina. “It was not everything we hoped for in terms of protecting wildlife,” she adds, noting there are more miles devoted to ORV users than she thought were necessary. “The folks that use ORVs in Cape Hatteras are only about two percent of the people that visit the seashore.”

Still, the Cape Hatteras Access Preservation Alliance continues to fight the new regulations even though the majority of the 21,000 commenters on the final environmental impact statement were in favor of the restrictions. In the past the group successfully lobbied in favor of the interim plan on Cape Hatteras. Between June 2008 and January 2009 members of the North Carolina congressional delegation introduced three bills, two in the House of Representatives and one in the Senate, to return to the more lenient management of ORVs under the Interim Strategy. None of those bills passed, but after the final rule was put in place, Representative Walter Jones presented one bill in the House, and Richard Burr, supported by Kay Hagan reintroduced another in the Senate. Both are designed to abolish the regulation and return to prior management measures under which protected species had declined.

Despite the previous bills’ failure to pass, Mike Daulton, Audubon vice president for government relations, is cautious. “As long as there’s legislation pending, the birds of Cape Hatteras are in danger,” he says.

Even if the bills don’t pass the House or Senate, the final ruling’s supporters have civil litigation to contend with.

The Cape Hatteras Access Preservation Alliance also filed a lawsuit against the Interior Department alleging that the National Park Service failed to give ORV riders’ interests meaningful consideration. Audubon and Defenders of Wildlife joined the National Parks Conservation Association, represented by the Southern Environmental Law Center, in an effort to help defend the National Park Service’s regulation in the lawsuit. (The alliance declined to comment on Cape Hatteras for this article.)

“The case is basically posturing, utterly without merit,” explains Ted Williams, *Audubon* field editor. When Williams visited Cape Hatteras beaches in 2005 and 2006 he encountered the damage ORVs cause to bird breeding grounds (see “Beach Bums,” January-February 2007). The park service’s new rules, he says, will sustain imperiled species. But for the rules’ dissidents, human access, not species protection, is the issue.

“It’s sickening to drive down this island and see rope and signs saying no,” explains Carol Busbey, who owns the Natural Art Surf Shop on Hatteras Island in Buxton. Busbey has run the shop for more than 30 years, but since the draft interim plan was replaced, her business has lost a lot of weekend business. “They closed off a lot of places that were special for a lot of people,” Busbey says. One week, there were two piping plover nests out on the point, she says, and “they’ve got acres and acres of land closed.”

Commenters on Ted Williams’s Fly Rod & Reed [blog](#) also express their discontent. “It’s not just about ORVs,” wrote one. “One piping plover nest closes over 700 acres of beach to all. This is the kind of thing we’re fighting.” (More fervent comments contained obscenities and had to be edited by Williams.)

Williams’s response is that “when we talk about ‘fairness’ we need to consider all Americans for all time, not the immediate appetites of a few loud, greedy ORV operators.”

Although the conservation groups are hopeful that neither the bills nor the lawsuit will reverse the progress made, the attacks do distract the groups from determining if the new protections are effective, says Starck. Even more threatening is the potential result if the new rule is overturned, she says. Political camps opposed to wildlife conservation would see the success of these measures and attempt to reverse other rulings. “If that user group sees that it was overturned here, it could be a really dangerous precedent for wildlife in this country,” she says.

Keep an eye out for an upcoming story on Cape Hatteras written by Ted Williams.

**This story was updated on June 13, 2013, to reflect a factual change.*