

U.S. FISH AND WILDLIFE SERVICE

DRAFT ECONOMIC ANALYSIS & PROPOSED TERRESTRIAL  
CRITICAL HABITAT - NWA LOGGERHEAD SEA TURTLE  
AUGUST 7, 2013 - USFWS PUBLIC HEARING

UNIVERSITY OF N.C. AT WILMINGTON  
WC WARWICK BALLROOM 5  
601 SOUTH COLLEGE ROAD  
WILMINGTON, NORTH CAROLINA

AUGUST 7, 2013

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U.S. FISH AND WILDLIFE SERVICE HEARING PANEL MEMBERS:

MR. GERALD A. THORNTON, MODERATOR

MR. PETE BENJAMIN, FIELD SUPERVISOR

MS. ANNE MARIE LAURITSEN, BIOLOGIST

MS. LORNA PATRICK, BIOLOGIST

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1                   COURT REPORTER'S NOTE: The Public Hearing for  
2 the Loggerhead Critical Habitat convened at 7:00 p.m. at the  
3 University of North Carolina at Wilmington, WC Warwick  
4 Ballroom 5, 601 South College Road, Wilmington North  
5 Carolina.

6                   MR. GERALD A. THORNTON: I think we'll go ahead  
7 and start. Welcome to this public hearing. My name is  
8 Gerald Thornton. I'm a -- an attorney with the Office of  
9 Field Solicitor of the U.S. Department of the Interior from  
10 Knoxville, Tennessee, and I've been asked to chair this  
11 public hearing. I'd like to welcome you here. This hearing  
12 is on the proposed rule issued by the U.S. Fish and Wildlife  
13 Service to designate terrestrial critical habitat for the  
14 Northwest Atlantic population of loggerhead sea turtles. Can  
15 everyone in the back hear okay?

16                   AUDIENCE: No.

17                   MR. THORNTON: No? I see a thumbs up. Okay.

18                   AUDIENCE: It could be louder.

19                   MR. THORNTON: Could be louder? Miya, can you  
20 make it just a little louder. Okay. Testing. Testing.  
21 How's that? As I told someone before, you know, we're not in  
22 church, so you don't have to all sit in the back. You can  
23 move up. There's lots of seats up here in the front.

24                   AUDIENCE: It's plenty loud up here.

25                   MR. THORNTON: Okay. All right. I'm the

1 moderator or hearing officer for tonight. I was asked by the  
2 Fish and Wildlife Service to do this task. And, personally,  
3 I have no role in the decision-making that will follow this  
4 meeting tonight. The decisions will be made by the U.S. Fish  
5 and Wildlife Service by a series of people, including the  
6 people who are up here with me tonight. We're here tonight  
7 to receive your input, as citizens, into the decision-making  
8 process of the U.S. Fish and Wildlife Service. We want to  
9 hear your comments, positive or negative, on the proposed  
10 rule, so that the Service can make a well-informed decision.

11 Before we get into it, I'd like to introduce the  
12 representatives of the service who are on the hearing panel,  
13 and also any public officials here in attendance. And I  
14 understand -- I know we have two or three mayors here  
15 tonight, and possibly some others who did not sign up to  
16 speak. So Mayor Harry Simmons, I believe you're here. Could  
17 you stand and be recognized. You'll be up here to speak  
18 shortly. Dean Lambeth, the Mayor of Town of Kure Beach, I  
19 believe is here. Grier Fleischhauer, a Commissioner from the  
20 Town of Topsail Beach. And are there other elected officials  
21 here that we can recognize? Please stand and identify  
22 yourself.

23 MS. JODY SMITH: I am Jody Smith. I'm on the  
24 Town Council at Carolina Beach.

25 MR. THORNTON: All right. Welcome.

1 MS. EMILIE SWEARINGEN: Emilie Swearingen, Town  
2 Council for Kure Beach.

3 MR. THORNTON: Okay.

4 MR. FRANK WILLIAMS: Frank Williams, Brunswick  
5 County Commissioner.

6 MR. THORNTON: Thank you.

7 MR. TOM BRIDGES: Tom Bridges, Carolina Beach  
8 Town Council.

9 MR. THORNTON: Okay.

10 MR. HOWARD BRAXTON: Howard Braxton, Mayor of  
11 Topsail Beach.

12 MR. THORNTON: Thank you.

13 MS. LINDA STIPE: Linda Stipe, I'm a  
14 Commissioner in Topsail Beach.

15 MR. THORNTON: Thank you.

16 MS. DEBBIE SMITH: Debbie Smith, Mayor of Ocean  
17 Isle Beach.

18 MR. THORNTON: Thank you. It's a good  
19 representation of the local community here.

20 AUDIENCE: One more at the door.

21 MR. THORNTON: One more at the door? We have  
22 another Mayor or elected official over here?

23 MR. BOB LEWIS: Yes. Bob Lewis; Mayor of  
24 Carolina Beach.

25 MR. THORNTON: Welcome. All right. And we have

1 a -- a number of speakers signed up tonight. And if you  
2 would like to speak and have not signed up, you can see this  
3 fellow in the blue shirt who just handed me this slip here.  
4 So we have, I think, about 14 people signed up at this point.  
5 And we're going to try to accommodate the elected officials a  
6 little bit, first, in the order.

7           But I'd also like to introduce the folks from  
8 the service who are up here on the podium with me. First of  
9 all, to my right is Pete Benjamin. He's a Field Supervisor  
10 for the Fish and Wildlife Services, North Carolina Field  
11 office in Raleigh. To my far left is Anne Marie Lauritsen.  
12 She's a Fish and Wildlife Service Biologist with the North  
13 Florida Ecological Services office in Jacksonville, Florida.  
14 To my immediate left is Lorna Patrick, who's a Biologist with  
15 the service regional office listing program in Atlanta,  
16 Georgia. These people will have a role in reviewing your  
17 comments and drafting responses to public comments, and  
18 informing the Director of the U.S. Fish and Wildlife Service  
19 regarding the final decision on whether to complete this  
20 rule, and if so, in -- in what form.

21           So, again, the purpose here tonight is for you  
22 to give input to us. Your comments will be considered in the  
23 Service's proposal to designate terrestrial critical habitat  
24 for the loggerhead sea turtle. Again, there will be no  
25 decisions made tonight. And these officials who are here

1 tonight will not and cannot tell you how this proceeding is  
2 going to come out. They're here to listen -- listen to your  
3 comments, your questions, your suggestions, which will have  
4 to be considered by them and evaluated, along with the  
5 written comments that are submitted towards reaching a good  
6 decision. These people will review your comments and make a  
7 recommendation to the Director, and the final decision will  
8 be published in the Federal Register with an explanation or  
9 response to all of the public comments.

10                   Now there was also an economic analysis that's  
11 required, along with the designation of critical habitat.  
12 And many of you may be aware of that. A draft economic  
13 analysis is available. It's a very thick document, so we  
14 didn't try to make copies available for everybody here  
15 tonight. But it's easily available at [www.regulations.gov](http://www.regulations.gov).  
16 Your comments, criticisms, suggestions regarding that draft  
17 economic analysis are also on the table tonight for your  
18 comments.

19                   This hearing is scheduled to continue until 9:00  
20 o'clock. If necessary, we'll go over that time a little bit  
21 to try to accommodate everyone who wants to talk tonight. To  
22 sure that -- ensure that there's an accurate and complete  
23 record of what happens here tonight, we've got a court  
24 reporter down here. I'd like to introduce Ms. Little. Linda  
25 Little is our court reporter tonight. Now, so that she can

1 hear what you have to say and whoever is speaking, we'd ask  
2 that the audience hold down the chatter and, you know, be  
3 courteous to the person who's speaking. If you want a  
4 transcript of tonight's proceedings, you'll have to see Ms.  
5 Little and arrange for that separately.

6           Okay. Now -- and the way we're going to order  
7 these proceedings is, first Ms. Lauritsen over here is going  
8 to make a short video -- not a video -- but a powerpoint  
9 presentation about loggerhead sea turtles and about the  
10 process that we're involved in here, and whether to  
11 designate critical habitat. As soon as she's done with her  
12 presentation, we'll go into your public comments. Now, after  
13 about an hour, we'll probably have a short break, so people  
14 can use the restroom or stretch your legs. If you haven't  
15 already figured it out, there's restrooms in the hallway  
16 right behind this meeting room.

17           Let me explain a little something about the  
18 public comments. There's two methods of commenting on the  
19 rule, of course -- the oral presentations you're going to  
20 make here tonight, and written comments. If you have lengthy  
21 comments, detailed comments, it's far better if you present  
22 those in writing. And you can do that either by old-  
23 fashioned mail, or you can send them through the Fish and  
24 Wildlife Service's website. And there are little slips of  
25 paper out on the sign-up table giving you that website for

1 presenting written comments.

2           And just a few comments on -- on how to make  
3 your comments. We have a -- a podium up here with a  
4 microphone, so come up when you're ready -- when your name is  
5 called to speak. And, stand close to the microphone. It  
6 should not be necessary to speak loud and shout or anything  
7 like that. The microphone will take care of that and Ms.  
8 Miya over here will help adjust the sound, if necessary. And  
9 we want to make sure that we do get a chance to hear from  
10 everyone who really wants to speak tonight. And, because of  
11 that and the number of people who've signed up, we're going  
12 to ask people to keep their comments to six minutes. We have  
13 a little timer that's sitting on top of the podium there, and  
14 it has green, yellow and red lights. And it'll be green  
15 during most of your comments, but for the last 45 seconds,  
16 it'll turn yellow. And then, you'll hit the stoplight -- red  
17 light when your time is up. We don't expect you to screech  
18 to a halt in the middle of a sentence. We'll give you a  
19 minute to finish up. But please try to hold it to the six  
20 minutes the best you can so that we can accommodate everybody  
21 who wants to speak.

22           When you come up to speak, please state your  
23 name and spell it, so the court reporter over here can record  
24 it correctly. If you're representing an organization, tell  
25 us who you're representing, and if necessary, spell that.

1 You don't have to give us your address, but you can if you  
2 want to. But if you'd like, please tell us generally where  
3 you're from, what county or town or whatever. And, again, if  
4 you haven't signed up and want to, you can still sign up.  
5 There's some people at the door who can accommodate you.

6 A little bit about the atmosphere here.

7 This -- this is a civil rule-making procedure, under the  
8 Administrative Procedures Act, which is held for the purpose  
9 of presenting and receiving information and it should be  
10 conducted in a civil manner. So we ask that everyone be  
11 courteous and respectful to each other and to the panelists  
12 at all times. While there will probably be some people  
13 speaking who are very comfortable with public speaking, not  
14 everyone is comfortable speaking, and so if there's some  
15 people -- a person comes up to speak and is having some  
16 difficulty, please be patient and -- and helpful to them.

17 So that the court reporter, again, can hear the  
18 person who's speaking, please refrain from making comments or  
19 noises while someone is at the podium speaking. And, please,  
20 refrain from applause or boos or hisses or making lots of  
21 noise. And, turn off your cell phone, or please mute -- mute  
22 your cell phone.

23 So this hearing is not being conducted to allow  
24 personal attacks on a person or a group with a difference of  
25 opinion. It's not a debate. Everyone who wishes to make a

1 comment about the proposed designation should be allowed to  
2 do so in a non-adversarial atmosphere. If -- if I believe  
3 that you are turning your comments into personal attacks on  
4 people, I will interrupt you and try to get you back on  
5 track, or ask you to yield the microphone to the next person.

6           So this is a good opportunity for you, under the  
7 Constitution and the Administrative Procedures Act, to  
8 present your views on a matter of important public policy.  
9 Again, we're not here to debate or to try a lawsuit, and it's  
10 not a dialogue. We won't be responding to your questions  
11 tonight. But we urge you to ask those questions because the  
12 Service will have to answer them on the public record when  
13 they make their final rule.

14           All of your comments should be focused on the  
15 limited issue of the designation of critical habitat as  
16 proposed. And, to the factors which you believe relate to  
17 this decision, including the draft economic analysis.  
18 Comments on other issues before the Fish and Wildlife Service  
19 or the Federal Government are simply not relevant to what  
20 we're doing tonight. And so, again, if I think you're  
21 drifting off into other topics, I'll try to get you back on  
22 course or ask you to yield the microphone to another speaker.

23           So, are there any questions about the process  
24 before we begin? Okay. Good. Now, Ms. Lauritsen will make  
25 her short presentation and we'll get on with your comments.

1 MS. ANNE LAURITSEN: All right. Good night,  
2 everyone. Thank you for coming. Can you hear me in the  
3 back?

4 AUDIENCE: No.

5 MS. LAURITSEN: Okay. How about now; is that  
6 better?

7 AUDIENCE: A little.

8 MS. LAURITSEN: Okay. I don't think I can get  
9 this to go any louder. All right. I'll try to speak even  
10 louder. To -- tonight, I'm going to briefly do an overview  
11 of the Proposed Terrestrial Critical Habitat for the  
12 Northwest Atlantic Loggerhead Sea Turtle. So, a little of  
13 the history of the loggerhead listing. In 1978, the  
14 loggerhead was listed worldwide as a species under the  
15 Endangered Species Act as threatened. This was a designation  
16 with responsibilities by both NOAA fisheries for in-water  
17 responsibilities, and the U.S. Fish and Wildlife Service for  
18 their responsibilities on the beach.

19 However, in August of 2007, we are required to  
20 do a five-year review for each federally-listed species. So,  
21 within that five-year review, there was a recommendation that  
22 we do a -- a full determination on whether this one worldwide  
23 population should be into distinct populations. And if that  
24 was the recommendation. So, in 2009, we assembled a  
25 biological review team and they identified nine distinct

1 populations of loggerheads. At that point, we re-listed the  
2 loggerheads -- the -- the distinct population of loggerheads  
3 in 2011, going from a single global threatened listing to  
4 nine distinct populations, either endangered or threatened.  
5 So, the distinct population we're dealing with today is the  
6 Northwest Atlantic Ocean distinct population, which was  
7 listed as threatened in the final rule.

8           So a little bit about loggerheads. They have a  
9 very complex life -- life cycle. They start off with nesting  
10 females come on to the beach, which you've probably seen on  
11 your beaches. And they lay their -- they lay their eggs  
12 within 65 days. Those -- those hatchlings emerge into  
13 the water and head out into the sargassum where they  
14 hide -- where they hide and feed as hatchlings and then  
15 post-hatchlings. Then you see them in deeper. And then, on  
16 the top slide, you would see that migration that they make  
17 around, which after 20 to 30 years, if they're females, they  
18 come back to that nesting beach to -- to lay their eggs  
19 again. So, in each life -- life-stage, we looked at the  
20 threats during the listing to determine what the status would  
21 be for the -- for the each distinct population.

22           So, a little bit of the history of the  
23 Endangered Species Act. When you do a listing, within that  
24 listing, critical habitat must be designated if it -- if, to  
25 the maximum extent, it is prudent and determinable. So, in

1 2011, we pro -- we said at that time we needed time to  
2 collect information to do a comprehensive review to determine  
3 what that would be for critical habitat. So, what is  
4 critical habitat? So, critical habitat is a specific area  
5 within the geographic range of that species at the time it is  
6 listed, from which are found physical and biological features  
7 that are essential, and that may require special management  
8 productions. And I'll go through each of these terms  
9 separately.

10                 So, what is the geographic area occupied by the  
11 species? So, for the area that we are dealing with today,  
12 we're looking at the terrestrial, which are the beaches. So  
13 you can see the range of the -- the Northwest Atlantic  
14 loggerhead and that nesting range that you'd find them.

15                 And, special management considerations or  
16 protections. This is what is an example of what we may  
17 consider. The top slide shows what a area looks like without  
18 special management, and then including special management,  
19 how that protection of that habitat is in place.

20                 Another definition that I'm going to explain is  
21 physical and biological features. So, within that critical  
22 habitat, we have to look at what the species depends on, the  
23 space that they need, area for reproduction. And, in this  
24 case, as you know, loggerheads in the terrestrial are tied to  
25 the beach, entirely. Their -- their most crucial life stage

1 is their nesting. So we looked at what features they needed  
2 to successfully nest, to reproduce themselves. So the first  
3 part is that near-shore access. They need to be able to  
4 access the beach without obstruction. And then, the sand  
5 that allows suitable nest construction. And, in the third  
6 slide down below, sand that allows for successful egg  
7 development within that 65 days. And then, sufficient  
8 darkness to allow the hatchlings to emerge, and head to the  
9 water as fast as possible.

10                   So, when we looked at the entire geographic  
11 range for nesting, we chose some selection criteria. So, as  
12 I mentioned, we -- we assembled a team which included our  
13 state partners, looking at the data over the last five years,  
14 and the -- the recent information that we had on the nesting  
15 of the -- the Northwest Atlantic loggerhead. In that  
16 selection criteria, of course, the -- the extra tidal or dry  
17 sandy beaches, they're -- they're tied to the beach in that  
18 nesting process. And then we looked at areas that were  
19 capable of supporting a high-density nesting beach. And  
20 then, areas adjacent to those that would serve as expansion  
21 areas, in sort of a rescue effect, if those high-density  
22 beaches were lost.

23                   What you would notice in the top square,  
24 the -- the loggerhead is divided into recovery units. Where  
25 you see, by genetics, the nesting female returns to that

1 particular range of beaches. And so, those nesting females  
2 are -- are pretty much your nesting females that -- that come  
3 to what is called the -- the Northern Recovery Unit. So we  
4 looked at that northern recovery unit, and -- and, in order  
5 to make sure we had good spacial representation of the  
6 nesting range, we took each state and looked at the higher-  
7 density beaches in each state in that Northern Recovery Unit,  
8 to ensure good spacial distribution.

9           And this is how the numbers fell out in  
10 calculation. By dividing the beach nesting density into  
11 four, we took the top twenty-fifth percentile and then, as  
12 I was mentioning, the adjacent beaches in there. The top  
13 column, you would see where the North Carolina beaches fell  
14 with regard to nesting densities. And this is for kilometer  
15 -- by kilometer.

16           So, after this selection process, 1,190  
17 kilometers were proposed designated in 90 units -- 8 of those  
18 units are in North Carolina. By ownership, it is 20 -- 19  
19 percent Federal ownership; State, 21 percent; and private and  
20 other local governments, 60 percent. And those are the  
21 units.

22           So, now we're in the process of looking at the  
23 draft economic analysis. So, beyond looking at the science,  
24 which is required under the Endangered Species Act, we -- we  
25 then are required to look at beyond the biological needs. So

1 we have to take into consideration the economic impact, and  
2 the impact on national security, and look at the benefits of  
3 excluding an area and whether that would outweigh the  
4 benefits of not having an area excluded. So, I'll talk about  
5 the draft economic analysis briefly. This is the -- the  
6 period that -- that just -- the paper that was just published  
7 and opened for comment. It looked at -- it was done by an  
8 independent consultant, which contacted Federal, State and  
9 other governments that looked at projects and histories of  
10 projects done by the Federal agencies, and estimated what  
11 that economic outcome would be. And these public comments  
12 that they're receiving now will be incorporated into the  
13 final rule.

14           And this is what they found -- what they -- was  
15 totally throughout the -- the range of the critical habitat,  
16 150,000 was the incremental impact. So, within the  
17 consultation process, because the -- the species is already  
18 listed, they looked at that change of having the species  
19 listed and what the additional economic impact of now having  
20 critical habitat designation. And what they found was the  
21 admin -- this represented the administrative costs borne by  
22 Federal agencies, Fish and Wildlife Service and other Federal  
23 agencies -- you can see it broken down -- for that  
24 determination, within the same consultation.

25           Another point that we also have to consider is

1 within -- within the Endangered Species Act, there is a part  
2 for exemptions for Department of Defense facilities, or  
3 installations, and, once these facilities have a management  
4 plan that shows that there is a benefit for the loggerhead,  
5 and, within that -- within your area, Camp Lejeune was  
6 proposed to be exempt.

7           So, what critical habitat does not do? It does  
8 not create a wildlife refuge, reserve, or park. It -- it  
9 continued -- it does not restrict access to the beach. It  
10 does not affect private homeowners that are not using  
11 Federal money, or Federally-permitted -- permitted projects.  
12 It -- it -- it has to do with Federally-permitted projects or  
13 where a Federal agency is involved, consulting with the U.S.  
14 Fish and Wildlife Service. It does not create a new  
15 independent review process. As I mentioned before, because  
16 the species is listed and that listing for the loggerhead,  
17 the terrestrial is tied to the beach. Conditions in place  
18 for minimizing impact to the nesting turtle, also are in the  
19 place for -- for the beach and the critical habitat they're  
20 in. So it is involved in that consultation process.

21           As -- as I mentioned, Federal agencies are  
22 already required to consult because this species is listed.  
23 And, all of the units that were proposed designated have  
24 nesting loggerheads on them. So there would already be a  
25 consultation in place. So what this does is looks at the

1 critical habitat and whether that project would adversely  
2 modify critical habitat.

3           A big question that we often get is looking at  
4 beach nourishment projects and whether that would be  
5 affected. We look at and we have consulted on beach  
6 nourishment -- nourishment projects for many years and there  
7 are terms and conditions in place for the species, that if  
8 these were in place, they do not affect the -- the critical  
9 habitat or those physical biological features that I  
10 mentioned before.

11           So, have you -- have you had to deal with  
12 critical habitat before? This looks at areas along the coast  
13 that already have critical habitat designation by other  
14 listed species. You can see in overlay. The one in your  
15 area that you probably know about is the piping plover. So  
16 as I mentioned, within that consultation process, the -- the  
17 piping plover was one that has been designated since July 10  
18 of 2001. And, as you can see, the highlighted part shows a  
19 project that was within piping plover critical habitat and  
20 that project continued within the time frame as a normal  
21 consultation would have, for the listed species.

22           So what the time line is for this critical  
23 habitat proposed rule. We published it -- the proposed rule,  
24 terrestrial part on March 25, 2013. That was open for a  
25 60-day comment period, which we did receive comments. And

1 then, recently, we published the draft economic analysis on  
2 July 18th. And that comment period will close on September  
3 16 of 2013. At the same time, NOAA Fisheries, which has the  
4 responsibility for sea turtles in water, recently published  
5 their proposed rule for in-water critical habitat on July  
6 18th, and that is open for public comment. So, if you're  
7 interested in commenting on that, as well. The final rule,  
8 we expect to publish it together and hope -- hopefully, in a  
9 year. And that's it.

10 MR. THORNTON: Thank you, Ms. Lauritsen.  
11 Without further ado, I'd like to call Mayor Harry Simmons to  
12 the podium to speak.

13 MR. HARRY SIMMONS: Hi there. I am Mayor Harry  
14 Simmons from Caswell Beach. Caswell Beach is an eastern part  
15 of the NC07 unit, as a part of Oak Island. We appreciate you  
16 being here to hear from us, and we hope that what we say has  
17 some meaning to you.

18 First of all, I want to say we support the  
19 conservation and recovery of the loggerhead sea turtle.  
20 However, we do not believe that the designation of critical  
21 habitat particularly in North Carolina supports this goal.  
22 Loggerhead nest density do not support designation of  
23 critical habitat for any of North Carolina's beaches. Based  
24 on 2012 data, North Carolina had a loggerhead sea turtle nest  
25 density of 3.25. Again, based on 2012 data, South Carolina,

1 Georgia, and Florida had loggerhead nest densities of 24.8,  
2 24.0 and 120.0, respectively. Loggerhead nesting in North  
3 Carolina represents a small fraction of the nesting by  
4 loggerheads in the Northwest Atlantic Ocean distinct  
5 population segment.

6           Designation of critical habitat for the  
7 loggerhead sea turtle will have significant economic impacts  
8 on the national, state and local economies. Our nation's  
9 beaches and inlets make a substantial contribution to the  
10 national, state and local economies. Beach tourism not only  
11 creates significant tax revenue to the Federal Government, it  
12 creates jobs. Beach erosion is the number one concern that  
13 tourists have about beaches, and is a threat to the national  
14 economy. Restoring beaches through beach renourishment and  
15 other shore protection measures provide critical protection  
16 and benefits to the public and private infrastructures, small  
17 businesses, the tourism industry, public recreation, and  
18 state and local tax bases. It also maintains and enhances  
19 habitat for loggerhead sea turtles. If critical habitat is  
20 designated for the loggerhead sea turtle, these existing  
21 successful programs will be burdened with additional and  
22 unnecessary measures, and will become more costly and  
23 difficult to implement, which will threaten our national,  
24 state and the local economies, and thereby increase the  
25 threat to the loggerhead sea turtle and its habitat.

1           There are already adequate measures in place to  
2 ensure the survival and recovery of the loggerhead sea  
3 turtle, and designations would adversely impact these  
4 successful programs. Thank you.

5           MR. THORNTON: Thank you, sir. The next speaker  
6 is Todd Roessler -- I hope I pronounced that right. He'll  
7 straighten me out. I understand that you represent a number  
8 of counties --

9           MR. TODD ROESSLER: That's correct.

10          MR. THORNTON: -- and cities.

11          MR. ROESSLER: Thank you. I appreciate  
12 you -- you having us here tonight. My name is Todd Roessler.  
13 I'm an attorney at Kilpatrick Townsend, and my firm  
14 represents a number of the communities that are here tonight.  
15 I represent Carteret County, New Hanover County, Caswell  
16 Beach, Oak Island and Holden Beach. Each of these  
17 communities have filed comments on the proposed rule, and we  
18 intend to submit written comments on the draft and economic  
19 analysis.

20                 Following up on Mayor Harry Simmons, we don't  
21 think the nesting density in North Carolina supports  
22 designation of critical habitat. We don't think it's  
23 necessary for the conservation of the species. As Harry  
24 mentioned, North Carolina has a loggerhead -- based on 2012  
25 data, it's nesting density is 3.25 per mile, compared to

1 South Carolina, Georgia and Florida. Those states range from  
2 anywhere from 24 to 120 nests per mile. Also, looking at the  
3 actual number of nests, the nests in North Carolina, based on  
4 2012 data, are approximately one percent of the total nests  
5 in the Northwest Atlantic DTS. And then, just looking at the  
6 northern recovery unit, I believe it's about -- approximately  
7 13 percent of the nests are in North Carolina.

8           And then, another aspect to consider is that in  
9 designating habitat, the Fish and Wildlife Service not only  
10 took the top 25 percent and considered this high density  
11 beaches, they look to adjacent beaches. When you take a  
12 whole island and designate that as critical habitat because  
13 it's adjacent to a beach, we don't think that's appropriate.  
14 One example is Bogue Banks, which is within Carteret County.  
15 It's approximately 24 miles in length. It was designated  
16 because it's adjacent to Bear Island, which is four miles,  
17 and Bear Island is a high-density beach by Fish and Wildlife  
18 standards.

19           Another aspect is that we think there are  
20 adequate measures in place to protect the loggerhead turtle.  
21 Each of these communities conducts beach renourishment  
22 projects. These projects are conducted pursuant to stringent  
23 State and Federal regulations. And these projects normally  
24 protect property, provide recreation, but they also provide  
25 habitat for the loggerhead turtle. There's also local

1 volunteers that, in coordination with the North Carolina  
2 Wildlife Resources Commission, that conduct sea turtle  
3 management programs. They daily monitor nests. They assist  
4 hatchlings in getting to the ocean.

5           The next thing I wanted to talk about briefly  
6 was that, although Fish and Wildlife Service contends that  
7 there really would be no differences in the way that  
8 loggerhead turtles are managed as a result of critical  
9 habitat designation, we believe that there will be unintended  
10 consequences as -- as a result of this designation. First,  
11 I'd like to think about, you know, how we got here. You  
12 know, as people have mentioned, loggerhead turtle was  
13 designated in 1978 as a threatened species. Thirty-five  
14 years later, after lawsuits from NGOs -- to one -- lists the  
15 turtle as endangered, but also for the Fish and Wildlife  
16 Service, alleged failure to designate critical habitat, one  
17 year later, we have this proposed rule to designate critical  
18 habitat in response to these lawsuits.

19           And then, the second thing that gives us concern  
20 is that, in the proposed rule, when you talk about special  
21 management considerations, you normally say that they may be  
22 required, but they are required. And then you list a broad  
23 number of threats that these special management  
24 considerations will address, including recreational use of  
25 the beach, beach sand placement activities, artificial

1 lighting, beach erosion, climate change. And, even though  
2 you say that they -- these special management protections  
3 will be required, there's nothing that's discussed in the  
4 rule that -- what these considerations will be.

5           The third point I want to make is that, in the  
6 draft economic analysis, I -- I think the Fish and Wildlife  
7 Service recognizes that designation of critical habitat is  
8 not necessary and essential for the conservation of the  
9 species. Based on the -- the number of dollars that you've  
10 said that this will result in, there's really no difference,  
11 in the section seven consultation under the Endangered  
12 Species Act. It's the same whether habitat's designated or  
13 not. I would contend that you really can't have it both  
14 ways. Either habitat is not necessary and will result in  
15 little economic impact, or it is necessary and will result in  
16 a significant impact to the economy.

17           And then, also, in the draft economic analysis,  
18 the Fish and Wildlife Service recognizes that a lot of this  
19 is unknown, that the consultation will take place at the time  
20 of the individual projects, and that there may be indirect  
21 results as a -- as a result of litigation. And Fish and  
22 Wildlife contends that these are too speculative and minor,  
23 so, you know, there were no economic impacts that would  
24 result from this. But I would contend, based on the history  
25 of the NGO suing the Fish and Wildlife Service, these

1 projects will be delayed, that there will be increased costs,  
2 and maybe increased regulations as a result of designation of  
3 critical habitat.

4           We would contend that the designation of  
5 critical habitat will have a significant impact on the  
6 national, state and local economies. Beach renourishment  
7 projects are vital to these communities. They provide the  
8 basis for recreation, the tourism industry. If habitat's  
9 designated and lawsuits are filed -- followed, it could be  
10 that additional and unnecessary measures will be in place on  
11 these beach renourishment projects, making them harder to  
12 implement and, actually, adversely impacting the loggerhead  
13 turtle.

14           I'll finish up that, you know, my point is that  
15 the NGOs that are interested in critical habitat designation  
16 are not interested in just a habitat being designated.  
17 They're interested in everything that flows from that. These  
18 additional protections that you have said are required in the  
19 proposed rule. And I'll close with that. Thank you. I  
20 appreciate it.

21           MR. THORNTON: Thank you, sir, appreciate your  
22 comments. Our next speaker is Town Commissioner Grier  
23 Fleischhauer from the Town of Topsail Beach.

24           MR. GRIER FLEISCHHAUER: Thank you. My name  
25 is -- is Grier -- Grier Fleischhauer --

1 MR. THORNTON: Grier.

2 MR. FLEISCHHAUER: -- that's fine. And I am  
3 from the Town of Topsail Beach. And I thank you for this  
4 opportunity to speak to you all today. The Town has sent in  
5 its official comments as far as -- for opposition to this  
6 designation.

7 I just want to point out that Topsail Beach has  
8 long been active in regards to protecting and -- and  
9 supporting the turtles. In fact, we've had a turtle hospital  
10 that the town has supported for a decade -- at least over a  
11 decade -- in the form of renting space for a dollar a year.  
12 We have active citizenry that works towards protecting the  
13 turtles and looking after the turtles, and walking and -- and  
14 -- and finding the turtles. Sometimes I think Topsail Island  
15 stands for "Turtle Island." So we are very active and very  
16 supportive of protecting this species.

17 What bothers us is what I read in your  
18 presentation as you were -- is that the statement that says,  
19 "It is unlikely that the types of conservation efforts  
20 requested by the U.S. Fish and Wildlife during consultation  
21 will change due to critical habitat designation." And the  
22 key word is "unlikely." Well, everything, even this  
23 presentation I saw today, I don't see where anything is  
24 improving or changing, other than what we are already doing  
25 as a community, and what most of the people -- towns on the

1 coast do. So my question is, what will this fix? I mean, is  
2 it like what the previous speaker says, it's fixing a threat  
3 from a litigation or something like that? You -- we've had  
4 this designation for 35 years, and then why now? We are --  
5 we're doing a good job. The turtles are recovering.

6           Topsail Beach just recently embarked on one of  
7 its first beach nourishment projects. And we are supported  
8 highly by the Karen Beasley Turtle Hospital for improving  
9 turtle habitat. One of the first things I read when this  
10 came out was that the -- possibility that this turtle  
11 designation -- habitat designation would regulate beach --  
12 engineered beach -- engineered beaches. And I think quickly  
13 it was state that -- well, we're not talking about, you know,  
14 certain types of engineering beaches. We're talking about  
15 the bad type of engineered beach. Well, I don't see how  
16 there is such a thing as bad engineered beach, because we  
17 already have the protections and the -- and the critical  
18 oversight of the -- of the governmental agencies to make sure  
19 that we do do the job right.

20           I just don't believe that we need to add another  
21 layer of bureaucracy. If there's a layer that, even by your  
22 own admission, that it doesn't really do anything, it's  
23 unlikely to change anything, then I think, in the future,  
24 somebody will say, "Well, we should be doing something about  
25 this because we had this designation, and we have to justify

1 this designation." So my comments are, is that I don't think  
2 that the town -- the Town of Topsail Beach believes that we  
3 should have this turtle habitat designation. I think that  
4 the towns along the North Carolina coast are doing a great  
5 job in providing services to improve the turtle habitat, and  
6 we're protecting the species. And I feel like this is an  
7 unnecessary -- just a bureaucracy -- a circus. Thank you.

8 MR. THORNTON: Thank you, sir. The next speaker  
9 is Mayor Dean Lambeth from the Town of Kure Beach. Welcome,  
10 sir.

11 MR. DEAN LAMBETH: Thank you. Thank you, ladies  
12 and gentlemen, for being here. I'm Dean Lambeth. I'm the  
13 Mayor of Kure Beach. Do you need me to spell that? We have  
14 a ocean front park in Kure Beach. We also have a "Turtle  
15 Talk" in the ocean front park. We have a designated turtle  
16 watch group in Pleasure Island, and Pleasure Island consists  
17 of Carolina Beach and Kure Beach. And we have ladies and a  
18 couple of gentlemen on this group that are the most advocate  
19 -- advocates for turtles that I have ever seen.

20 We have 14 nests in Kure Beach at this time.  
21 It's a banner year for us. I think Carolina Beach has got  
22 five or six. A couple of the nests have already hatched and  
23 gone on their merry way. The tourists love to come to the  
24 beach. They love to see the turtles boil out and we love to  
25 make sure that that is accommodating to the tourists.

1           And I really don't think, with reading your  
2 regulations that we need any more stuff to have to follow. I  
3 think part of it is redundant, and a lot of it, like a couple  
4 of the speakers, if it's implemented, then, you'll have to  
5 find some reason to make it part of your plan. So, please,  
6 we don't need any regulations, any more than we have. So  
7 thank you very much.

8           MR. THORNTON: Thank you, sir. Thank you. Our  
9 next speaker is Mayor Bob Lewis from Carolina Beach. Is  
10 Mayor Lewis here? Here he comes.

11           MR. BOB LEWIS: Again, Bob Lewis, Mayor of  
12 Carolina Beach -- the Town of Carolina Beach. I'm going to  
13 be brief because I'm kind of just reiterating what a number  
14 of people have said.

15           But I think -- quite frankly, I appreciate the  
16 opportunity to speak here today. But I think the oversight  
17 of this whole situation in which you've had in the  
18 regulation, is just redundant to what we have already from  
19 the Federal Government. It is difficult enough to get beach  
20 renourishment inlet dredging in our beaches -- at our beach  
21 location at Carolina Beach and Kure Beach and others in New  
22 Hanover County. And, to put another oversight in this whole  
23 regulation, doesn't seem like a -- a real advantage to me  
24 or -- or -- I look at it as a disadvantage.

25           We have a large grass roots effort that's been

1 going -- a grass roots effort that's been going on for years  
2 in Pleasure Island, and a lot of these people, I think, are  
3 sitting here today. And they've done a great job in  
4 protecting the turtles. Everybody in our community loves the  
5 loggerhead turtles. We're trying everything we can to  
6 protect them, everything we can that, hopefully, continue  
7 their population.

8                   But my -- let's take a look at one of the  
9 things. When you start talking about density -- we don't get  
10 density. It almost looks like you just dropped North  
11 Carolina into this whole pot of things because you just felt  
12 like doing it. I understand if you take a look at where  
13 they -- where their nests are totally, but when you have a  
14 small density that we have in this state versus South  
15 Carolina, Georgia, and Florida, I think somebody just decided  
16 to throw us in -- into the pot. I -- I -- if that helps us a  
17 little bit; that's great. I don't -- really don't see a real  
18 advantage. When you talk about special management  
19 considerations, there's not really much definition in which  
20 you've written about special management considerations. My  
21 concern, that's going to be very arbitrary, by town, by  
22 location, and you're going to get people competing against  
23 each other. You're going to have arguments within the  
24 community about one beach versus another, and how these  
25 things are being implemented.

1                   Now you talk about -- I think space area, near  
2 shore opportunities and sufficient darkness. That's going to  
3 require a major change, I think, on all the beaches, at least  
4 in Carolina Beach, how -- how we light our facilities, how  
5 we light our houses, how we light the -- even what we call  
6 our Carolina Beach wooden boardwalk. So I think there  
7 are -- there are major -- there are major economic impacts to  
8 what may happen to us, you know. And we think if we don't  
9 get beach renourishment, if for some reason someone makes a  
10 designation that beach renourishment is going to harm what  
11 we have as far as the loggerhead habitat, that's definitely  
12 going to affect our economy, because our economy runs  
13 today -- in the State of North Carolina economy, the number  
14 one economic driver is tourism. So, today, for us, the  
15 state, the local, the economy in our -- in our community  
16 would be heavily impacted, and negatively impacted from that  
17 impact. So I appreciate the comments.

18                   I think I agree with most of the people who have  
19 talked here today, so far. Thank you for your time.

20                   MR. THORNTON: Thank you, Mayor Lewis.  
21 Can you hear me? There we go. All right. Thank you, Mayor  
22 Lewis. Let's see. Next up is Frank Williams from the -- is  
23 it Brunswick County Commissioner.

24                   MR. FRANK WILLIAMS: That's my handwriting for  
25 you. I'm Frank Williams and I'm an elected member of the

1 Brunswick County Board of Commissioners. And the beaches in  
2 our county are Caswell Beach, Oak Island, Holden, Ocean Isle  
3 and Sunset. And I hope I didn't miss anyone. We've got  
4 enough beaches; it's hard to keep up with.

5 I have a few concerns that I'll articulate  
6 without -- and I'll attempt not to repeat what everyone else  
7 has already said. I think the first is to consider how this  
8 impacts people. Obviously, it's going to impact the turtles,  
9 whatever way we do this. But people, and that boils down to  
10 the economy and to jobs. As several of the speakers have  
11 mentioned, tourism is the backbone of our economy in this  
12 area. It certainly is in my county. So that's something to  
13 consider the impacts of. And, a big part of that is also  
14 beach renourishment. Tourists aren't going to visit a beach  
15 if there's no beach to visit. So that's something to  
16 consider.

17 A second thing I would consider is  
18 justification. I believe in the powerpoint, you mentioned  
19 the justification to exclude an area. To me, I would invert  
20 that and say that you -- we need to make a case that  
21 something needs to be included, and that the -- the benefits  
22 of including something in this area, in -- in this rule,  
23 outweigh the costs before including it. I think that's the  
24 case that needs to be made. Not the other way around. I  
25 realize there may be a statutory issue with that. But, to

1 me, that's the way that, in an ideal world, that should work.

2           Thirdly, I think, in my opinion, generally,  
3 local people tend to handle local solutions better. And,  
4 every beach in Brunswick County, based on what Harry Simmons,  
5 the Mayor mentioned just a moment ago, already has an active  
6 effective volunteer-driven turtle protection program. I know  
7 I get e-mails from Holden Beach frequently, about what  
8 they're doing. And I honestly, from what I've seen, I  
9 believe they've got it covered about as well as it can be  
10 covered here.

11           And, fourthly, the attorney earlier mentioned  
12 just the uncertainty in the potential unintended  
13 consequences. I think that's the big concern that a lot of  
14 people have. The people I've talked to walking in were  
15 concerned just about what we don't know. And I read the  
16 information, a good bit of the information on the website,  
17 and still really wasn't sure what the rule was all about when  
18 I walked in the door. So I think there's a lot of  
19 uncertainty out there that needs to be cleared up to make  
20 people comfortable with this, if it does move forward.

21           But, at this point, I'm not convinced that the  
22 rule is needed. I -- I agree with the other people who said  
23 it's not.

24           MR. THORNTON: All right. Thank you, sir. Next  
25 speaker is Layton Bedsole.

1                   MR. LAYTON BEDSOLE: Good evening, and welcome  
2 to Wilmington. My comments tonight are centered around a  
3 premise that was made in your proposed rule. And, in my  
4 opinion, was carried forward into your economic analysis.  
5 That premise, if -- if you'll bear with me, this is from your  
6 rule. However, beach sand placement projects conducted under  
7 the Fish and Wildlife Service statewide programmatic  
8 biological opinion from the US Army Corps of Engineers  
9 planning and regulatory sand placement activities in Florida  
10 and other individual biological opinions, blah, blah, blah,  
11 blah, blah. The sand placement projects are not expected to  
12 result in adverse modification to turtle habitat. So what  
13 you're telling me is that, if you've fallen under a statewide  
14 BO or Corps BO, or an individual BO, we should see no  
15 effects.

16                   My contention, I would use the shallow draft  
17 inlets of North Carolina to challenge that a bit. The  
18 shallow draft inlets from north to south of Bogue Inlet, New  
19 River Inlet, Topsail, Carolina Beach, Lockwoods Folly and  
20 Shallotte Inlet, they are Federally-authorized projects.  
21 They also have beneficial use from the sand that comes from  
22 those projects. They are also on the list of projects that  
23 haven't been in a President's budget since 2005. The locals  
24 have stitched together maintenance dredging to keep those  
25 inlets open. They're critical to our economy -- commercial

1 fishing, for-hire fishing, recreational fishing, tourism as a  
2 whole. We are finding ourselves having to get local  
3 authorizations to maintain those critical coastal  
4 infrastructure features within our communities. In that  
5 process, there is a BO; it's dated. There is an EFH; it's  
6 dated. We're finding ourselves rewriting biological  
7 assessments, essential fish habitat assessments, working it  
8 through the biological opinion process, coming out with the  
9 terms and conditions, developing construction management  
10 tools before, during and after, and then report. And that's  
11 today. That's before critical habitat designation.

12           Now, I'm going to step to your economic analysis  
13 for a moment. Your firm, IEC, excellent from out of Boston.  
14 Very bright; good crowd. They came up with a 1.2 million  
15 dollar effect from critical habitat designation over the next  
16 ten years. Okay. \$120,000 a year. Let's say the first  
17 year, there's ten projects between North Carolina and the  
18 gulf; \$12,000 a project. We're going to include essential  
19 fish habitat in our now BA's, EFH's. We're going to  
20 negotiate terms and conditions. We're going to potentially  
21 set up critical habitat management plans, negotiate  
22 incidental take permits, and now we get to construct. We  
23 implement the monitoring before, during and after for  
24 \$12,000.

25           Folks -- folks, the Corps South Atlantic

1 District, provided comments to your proposed rule. In  
2 keeping with my navigation mindset, I'd like to read one  
3 other quote. "Dredging operations cost -- dredging operating  
4 costs could increase on the order of tens of millions on an  
5 annual basis for those projects in the affected SAD region --  
6 South Atlantic District -- mostly for paperwork of little on  
7 the ground benefit to the turtle." Tens of millions of  
8 dollars. I manage the projects for a living. I know what  
9 the market costs are. Your numbers, \$120,000 a year. The  
10 Corps' numbers, tens of millions of dollars a year. Folks,  
11 we're not on the same page. This needs to be resolved before  
12 you begin rule-making, because we the folks that are having  
13 to respond to permitting formerly-managed Federal projects  
14 are going to be on the front line paying for this.

15 Now, I appreciate you allowing my diatribe --  
16 maybe a little bit of a tirade. Would like to invite you all  
17 back. Stay on our beaches. Stay a long time, because we  
18 need our room occupancy tax funds increased to implement what  
19 we're considering unnecessary and really redundant regulatory  
20 measures. Thank you for your time.

21 MR. THORNTON: All right. Thank you.  
22 Appreciate your -- your comments. And our next speaker is  
23 Donald Fox.

24 MR. DONALD FOX: I'm Donald Fox from Pleasure  
25 Island. I've come to speak to specifically the loggerhead

1 life cycle and the threats that are represented in the  
2 documents. Particularly, the question of recreational use in  
3 predation. I've had the opportunity to visit several of the  
4 beaches in the last four or five weeks. I've been to Bear  
5 Island, to Topsail, to Wrightsville, Masonboro, Carolina  
6 Beach, Fort Fisher, Kure Beach, Caswell, Holden and Ocean  
7 Isle. You say, "Why are you at all these beaches?" I'm out  
8 there walking around, looking for shells, looking for shark's  
9 teeth, and not having very much luck.

10                   However, what I have seen and had the  
11 opportunity to see this summer is the sort of life cycle of  
12 the nesting process, starting with looking at some of the  
13 beaches and seeing some of the nests already marked. I've  
14 had the opportunity to go out early on the morning, and walk  
15 Masonboro Island with another volunteer to look for nests.  
16 And so I've begun to see all of these -- the start of the  
17 cycle. And one of the things that puzzled me, and I've  
18 already talked with Ms. Anne Marie, was that, in the proposed  
19 rule-making, the statement is, "At this time, we are not  
20 aware of any management plans that address this species  
21 in this area." She told me earlier before the meeting  
22 that -- that may -- that information is now gathered into the  
23 document. Well, it certainly needs to be in there because it  
24 really represents the efforts, hundreds if not more than  
25 hundreds of individuals in these counties that are trying to

1 do their best by loggerhead turtles.

2 I'll tell you an additional experience about the  
3 question of sort of recreational use of beaches. I've just  
4 begun volunteering at the Fort Fisher Aquarium. I was there  
5 this morning at the turtle tank. Several families came by  
6 and they spoke to their children, rather to us. They looked  
7 at the tank and they said, "Oh, Johnny -- oh, Sue -- these  
8 are the turtles that you saw two nights ago erupt on the  
9 beach as babies." So there has to be some compatibility with  
10 recreational use and the turtle site -- nesting site. And  
11 there have been, as stated before, hundreds of volunteers  
12 that go through that process to help ensure nesting and  
13 hatching and recreational use co-exist on these beaches.

14 I do have a specific question, too, that  
15 I'd like for you to consider in your rule-making, and  
16 your decision-making process. One is, how will the  
17 permit -- permanent -- or -- or proposed rule-making go about  
18 permitting the continued use of our beaches for recreational  
19 use. In addition to that, I'd like to see, if it's not in  
20 there, some indication of the economic costs that will come  
21 to private businesses that will be incurred due to this rule  
22 designation. Thank you very much.

23 MR. THORNTON: Thank you, sir. Our next speaker  
24 is Mr. Steve Candler.

25 MR. STEVE CANDLER: Can we submit written

1 comments to Ms. Linda?

2 MR. THORNTON: I'd rather that you submit your  
3 written comments directly to the website.

4 MR. CANDLER: Okay. Thank you for allowing the  
5 citizens affected by your proposed rule to speak tonight. My  
6 name is Steve Candler, the CEO of the Brunswick County  
7 Association of Realtors. And I'm here with my 2013 president  
8 of BCAR, Larry McNeil.

9 The Federal Endangered Species Act has long been  
10 one of major flash points in the property of rights debate.  
11 We also realize that of the 17 taking decisions that have  
12 currently been found in court records only one was ruled a  
13 taking that violated the Fifth Amendment to the U.S.  
14 Constitution. This is not Brunswick County's first encounter  
15 with the ESA or the critical habitat designation. The City  
16 of Boiling Spring Lakes is a critical habitat for the red  
17 cicada woodpecker. A coalition of interested parties formed  
18 to write a city-wide HCP and should have been successful,  
19 except for some cold feet from -- from elected officials.  
20 Pete Benjamin was a part of that. John Hammond was a part of  
21 that, as well.

22 So what we'd like to do is respond to a section  
23 of the Federal Register, Volume 78, Issue 57, that asks for  
24 comments on the five questions proposed. Question 4.  
25 Information on the projected and reasonably likely impacts of

1 climate change in the loggerhead sea turtle and proposed  
2 terrestrial critical habitat. Our comments on that is, the  
3 state and its interested stakeholders are still debating and  
4 developing scientific data related to the possibility that  
5 climate change affects North Carolina.

6           Number 6. Whether any of the exemptions we  
7 are considering under Section 4(a) or 3(b) of the ESA of  
8 land -- of land on the Department of Defense property. We'd  
9 like to propose that the Sunny Point Military Terminal was  
10 not given any consideration in the proposal. While the  
11 proposal discusses terrestrial critical habitat, we also  
12 believe that the shipping channel area used by the terminal  
13 should be exempted. The suggestion for exemption is due to  
14 the ongoing need to dredge the shipping channel from constant  
15 shoaling. Sunny Point currently has an integrated national  
16 resource management plan that includes the red cicada  
17 woodpecker, another endangered species. Incorporation of the  
18 loggerhead sea turtle into the existing plan would assist the  
19 justification of the exemption of the area.

20           Question number 7. Exemptions for having  
21 habitat conservation plans -- HCP's. Section 10 of the  
22 Endangered Species Act allows an often-used exemption to the  
23 takings prohibition of Section 9. So, with Section 10 in  
24 mind, and on behalf of BCAR, we would like to make a proposal  
25 for LOGGTNC06, LOGGTNC07, LOGGTNC08, all identified as

1 distinct population segments for Brunswick County, North  
2 Carolina. Our proposal is to exempt these three DPS's from  
3 the proposed rule of critical habitat designation, and we in  
4 return would create a habitat conservation plan that  
5 addresses the following identified threats: recreational  
6 use, predation, beach sand replacement activities, in-line  
7 and shore-line alterations, coastal development, climate  
8 change, beach erosion, artificial lighting, and human-caused  
9 disasters and their responses.

10           With successful completion of the HCP and  
11 acceptance from the U.S. Fish and Wildlife Service, we would  
12 propose to receive an incidental take permit for 20 years.  
13 We would need 18 to 24 months for the proposed HCP process.  
14 That does not include U.S. Fish and Wildlife's acceptance  
15 into the process. This would include developing a coalition  
16 of stakeholders to assist in plan development. We have  
17 reviewed the HCPs for Volusia, Saint John's and Indian River  
18 Counties and plan to use those as a model for Brunswick  
19 County.

20           If the service approves the proposal, then the  
21 terrestrial economic impact estimates would need modification  
22 before the final determination. You said terrestrial and not  
23 marine. Is that what the public hearing is for; correct?

24           MR. THORNTON: Yes.

25           MR. CANDLER: Okay. Questions 3, please. Do

1 state harbor programs exist for loggerhead turtles such as  
2 the one for RCWs that guarantee no additional ESA act  
3 restrictions that would place upon the species? Number 2.  
4 Do habitat conservation planning assisted grants still exist  
5 with the Federal Government for 2013 or 2014? And, would the  
6 Department of Interior empower the North Carolina Fish and  
7 Wildlife -- empower means with money and time -- to educate  
8 the local governments and citizens before the final rule?

9           Again, thank you very much for your time, and I  
10 will submit the comments on-line and not to Ms. Linda. Thank  
11 you.

12           MR. THORNTON: All right. Thank you, sir. By  
13 the way, I think NOAA -- the National Marine Fisheries  
14 Service out of National Oceanographic Atmospheric  
15 Administration, in their parallel rule are receiving comments  
16 on the proposed designations of critical habitat in the  
17 marine environment, whereas we're focused only on the  
18 terrestrial environment here.

19           AUDIENCE: That is not in the public hearing  
20 format; correct?

21           MR. THORNTON: I don't know if they -- have they  
22 called for a public hearing, Pete? Does anybody know?

23           MS. LORNA PATRICK: They have not -- have not  
24 announced one yet.

25           MR. THORNTON: They may have one, but it hasn't

1 been announced yet, if they're going to have a public  
2 hearing. Our next speaker is Calvin Peck.

3 MR. CALVIN PECK: Thank you. I'm Calvin Peck.  
4 I'm the Village Manager for Bald Head Island. It is a beach  
5 town in Brunswick County. Bald Head Island is in NC06 Unit.  
6 Through the auspices of the Bald Head Conservancy, we've had  
7 30 years of a very active turtle protection program, to  
8 include an artificial lighting ordinance. We recognize that  
9 no sand equals no habitat. I'd like to -- we have submitted  
10 written comments previously, and they remain active.

11 I'd like to speak about a disconnect between  
12 information in the proposal rule, which states -- it talks  
13 about to -- to justify the proposed designation of critical  
14 habitat, the Fish and Wildlife Service has taken the position  
15 that special management considerations or protections are  
16 required to address threats to the essential features of  
17 loggerhead habitat. And yet, in the economic impact  
18 analysis, the Wildlife -- the Fish and Wildlife Services  
19 takes a position that designation of critical habitat is not  
20 necessary or essential for the conservation and recovery of  
21 the species.

22 In particular, draft economic analysis, Appendix  
23 D, page 12, "We anticipate that Section 7 consultation  
24 analysis will result in no differences between  
25 recommendations to avoid jeopardy or adverse modification in

1 occupied areas of critical habitat." A lot has been said  
2 about the economic -- the draft economic analysis or impact  
3 of which I agree. But I want to point out specifically that  
4 project proponents may experience indirect effects due to  
5 litigation. I would propose to you that the reason we're  
6 here is because of proposed and actual litigation by NGOs,  
7 and I would ask you, in the time that the U.S. Fish and  
8 Wildlife Service has been promulgating this rule, I'd ask you  
9 to consider how much time and effort and money has been  
10 expended on our behalf by the agency. And the claim that  
11 those costs would be too speculative and likely to be minor,  
12 would seem to be in direct conflict. Thank you.

13 MR. THORNTON: Thank you, sir. We've been at it  
14 for a little over an hour right now. I'd like to give  
15 everybody a few minutes to stretch your legs, go to the  
16 bathroom if you need to. So let's take just a -- a short  
17 break and be back on the record at 8:15. It's 8:08 right  
18 now.

19 COURT REPORTER'S NOTE: There was an off-the-  
20 record break at 8:08 p.m. until 8:15 p.m.

21 MR. THORNTON: Our next speak is Ms. Karen  
22 Linehan -- Linehan -- Linehan?

23 MS. KAREN LINEHAN: Thank you for the chance to  
24 speak with you all tonight. My name is Karen Linehan.  
25 That's spelled L-I-N-E-H-A-N. I am a resident of Carolina

1 Beach and a first and second grade teacher. I appreciate the  
2 expertise of those who have spoken before me. I'm certainly  
3 not an expert on loggerhead sea turtles, nor on policy-making  
4 by the Federal Government. I am here to speak from the heart  
5 tonight. And I'm here this evening to support the proposed  
6 designation of critical habitat for loggerhead sea turtles  
7 along our area beaches.

8           We humans love our beaches, where we live, play  
9 and also forage for seafood. And I, like many of us here  
10 tonight, am not originally from this area. I grew up in  
11 Raleigh and came here to live by the ocean 25 years ago.  
12 Unfortunately, the activities we enjoy along our coast are  
13 also hazardous to many kinds of sea life and, in this case,  
14 specifically loggerhead sea turtles that need our beaches for  
15 nesting, and that also forage for food in the same places  
16 where we drive our boats and fish in coastal waters.

17           I think most of us who live here or visit the  
18 Cape Fear beaches would claim to love and care for loggerhead  
19 sea turtles. But if we truly care for these creatures and  
20 call ourselves stewards of the environment, then we should  
21 take this positive step as a local and regional community in  
22 creating more safeguards for them. As members of Animalia,  
23 as we all are, we should agree to a plan that allows us time  
24 to think together when future coastal projects are proposed.  
25 Here is a fellow animal in trouble, in large part due to our

1 activities, and it continues to need our help. We humans who  
2 take and use so much of the earth's resources, can we not  
3 stop and think of the needs of other creatures unable to  
4 speak for themselves?

5           Sea turtles have roamed the earth's waters for  
6 millions of years. They were here before the dinosaurs and  
7 long before mammals evolved. They survived the breakup of the  
8 continents and endured numerous ice ages, and times of  
9 increased volcanic activity on earth. While we gather here  
10 tonight to discuss their fate, there are tiny loggerhead  
11 turtles hatching from eggs beneath the sand, maybe even as we  
12 speak. And they're waiting for the right moment to emerge in  
13 mass. They will make their way down to the sea and take  
14 their chances with the rolling surf and a myriad of  
15 predators. It has been this way for eons. But will it  
16 continue to be so?

17           Loggerhead and other sea turtles may become  
18 extinct during our lifetime. Establishing critical habitat  
19 is one more way we can hopefully prevent this tragedy from  
20 happening. Thank you.

21           MR. THORNTON: Thank you. Okay. Our next  
22 speaker is Mr. Curtis Schacher. Did I get that right?

23           MR. CURTIS SCHACHER: You got that right on.  
24 That's amazing. Curtis Schacher -- S-C-H-A-C-H-E-R. I've  
25 been a resident of Wilmington for about 35 years. I'm an

1 avid surf fisherman and I've surf-fished the beaches from  
2 Virginia to South Carolina. I've frequented Cape Hatteras  
3 and probably twice, three times a week going to the area of  
4 Fort Fisher and Carolina Beach Freedom Park.

5 I have seen Fish and Wildlife Service make rules  
6 and regulations at Cape Hatteras that are actually  
7 detrimental to the interests of the businesses and the  
8 fishermen. The rules and regulations have pushed me out of  
9 Cape Hatteras, where I only go probably once a year up there,  
10 whereas I used to go every three months or so.

11 The restrictions I have not seen do anything to  
12 improve the habitat of the sea turtles. The closure of  
13 beaches, like I say, is detrimental to having access to where  
14 you want to go. And I don't mean that every place on the  
15 beach should be accessible. I -- you know, a marked turtle  
16 nest certainly is a location that you don't need vehicles.

17 I can say without a shadow of a doubt that  
18 the people of Pender, New Hanover and Brunswick County do  
19 light-years ahead work, dealing with sea turtles that is done  
20 by the U.S. Fish and Wildlife Service at Cape Hatteras. I've  
21 experienced it; I've been there. I've been at the -- when  
22 the turtles hatch, and you know, it's beautiful seeing this  
23 army of little fellows marching to the beach. I've got my  
24 grandsons involved now that they're out of school, to be able  
25 to watch and participate somewhat in this effort.

1           I don't think rules by the Federal Government  
2 will do anything. We saw at Cape Hatteras where it wasn't  
3 going to cost anybody anything. At Cape Hatteras, if you  
4 call any of the businesses there, and call them up and ask  
5 them, "What economic impact has been happening to your  
6 business over the last two to three years?" they will shout  
7 that it's not a thing for them.

8           Secondly, I have participated in comments to  
9 the Fish and Wildlife Service while they had their proposed  
10 rule-making. I can say without a shadow of a doubt my  
11 comments were not considered. The only people that was  
12 considered were the lawyers representing the opposition to  
13 the citizens of the area.

14           I think that you have to look at -- if the  
15 citizens in these counties are doing more than the Federal  
16 Government, then why do you need the Federal Government  
17 involved? And that's what I'm saying. Why make more  
18 regulations? I do not see ever, that the Federal Government  
19 will do more than the state agencies for protecting our  
20 beaches. And I thank you for your time.

21           MR. THORNTON: All right. Thank you, sir. The  
22 next speaker is Ms. Carin Faulkner.

23           MS. CARIN FAULKNER: Thank you. I'm from North  
24 Topsail Beach. North Topsail Beach loves the loggerhead  
25 turtle. It's a part of our town logo, and even our town hall

1 is located at 2008 Loggerhead Court. Our visitors love the  
2 beach, and so do the turtles for their nests. Our town has  
3 been working on restoring our beach on our own since about  
4 2002. We finally received our permits and completed the  
5 first phase of our shoreline protection plan, the New River  
6 Inlet Channel Realignment project this past January, on our  
7 North end. This added approximately 150 feet width to our  
8 shoreline, saving several homes and a condo complex from  
9 falling into the Atlantic.

10 As of July 28th, there have been 106 turtle  
11 nests found on Topsail Island this season. Last year, there  
12 were 85 total. This year, 64 have been found -- found at  
13 North Topsail Beach, and at least three of those were found  
14 in the project area on the North end. Connie Pletl, a North  
15 Topsail Beach resident, found these nests. Connie has been  
16 on the turtle patrol for about eight years now, walking the  
17 same area. She said, sometimes, it would be one or two years  
18 before she would even find one nest, and she found three this  
19 year. And, oftentimes, when she found this before the  
20 project, those eggs would be too close to the shore, because  
21 of the severe erosion.

22 Our town had never had an engineered beach until  
23 this year. The town did this with no Federal, State, or  
24 County funding. And we would like to finish the rest of the  
25 shoreline to create more habitat for the turtles, protect our

1 property, and continue to be a tourist destination. This  
2 designation will slow down this effort and make it more  
3 costly for our taxpayers. Thank you for your time.

4 MR. THORNTON: Thank you. The next speaker is  
5 Mr. Tony Marwitz. Mr. Marwitz.

6 MR. TONY MARWITZ: Very good. My name is Tony  
7 Marwitz. I'm the President of Holden Beach turtle patrol.  
8 Obviously, I live on Holden Beach. I've been a member of  
9 the turtle patrol for approximately 19 years. Our turtle  
10 patrol is approximately 22 years old. In that time, we've  
11 been very active, very successful. Typically, our hatch  
12 rates -- success hatch rates are among the highest in the  
13 state.

14 We know what we're doing. We know our beach  
15 better than you do. Let us do our job. Yes, the turtles  
16 have been laying eggs for centuries. But now, our patrol  
17 keeps crabs from biting hatchlings as they go to the beach.  
18 We make sure the nests are not dug up by the foxes. I can  
19 easily see more regulations coming from you guys saying, "We  
20 can't do what we're doing now." We help the turtles now.  
21 Let us keep it up.

22 In 19 years, I have never had the Town of Holden  
23 Beach not agree to do something that would help the turtles.  
24 We work very closely together. At times, they wanted to put  
25 sand on -- on the beach at a -- at a difficult time. We

1 arranged to go check the beach out for them. Like I say, we  
2 know what we're doing. Don't interfere with us anymore. Let  
3 us do our job, and we'll take care of the turtles. Thank  
4 you.

5 MR. THORNTON: Thank you, sir. Mr. Mark Miller  
6 is our next speaker.

7 MR. MARK MILLER: Hi, I'm Mark Miller. I live  
8 in Carolina Beach. I'm kind of in the service industry.  
9 Most of us down on the beach areas are in the service  
10 industry. We depend on the tourists to come down in the  
11 summer time so we can survive the winter time.

12 I didn't find out about this until this morning.  
13 I saw it on the news, and I had -- the Mayor e-mailed me and  
14 said, "Hey, we've got this thing." So, next time, I wish we  
15 could get the news out a little bit better.

16 In talking to Pete, you know, I came down here  
17 thinking that we were going to get shut down like Cape  
18 Hatteras. It's shut down right now. Pete says, "No," you  
19 know, "that's not going to happen." Well, the regulations  
20 for the critical ha -- habitat designation at some point in  
21 time, I've got a feeling that the -- that the committee is  
22 going to have to justify itself, and they're going to have to  
23 make some rules. And I can think of the only rules that  
24 they're going to make is, "You can't do this. You can't do  
25 that." And when you do that to a beach community, it's going

1 to really shut the beach community down.

2           These guys, the turtle groups, I've watched -- I  
3 go surf in the morning, fish in the morning, I see the guys  
4 and the ladies -- most of them are ladies -- they're out  
5 there every morning, zipping up and down in their little  
6 four-wheelers, and they're marking the turtle nesting areas.  
7 They're -- you know, they're keeping people away from them,  
8 which is good. Where the foxes are eating the eggs, they've  
9 got them fenced off so the foxes don't eat the eggs in  
10 some places. That's kind of a natural selection. They've  
11 been eating the eggs forever, so I don't -- you know, I  
12 don't -- that's -- that's between the turtle people and the  
13 foxes. But, you know, it's just -- it's -- what they're  
14 doing is working.

15           The Mayor says that they've had a banner year  
16 for the turtle nesting this year. Well, we did a beach  
17 renourishment this year. We've got all the lights on at the  
18 beach. We've got the pier lights on. We must be attracting  
19 them. We're doing something right for a change. I can go  
20 back to when I was a little kid when I lived in Florida. I  
21 can remember when the turtles had to come up a five-foot dune  
22 where I lived and go through 25, 30 yards of yucca bushes.  
23 And we used to have to cut past to go to the beach to go  
24 surf. There were no hotels on the beach. You couldn't see  
25 the houses from the beach. You couldn't see the lights from

1 the beach. And, unfortunately, I can remember thousands of  
2 little turtles this big around on 81A, where the cars are  
3 tripping over them and killed them. There was no lights  
4 drawing them in that direction. They just kind of  
5 sporadically go whichever way they went. That's kind of one  
6 of my pet peeves I've had for -- since I was a little kid.

7           So I think some of the rules and regulations are  
8 getting carried away. I think these people are doing a  
9 wonderful job. They're volunteers. You can't ask for much  
10 more from them. But we can ask you guys not to regulate us  
11 to death.

12           I'd say and we're in -- and, being in the  
13 service industry, if you regulate us, you're going to kill  
14 our economy. You're going to hurt -- most of us are service  
15 people. We rely on the tourists to come down and spend money  
16 so we can have an income. Kind of sim -- kind of similar to  
17 the Outer Banks. We'd have more professionals here than the  
18 Outer Banks, I would say. But, still, in the long run, we  
19 need the -- these people to come down here and -- just let us  
20 regulate. Let them do their work. They do a wonderful job.  
21 We don't need any of the designations, I don't think. Thanks  
22 a lot.

23           MR. THORNTON: All right. Thank you, sir, for  
24 your comments. And, at this point, at least our final  
25 speaker is Ms. Jody Smith. Is Ms. Smith here? Okay.

1           MS. JODY SMITH: Good evening. Thank you for  
2 having us here tonight. My name is Jody Smith, and I am an  
3 elected official in Carolina Beach. However, tonight, I  
4 represent the Pleasure Island Sea Turtle Project. I am the  
5 President, and I have been for about ten years. I also hold  
6 the Endangered Species permit in Kure Beach for our sea  
7 turtle monitoring program.

8           And I hadn't really planned on saying anything  
9 tonight, but just a few thoughts that come to mind. But I  
10 just wanted to -- I guess, not just so much questions, but  
11 just kind of some, I guess, food for thought from my  
12 perspective. I do feel like the economic impact that this  
13 could possibly have on our state as a whole is a worthwhile  
14 investment in our beach. It might impact our towns on the  
15 years that we have to -- to renourish. Those funds are  
16 already very hard to come up with, it looks like in the  
17 future. But the increase, I feel like, is something that we  
18 as citizens and we as town officials, and people that protect  
19 and love our beaches, it's a worthwhile investment.

20           With regard to the recreational uses, I could  
21 argue that sea turtles actually bring tourists to our island.  
22 Every year, we get hundreds -- truly hundreds of e-mails and  
23 phone calls saying, "We come here every year on vacation.  
24 Where are the sea turtles? When can we come out and watch  
25 them?" I don't feel like this is something that's going to

1 affect our tourist industry at all. And, if anything, it  
2 would actually draw people more to our beaches, because they  
3 would say, "Look, Carolina Beach has actually cared enough to  
4 protect their beach and call it a critical habitat."

5 I, for years, have actually worked with our  
6 project, trying to get lighting ordinances in place for our  
7 towns. And that's something that I think, if this goes  
8 forward, that might actually help us do that. We're looking  
9 at improving our boardwalk area in Carolina Beach, and I  
10 would love to see something in the future that would actually  
11 encourage proper lighting that's not going to distract  
12 hatching and nesting sea turtles.

13 I think this is a great opportunity to educate  
14 and just raise awareness about sea turtles. And that  
15 protecting the beaches is our duty as a citizen, and as  
16 residents of the beaches. It's -- this -- bringing this  
17 designation would actually just to help raise awareness and  
18 not be such a hurtful thing.

19 And I, actually, just was talking with someone  
20 earlier and understand that they were trying to get a grant  
21 for a project in the Cape Fear River, and because there are  
22 two endangered species that live in the Cape Fear River, they  
23 were actually not granted the money because there wasn't a  
24 critical designation habitat designated there for -- in the  
25 Cape Fear River for those species. Not the loggerhead sea

1 turtles -- something unrelated. But I just wanted to point  
2 out that, because we have this designation, potentially, it  
3 could actually bring funds to our -- to different projects  
4 that go on, maybe even beach renourishment.

5           And just wanted to correct two things. We  
6 actually have 19 nests in Kure Beach, which is the most we  
7 have ever had -- 14 was our old record. We've broken it by  
8 five nests so far this year. And, in the entire state, we  
9 are right now, with still just a couple weeks in August to  
10 go, holding steady at second most nests we've ever had. In  
11 the past four years, the nest numbers have continued to  
12 increase.

13           So, are protection measures that we do working?  
14 We really don't know because, like Anne Marie mentioned  
15 earlier, the life cycle is so long, we won't know really,  
16 maybe even in our lifetime, if what we're doing is working,  
17 because it takes 20 years for them to reach maturity. But  
18 I'd like to think that something like this being put in place  
19 isn't going to change the recreational uses on our beaches.  
20 It's not going to change how we renourish the beaches. It's  
21 not going to change any of those major things, except enhance  
22 our beaches and make it a better -- more suitable environment  
23 for sea turtles, because they were there first, and we're  
24 just stewards and trying to protect them.

25           I think that's all I have to say. Thank you.

1                   MR. THORNTON: Let me ask you, of the 19 nests,  
2 are they all loggerheads?

3                   MS. SMITH: They all are loggerheads in Kure  
4 Beach. Yes, sir.

5                   MR. THORNTON: Okay. Thank you. All right.  
6 We've run out of little slips of paper with peoples' names on  
7 it. The record's still open, so if there's anyone sitting  
8 out there who has thought of something they'd like to add to  
9 the record, we'd be glad to hear you. Okay. Well, if not,  
10 we'll -- we'll stand adjourned for now, and I'll -- we'll  
11 wait a few minutes around to see if somebody comes up and  
12 wants to speak. And, if not, we'll -- we'll end the hearing  
13 at or before 9:00 o'clock.

14                   Now, there's a hand up. Wait a minute here.  
15 Somebody's getting brave. Come on -- come on down. Go back  
16 on the record. Please tell us your name.

17                   MS. NANCY BUSOVNE: My name is Nancy Busovne.  
18 That's B-U-S-O-V-N-E. I am the Endangered Species permit  
19 holder for Carolina Beach, and I'm in charge of the project  
20 there. We're also part of the Pleasure Island Sea Turtle  
21 Project. Jody with Kure Beach and I work very, very closely  
22 together.

23                   I won't reiterate what Jody said, but I do agree  
24 with it word for word. And I would also like to add to the  
25 fact, I'm actually Broker-in-Charge for one of the largest

1 rental agencies on the island. We specialize in vacation  
2 rentals. And I will say, just from dealing with the tourists  
3 directly, Jody's right. They love the turtles. They love  
4 the turtles. We -- we put flyers in our brochures and, you  
5 know, all -- for the turtle talks. And we have brochures on  
6 the counter, and people are always calling us, you know, "Is  
7 there a nest going on this week?" And they just -- they love  
8 it. They love it. We actually had people come stay with us  
9 year after year, and they time their vacations around  
10 hatching nests.

11 I really cannot see where the critical habitat  
12 designation will affect the vacation rental industry, which  
13 is a huge part of the economy on our island. They really  
14 love the turtles. We have tried for quite some time to, you  
15 know, broach the subject of getting a -- a lighting ordinance  
16 in place. I do not think that will affect tourism. It  
17 hasn't in Florida, and Florida's had lighting ordinances for  
18 years.

19 So, just kind of wanted to -- to add to that.  
20 Just being directly in the tourist industry, I just really  
21 don't understand why it would ever have -- would have any  
22 sort of effect on that whatsoever. Thank you.

23 MR. THORNTON: All right. Thank you. Anyone  
24 else? Okay. It's 8:37. I will suspend the record for now  
25 and I'll -- we'll wait around about ten minutes to see if

1 anybody else wants to add anything to the record. And, if  
2 not, we'll -- we'll conclude the hearing at that time.

3           If I don't get another chance to say it, I'd  
4 like to thank all of you for coming and for speaking your  
5 minds and participating in this process. It's part of the  
6 great democratic process we have here in the United States.  
7 And I appreciate your courtesy and consideration towards each  
8 of your fellow citizens and speakers here tonight.

9           Thank you very much.

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11           \*\*\*\* HEARING CONCLUDED AT 8:50 P.M. \*\*\*\*

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