

In The Matter Of:
U.S. Fish & Wildlife Service

In Re: Public Hearing
August 6, 2013

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US FISH AND WILDLIFE SERVICE
PROPOSAL TO DESIGNATE CRITICAL HABITAT FOR
NORTHWEST ATLANTIC POPULATION OF
LOGGERHEAD SEA TURTLES

PUBLIC HEARING

SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES
MARINE RESOURCES RESEARCH INSTITUTE AUDITORIUM

217 FT. JOHNSON ROAD
CHARLESTON, SOUTH CAROLINA

AUGUST 6, 2013

7:00 PM

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1 HEARING OFFICER THORNTON: Good
2 evening, everyone, and welcome to the public
3 hearing on the proposed rule issued by the US Fish
4 and Wildlife Service to designate terrestrial
5 critical habitat for the Northwest Atlantic
6 population of loggerhead sea turtles.

7 My name is Gerald Thornton. I'm
8 employed by the Department of Interior as an
9 attorney in the Office of the Field Solicitor in
10 Knoxville, Tennessee. The solicitor's office is
11 the house counsel for the Department of Interior,
12 so we represent the Fish and Wildlife Service and
13 the National Park Service and other Interior
14 Department agencies.

15 I'm the moderator or hearing officer
16 for tonight's hearing. I was asked to moderate
17 this hearing by the Fish and Wildlife Service, and
18 I have no role in the decisions to be made in this
19 proceeding. I am a neutral moderator for
20 tonight's public hearing. The decisions which
21 will come after tonight will be made by the US
22 Fish and Wildlife Service.

23 We're here tonight to receive your
24 input as citizens in the decision-making process
25 of the Fish and Wildlife Service. We want to hear

1 your comments, your questions, positive or
2 negative thoughts on the proposed rule, so that
3 the Service can make a well-informed decision.

4 Before we get into the public hearing
5 itself, I'd like to introduce some of the
6 representatives of the Fish and Wildlife Service
7 who are here on the panel with me, and also some
8 public officials who are in attendance.

9 In fact, we're honored to have Mayor
10 Bill Holtz, of the Town of Seabrook, who's over
11 here, and he's going to be speaking shortly.

12 But in addition to myself, there are
13 some other people up here at the table, and I'd
14 like to introduce them. First, to my right is
15 Mr. Jay Herrington. He's the field supervisor for
16 the US Fish and Wildlife Service, South Carolina
17 Field Office, here in Charleston, South Carolina.

18 On my far left is Ann Marie Lauritsen.
19 She's a Fish and Wildlife Service biologist for
20 the Fish and Wildlife Service in the North Florida
21 Ecological Services Office in Jacksonville,
22 Florida.

23 And to my immediate left is Lorna
24 Patrick, who is a Fish and Wildlife Service
25 biologist in the regional office in Atlanta,

1 Georgia, in the listing program.

2 All of these folks will have a role in
3 reviewing your comments and drafting responses to
4 the public comments and ultimately informing the
5 director of the US Fish and Wildlife Service
6 regarding final decisions to be made on this
7 critical habitat designation.

8 Now, as I indicated, the purpose of
9 this hearing is to provide interested parties with
10 an opportunity to participate in the
11 decision-making process. Your comments will be
12 considered before the Service completes its action
13 on the proposal to designate terrestrial critical
14 habitat for Northwest Atlantic population of
15 loggerhead sea turtles.

16 Again, I'd like to emphasize that no
17 decision will be made tonight, and these officials
18 who are here will not and cannot make any
19 substantive statements about the final outcome of
20 this proceeding. They're here to listen to you,
21 to listen to your questions, to listen to your
22 comments, to listen to your suggestions, which
23 will all be considered and evaluated by Fish and
24 Wildlife Service staff, along with the written
25 comments that will be sent in to the Service, and

1 this will all be processed into reaching a
2 decision.

3 After all the comments and questions
4 have been carefully evaluated, the staff of the
5 Service will inform the director regarding the
6 proposed critical habitat designation. The final
7 decision by the director of the Service, which
8 will include a lengthy explanation of the
9 decision, will be published in the federal
10 register, along with responses to all of your
11 public comments.

12 Now, regarding the economic analysis,
13 it's required, prior to a designation of critical
14 habitat, the notice for this hearing also
15 announced the availability of the service's draft
16 economic analysis on the effects of designating
17 terrestrial critical habitat for the Northwest
18 Atlantic population of loggerhead sea turtles.

19 So your comments are also welcome on
20 the draft economic analysis, which is available
21 online at www.regulations.gov. It's a very long
22 document, so we're not providing copies for
23 everybody tonight. Here's an example of it. It's
24 pretty thick. And there are some copies in the
25 foyer available if you wanted to thumb through one

1 tonight, but obviously, it's not something you can
2 read in a hurry. I'm hoping that many of you will
3 have already read it and come here with some
4 comments tonight.

5 Now, this hearing was scheduled to
6 start at 7:00, which we've done, and will continue
7 until 9:00. If more people show up and want to
8 speak, we will continue for a short while after
9 9:00, if we have to, to ensure that everybody who
10 has something to say will get a chance to say it.
11 If everyone who wants to speak has spoken, and
12 it's not yet 9:00, we'll hold the hearing open
13 until 9:00 anyway, because the public notice said
14 it would be open until 9:00.

15 And we're maintaining a written record
16 of tonight's proceedings, and to ensure that it's
17 an accurate record, we have a court reporter here
18 to record and transcribe all of your comments and
19 recommendations. Now, if you wish to receive a
20 transcript of the proceedings, you will have to
21 make arrangements directly with the court
22 reporter, and the court reporter, over here to the
23 right, is Mrs. Marie Bruegger.

24 Now, so that Mrs. Bruegger can hear
25 the comments from each speaker, please turn off

1 your cell phones, or mute them, and please hold
2 down the chatter while people are speaking.

3 Now, in the order of proceedings
4 tonight, we're going to have a brief presentation
5 first by Ms. Lauritsen over here about the
6 proposed rule, proposed terrestrial critical
7 habitat, which will have information about the
8 biology of the turtles and also some information
9 about the process that we're undergoing right now.
10 And as soon as she's finished, we'll go right to
11 your public comments.

12 Now, let me explain something about
13 what we mean by comments. There's two different
14 methods of providing comments into the record,
15 both oral and written. Each of these types of
16 comments will be considered equally -- they're
17 just as valuable -- in determining whether to
18 finalize a rule on critical habitat and what it
19 should say.

20 Again, no final decision will be made
21 tonight. Your comments are a necessary and
22 important part of this process and will be
23 considered in determining whether to finalize the
24 rule and to implement the proposed rule.

25 If you have written comments, please

1 submit them by mail or electronically.

2 Instructions for doing that are provided at the
3 speaker registration table, and I think many of
4 you picked those up.

5 Oral comments will be received tonight
6 from all interested speakers, from parties or
7 individuals speaking on behalf of interested
8 organizations who have expressed an interest in
9 speaking by completing the registration card.

10 Now, I have five registration cards
11 for people that want to speak. Is there anyone
12 else who wants to speak who's not filled out a
13 card?

14 So you can get one from this gentleman
15 in the back here.

16 Just a few little tips or ground rules
17 for better oral presentation. This microphone's
18 going to be placed in this little stand here, and
19 if you're not comfortable using the microphone
20 here right in the front, there's another one over
21 here at this speaker's podium. When you are using
22 the microphone, speak close to it so it'll pick up
23 your voice and you don't have to shout. It seems
24 to be a pretty good microphone.

25 So that we can accommodate everyone, I

1 don't think it's going to be much of a problem,
2 but I'm asking that initially, let's limit your
3 comments to eight minutes. There may be some
4 other people who come later who want to comment.
5 We want to make sure we have plenty of time.

6 And we have an automatic timer that
7 you can probably see over here. It has the green,
8 yellow, and red lights, and there's a small device
9 here in front of the microphone, so the speakers
10 can see it.

11 When you start speaking, we'll turn on
12 the timer, and it'll be green, when you have about
13 45 seconds left, it'll turn yellow, hinting it's
14 time to start wrapping things up, and at the end
15 of the time, there will be a little flashing red
16 light and a series of beeps, and the floor will
17 open, and you'll drop through.

18 Now, we don't expect you to stop in
19 the middle of a sentence, so please, if you've got
20 a sentence, finish it up, and just try to wrap it
21 up and be courteous of the person waiting to speak
22 behind you.

23 When you come up to speak, please
24 clearly state your name and spell it, so the court
25 reporter can get down correctly who you are. If

1 you're representing an organization, please state
2 the name of that organization and, if necessary,
3 spell that also. If you want to state your
4 address, you can, but you don't have to, but it
5 might be helpful for us to understand at least
6 what state or county you're from, so please state
7 that if you wish.

8 Now, just some little civic reminders
9 here. This is a civil rule-making proceeding
10 under the Administrative Procedures Act. It's
11 being held for purposes of presenting and
12 receiving information, and it should be conducted
13 in a civil manner. We ask that everyone be
14 courteous and respectful to each other and to the
15 panelists at all times.

16 Now, while we probably will have some
17 people who have substantial experience in public
18 speaking and are comfortable speaking, that's not
19 the case for everyone. Therefore, everyone is
20 asked to show courtesy for each speaker,
21 particularly if there's anyone who may have some
22 difficulty expressing himself or herself.

23 To ensure that the court reporter is
24 able to hear and record everything, and in the
25 interest of time, please refrain from making

1 comments or noises while another individual is
2 speaking, and also refrain from applause or boos
3 or hisses, and just be nice.

4 And if I haven't already told you,
5 mute your cell phone.

6 This hearing is not to be conducted to
7 allow personal attacks on people or groups with a
8 difference of opinion. It's not a debate.
9 Everyone who wishes to make a comment about the
10 proposed designation should be allowed to do so in
11 a nonadversarial atmosphere.

12 If I come to believe that you are
13 using your comments to make personal attacks or be
14 obnoxious, I'm going to interrupt you and ask you
15 to get back on track and, if necessary, yield the
16 microphone to someone else.

17 This is your opportunity under the
18 Constitution of the United States and federal law
19 to present your views on a matter of important
20 public policy, but again, we're not here to
21 debate, and it's not a dialogue.

22 If you have questions about this
23 designation, please ask them, but your substantive
24 questions will not be answered tonight by the
25 people who are here to hear what you have to say.

1 Your questions will be addressed and your comments
2 will be addressed in the written decision that
3 will be published in the Federal Register.

4 So again, we're not here to try a
5 lawsuit. There's not going to be a verdict. This
6 is just a civil administrative process for
7 obtaining facts and opinions and suggestions about
8 the merits of this proposal for the designation of
9 critical habitat for sea turtles.

10 So all of your comments should be
11 limited to the subject matter of this
12 presentation, which is critical habitat
13 designation for the sea turtles and to factors
14 which you believe relate to the decisions on this
15 issue, including discussion of the draft
16 environmental -- economic analysis.

17 So that means that comments on other
18 issues before the Fish and Wildlife Service or
19 other issues before the federal government are
20 simply not relevant or material to tonight's
21 discussion and would be a waste of time for those
22 who are here to address the issue that is before
23 the hearing, which is the critical habitat
24 designation.

25 So again, if I think you're drifting

1 away from the subject matter of the hearing, I'll
2 try to direct you back into the right direction.

3 So are there any questions about the
4 process before we get started? That's probably a
5 lot more than you wanted to hear.

6 Okay. Hearing none, I'd like
7 Ms. Lauritsen to go ahead with her presentation.

8 MS. LAURITSEN: Good night, everyone.
9 Thank you for coming.

10 My name is Ann Marie Lauritsen. I'm a
11 biologist with the North Florida Field Office.
12 I'm here to talk about the Northwest Atlantic
13 loggerhead terrestrial critical habitat proposed
14 rule, so I'm going to start --

15 Can everyone hear me in the back?

16 Okay. Great. So I'm going to start
17 my presentation talking a little bit about the
18 history of the loggerhead listing.

19 So loggerheads were originally listed
20 in 1978 as a single species world-wide, and they
21 were listed as threatened.

22 In August 2005, the Service and NOAA
23 Fisheries, which is also -- they also have
24 responsibility for turtles in the water, we did a
25 five-year review, and at that point, the

1 recommendation was to look at the loggerhead to
2 see if it can be divided into distinct
3 populations.

4 In August of 2009, we assembled a
5 biological review team, and at that point, they
6 identified nine distinct populations of that
7 loggerhead single species.

8 In September 22nd, 2011, both
9 services, NOAA Fisheries and Fish and Wildlife
10 Service, relisted the loggerhead into that nine
11 distinct populations. These are the listings, and
12 if you look at the red, the Northwest Atlantic
13 Ocean distinct population is the one that we're
14 going to focus on, which is the critical habitat
15 proposed rule.

16 So loggerheads, as you know, have a
17 very complex life cycle, so I'll go through that,
18 because when we look at their life stages, you can
19 see how complex and how we address each of the
20 threats in each of their life stages.

21 So as you've probably seen, walked
22 along the beach where you are, you've seen a
23 loggerhead nesting. So it starts off there, and
24 those nesting females are about 20 to 30 years
25 old, so they reach maturity.

1 And then you get the whole process of
2 the nest. 65 days later, they hatch out. You
3 have the hatchlings that head to the water. And
4 this slide here shows their migration, or what
5 happens when they get to the water, being out in
6 the water for a while, and then, if they're
7 females, coming back to nest.

8 So when we looked at the listing,
9 threats were something that was considered and how
10 it interacted with the number of loggerheads that
11 were present, so we looked at that pertaining to
12 the listing, the relisting of that distinct
13 population.

14 Threats were identified: Recreational
15 use, beach driving, predation, beach erosion,
16 climate change, habitat obstruction, beach
17 nourishment projects and some of those groin and
18 jetty projects which involve in-water and
19 shoreline alterations. Other threats included
20 coastal development, artificial lighting,
21 human-caused disasters -- oil spills and
22 hurricanes -- and the response to those disasters,
23 and then military training and testing.

24 So, now, the purpose of why we're here
25 is this loggerhead proposed rule for terrestrial

1 habitat, so I'll go through the history of that.
2 So under the Endangered Species Act, critical
3 habitat must be designated for any species, so
4 this was the process that is under the Endangered
5 Species Act, and following the rule, that's what
6 we did.

7 In the listing in 2011, we determined
8 that at that time, it was not determinable so that
9 we could then collect enough information, the
10 latest information, and do a comprehensive review
11 of what should be designated both terrestrial, the
12 beaches, and in the marine habitat.

13 So what is critical habitat? So the
14 term critical habitat -- and I have some words
15 here underlined, and I'll go into a little bit
16 more detail in later slides. But on the whole, it
17 is done for federally-listed species, both
18 threatened and endangered, and it is for specific
19 areas within the geographic area occupied by the
20 species, which in this case, loggerheads, they can
21 nest all along the beaches that you'll see in a
22 minute.

23 And at this time, it is listed, which
24 is found physical and biological features, and
25 I'll go into that in a little detail. In one, it

1 has to be essential for the conservation of the
2 species. So the purpose of putting a species on
3 the endangered species list is to eventually get
4 it off the list to the point of recovery, so
5 identifying conservation for the species in that
6 and also measure special management considerations
7 may be something that is considered in determining
8 critical habitat.

9 A lower part, the second part, is it
10 can be areas that are not within the geographic
11 range. We won't go into that, because
12 loggerheads, all areas in this proposed rule, are
13 occupied by the species.

14 So this is the geographic range of the
15 nesting Northwest Atlantic loggerhead. Go all the
16 way around. That's the geographic area, looking
17 at the nesting. Essential to the conservation of
18 the species, this is not something that is defined
19 by the Endangered Species Act or regulations, but
20 it does reflect the habitat needed to see that
21 species recovered and eventually taken off the
22 endangered species list.

23 An example of a special management
24 consideration or condition is lighting. Without
25 is in the first. The first diagram shows an area

1 without special management conditions, and then
2 with is where the lights are directed down and not
3 affecting or disorienting a nesting female or a
4 hatchling. So this is an example of a special
5 management consideration or protection.

6 So critical habitat is tied to the
7 physical and biological features. And we look at
8 the species on the whole. What does the species
9 need for recovery? It needs to eat. It needs to
10 reproduce. It needs to have a place to shelter or
11 cover. So specifically, this proposed rule is on
12 terrestrial habitat, and the loggerhead is tied to
13 the terrestrial, or the beaches, playing an
14 important part in their reproduction by laying its
15 nest.

16 So what we looked at for the physical
17 and biological features is what would support the
18 nesting of the loggerhead. So the first thing is
19 allow a successful near-shore approach from the
20 ocean to the beach without obstruction. The
21 second is sand that allows a suitable construction
22 of that nesting cavity, the hole that they have to
23 dig to put the eggs in, and then sand that allows
24 successful incubation, or that time when they go
25 from egg to hatch out to hatchlings, and then

1 sufficient darkness to make sure that those
2 nesting turtles reach the water and get where they
3 need to go as quickly as possible. So these were
4 all features that were considered when looking at
5 critical habitat.

6 So during the selection process for
7 critical habitat, of course, again, tied to the
8 nesting beach, it needs sand, it needs dry sand
9 and not extra tile or sandy beach. We looked
10 at -- again, linking it to the conservation and
11 recovery of the species, we looked at areas that
12 support high-density nesting beaches as well as
13 areas that support expansion of those high-density
14 nesting beaches.

15 One thing that we looked at as well is
16 the loggerhead, the Northwest Atlantic distinct
17 population, is divided into recovery units, so
18 what you'd find here, this box that you fall into,
19 Georgia, South Carolina, and North Carolina,
20 belongs to the Northern Recovery Unit. So that
21 distinction was made based on specific genetics of
22 the loggerhead, showing that these females that
23 nest in this area belong, and they would come back
24 to nest in this area, so that makes these beaches
25 important to those females. And same thing for

1 the Florida beaches. You have the Peninsula
2 Florida Recovery Unit and then the Northern Gulf
3 of Mexico Recovery Unit.

4 When we looked at the selection
5 process, we looked at these recovery units and
6 tried to ensure that when we designated critical
7 habitat, we were allowing for the spatial
8 distribution of the nesting range, so in this
9 case, we looked at the nesting densities by state.

10 And in looking -- information provided
11 by your state and working with our state partners,
12 as well as those of you -- I know I met a few of
13 you that are out there doing nesting surveys, and
14 that information has been very beneficial to
15 looking at the population as a whole. So we
16 looked at those densities and selected the top
17 25th percent of the highest density beaches that
18 there were in South Carolina. Same for North
19 Carolina and Georgia.

20 So this is where it fell in. So more
21 than 13.97 nests were considered high nesting
22 densities, and then the other, as I mentioned
23 before, adjacent areas are areas that supported
24 those high density. In case the high density
25 beaches were lost, this would act as a rescue

1 effect for those turtles.

2 So the proposed rule on the whole has
3 739 miles and 90 units designated, or proposed
4 designated. The ownership is federal lands
5 19 percent, state 21 percent, and private and
6 local governments/others 60 percent.

7 As you've seen in the maps and from
8 reading the proposed rule, 22 of those units are
9 within South Carolina, making up 79 miles, and
10 this is how those units were distributed, so they
11 were named SC-01 to SC-22.

12 So the next phase which you see, as
13 Jerry was saying is open right now for the public
14 to comment on, is this Draft Economic Analysis.
15 So the ESA requires us to look at the best science
16 and make sure that we're doing -- we're using
17 that. However, in this designation, beyond the
18 biological needs of the species, we have to take
19 into consideration the economic impact, the impact
20 on national security, and other relevant impacts.

21 So this Draft Economic Analysis was
22 prepared by an independent consultant. They
23 contacted federal agencies/state agencies that
24 work through the consultation process, so agencies
25 such as the Corps, FEMA, they provided

1 information, as well as the Fish and Wildlife
2 Service, on estimating what the cost would be for
3 the designation looking at future projects. After
4 this comment period, they will incorporate the
5 comments received into the final rule all
6 together.

7 So what they found was that annually,
8 there was 150,000 total annually. Now, what this
9 reflects is an incremental amount or cost, because
10 the species as a whole is already listed, so
11 federal agencies must consult because the species
12 is listed. And within that process, a
13 determination of how that project will affect or
14 adversely modify critical habitat is part of that
15 consultation process, so that incremental change
16 is what they looked at in the economic analysis.

17 Areas that were proposed excluded were
18 areas that had HCPs. Again, it's part that was
19 proposed and then areas that were exempt. Part of
20 the Act is to exempt if there is a management plan
21 for Department of Defense installations, so in
22 this case, it included Camp Lejeune, Cape
23 Canaveral Air Force Base, Patrick Air Force Base,
24 and Eglin. Areas that were not included were
25 lower-density beaches and areas that did not have

1 those physical and biological features.

2 So what critical habitat does not do,
3 it does not create a wildlife refuge, a reserve,
4 or a park. I know I got a lot of questions on
5 whether this will restrict people's access to the
6 beach. It does not do that.

7 The second thing is will it affect
8 private landowners. Critical habitat is tied to
9 the Section 7 consultation process, and what that
10 process is is involving only federal agencies. If
11 a project, for example, a beach nourishment
12 project, can either be permitted by the Corps of
13 Engineers or funded by the Corps of Engineers,
14 that consultation process is where that Section 7
15 consultation occurs.

16 It does not create a new independent
17 review process, so it's all included in the
18 listing of the species and that consultation with
19 federal agencies that has to occur because the
20 species, the loggerhead, is listed.

21 So what is the regulatory impact? So
22 when we are looking at a project that would impact
23 loggerheads, if that project falls within
24 designated critical habitat, we have to do a
25 second look at whether that project would

1 adversely modify those physical and biological
2 features I was saying, so the features that
3 support good nesting, incubation, et cetera.

4 So regardless of whether there is
5 critical habitat or not, there is that
6 consultation process occurring, and this would
7 be -- this would look at how that habitat looks at
8 recovery of the species on the whole.

9 This is where we -- with a Section 7
10 consultation for a species, the loggerhead that is
11 currently listed without critical habitat, the
12 decision process, which will look at -- we look at
13 jeopardy, and you'll hear that word when we look
14 at whether this project is going to affect whether
15 the species can recover or not.

16 Well, the second determination within
17 that consultation process looks at whether that
18 project adversely modifies and does not allow the
19 recovery of the species, so it is within that
20 consultation process.

21 You're wondering if this is new.
22 We've designated -- there are other listed species
23 that have critical habitat designation. This
24 shows an overlap of some of the species already
25 designated with critical habitat. One in

1 particular is in your area, which is the piping
2 plover. You can see some of the overlap already
3 in areas that have piping plover critical habitat
4 and where the map of the proposed rule is for
5 terrestrial critical habitat for the loggerhead.

6 This slide, I know it's -- sorry you
7 can't see the words, but it is a list of projects
8 that occurred through consultation with the
9 Service, so I put this up to highlight that these
10 projects -- the highlighted projects occurred in
11 piping plover critical habitat, and I wanted to
12 show that because it didn't stop the project. The
13 project continued, even though there was piping
14 plover critical habitat within the time frame.
15 Section 7 process ensures that we have a 135-day
16 time frame, so these projects occurred within that
17 time frame.

18 Now, what's next? So the timeline of
19 the loggerhead critical habitat proposed rule, we
20 published the proposed rule in March, March 25th,
21 2013. We published the notice of availability,
22 which is open now for the Draft Economic Analysis.
23 Those comments will close on September 26th of
24 2013.

25 In the meantime, the NOAA fisheries,

1 which as part of -- as well as the listing for the
2 loggerhead, they looked at critical habitat for
3 the loggerhead in the water, and that is -- that
4 proposed rule for in-water is out there,
5 published, and available for comments on that, so
6 please take a look at that as well, if you're
7 interested in loggerheads, and look at what NOAA
8 Fisheries is proposing to designate in-water.

9 The plan is in a year or so, that both
10 the in-water proposed designations and the
11 terrestrial, the beach, will come together for a
12 publishing of the final rule and will come
13 together in one final rule.

14 And that's it for me. Thank you.

15 HEARING OFFICER THORNTON: Thank you.

16 Now, without further ado, we're going
17 to go right to the public speaking. And Mayor
18 Holtz, would you like to go first?

19 MAYOR HOLTZ: Thank you.

20 HEARING OFFICER THORNTON: And I
21 believe you said you wanted to use the microphone
22 over at the podium.

23 MAYOR HOLTZ: Unfortunately, yes.

24 How many people are from Seabrook
25 Island? Raise your hand. A few people. Thank

1 you.

2 I'm Bill Holtz. I'm the mayor of
3 Seabrook Island, and I'm speaking for the
4 community today, but the community is here. I
5 don't have to worry. They're very concerned.
6 They know their turtles. They know their
7 endangered species. They're very educated.

8 I'm going to try to stay with the
9 script, because if I get off the script, it won't
10 be very good.

11 I'm speaking for the community. I
12 want to thank the agency for opening up this
13 hearing for another 60 days. It originally ended
14 May 25th, and we asked for another hearing, just
15 to make sure we were heard. We have a concern.
16 (Inaudible.) That's another concern.

17 We are grateful that you brought the
18 hearings here in Charleston, because if you did it
19 out in Columbia, it'd be very sparse.

20 Seabrook Island is a gated residential
21 community located about 20 miles down the coast of
22 Charleston with a population of more than 1,700
23 full-time residents.

24 Oh, I forgot to introduce the mayor of
25 Kiawah Island next door. He's here too. They're

1 up to 370 nests.

2 In addition to Seabrook, the island's
3 governing bodies have many volunteer
4 organizations. We're a community that
5 appreciates, respects, and protects our incredible
6 natural surroundings. We insist our resort
7 visitors do the same. In short, we are an
8 extremely environmentally aware and active
9 community, and when it comes to turtles, we've
10 been doing it for 20 years.

11 I have a handout giving the statistics
12 on every egg and every turtle nest at Seabrook in
13 the last 20 years, and I can give it to you.

14 This is not the piping plover; this is
15 turtles we're talking about. And we seem to know
16 something about it. Not the town, the volunteers.

17 I'd like to focus tonight on one of
18 the most serious concerns about the rule initially
19 proposed. There are 70 pages of ruling that came
20 out. This was not a two-page document, it's a
21 70-plus-page document, and plowing through it and
22 understanding it was difficult.

23 We're concerned mostly about beach
24 maintenance and renourishment, our ability to do
25 that. I'll explain why in just a minute.

1 The language in that 70 pages is very
2 difficult to understand as to how you're going to
3 do beach nourishment and management. It seems
4 very restrictive on-season and off-season, and I
5 would like that clarified as much as possible as
6 to what you mean.

7 Let me go on just for a second.
8 Economic impact. In your message out to us, you
9 said the total economic impact of doing this is
10 \$1.2 million for the 90 beaches. Seems a bit low
11 to us. If our beach goes to hell, it's going to
12 be a lot more than \$1.2 million, so be careful
13 with the critical designation. We appreciate what
14 you're trying to do, but the danger is there. We
15 could really lose everything we built into
16 Seabrook Island.

17 Let me boast about Seabrook Island and
18 our record of protecting the loggerhead sea turtle
19 and why our final comments, which ask that
20 Seabrook Island be exempt from the critical
21 habitat designation, based in part because of
22 these efforts, both historical and ongoing. It is
23 important for you to understand the extent and
24 success of these efforts so you can appreciate our
25 concern about our ability to maintain our beach

1 and the nesting habitat of loggerhead.

2 We're hitting a record this year.

3 We're moving -- 80 percent of the nests have to be
4 moved to high ground, egg by egg. We have to fix
5 the beach. We're not concerned about the
6 lighting. We're not concerned about the
7 ordinances we have today in place, not concerned
8 about the guard we have patrolling the beach who's
9 an off-duty policeman. We're doing a lot of these
10 things, and we're open to an audit, and we're
11 doing a good job. The town has nothing to do with
12 it. These are volunteers, except that guard. We
13 pay for the guard.

14 And in addition to all the work the
15 turtle patrol does to protect the loggerhead nests
16 from tidal inundation, erosion, members walk the
17 beach, they clear debris that is dangerous to the
18 turtles, both nesting females and hatchlings, and
19 they work to educate residents and visitors.

20 In our newspaper this month is a
21 one-page article on this whole turtle patrol.
22 It's not meant for the people that live at
23 Seabrook; it's meant for the thousands of visitors
24 that come in August and July. They have to read
25 it, and they have to understand. It's written by

1 a turtle patrol person, not written by the mayor.
2 They educate. They work. They do the job.

3 And when we see 70 pages come out
4 saying you can do this and you can do that, we get
5 very hurt. We all show up at the meetings, say
6 what's going on, and we find -- I'm very happy to
7 talk to you in the lobby. I was assured that
8 you're not going to do all the things I think
9 you're going to do, but to read 70 pages, it's
10 tough.

11 And we're looking at beach
12 renourishment and access to the beach is the two
13 main things. The other stuff, we'll be -- we
14 should get an award for these people. Use part of
15 that \$1.2 million to give them an award, give them
16 a plaque for doing the job, rather than say no,
17 you can't do this. It's very simple.

18 Report all data about nests, including
19 the GPS of the nests, the number of eggs, the
20 resulting hatchlings to the South Carolina DNR.
21 We don't do this by ourselves. We're trained by
22 the State. This is not something we're going to
23 do, and we know we're the expert. They pass
24 courses. They work at it. These people, they're
25 wonderful. I can't say enough for them.

1 The number of nests this year is
2 already outpacing last year, with more than 68
3 already identified. I've covered this. It's
4 significant to know, however, that 80 percent of
5 this year's nests have been below the full moon
6 high-tide mark and had to be moved to higher
7 ground for eggs to survive. That can't continue.
8 We have to fix the beach.

9 Seabrook Island has approximately
10 3.5 miles of beach. As a management plan and in
11 compliance with the State of South Carolina
12 Beachfront Management Act, the eastern end of the
13 beach is subject to severe land loss due to
14 migration of Captain Sam's Inlet, which forms our
15 boundary with Kiawah Island.

16 In 1982, after years of inlet
17 migration, fully 85 percent of the oceanfront was
18 armored with a seawall, and there was little
19 nesting habitat. They relocated Captain Sam's
20 both in 1983 and 1996. We worked with a
21 consultant. We don't do this by ourselves. We've
22 worked with the same beach consultant for 20
23 years, very good.

24 Those projects, along with one
25 traditional nourishment project in 1990, have

1 restored large portions of the beach, creating dry
2 sand and dunes fronting the residential
3 development, establishing desired nesting habitat.
4 It is no coincidence that our beach prevention
5 efforts, our replenishment efforts correspond to
6 the increased loggerhead nesting.

7 It also follows that Coastal Science
8 and Engineering, as the consultant, found in its
9 May 2013 analysis that continued nesting success
10 will be dependent on periodic relocation of the
11 upcoast inlet, as well as transfer of sand to
12 areas where seawall has become exposed. These
13 essential projects, ironically, could be
14 significantly restricted --

15 Am I running over time?

16 HEARING OFFICER THORNTON: Yes, sir.
17 It's eight minutes. How much more do you have
18 there?

19 MAYOR HOLTZ: I've got two pages.
20 I'll cut -- I'll narrow it down to half a page.

21 UNIDENTIFIED SPEAKER: I'm from
22 Seabrook Island, and I'm entitled to eight
23 minutes, and I'm donating my eight minutes.

24 HEARING OFFICER THORNTON: We'll hear
25 the mayor out. Go ahead.

1 MAYOR HOLTZ: All right. Well, I'll
2 try to make it quick.

3 At present, the island is tied up in
4 litigation over the plan and already
5 federally-permitted relocation of the upcoast
6 inlet. That project should have been completed
7 this past spring, and as a result of its delay, we
8 have seen beach erosion at the rate of five to six
9 feet per month at the east end of the island.

10 We have a suit of a property owner
11 that was brought under state law. He drew upon
12 the critical habitat designation of piping plovers
13 in filing his suit. It's not you folks. You
14 agreed that we should do the inlet. It was on
15 your chart just now. Any individual can now sue
16 because it's a critical habitat.

17 And this particular gentleman didn't
18 like the boardwalk we built next to his house, and
19 he's using the beach as an excuse to get things
20 done. He's got a lot of money, and he's doing a
21 good job, and we're very sad, because another
22 critical habitat is about to be formed, and any
23 individual can say: I don't like it. I don't
24 care if the Fish and Wildlife like what you do. I
25 can sue you. And that's a problem. I don't know

1 how to solve that one. I don't think you know how
2 to solve that one.

3 You can understand our apprehension of
4 an additional critical habitat that could further
5 jeopardize our efforts to preserve our beach and
6 its development. It should be clear that the
7 final rule at entry seek renourishment. Then
8 beaches cannot be hamstrung by Fish and Wildlife
9 or other interested parties who use the
10 designation to force costly delays in permitting
11 and construction and take advantage of ambiguous
12 language in the rule and throw up unnecessary
13 roadblocks that require valuable time and
14 additional monies to address.

15 That's that 1.2 million. That alone
16 could be Seabrook. I know you're not looking at
17 it that way. You look at your dollars a different
18 way. That's what it costs you to do, but this
19 could cost us some money.

20 On that point, I know that the Army
21 Corps of Engineers comments on this proposed rule
22 in which the Army Corps expresses serious concerns
23 about the need for designation of critical habitat
24 on its congressionally-authorized projects and
25 dredging activities reports in navigation

1 channels. That's up in Washington.

2 Those comments also raise concerns
3 about the impact of the proposed rule on coastal
4 storm damage reduction projects, which could at
5 any time be a necessary resource for Seabrook
6 Island. I'd like to reference the expertise of
7 the Army Corps to bolster Seabrook Island's
8 position here, additional paperwork, consultation
9 for permitting under the proposed rule. We could
10 get in trouble again. We haven't gotten in
11 trouble. I'm looking ahead. This could come up
12 and hit us in the head.

13 Bottom line, if Seabrook Island can't
14 maintain its beach through acceptable nourishment
15 activities that do not tie us up in court and
16 break the bank during the permitting process, then
17 there will eventually be no nesting area for
18 loggerhead turtles. The 80 percent is going to go
19 to 100 percent if we don't fix the beach.

20 The final rule needs to be flexible
21 and acknowledge a variation in beach dynamics from
22 area to area. You can't be a one-size-fit-all for
23 90 beaches. That won't work.

24 As I said when I started the comments,
25 the Town of Seabrook did submit detailed comments,

1 and those comments, we ask that Seabrook Island be
2 exempt from critical habitat designation. I don't
3 think that's going to happen, but we're trying to
4 get it. We think we've earned it. In our
5 comments, we noted that Seabrook was real strong,
6 and we are already doing an excellent job of
7 protecting the loggerhead sea turtle. We further
8 noted, amongst the other things, that ordinances
9 adopted by the town and rules and regulations
10 adopted by the property owners cover most, if not
11 all, of the 12 listed special management
12 considerations or protections.

13 The environmental awareness of our
14 community is evidenced by its decision to join
15 Audubon International Sustainable Communities
16 Program. We're doing a whole lot of stuff. It's
17 not the town; it's the people that are doing it.

18 Since 1990 -- we've had the same lady
19 run the turtle patrol for 19 years. She's upset.
20 It's funny. She says: I've got to use my vehicle
21 on the beach. It's one of the things, that you
22 got to restrict vehicles. I said: No. They'll
23 let you use your vehicle. I says: They're not
24 going to be vindictive. They'll definitely let
25 you. It's the obvious -- the guys coming to beach

1 parties and things of that nature we don't need.

2 But they're very concerned. There's a
3 lot of concern, what does this mean when you say
4 this in your language, so be careful when you redo
5 this, you clean it up. Be very specific. If
6 you're going to use a vehicle -- to enforce
7 ordinances on 3.5 miles, you can use a vehicle.
8 If you use a vehicle to go to a nest and help it
9 relocate, you've got the expert to do that. Use a
10 vehicle. It's all permitted. No one goes on that
11 beach with a vehicle without a permit.

12 We remain extremely skeptical about
13 the potential benefit of a critical habitat
14 designation, given what we have done and continue
15 to do. We understand our beach is one of many
16 along South Carolina's coast, and it's key to the
17 success of the loggerhead turtle. Kiawah has a
18 bigger job than we do.

19 Accordingly, we strongly encourage the
20 agency to take into consideration our request for
21 exemption. If our request is denied, the Town of
22 Seabrook Island will work with Fish and Wildlife
23 and others to examine the viability of statutory
24 alternatives to the critical habitat designation.

25 Once again, I appreciate this

1 opportunity to speak for my community. Should
2 this panel or anyone at Fish and Wildlife have any
3 questions, please address them to me, and I'll
4 make sure the right person gets it.

5 But I really appreciate being here. I
6 appreciate you extending your time, which ended
7 May 25th, and you've given us another time to come
8 up here, and we just want to explain what we're
9 doing. We have handouts.

10 And thank you very much.

11 HEARING OFFICER THORNTON: Thank you,
12 Mr. Mayor. Appreciate your comments.

13 I'm going to move this microphone
14 around so if anybody wants to come right up front
15 here and talk.

16 The next person who had signed up was
17 Brent McDonald. Are you still intending to speak?

18 MR. MCDONALD: Sure. I'll be very
19 brief.

20 HEARING OFFICER THORNTON: Okay.
21 Thank you.

22 MR. MCDONALD: And you can hold me to
23 that.

24 HEARING OFFICER THORNTON: I've got my
25 hammer here.

1 MR. MCDONALD: My name is Brent
2 McDonald, and my firm, Smith Bundy, represents the
3 Town of Seabrook and represents the Town of Kiawah
4 as well.

5 And as I indicated, I'm going to be
6 very brief, but there are some important things
7 that we wanted to bring up, and it's not so much
8 always how you do something, it's in the details
9 of how you do it. And our concerns are limited to
10 the special management considerations that are
11 encompassed in the rule, as the mayor indicated,
12 that's 70 pages long, and I wanted to read a
13 sentence from it, starting out.

14 It's: We, Fish and Wildlife Service,
15 have determined not only that special management
16 considerations or protection may be required, but
17 that they are required, within critical habitat
18 areas, to address these threats to the essential
19 features of the loggerhead sea turtle terrestrial
20 habitat.

21 And it goes on to list 12 items that
22 you all have included in here as items that you
23 have determined are required within critical
24 habitat areas to address the threats, and our
25 concern is, quite simply, that those 12 items that

1 you've listed are going to be used as written to
2 challenge things not only in permitting, but in
3 citizen suits under the Endangered Species Act.

4 As the mayor alluded to, it does not
5 require just the federal government to come in and
6 tell you you can't do something or you can't have
7 a permit. Any citizen can use the language in
8 this document to say: I don't like it, and I'm
9 going to stop you from doing it. I'm going to
10 bring a suit against you.

11 And I'll bring up one example of what
12 happened. The mayor has indicated that the Town
13 of Seabrook has passed various ordinances. Well,
14 there was a town -- excuse me, a county in
15 Florida, Volusia County, that passed an ordinance
16 on lighting, and they were sued that the ordinance
17 wasn't good enough, and the United States District
18 Court found, and it was held up on appeal, that
19 they didn't have to pass the ordinance, but the
20 person that brought the suit was still the
21 prevailing party because the town changed their
22 ordinance and made it more restrictive for
23 lighting on the beach, and as a result, they were
24 forced to pay over \$200,000 in attorneys' fees.

25 And what we would submit, quite

1 simply, is the 12 items that are listed here are
2 going to be used much in that manner.

3 Recreational beach use, beach cleaning, human
4 presence, dogs on beach, special events, piers,
5 and recreational beach equipment. That's it.

6 That's all it says, as it's written here.

7 And the concerns that I think the
8 mayor has and the concerns that I think many of
9 these people have who have shown up here tonight,
10 not to speak for them, is that it's in the rule,
11 it's written here, and the fact that it's written
12 here, it creates uncertainty into the future.

13 And the reason that uncertainty, in my
14 humble opinion, is so important is because when
15 you all use language like: We have determined
16 they are required, when it goes forward in the
17 courts -- and make no mistake about it, I have no
18 illusions that the federal government doesn't have
19 its own bevy of lawyers that can go through this
20 language, but in my opinion, when it goes before
21 the courts, the history of the Endangered Species
22 Act and the opinions that I've read show that
23 they'll make that a per se taking of this animal,
24 and it's going to have an impact on the things
25 that are done on Seabrook Island, on Kiawah

1 Island, beach renourishment permits are going to
2 be an issue when you're left with this vague and
3 restrictive language, and we have serious concerns
4 about that.

5 We have concerns about the practical
6 effects on tourism. To the extent a tourist who
7 visits Seabrook Island after this rule is adopted,
8 which we hope that it is not, someone needs to
9 educate them that they shouldn't be on the beach
10 at night, and to the extent they're not thoroughly
11 educated, they're going to be in violation, it
12 would be our position, of the Endangered Species
13 Act, based upon what's written in this rule, and
14 the impact on tourism is going to be financially
15 felt by these communities, and we think it is
16 irresponsible to have these 12 items listed.

17 And albeit, not all of them are
18 applicable. Driving on the beach, we don't have
19 driving on the beach specific as you might find
20 down in Florida. We have some indications where
21 motorized vehicles may be used on the beach. I
22 don't represent Isle of Palms, but they use a
23 motorized vehicle on the beach from time to time,
24 the town does.

25 But as written, our concerns are that

1 these will be used as per se violations of the
2 Endangered Species Act, and they'll be used in the
3 challenge of permits by citizens, they'll be used
4 in bringing citizen suits, as I indicated in the
5 case in Volusia County, and they will be
6 detrimental as written.

7 And there are no answers in this
8 document. I know that there's been answers
9 provided here in the presentation about, well, it
10 won't affect beach use. It does affect beach use.
11 This is what the lawyers who are confronted with
12 attorneys' fees, provisions, and citizen suits, if
13 they are successful, like the lawyers in Volusia
14 County, can make hay of this type of language, and
15 we think it doesn't need to be in there.

16 In conclusion -- I said I would be
17 brief -- I can't stress enough the dedication and
18 commitment of these people that feel -- that do
19 turtle patrol, that aren't on turtle patrol, that
20 walk out on the beach and acknowledge the fact
21 that there's a turtle nest there, walk their kids
22 around it. I see it every day in South Carolina.
23 Every time I go to the beach, I see it. And I
24 don't believe that this is the best way of
25 accomplishing in our community what it is you seek

1 to accomplish.

2 I started off, it's not necessarily
3 what you do, but how you do it. What you're doing
4 is what it is, but how you're doing it is what the
5 concerns arise out of.

6 We live in a community where there's
7 islands that have constantly shoals coming on and
8 beach renourishment that's necessary. The legal
9 entanglement that arises out of this is going to
10 be a problem with this language. It's not when,
11 it's going to be.

12 And I appreciate -- as the mayor
13 indicated, I appreciate y'all's time. I know
14 constitutionally we're entitled to this, but
15 having said that, we do certainly appreciate your
16 time and allow us to come here and express the
17 significant concerns that we have with the rule as
18 written.

19 Thank you very much.

20 HEARING OFFICER THORNTON: Thank you,
21 Mr. McDonald.

22 The next speaker is -- is it Nicole
23 Elko? How do you pronounce your first name?

24 MS. ELKO: Nicole.

25 HEARING OFFICER THORNTON: Nicole,

1 Nicole Elko.

2 MS. ELKO: Thank you. Good evening.
3 My name is Nicole Elko, and I am with the American
4 Shore and Beach Preservation Association, the
5 ASBPA.

6 We are an organization of over a
7 thousand members all around the world, actually,
8 but most of our constituents/our members, are
9 local communities, very similar to Seabrook, who
10 are dealing with beach erosion issues, so our
11 members are very fond of their beach restoration
12 projects, and they're also very fond of their
13 loggerhead sea turtles.

14 We are -- our members, aside from the
15 communities, also include coastal zone management
16 experts from academia, government agencies, and
17 private industry and other organizations, and like
18 I said, we strongly support management approaches
19 to protect the threatened loggerhead sea turtle.

20 So what I would like to address
21 tonight, obviously, is, like the others, one of
22 the lists -- or one of the items on the list of
23 primary threats is, as you saw in Ann Marie's
24 presentation, beach sand placement activities, in
25 other words, beach restoration. And it's

1 interesting that that threat really is the only
2 one on that list that's also a tool in habitat
3 restoration, habitat preservation.

4 So we acknowledge -- or we are very
5 proud of the fact that the ASBPA supports these
6 federal projects that have taken communities, due
7 to the mistakes of our forefathers and our
8 predecessors, communities that had their beaches
9 eroded to the seawalls, and they have now been
10 restored to a thriving beach ecosystem once again.

11 So the beach placement activity is
12 that intermittent -- reoccurring, yes, maybe every
13 five to ten years -- intrusion, a very physically
14 intrusive process of beach restoration and
15 construction, but the benefit is that five to ten
16 years in between of a natural habitat, so the
17 goal, obviously, being to restore the beach
18 ecosystem.

19 So our concerns -- our members'
20 concerns are very similar to those of the two
21 voiced previously. What are the implications on
22 these projects, and how will this affect our
23 ability to restore these ecosystems in the future.
24 And we have already -- our organization has
25 already submitted comments in the previous written

1 comment period, and I do thank you for bringing
2 the meeting here to Charleston. You're going to
3 hear from the ASPBA again in the next two evenings
4 that you have ahead of you.

5 So the concern I'll address tonight is
6 in reference to the economic analysis, and the
7 economic documentation suggests that the final
8 determination regarding the special management
9 considerations will be made at the time of the
10 individual consultations, so it seemed that the
11 economic analysis suggested that there is some
12 undetermined economic impact that will occur on a
13 case-by-case basis.

14 The documentation suggested that those
15 costs were too speculative and would likely be
16 minor, and our members are concerned that they
17 will -- the costs will be likely, and they will
18 probably be significant.

19 So the costs that I'll address tonight
20 involve the three aspects of a beach restoration
21 project: The first is that feasibility permitting
22 phase, the second is the construction phase, and
23 the third is the monitoring phase.

24 I also should have mentioned that in
25 ASBPA's mission, it states that we support

1 scientific data and using science to guide policy
2 decisions, so I told you that our board has a lot
3 of academics on it, and we're very -- we have a
4 lot of experience, and we have a lot of academics
5 who have a lot of experience with beach
6 restoration, that we want to share our scientific
7 expertise with you in this determination.

8 So we'll look at some specific
9 examples. The first example I'll give you, it's
10 from here in South Carolina, and it addresses the
11 permitting period of the project as well as the
12 monitoring period. And what we're going to do is
13 compare a critical habitat designation for the
14 piping plover, so we have an actual example of
15 another critical habitat designation for a
16 different species and kind of try to get an idea
17 of what type of economic impact there might be on
18 a future project, and this is the Captain Sam's
19 relocation project.

20 So the community had to provide
21 additional supporting environmental documentation
22 in the initial consultation during the permitting
23 period, and that introduced some significant
24 additional costs, and then, of course, the project
25 has been delayed now due to lawsuits, which is

1 another issue that I don't think I need to
2 address. Thank you to the others who have already
3 done that. And then in terms of the monitoring,
4 the permit incorporated special monitoring
5 conditions that also increased the cost.

6 So just in terms of permitting and
7 monitoring, you're looking at about a 50-percent
8 increase in costs for this project, due to a
9 critical habitat designation of a different
10 species.

11 Now, the other example that I'll give
12 you tonight is in relation to the construction
13 element of these projects, and as you know, these
14 projects are extremely -- beach restoration
15 projects are extremely expensive to construct.
16 Fortunately, the tourism economies that they
17 bolster are orders of magnitude larger, so the
18 cost benefit analysis does work out. But the
19 concerns for these projects, which can range from
20 10 to \$80 million for a construction project, the
21 concern of the communities there has to do with
22 additional restrictions that will be placed on
23 construction.

24 So shortened dredging windows is a big
25 concern. Will we only be allowed to dredge in the

1 wintertime now, and not at all during loggerhead
2 turtle nesting season? So if that is the case,
3 then the North Carolina/Wilmington District of the
4 Corps of Engineers, for example, is speculating
5 some future costs, and they're looking at how much
6 it's going to cost to mobilize dredging equipment
7 over multiple years, because let's say it's a
8 ten-month-long project that can't be completed
9 within the designated dredging window, then
10 they're going to have to bring the dredging
11 equipment in, which is over a million dollars for
12 mobilization alone, construct during the time
13 period where they can, but then they're going to
14 have to demobilize during nesting season and then
15 come back, so you're adding these additional
16 mobilization costs, introducing millions of
17 dollars of additional costs.

18 Then there's the supply and demand
19 question. That's the second of three items under
20 the dredge window's concern. The dredging fleet
21 in the US right now, it does a pretty good job in
22 terms of competition and providing competitive
23 bids for these projects, but if they're only
24 allowed to restore beaches during the winter
25 season, then there will be a significant

1 supply/demand issue, and it will drive up costs.

2 We saw a similar example to that after
3 the 2004 hurricane season in Florida when a lot of
4 demand was placed on the dredging industry. That
5 resulted in a 20-percent increase in project
6 construction costs.

7 And then finally, just dredging in the
8 winter is more expensive than dredging in the
9 summer. The conditions are rougher, so
10 contractors incorporate a lot more down time into
11 their bids, and we've seen that the costs for
12 winter dredging versus summer dredging can also
13 increase costs around 15 percent.

14 So based on some different projects
15 that we've looked at, kind of a rough economic
16 analysis, we're estimating that these restrictions
17 on dredging windows could increase costs from 15
18 to 40 percent.

19 And this is my final couple of
20 sentences.

21 HEARING OFFICER THORNTON: Okay.

22 MS. ELKO: So an increase in 15 to
23 40 percent, even if it's a 20-percent increase on
24 a \$50 million project, is a significant cost
25 increase. These are federal, state, and local

1 dollars. This is public money we're talking about
2 here.

3 So those are the concerns of our
4 association, and we have, again, a lot of
5 scientists on our board and as members, and we
6 want to work with you to come up with these type
7 of numbers. We've got so much experience doing
8 these projects, hundreds of years of combined
9 beach nourishment experience, and we hope to share
10 with you our experiences and work on an economic
11 analysis together.

12 HEARING OFFICER THORNTON: Thank you,
13 Ms. Elko.

14 MS. ELKO: Thank you for your time.

15 HEARING OFFICER THORNTON: Our next
16 speaker is Bill Middleton. Mr. Middleton? You're
17 welcome to use this microphone.

18 MR. MIDDLETON: I'll go where
19 everybody else goes.

20 I'm happy to see so many of my
21 Seabrook friends here. My name is Bill Middleton.
22 My address is 2802 Mallard Lake Drive, Johns
23 Island.

24 I here am approaching this from a
25 little bit of a different perspective. My wife

1 and I have both served on the turtle patrol here
2 on Seabrook Island for more than ten years, and it
3 would seem to me that if you look at any type of
4 person that would stand before you and say they
5 are not in favor of the Endangered Species Act, it
6 certainly would not be us, because we obviously
7 are in favor of the preservation of the loggerhead
8 sea turtle.

9 However, I find it rather interesting
10 when I read through some of the prohibitions that
11 are listed in the regulation that really create a
12 problem for the residents on Seabrook Island, as
13 well as the loggerhead turtle.

14 One of the most prominent nesting
15 sites on Seabrook Island was North Beach. That
16 North Beach nesting site is no longer existent,
17 for all practical purposes. We have had to move
18 approximately sea turtles that nested on one mile
19 of our beach further up the beach so that they're
20 able to survive.

21 We've been most successful with our
22 sea turtle patrol over the past 19 years, and I
23 would hope that it would continue to perpetuate
24 itself in that respect. However, looking at some
25 of those regulations, they may preclude us from

1 doing just that.

2 Let's take a look at the renourishment
3 of the beach. Now the renourishment of the beach,
4 as Nicole had just expressed, there's a
5 regulation, a prohibition in there about that, and
6 yet there seems to be a contribution, because if
7 you go back and read the previous regulation, it
8 stipulates that you could put a groin in to
9 preserve the loggerhead sea turtle nesting area,
10 but you're not able to renourish the beach, so
11 there's something wrong with that.

12 Now, I was very pleased when I saw
13 that there was an economic survey that was done.
14 I actually thought it was based on the communities
15 of which the regulation would affect, but
16 unfortunately, that was not the case. That was
17 just the effect for the regulatory bodies. And if
18 you add all the ones up for South Carolina, they
19 probably would not be equivalent to one lot that's
20 on Seabrook Island.

21 My concern also has to do not only
22 with the sea turtles, but the people. Now, if we
23 are not able to renourish our beach and have to go
24 through all kinds of regulations to get permits to
25 do it, as Nicole expressed, similar to what has

1 happened with the piping plover, then people's
2 property are at stake. You're taking away
3 personal freedoms from individuals, and you are
4 taking away property rights.

5 I stand before you here being a victim
6 of Tropical Storm Sandy. We lost a tremendous
7 amount of our beach on Seabrook Island from Irene,
8 and then we had Sandy. Well, on the Jersey Shore,
9 where I grew up, my house had water in it in my
10 shower up to my chest. That house had not flooded
11 in 94 years. The only thing that saved the
12 property there was the dunes on the beach.

13 If I were a property owner and lived
14 on the beach on Seabrook Island or even over there
15 by Captain Sam's, I would be furious about what
16 has transpired on the beach because of the lack of
17 the ability to renourish the beach when it should
18 be renourished. The next storm that comes there
19 by Seabrook, tropical storm, a lot of those houses
20 will be in jeopardy.

21 So not only are you affecting the
22 loggerhead sea turtle, but you're affecting those
23 properties and the people that are in proximity to
24 it. And some people may think, well, you know
25 what, I'm pretty safe. Well, guess what, Super

1 Storm Sandy, people one mile back from the ocean
2 had water in their houses. So without the ability
3 to renourish the beach, if it's impeded by the
4 regulations contained in the Sea Turtle Act, then
5 we are placing ourselves in jeopardy.

6 I'm hoping that what you would do with
7 these 12 prohibitions, that you would go back and
8 be specific. For example, say that the beach may
9 be nourished. Say that you could put a revetment
10 in there if it's necessary to preserve personal
11 property. Say that vehicles can be used with
12 permitting or provisions that are established by
13 the locality in which you live.

14 You look at people who want to use the
15 beach, talk about the economic impact. Almost the
16 entire budget from Seabrook Island is based upon
17 the accommodations tax. Well, if we have no
18 people coming to the shore, what happens to the
19 town revenue? How about the people who rent their
20 properties on Seabrook Island? What happens to
21 those individuals?

22 And that is repeated throughout the
23 whole shore, from North Carolina all the way down
24 to -- how far does it go, to Mississippi, the
25 regulation here? Okay. That's repeated right

1 along the coast. Where does the economy come, if
2 not from the tourists attending, right, visiting
3 the shore.

4 People like to walk at the beach. Now
5 it says in here if you walk at the beach, that
6 might leave footprints that could possibly disturb
7 the sea turtle. Well, I watched one the other day
8 that went right over a giant castle and laid a
9 nest, right. So yeah, that might impede them
10 somewhat, but not to any great extent.

11 Now, granted, the hatchlings may get
12 caught up, but unless you're really going pretty
13 deep in the sand, most of our beaches, the other
14 thing, are low-tide beaches. Almost everything
15 gets washed all the way up to the dune. So people
16 are not walking on the dunes, they're walking on
17 the low-tide beaches. If we can't replenish our
18 beaches, we may not have any, right, and that's a
19 big issue.

20 The other thing I think, when you look
21 at the renourishment and refurbishment of beaches,
22 as the mayor said, I think in '83, we had a
23 renourishment done and then again in '96. That's
24 13 years. That's a lot of time to provide turtle
25 habitat. We're not providing any habitat where

1 they previously used to be. We lost three lines
2 of dunes on that North Beach section, 1996, they
3 did it again. Now what's it going to be, 17 years
4 later, we're cutting it again. Now, that's not
5 too soon, in my opinion, right, probably should
6 have been done just a little bit earlier than
7 that.

8 So I guess the whole thing boils down
9 to looking at the consequences that are actually
10 contained in the provisions that you have and what
11 the Bundy Law Firm explained restricted what
12 you're actually able to do. I don't think we need
13 to put ourselves in a position where we make any
14 type of regulation so restrictive that it denies
15 people the opportunity to enjoy themselves and
16 increase the tourism that we presently need in
17 order to maintain our towns and communities.

18 I, for one, am very in favor of the
19 loggerhead sea turtles, as well as I'm sure many
20 people on Seabrook Island, and we are thanked
21 almost daily every time we show up on the beach to
22 move a nest or to be able to take care of whatever
23 happens during the inventory of the nest, as well
24 as the education that is performed for those
25 individuals who happen to be there seeing it.

1 With that, I'll stop, and thank you
2 very much, sir, for your opportunity to make a
3 presentation, and I would hope that you would look
4 at those 12 prohibitions and see if you can't put
5 more specific language in there, instead of just
6 generalities that may create more problems for the
7 people in the local communities.

8 HEARING OFFICER THORNTON: Thank you,
9 Mr. Middleton.

10 MR. MIDDLETON: You're welcome.

11 HEARING OFFICER THORNTON: We've been
12 sitting for an hour and 15 minutes. I think I'd
13 like to call for about a ten-minute break, so if
14 you want to stretch your legs, run to the
15 restroom, we'll come right back at 8:25.

16 MR. MORGENSTERN: That doesn't come
17 out of our speaking time, does it?

18 HEARING OFFICER THORNTON: No, it
19 doesn't.

20 (A recess transpired.)

21 HEARING OFFICER THORNTON: Folks, can
22 we come back to order? Please take your seats,
23 and we'll continue.

24 Our next speaker is Mr. Art
25 Morgenstern.

1 MR. MORGENSTERN: Thank you.

2 My name is Art Morgenstern. I'm a
3 resident of Kiawah Island. I am not speaking on
4 behalf of any organization; I'm speaking on behalf
5 of myself and my family.

6 First of all, I want to thank you
7 again for having the hearing here in Charleston,
8 but I have a few comments about the proposal.
9 Number one, I suggest that in your final rule, you
10 clarify the definition of the controlled area to
11 include not just the beach areas, but also the
12 inlets between the islands. Specifically, when
13 you've talked about Kiawah and Seabrook and the
14 other areas, you've defined the beachfront and not
15 the inlets.

16 Just this past weekend, my children
17 and grandchildren saw loggerheads swimming up the
18 Kiawah River, up the Captain Sam's Inlet, so
19 clearly, at least, this is -- there's no more data
20 we have than just what we saw this past weekend.

21 Clearly, the inlets are part of the
22 habitat for the loggerheads, and they also provide
23 some food sources, so we strongly suggest that you
24 clarify to include inlets, not just the
25 beachfront.

1 Secondly, when you talk about coastal
2 development and habitat obstructions, you
3 concentrate on permanent structural obstructions,
4 not necessarily temporary ones.

5 And thirdly, we suggest that you
6 comment on the timing of applicability of any
7 final regs that you come up with.

8 My understanding, from talking to some
9 of the staff people here, is that given that the
10 definition of critical habitat is still in flux,
11 it is possible that there may be a reexamination
12 of any permits that may have been granted in the
13 past, so long as there have been -- there have not
14 been any actions taken based on any permits, in
15 other words, as long as there have not been any
16 structures built, that any new rule-making be
17 reconsidered and be applicable again to any
18 actions that are considered, but not yet put in
19 place.

20 Those are our comments. I think we
21 and many of our neighbors are interested in
22 maintaining habitat for loggerhead and other
23 threatened species, and we are glad that you're
24 undertaking this exercise and encourage you to
25 consider at least these points that we're making

1 today.

2 Thank you.

3 HEARING OFFICER THORNTON: We will,
4 indeed. Thank you, Mr. Morgenstern.

5 And the final signed-up speaker is
6 Katie Zimmerman. Ms. Zimmerman?

7 MS. ZIMMERMAN: Thank you for holding
8 this hearing. My name is Katie Zimmerman. I am
9 the program director for the Coastal Conservation
10 League's Air and Water Quality Program, and I just
11 wanted to speak tonight in support of the proposed
12 regulation, habitat designation regulation.

13 And actually, one thing that we urge
14 you to also consider as you're finalizing this
15 rule is to add more nesting beaches, upland areas
16 and unoccupied habitat areas, to the proposed
17 designation to make it a little bit stronger and
18 encompass the areas that loggerheads are most
19 likely heading to as we're experiencing sea level
20 rise and increased storm events and increased
21 coastal development, which never seems to slow
22 down.

23 We also are supportive of the National
24 Marine Fishery Service's recent proposal to
25 designate critical waters near those beaches.

1 And finally, just based on the
2 comments tonight, I do think it's important to --
3 particularly, every state needs to do this, but
4 since we're in South Carolina, I'm speaking about
5 South Carolina. We really need to figure out what
6 our policies are going to be and what our plan of
7 action is going to be going forward as we continue
8 to see increased storm events.

9 I'm not quite sure that it's the
10 loggerhead's responsibility to figure out a way to
11 get us out of our situation, and so we're going to
12 really need to come up with ways to properly
13 protect our beaches using soft structures, not
14 hard structures, look at the way we're
15 renourishing beaches and how we're funding those
16 renourishments and looking at what structures are
17 in areas, and I'm actually thinking particularly
18 of Folly Beach, with some structures in some areas
19 that maybe already are in violation of some of the
20 funding efforts that are going that way.

21 So I would actually urge you all to
22 really focus on, as you have, this is habitat, and
23 it's important for the continued success of the
24 loggerhead turtle. Any sort of stress is going to
25 affect the success and viability of their young,

1 and I wouldn't put all of the stressors that we
2 have created as far as solving our coastal
3 management issues on this one species.

4 So thank you.

5 And I actually have my comments in
6 writing. Should I give them to you all and also
7 post them online?

8 HEARING OFFICER THORNTON: It would be
9 better if you'd submit them electronically on the
10 Website. Did you get the listing out there?

11 MS. ZIMMERMAN: I have it. Thank you.

12 HEARING OFFICER THORNTON: Thank you
13 very much.

14 It's time for an altar call. Is there
15 anyone else that would like to speak before we
16 suspend the hearing for a while?

17 We're going to hold the record open
18 until 9:00, so if the spirit moves you, let me
19 know, but hearing no one wanting to speak at the
20 moment, we will suspend the hearing until 9:00 or
21 until someone says they want to speak. Thank you.

22 And I want to thank all of you. I
23 know some of you will take this opportunity to
24 leave, and I want to thank you very much for your
25 kindness and patience and consideration of each

1 person who spoke. I think you've been a wonderful
2 audience, and this is a great example of public
3 participation under our nation's laws and
4 Constitution, so I thank each of you for your
5 kindness and consideration tonight.

6 (A recess transpired.)

7 HEARING OFFICER THORNTON: It's now
8 9:00, and there's no one left in the room to
9 speak, and so I pronounce this hearing officially
10 closed.

11 (The hearing was concluded.)

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1 CERTIFICATE OF REPORTER
2

3 I, Marie H. Bauer, Registered
4 Professional Reporter, Certified Realtime
5 Reporter, and Notary Public for the State of South
6 Carolina at Large, do hereby certify that the
7 foregoing transcript is a true, accurate, and
8 complete record.

9 I further certify that I am neither
10 related to nor counsel for any party to the cause
11 pending or interested in the events thereof.

12 Witness my hand, I have hereunto
13 affixed my official seal this 9th day of August,
14 2013, at Charleston, Charleston County, South
15 Carolina.
16
17
18
19
20

21 _____
22 Marie H. Bauer
23 Registered Professional
24 Reporter, CCR
25 My commission expires
April 18, 2021

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