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Beach Bums

The Interior Department has pledged to put wildlife before recreation in our national parks, but on a North Carolina national seashore, it's letting off-road vehicles run amok, imperiling birds and people.

By Ted Williams

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What's wrong with this picture: off-road vehicles (ORVs) monopolizing barrier beaches on North Carolina's Outer Banks, aborting nesting attempts by colonial waterbirds, oystercatchers, threatened piping plovers, and threatened and endangered sea turtles; crushing eggs and young of all these species; and imperiling and/or intimidating the roughly 90 percent of visitors who travel by foot.

Answer: These long, thin islands that help insulate the northern half of the state from storms and provide critical habitat to vanishing wildlife are part of our National Park System. Seventy miles of them were designated as the Cape Hatteras National Seashore in 1953.

Such abuse results largely from ongoing priorities of the Bush administration that give lie to its "new park policy," announced August 31, 2006, of favoring the protection of natural and cultural resources over recreation.

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Even if such a policy were genuine, it would hardly be new. Throughout most of its history the National Park Service has been a beacon for the nation and the world, protecting and restoring native ecosystems. Other federal resource agencies have been charged by Congress with managing for "multiple use," but despite the fact that about 274 million people visit national parks each year, this has never been part of the Park Service's mandate. Unlike the U.S. Forest Service and the Bureau of Land Management, the Park Service does not auction off timber, minerals, or cattle forage. Unlike the U.S. Fish and Wildlife Service, it does not manipulate habitat for maximum production of favored species.

Other federal resource agencies have struggled to define their missions. But since 1916, when Congress and President Woodrow Wilson created the National Park Service and its organic act (the enabling legislation by which it operates), its legal mandate—to protect flora, fauna, land, water, and the natural processes with which they all interact "unimpaired for the enjoyment of future generations"—has never been in question. By law, then, national parks must provide Americans with ecosystem preserves.

Current management of the Cape Hatteras National Seashore is one of the better examples of how the Park Service is flouting federal laws, such as its own organic act, the Endangered Species Act, the Migratory Bird Treaty Act, and the General Authorities Act (which requires that all park units be managed as a single system); executive orders by Presidents Nixon and Carter (which forbid ORV use unless it can be demonstrated that it won't compromise natural values); and the seashore's enabling legislation (which requires that it be "permanently reserved as a primitive wilderness").

"Primitive wilderness" is hardly what Audubon North Carolina's deputy director Walker Golder, Audubon field technician Sidney Maddock, and I have encountered on our outings to the Cape Hatteras National Seashore these past two summers. Instead we've seen: casings of spent fireworks (illegal in the park because they discourage nesting); footprints and tire tracks on the wrong side of symbolic (string) fences erected to protect nesting birds; bumper stickers that featured circled and slashed renderings of piping plovers or proclaimed, "I love piping plover, tastes like chicken"; a passenger on a speeding ORV heckling us because Maddock was toting a spotting scope. In 2005 what I would have called traffic jams were defined by both my companions as "relatively light summer use." Said Maddock, "Look, there are parking spaces left."

Most of these ORVs carry fishermen. I spend a lot of time with anglers because I am one, but none I've seen are quite like these. Typical behavior is their treatment of Steve Kayota, a doctor who owns a house on Hatteras Island. In 2004 a speeding ORV nearly killed his five-year-old son as he played on the beach. "The guy was driving at least 50 miles per hour," Kayota told me. "The tire missed Andrew's head by about a foot. The ORV was between us, so I thought he'd been run over." The experience motivated Kayota to start the Hatteras Island Homeowners Coalition in an effort to get ORVs regulated. After he testified at a hearing at Kitty Hawk, the attacks started on ORV chatrooms Fish Mojo and RedDrumTackle.com. Links were posted providing his home and office phone numbers, his address, even a photo of his house. Vandals broke his pool fence, emptied his propane tanks, smashed his chairs. He started getting harassing calls at home and work.

ORV-chatroom participants have posted links to photos of Maddock's house and provided his e-mail address and phone number, and they've accused him of all manner of fictional offenses, from tax evasion to reckless driving. Herewith, typical posts: "Sid [Maddock] is an econazi, beach speeding, tag expiring, bird loving, trying to close the beach down, exlawyer, self centered, left wing idiot." And: "Syd [sic] Maddock def: an insult to every piece of excrement out there. The kind of person you would invite to a nuke test. . . . Once we retake Congress, public enemies such as himself and the idiots we elected who have supported him will only have survival to fear." And: "Seriously, folks, I hope that the raccoons and ghost crabs survive the storm, and prosper; as for the birds, to hell with 'em."

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The loudest, ugliest voices are those of the Orwellian-named Outer Banks Preservation Association, whose flier reads: "The Endangered Species Act has become the favorite 'tool' of the radical environmentalists who want to obstruct development, resource extraction, many public works projects, and also YOUR rights to recreate responsibly on YOUR public lands. . . . The radical enviro-crazies and Hollywood fat-cat sycophants who want to shut you out of YOUR public lands unless you are one of the enviro-elite are pulling out all the stops to water down or kill the rewrite [of what amounted to an Endangered Species Act repeal bill sponsored by soon-to-be ex-Representative Richard Pombo (R-CA)] Remember the ESA has been perverted and prostituted by the eco-wackos; it isn't about resources these days. It is all about access. They HATE to see you on 'their' beach with your kids, family, coolers, surfing or fishing gear, and especially your ORV."

With the warm sea wind in our faces and brown pelicans skimming the waves, Golder, Maddock, and I stood next to the symbolic fencing at Cape Point on Hatteras Island. To our left, in the open vehicle area, the sand was clean and white. But to our right it was festooned with seaweed behind which sanderlings hunkered. "Wrack," as it's called, is vital to beach birds because it provides rich habitat for their invertebrate prey as well as protection from the wind. ORV tires destroy wrack.

In 2005 the seashore failed to get its symbolic fencing up before April 1, thereby violating guidelines set forth in the Fish and Wildlife Service's piping plover recovery plan. In 2006 it got the fencing up in time, but mostly where it wasn't needed—i.e., marginal fishing areas, where it wouldn't offend. Then, when bird-breeding behaviors were observed in unfenced areas, the seashore delayed or failed to take action. The popular beaches—at Cape Point, South Beach, Bodie Island, Hatteras Inlet, and Ocracoke, for example—all had legal ORV traffic in front of unfledged shorebirds or waterbirds.

In 2006 black skimmers at Cape Point failed on their first nesting attempt. Some re-nested and were incubating on July Fourth, when there were 17 documented instances of trespass. Fireworks were set off illegally. In the mid-1980s there were 1,000 pairs of colonial waterbirds at Cape Point. Now there are fewer than 100.

That decline reflects a breach of law. Thirty-five years ago President Nixon issued an executive order directing the Department of the Interior to issue ORV-use regulations within six months. In 1978 (seven and a half years late) the seashore hatched a "draft interim management plan," thereby eliciting histrionics from the ORV lobby. Management decided not to finalize it. Since then the seashore has, when convenient, operated under the interim plan, a document rife with deficiencies such as suggested closures for nesting birds that the Interior Department's own consultants say are grossly inadequate. "At the beginning of the 2006 season the seashore said they were going to follow their newly minted Draft Interim Protected Species Management Strategy plan," said Maddock. "As the season wore on and that plan would have caused closures they deviated even from their own lax guidelines."

Diminished as they are, the colonial waterbirds at Cape Point and adjacent South Beach are still an important part of the seashore's production. But after predators destroyed many of the nests of least terns, common terns, and black skimmers in 2006, the seashore opened South Beach back up to ORVs. Then, when the remaining eggs hatched, it didn't put up fencing.

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Not far from the point, in the ephemeral ponds created by rain and overwash, we watched three diminutive birds with sand-colored backs, white bellies, black breast bands, and orange legs and bills as they alternately dashed and froze along the moist edges. They were piping plovers. There had been a successful nest at Cape Point this year—the only one for the entire seashore.

In June 2005, at Hatteras Inlet, also on Hatteras Island, we heard the clear *peep-lo* of a piping plover, and one nest fledged three chicks. But in 2006 there was no production. In April 2006 the seashore had hosted an informational meeting here for interested parties, which in this case consisted of all the ORV leaders and one environmentalist—Maddock. “I’m GPS-ing the fence posts so I can know where the closure is,” he told me. “And I hear a piper vocalizing. I look up, and there is a male bird scraping [breeding behavior in which the birds excavate nest depressions]. One of the seashore’s biological technicians and I tell the superintendent: ‘You have to move the fencing out because there isn’t an adequate buffer.’ He moved the fencing out six to eight feet. But the Fish and Wildlife Service recovery plan called for at least another 150 feet. The birds stayed about a week and a half more, were disturbed multiple times, then quit scraping.”

There was an oystercatcher nest here in 2006, but it wasn’t given an adequate buffer either, and the birds abandoned.

In 2004 the seashore had opened this area to ORVs against the recommendations of its own biological staff and after least terns had displayed nesting behavior. When Maddock saw birds incubating and unfledged chicks he phoned the regional office in Atlanta, but the director was traveling. So he phoned the D.C. office, where a Park Service employee went on and on about the political sensitivity of the situation. For most of the day Maddock and a biological technician stood in the rain, directing traffic away from nests. Finally, the D.C. office decided that it might be okay to move the fencing out a little, but not enough to offend the ORV lobby or protect the birds. After ORVs ran over two least tern chicks, special agents from the Fish and Wildlife Service investigated this apparent breach of the Migratory Bird Treaty Act by the Park Service, but the Department of Justice declined to prosecute.

A dozen years ago the seashore averaged something like 12 breeding pairs of piping plovers annually. In 2006 there were five, only one of which produced young. Seven years ago there were 41 breeding pairs of oystercatchers; in 2005 there were 24. Seven years ago 57 percent of the gull-billed terns in the state nested at Hatteras Inlet. By 2006 the species had abandoned not only Hatteras Island’s 42-mile-long beach but the entire seashore. From 1993 to 2004 breeding pairs on Hatteras Island declined as follows for these colonial waterbirds: least terns, from 610 to 272; common terns, from 385 to 11; gull-billed terns, from 11 pairs to zero; and black skimmers, from 216 to 13.

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The National Park Service does not know how many chicks, like this least tern, are killed by vehicles at Cape Hatteras. What is known is that in 2004 two chicks were killed after the park service removed fencing from around their nest sites.

Photo by Walker Golder

ORVs aren't entirely to blame. Predation of eggs and chicks is a growing problem on most of the seashore. Some of this predation is the result of the massive development along the Outer Banks in the past 30 years and the corresponding increase in cats, foxes, and garbage-swilling raccoons. But ORV operators discard bait and fish entrails, and they don't like skates and sharks, so instead of releasing them, they leave them on the beach. All this offal, along with other garbage and purposeful feeding, attracts gulls, resulting in loss of eggs and chicks. When the seashore closes areas to vehicles the dearth of gulls is sudden and dramatic.

And at times ORVs play the main role in chick loss and nest failure attributed to "predation." For example, last June at Hatteras Inlet two oystercatcher chicks were lost to predators due to the seashore's refusal to close the beach. When the chicks wandered into the traffic, Maddock asked ORV operators to please wait until the chicks could rejoin their parents. When the ORV operators refused, one chick fled and got nailed by a ghost crab. The other, abandoned after traffic flushed the adults, became hypothermic and got eaten by a grackle.

The ORV crowd correctly observes that some of the decline is due to habitat damage caused by artificial dunes constructed in vain attempts to protect roads and dwellings. Near the town of Rodanthe, on Hatteras Island, Maddock and I walked the top of a high dune built by the North Carolina State Department of Transportation. Despite all that has been learned about beach dynamics, the dune is still being maintained. After it was knocked down by Hurricane Isabel in 2003, the department rebuilt it and planted beach grass. Beach birds can't nest in thick vegetation, so planting beach grass destroys what little habitat remains. From the top we looked almost straight down into the breakers. The dune had acted like a seawall, reflecting wave energy so that it carried away the beach and, at the same time, prevented the overwash that had maintained beaches on the sound side and kept vegetation down. Net result: The island is narrowing, bird habitat is vanishing, and the threat to roads and property is exploding.

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Not only do ORV operators destroy habitat by eliminating wrack and creating ruts chicks can't crawl out of, they're a major obstacle to habitat restoration. At Oregon Inlet, which hurls the waters of Pamlico Sound into the Atlantic, I walked across a wide beach created by a rock jetty. The jetty prevents the inlet from migrating south, as it had done from its birth in 1846 until 1962, when construction of the Bonner Bridge created easy access to Hatteras Island. But the ocean strips sand from 13-mile-long Pea Island to the south, shortening it by 10 to 15 feet every year and threatening the already decrepit bridge. Pea Island, managed as a national wildlife refuge and offering nesting habitat to three species of sea turtles and 365 species of birds, is one of the nation's last undeveloped barrier islands. But the artificial dune that supposedly protects Route 12 (the highway that runs along the whole seashore) prevents overwash and severely compromises nesting and foraging habitat. Meanwhile, the state is spending about \$1 million a year rebuilding and relocating the road and clearing it of sand.

With the bridge failing structurally, a new one must be built. The cost of a longer bridge that would bypass Pea Island and all its expensive highway problems would be \$425 million. The cost of replacing the short bridge and maintaining Route 12 through 2060 would be \$620 million. It was a no-brainer, so in July 2003 the state Department of Transportation and 12 other state and federal agencies unanimously agreed to go with the long bridge.

But the ORV crowd demanded the short bridge because it wanted to drive to Pea Island to fish, and it has the Interior Department's ear. In fact, the mountain came to Mohammad. Before David Smith resigned in disgrace as deputy assistant secretary for fish, wildlife, and parks (after accepting a free bison hunt at an exotic-game preserve in Texas a month before the Interior Department designated Houston as an official port for importing exotic game), he journeyed to the Outer Banks to meet with ORV groups. Environmentalists and even the press failed to get an audience.

Then, on July 5, 2006, Interior Secretary Dirk Kempthorne announced the short bridge was the best choice, thereby undercutting the National Environmental Policy Act (requiring that alternatives for such projects be evaluated objectively) and maybe violating the National Wildlife Refuge Improvement Act, which requires that if the short bridge is to be built, the Fish and Wildlife Service must find it to be "compatible" with its mission. Clearly, the agency does not think it is, since until Kempthorne's pronouncement, it had been citing the dangers of the short bridge to wildlife and the potential of the long bridge for wildlife restoration. Now it is silent.

ORV drivers, on the other hand, are never silent, and the Park Service is terrified of them. For instance, after they publicly accused its biologists of concocting excuses for fencing off more beach by herding piping plovers west toward Cape Point (a physical impossibility), the seashore instructed field personnel to approach birds from the east. To comply, however, they had to disturb a large tern colony. The Park Service keeps bringing in new superintendents, hoping one will defuse the situation. In 2004 Superintendent Larry Belli was abruptly transferred after the ORV lobby complained about routine beach closings. Acting superintendent Phillip Francis took over in 2005. That same year Francis was replaced by acting superintendent Pat Reed. In December 2005 Reed was replaced by Mike Murray.

When I interviewed Francis and Murray at seashore headquarters in Manteo in 2005 and 2006, respectively, they impressed me as decent, intelligent bureaucrats who wanted to do the right thing. Francis, whom I had known when he was running Great Smoky Mountains National Park, had proven himself to be a champion of wildlife. And Murray was fresh from the deputy superintendent's job at the Cape Cod National Seashore, one of the best-run units in the National Park System. I asked Murray why piping plovers were doing so well in

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Massachusetts and how Cape Cod National Seashore superintendent George Price had dared to make the following announcement on June 24, 2006: "I could seek permission for a program that allows for a certain amount of [incidental] 'take.' I learned that 'take' means dead birds. I don't believe the people who support the Cape Cod National Seashore want the National Park Service to allow for 'take' when the species' survival remains threatened."

Murray's answer: "It's an interesting contrast. I think the history of the issue has evolved differently there. There's a large environmental lawsuit that reduced the amount of area [open to vehicles], a much longer history of more reduced area, and more established management. The birds are doing better in the northern part of their breeding range." Indeed they are, and they're also doing better south of Cape Hatteras—where, as in the north, ORVs don't run over chicks and eggs or flush adults from nests. For instance, the 3.7 miles of barrier beach on Lea-Hutaff Island, near Wilmington, North Carolina (managed by Audubon), had five successful piper nests in 2006 compared with one on the Cape Hatteras National Seashore's 70 miles.

Was the seashore violating the Park Service's organic act by not leaving native ecosystems "unimpaired for the enjoyment of future generations"? Murray paused, then said: "We need to wait for the [Fish and Wildlife Service's] Biological Opinion to inform us about the treatment of listed species."

He didn't have to wait long. Three weeks later, on August 14, 2006—and in response to the seashore's pursuit of incidental take for piping plovers—the Fish and Wildlife Service released one of the most bizarre biological opinions in the history of the Endangered Species Act, in which it found that "the undeterminable level of incidental take [of piping plovers] is expected to be a proportion of all the abandoned and existing nests." In other words: It's okay for the seashore to let ORVs kill most of the birds—say, 99 percent—provided they don't kill them all. Same with sea turtles. The document had made sense before it was sent to the USFWS regional office in Atlanta for the "review process." Such is the administration's commitment to its alleged "new" park policy of favoring natural resources over recreation.

As for the ORV management plan required by law to have been implemented in 1972, the seashore hopes to have it ready by 2009. Toward this end it has embarked on what it calls "negotiated rule making," a process by which private "stakeholders" do the Park Service's job for it by promulgating regulations for themselves. The seashore has spent the last year just trying to figure out who should sit at the table, and at this writing it's still figuring. "We've agreed to participate because they asked us," said Derb Carter of the Southern Environmental Law Center. "But I really question whether the ORV crowd will accept any level of compromise. . . . There's not going to be much incentive for environmentalist involvement if this is just going to be a distraction from actions that the seashore should be taking."

So far ORV interests dominate the stakeholder committee. The Hatteras Island Homeowners Coalition (Kayota's group) tried and failed to get a seat. But the Outer Banks Preservation Association succeeded. Its representative at the table will be none other than Dave Goodwin, moderator of the "Free Access Dammit!" forum of Fish Mojo.

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What You Can Do

To help birds threatened by ORVs, log on to www.ncaudubon.org, click on the "Birds & Science" menu bar, and click on "Protect Beach Nesting Birds." Show your concern by writing to Mike Murray, Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, NC 27954, and Mary A. Bomar, Director, National Park Service; 1849 C Street, NW, Washington, DC 20240. Send Audubon copies for our website by mail (225 Varick St. 7th Floor, New York, NY 10014) or e-mail (editor@audubon.org).