

PRESERVING ACCESS TO CAPE HATTERAS NATIONAL
SEASHORE RECREATIONAL AREA ACT

JUNE 15, 2012.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural
Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4094]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4094) to authorize pedestrian and motorized vehicular access in Cape Hatteras National Seashore Recreational Area, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 4094 is to authorize pedestrian and motorized vehicular access in Cape Hatteras National Seashore Recreational Area.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 4094 directs the Secretary of the Interior to manage Cape Hatteras National Seashore Recreational Area in accordance with the Interim Protected Species Management Strategy/Environmental Assessment issued by the National Park Service (NPS) on June 13, 2007.

Authorized in 1937, Cape Hatteras National Seashore Recreation Area now covers 30,350 acres. In 2007, the NPS instituted an Interim Management Strategy to govern off-road vehicle (ORV) use at Cape Hatteras. The access restrictions it contained were much

more limiting than visitors and local residents were accustomed, but there was general agreement that the strategy was functional.

The U.S. Fish and Wildlife Service issued a Biological Opinion finding that Interim Management Strategy would not jeopardize any Endangered Species Act (ESA) listed species. However, litigious interest groups sued the NPS over the adoption of the Interim Management Strategy and, in April 2008, the court approved a settlement that resulted in a consent decree establishing new, more restrictive rules on ORV use at Hatteras until a new final rule could be crafted. That final rule, which is even more restrictive than the consent decree, went into effect in March 2012.

Local businesses have reported significant economic losses and expect to lose more business as the season continues. ORVs have long been used to access the park by fisherman and other visitors. By restricting long sections of the beach from ORV use and leaving no alternatives, NPS has effectively shut down more miles of the park than the NPS represents.

H.R. 4094 would suspend the consent decree and the final rule and reinstate the Interim Management Strategy. It lays out a list of criteria that the Secretary of the Interior would have to meet to institute access restrictions greater than those in the Interim Management Strategy.

COMMITTEE ACTION

H.R. 4094 was introduced on February 28, 2012, by Congressman Walter Jones (R-NC). The bill was referred primarily to the Committee on Natural Resources, and in addition to the Committee on the Judiciary. Within the Committee on Natural Resources, the bill was referred to the Subcommittee on National Parks, Forests and Public Lands. On April 27, 2012, the Subcommittee held a hearing on the bill. On June 7, 2012, the Full Natural Resources Committee met to consider the bill. The Subcommittee on National Parks, Forests and Public Lands was discharged by unanimous consent. No amendments were offered and the bill was then adopted and ordered favorably reported to the House of Representatives by a roll call vote of 24–18, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: June 7, 2012

Recorded Vote #: 3

Meeting on / Amendment: **H.R. 4094** – Adopted and favorably reported to the House of Representatives by a roll call vote of 24 yeas and 18 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA Chairman	X			<i>Mr. Heinrich, NM</i>		X	
<i>Mr. Markey, MA Ranking</i>		X		Mr. Benishek, MI	X		
Mr. Young, AK				<i>Mr. Lujan, NM</i>		X	
<i>Mr. Kildee, MI</i>		X		Mr. Rivera, FL	X		
Mr. Duncan of TN				<i>Ms. Sutton, OH</i>		X	
<i>Mr. Defazio, OR</i>		X		Mr. Duncan of SC	X		
Mr. Gohmert, TX				<i>Ms. Tsongas, MA</i>		X	
<i>Mr. Faleomavaega, AS</i>		X		Mr. Tipton, CO	X		
Mr. Bishop, UT	X			<i>Mr. Pierluisi, PR</i>		X	
<i>Mr. Pallone, NJ</i>		X		Mr. Gosar, AZ	X		
Mr. Lamborn, CO	X			<i>Mr. Garamendi, CA</i>		X	
<i>Mrs. Napolitano, CA</i>		X		Mr. Labrador, ID	X		
Mr. Wittman, VA	X			<i>Ms. Hanabusa, HI</i>		X	
<i>Mr. Holt, NJ</i>		X		Ms. Noem, SD	X		
Mr. Broun, GA	X			<i>Mr. Tonko, NY</i>		X	
<i>Mr. Grijalva, AZ</i>		X		Mr. Southerland, FL	X		
Mr. Fleming, LA	X			Mr. Flores, TX	X		
<i>Ms. Bordallo, GU</i>		X		Mr. Harris, MD	X		
Mr. Coffman, CO	X			Mr. Landry, LA	X		
<i>Mr. Costa, CA</i>		X		Mr. Runyan, NJ	X		
Mr. McClintock, CA	X			Mr. Johnson, OH	X		
<i>Mr. Boren, OK</i>				Mr. Amodei, NV	X		
Mr. Thompson, PA	X						
<i>Mr. Sablan, CNMI</i>							
Mr. Denham, CA	X						
				TOTALS	24	18	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 4094—Preserving Access to Cape Hatteras National Seashore Recreational Area Act

H.R. 4094 would require the Cape Hatteras National Seashore in North Carolina to be managed according to the Interim Protected Species Management Strategy/Environmental Assessment (Interim Strategy) issued by the National Park Service (NPS) on June 13, 2007, until the NPS issues a new final rule. Under the bill, that final rule cannot include additional restrictions on pedestrian or motorized access to the seashore beyond those in the Interim Strategy unless the restrictions are based on peer-reviewed science and the public has had the opportunity to review and comment on them.

H.R. 4094 would prohibit implementation of the existing final rule entitled “Special Regulations, Areas of the National Park System, Cape Hatteras National Seashore Off-Road Vehicle Management” and would invalidate the consent decree concerning use of off-road vehicles at the seashore, which was filed on April 30, 2008.

Based on information provided by the NPS, CBO estimates that the legislation would have no significant impact on the federal budget over the 2013–2017 period. Management of the seashore under the Interim Strategy would not require significant changes in NPS operations regarding the seashore.

CBO estimates that enacting H.R. 4094 would affect direct spending; therefore, pay-as-you-go procedures apply. Under the existing final rule, the NPS will charge fees (which are recorded in the budget as offsetting receipts) for off-road vehicle permits. Those fees would be available to be spent at the seashore without further appropriation. Those fees are not a part of the Interim Strategy; therefore, under the bill, the NPS would not collect or spend those fees. CBO estimates that the net impact of that change would not be significant. Enacting H.R. 4094 would not affect revenues.

H.R. 4094 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information provided by the National Park Service, CBO estimates that the legislation would have no significant impact on the federal budget over the 2013–2017 period.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to authorize pedestrian and motorized vehicular access in Cape Hatteras National Seashore Recreational Area.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 14, 2012.

Hand-delivered.

Hon. DOC HASTINGS,
Chairman, Committee on Natural Resources,
Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN HASTINGS: I am writing with respect to H.R. 4094, the “Preserving Access to Cape Hatteras National Seashore Recreational Area Act,” which the Committee on Natural Resources reported favorably on June 7, 2012. As a result of your having consulted with us on provisions in H.R. 4094 that fall within the Rule X jurisdiction of the Committee on the Judiciary, I agree to discharge our Committee from further consideration of this bill so that it may proceed expeditiously to the House floor for consideration.

The Judiciary Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 4094 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation, and that our Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues in our jurisdiction. Our Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-

Senate conference involving this or similar legislation, and asks that you support any such request.

I would appreciate a response to this letter confirming this understanding with respect to H.R. 4094, and would ask that a copy of our exchange of letters on this matter be included in the Congressional Record during floor consideration of H.R. 4094.

Sincerely,

LAMAR SMITH,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATURAL RESOURCES,
Washington, DC, June 14, 2012.

Hon. LAMAR SMITH,
Chairman, Committee on the Judiciary,
Rayburn HOB, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 4094, the Preserving Access to Cape Hatteras National Seashore Recreational Area Act. As you know, the Committee on Natural Resources ordered reported the bill on June 7, 2012. I appreciate your support in bringing this legislation before the House of Representatives, and accordingly, understand that the Committee on the Judiciary will forego action on the bill.

The Committee on Natural Resources concurs with the mutual understanding that by foregoing consideration of H.R. 4094 at this time, the Committee on the Judiciary does not waive any jurisdiction over the subject matter contained in this or similar legislation. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on the Judiciary represented on the conference committee. Finally, I would be pleased to include your letter and this response in the bill report filed by the Committee on Natural Resources, as well as in the Congressional Record during floor consideration, to memorialize our understanding.

Thank you for your cooperation.

Sincerely,

DOC HASTINGS,
Chairman.

DISSENTING VIEWS

Cape Hatteras National Seashore, on the Outer Banks of North Carolina, includes more than 30,000 acres of barrier islands. Established in 1937 and managed by the National Park Service (NPS), Cape Hatteras is the nation's first national seashore.

In 2007, the NPS completed an interim environmental review to assess whether motorized vehicle use on the beaches was endangering public safety or impacting threatened and endangered nesting shorebirds and sea turtles found in the Park. In 2008, the NPS was sued by groups alleging that the management plan put in place as a result of the 2007 process was woefully inadequate to protect those species.

Parties to the lawsuit, including the local counties who intervened in the case, eventually signed a consent decree providing for temporary management of the Seashore and protection for the imperiled species, until the NPS could complete a full environmental impact statement and final rule. The final rule was published in January and became effective February 15 of this year.

It is important to note that, despite the fact that the consent decree and final rule placed certain limits on motorized beach access, the numbers of park visitors, piping plovers and turtle hatchlings have all increased in recent years. Off-road vehicle use is still allowed in the park, albeit on fewer acres and at different times of the year.

H.R. 4094 would overturn the new rule, revert Park management to the 2007 plan and limit the effectiveness of any future rule. The legislation flies in the face of sound science, responsible rule-making and legitimate efforts to balance the competing demands placed on the Seashore's resources. The bill represents Congressional micro-management of a specific unit of the National Park System to the detriment of the Park. H.R. 4094 is an unwarranted intrusion on behalf of small but aggressive segment of the public who demand expansive access for off-road vehicles regardless of the impacts.

A far larger majority of the public supports the final rule; their wishes and the solid scientific work of the NPS and the courts should be respected. H.R. 4094 should be rejected.

EDWARD J. MARKEY.
RAÚL M. GRIJALVA.

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