

FIRST SUPPLEMENT TO
REQUEST FOR RELIEF FROM
PARK'S MISMANAGEMENT

OBJECTIONS TO PARK NO PARKING AND TOWING POLICY

1. Introduction. This First Supplement adds additional allegations of mismanagement of Padre Island National Seashore (the Park) not set forth in the Request for Relief from Park's Mismanagement (Request for Relief). The prior Park Superintendent for the Park was diligent in working with the public and others in trying to solve problems for the benefit of the Park's users rather than aggravating or creating problems, as has the current Park Superintendent, Joe Escoto (Escoto). A prior Park Superintendent expanded the parking area at Bird Island Basin (the Basin). Prior Park Superintendents permitted vehicles and boat trailers to park on the shoulder of the two-lane asphalt Basin road, so parking was not a problem at the Basin on busy weekends. Escoto has unnecessarily converted the shoulder of the Basin road into no parking areas and has unnecessarily towed vehicles parking on the shoulder of such road.
2. Introductory Discussion of Mismanagement Issues. Escoto and the Chief Ranger, Deanna Mladucky (Mladucky), by establishing no parking areas on the shoulder of the Basin road and by adopting a "one violation you are towed" approach to vehicles parked on such shoulders, have abused their governmental authority, exposed the Park to liability, exposed Park users to danger, mismanaged the Park and alienated its users. Parking at the Basin has not been a problem since the inception of the Park, even on holiday weekends, until Escoto commenced his reign as Superintendent and arbitrarily changed the parking rules. Escoto has evidenced a total refusal to make use of civic engagement and public involvement strategies in connection with his management of the Park, as more fully discussed below and in the Request for Relief.
3. Purpose of Park. Pursuant to Public Law 87-712 passed September 28, 1962, the Park was established in order to save and preserve, for the purposes of public recreation, benefit, and inspiration, a portion of the diminishing seashore of the United States that remains undeveloped.
4. Governing Law.
 - A. Reference herein to "36 CFR" is to Title 36, Chapter I, of the Code of Federal Regulations (CFR).
 - B. References herein to "MP2006" and "DO75A" are as defined in the Request for Relief.
 - C. Reference herein to the "Superintendent's Compendium" are to the Superintendent's Compendium (Revised February 2009) prepared and

recommended by Mladucky and approved by Escoto.

<http://www.nps.gov/pais/parkmgmt/upload/Superintendent%20Compendium%20FINAL%202009.pdf>

D. Reference to the “Regulations” is to the Bird Island Basin Parking Regulations (Basin Parking Regulations) dated March 2, 2008.

<http://www.nps.gov/pais/planyourvisit/upload/PAIS%20BIB%20Regulations%20given%20to%20public.pdf>

5. Discussion of Inappropriateness of the Park’s No Parking Area Designations and Towing Policies. Escoto and Mladucky have abused their authority, exposed Park users to danger and alienated its users by designating the shoulder of the Basin road as no parking areas and by towing vehicles parking on such shoulder.

A. The prior Superintendents permitted parking on the shoulder of the Basin road. Escoto changed this practice by issuing his Regulations establishing no parking areas, without civic engagement and public involvement. See

<http://www.corpusfishing.com/messageboard/phpBB2/viewtopic.php?t=10921>

B. 1.7 of MP2006 provides in part that

The Service will embrace civic engagement as a fundamental discipline and practice. The Service’s commitment to civic engagement is founded on the central principle that preservation of the nation’s heritage resources relies on continued collaborative relationships between the Service and American society. Civic engagement will be viewed as a commitment to building and sustaining relationships with neighbors and other communities of interest—both near and far. This will require that the Service communicate by both talking and listening. Through its practice of civic engagement, the Service will actively encourage a two-way, continuous, and dynamic conversation with the public.

C. IV of DO75A provides in part that

The civic engagement and public involvement policies of this order . . . apply to discretionary decision-making by superintendents, regional directors and national program directors, at all levels and within all program areas of the National Park Service where: 1) the public has an identifiable interest or is likely to be interested, 2) there may be applicable knowledge or expertise likely to be available only through public consultation, or 3) there are complex or potentially controversial issues.

D. The provisions of 1.7 of MP2006 and IV of DO75A were not followed by Escoto and Mladucky in implementing the no parking areas along the Basin road or their towing policies.

E. Now no parking signs are posted approximately 0.1 miles apart on the shoulder of the Basin road.

F. Escoto has not mentioned that illegally parked vehicles will be towed on his no parking signs, in his Regulations or in the Superintendent's Compendium. No number is posted for a towed user to call to retrieve his vehicle. A towed user must wait until a ranger drives by, call the ranger station (if he has a cell phone and coverage) or travel 2.5 miles to the ranger office to determine that his vehicle was towed and the location to which it was towed.

G. Often, the Basin does not have adequate parking facilities to accommodate its users on busy weekends. Escoto has suggested in his Regulations that if the parking area is full that users should launch their boat and park their vehicle and boat trailer at Malaquite Visitor Center. He does not address how the user is to get from the Visitor Center to the Basin, a 4.2 mile walk.

H. Escoto has also indicated that rangers would post "parking lot full" signs at the Park entrance and at the intersection of Park Road 22 and the Basin road when the parking lot is full. Unfortunately sign postings have occurred later in the morning after visitors to the Park have launched their boats, then discovered that no parking spaces were available and parked on the shoulder of the Basin road. Fishermen often launch their boat to go fishing and park their vehicle and trailer around daylight, which is long before rangers commence working so Escoto's parking lot full signs are often many hours too late to serve as a worthwhile warning. Escoto and Mladucky apparently don't realize that a fisherman doesn't drive around verifying if a parking space is available before launching his boat. Instead he launches his boat first, and then tries to find a place to park. It is unreasonable to expect a user who has launched his boat and was unable to find a parking space, to load his boat back on the trailer or leave his boat at the boat ramp, drive his vehicle and trailer to the Visitors Center and then walk back 4.2 miles to the Basin at daybreak. Even if the signs were timely posted, that does not solve the problem of the Park having inadequate parking facilities because of the unreasonable no parking rules instigated by Escoto and Mladucky.

I. It is ludicrous that Escoto seems to feel that he has solved the parking problem by posting "parking lot full" signs at the Park entrance and at the intersection of Park Road 22 and the Basin road when the parking lot is full. No business person who was expecting a large influx of customers on a holiday weekend would intentionally run off customers if a way could be found to accommodate them. He would be mindful that if he does not find a way to accommodating his customers that they will cease to use his services. Parking lot full signs were not necessary before Escoto started managing the Park because adequate parking was available on the shoulder of the Basin road. The clear message that Escoto is conveying to Park users is that they should not count on

Park facilities being available to them under his reign, and that the Park has no genuine interest in trying to accommodate their recreation needs.

J. A fundamental issue which needs to be addressed is: Why isn't parking permitted on the shoulder of the two-lane Basin road when the parking lot is full?

(1) The fact that occasionally vehicles with trailers park too close to the Basin road creating a minor impediment to passing vehicles with trailers is not justification for the no parking or towing policy. The two-lane Basin road is plenty wide for vehicles with trailers to get by. It is approximately 20.5 feet wide. Rather than adopting a policy which alienates the public, Escoto and Mladucky should have tried to find a constructive solution to the need for additional parking at the Basin.

(2) Currently, the shoulder along the side of the Basin road is only mowed about as wide as a vehicle so that to park a vehicle further from the road may require driving in the uncut grass. The area along the side of the Basin road is short and sparse coastal prairie grass with a ground surface of sand, with small rocks at the edge of the road bed.

(3) Rather than posting no parking signs, a more constructive approach and simple solution to the no parking problem would have been to mow an extra few feet of shoulder in the area where users are most likely to park so that vehicles could easily park on the mowed shoulder and still be far enough from the Basin road. No fences or other major obstructions exist which prevent mowers from clearing the extra area. Currently, only a portion of the south shoulder would have to be mowed, and none of the north shoulder would have to be mowed.

(4) Rather than posting no parking signs, it would have been more user-friendly to have posted signs and notices that vehicles are to park at least one foot from the Basin road.

(5) Users who then park too close to the Basin road could be given a ticket or warning for doing so, but should not be towed.

(6) Towing a vehicle is an extreme action which should not be undertaken just because a vehicle parked on the shoulder is too close to the edge of the two-lane Basin road.

K. Although it is recognized that paving a new parking lot area or expanding the existing lot might involve environmental issues, it is difficult to imagine that anyone who had actually viewed the shoulder of the Basin road (most of it is sand and sparse short grass) would suggest that any habitat loss arises from permitting vehicles to park on such shoulder when additional parking is needed. If this is

raised as an issue, then the initial question which needs to be addressed is whether a genuine desire exists to try to solve the Basin parking problem. If a desire exists, then solving this issue should not be difficult. The Park currently mows the shoulder of the Basin road approximately as wide as a vehicle. If permitting vehicles to use the shoulder a few days a year is thought to result in habitat loss, then one alternative is for the Park to quit mowing the shoulder of the remainder of the Basin road not needed to park vehicles. Since vehicles will probably need less than one-half mile of the shoulder of the Basin road, leaving the remaining approximately one and one-half miles of the shoulder of the Basin road unmowed (or mowed only a foot) should create more than enough additional new year-around unmowed habitat to more than make up for any perceived habitat loss from letting vehicles park on the shoulder of the Basin road a few days a year. Attention is called to 1.4.7.1 of MP2006 which provides in part that “virtually every form of human activity that takes place within a park has some degree of effect on park resources or values, but that does not mean the impact is unacceptable or that a particular use must be disallowed”.

L. If Escoto and Mladucky have any other perceived reasons why they feel parking should not be permitted on the shoulder of the Basin road which they are unable to solve in a manner which will not alienate Park users, they should engage in civic engagement with the public in accordance with 1.7 of MP2006 and DO75A to determine if a solution to their concerns can be found.

M. The Basin is located in a remote coastal wilderness. No telephone service exists at the Basin and cell phone coverage is often unavailable. Any user whose vehicle is towed in order to summon assistance [if no friends (or strangers willing to help) with vehicles are present and no cell phone can be used] must either (i) travel more than 10 miles by boat to the outskirts of Corpus Christi, Texas, running the risk of running out of gas, health problems, encountering bad weather or nightfall or (ii) leave his boat, family, fishing tackle and other belongings unattended at the boat ramp and (a) travel 2.5 miles to the Ranger station (and hope someone would assist him), (b) travel 4.2 miles to Malaquite Visitor Center, or (c) travel 9.8 miles to the nearest convenience store on Park Road 22 on the outskirts of Corpus Christi, Texas, while running the risk of theft, health problems or encountering bad weather or nightfall. One can only imagine the problems a fisherman without cell phone coverage might experience returning to the Basin just before nightfall after fishing all day, and then finding his vehicle and trailer are missing. If he can't find a ranger, he has no way of knowing whether his vehicle was towed or stolen. Since no one with prior knowledge that the Park tows vehicles would park in a no parking area, he would naturally assume that his vehicle was stolen. If it were too late to walk 4.2 miles to Malaquite Visitor Center, spending the night at the Basin without mosquito protection on the floor of the Basin public restroom could be a horrible experience.

N. It is also submitted that the Park, by exercising excessive and unnecessary governmental authority by towing a user's vehicle and intentionally stranding him

miles away from assistance, might be liable if a user or a member of his party suffers a major health problem caused or aggravated because such person was unable to timely secure medical treatment as a result of the towing.

O. The Park has been well aware since September, 2008 that high wrecker fees, as high at \$2,500, were being charged towed victims.
http://www.mysanantonio.com/news/local_news/Wrecker_fees_wreck_beach_fun.html

P. Escoto and Mladucky by exposing users of the Park to unnecessary personal danger and to outrageous wrecker charges for merely parking in a no parking area (so designated by them) have acted with total indifference and disregard for the welfare of Park users, evidenced a lack of judgment by unnecessarily applying excessive and unnecessary punishment, mismanaged the Park and alienated its users.

Q. Since the prior Park Superintendents permitted parking on the shoulder of the Basin road, the prior practice should not have been changed without civic engagement in accordance with 1.7 of MP2006 and DO75A. Had such civic engagement occurred, the public could have assisted Escoto and Mladucky in constructively solving the parking problem that they perceived existed and were unable to satisfactorily solve.

6. Discussion of Park's Liability for Adopting Towing Policy. Escoto and Mladucky by implementing a strict towing policy for Park users parking in areas they designated as no parking areas have exposed the Park to liability if a towed vehicle is damaged or if the towing company charges excessive fees.

A. A wrecker driver called by Mladucky to tow a vehicle is not operating as an independent contractor with a Commercial Use Authorization under of 36 CFR §5.3, but instead is acting as an agent of the Park under 36 CFR §5.6.

B. Section 5.6 provides in part as follows:

§ 5.6 Commercial vehicles.

(a) The term "Commercial vehicle" as used in this section shall include, but not be limited to trucks, station wagons, pickups, passenger cars or other vehicles when used in transporting movable property for a fee or profit, either as a direct charge to another person, or otherwise, or used as an incident to providing services to another person, or used in connection with any business.

(b) The use of government roads within park areas by commercial vehicles, when such use is in no way connected with the operation of the

park area, is prohibited, except that in emergencies the Superintendent may grant permission to use park roads. . . . (Underlining added)

C. Thus, wreckers, as commercial vehicles, can only lawfully operate in the Park when assisting with the operations of the Park or in the case of emergencies. Since the wrecker drivers are called to the Park by Mladucky to assist in operations of the Park, they are agents of the Park.

D. The towing arrangement constitutes an involuntary bailment for the sole benefit of the Park whereby the owner of the towed vehicle is the involuntary bailor and the Park is the bailee. The wrecker driver and his storage facility are agents of the Park.

E. Taking a towed vehicle into possession or control is a sufficient acceptance to establish an implied bailment. Rust v. Shamrock Oil & Gas Corp., 228 S.W.2d 934, 935 (Tex.Civ.App.-Amarillo 1950, no writ).

F. Since the towing arrangement is for the sole benefit of the Park, as bailee, great diligence is required of the Park, and the Park is responsible for slight neglect. Citizens' National Bank v. Ratcliff et al., 253 S. W. 253 (Tex. Com. App.); Exporters' & Traders' Compress & Warehouse Co. V. Bargainer, 45 S.W.2d 563 (Tex. Com. App., 1932).

G. Thus, if a wrecker company damages a towed vehicle (for example, damaging its transmission by towing it without disconnecting its drive shaft before towing), the Park, as principal, is liable along with its agent, the wrecker company. Section 2308.403 of the Texas Occupations Code (the Code) limiting the liability of the organization authorizing a tow is not applicable because such section is only applicable to parking garages.

H. Further, since the Park, as bailee, has a duty to exercise great diligence, it has a duty to insure that fees charged for the tow are reasonable and that the wrecker company making the tow is operating lawfully, including in compliance with §2309.159 of the Code.

I. Having a wrecker company tow a vehicle which charges \$2,500, when other wrecker companies will tow for less than \$800, is a dereliction of the Park's duty to exercise great diligence and exposes the Park to liability for the excessive charge, if it is not refunded by the wrecker company.

J. When a wrecker company tows a vehicle, it must tow it to a "vehicle storage facility" pursuant to the provisions of §2303.155 of the Code. Under §2309.159 of the Code, a vehicle storage facility is required to accept payment by an electronic check, debit card, or credit card for any charge associated with delivery or storage of a vehicle.

K. Sanford Amey, owner of Sanford's Wrecker Service and Amey's Wrecking Service, has charged \$2,500 for towing vehicles from the Park at Mladucky's request and has insisted on payment in cash in violation of §2309.159 of the Code. <http://www.caller.com/news/2009/may/27/fishermen-get-2500-tow-bills/>

L. The Park by having vehicles towed by a wrecking company which charges excessive fees and does not operate lawfully has violated its duty to exercise great diligence and has exposed the Park to liability since it has at the very least committed slight neglect.

7. Concluding Comments. As a result of Escoto's close-minded, internal management style, the Park has been mismanaged and its users alienated. Examples continue to surface reflecting Escoto's bias against civic engagement and hearings. The Park needs to be managed as Congress mandated for the purposes of public recreation, benefit and inspiration and in accordance with the mandates set forth in MP2006 and DO75A.

Escoto and Mladucky by unnecessarily establishing no parking areas along the shoulder of the Basin road and by adopting a "one violation you are towed" approach to vehicles parked in such no parking areas have abused their governmental authority, exposed Park users to danger, exposed the Park to liability, mismanaged the Park and alienated its users. The fact that Escoto and Mladucky elected to follow an approach guaranteed to alienate Park users rather than trying to solve the perceived parking problem in a constructive manner calls into question their willingness and desire to place the interests of Park users paramount when solving perceived Park problems.

8. Relief Requested. The following relief is requested:

A. The shoulder of the Basin road should be mowed wider so that vehicles with trailers can park away from the road without having to park in unmowed grass. The no parking signs should be replaced with signs advising Park users that they should park at least one foot from the road. Any user parking closer than one foot from the road may be given a ticket or warning for doing so, but should under no circumstances be towed.

B. The policy of towing vehicles parked on the shoulder of the Basin road should be terminated immediately. No justification exists for such towing.

C. If involuntary towing is appropriate in other portions of the Park, no tow should be directed to a business owned by Sanford Amey since it appears that he has violated the law, as discussed above, and is known to charge excessive fees, or to any other wrecker company which only accepts cash or charges excessive fees. Since the Park, as bailee (in the case of an involuntary tow), has a duty to exercise great diligence, it should verify the reasonableness of the fees charged by the towing companies it uses and verify that they are complying with the law.

Using a list supplied by another governmental agency does not satisfy the Park's duty to exercise great diligence.

D. Escoto and Mladucky should be admonished to follow the mandates set forth in MP2006 and DO75A in the performance of their duties in the future. Specifically, they should be instructed to follow the civic engagement and public involvement policies of DO75A where: 1) the public has an identifiable interest or is likely to be interested, 2) there may be applicable knowledge or expertise likely to be available only through public consultation, or 3) there are complex or potentially controversial issues. Escoto and Mladucky in handling their respective duties for the Park need to be mindful of Congress's intent in creating the Park for the purposes of public recreation, benefit, and inspiration. The Park should not be operated as a Federal Fiefdom where the public's interest and benefit are deemed to be subservient to the efficient and trouble-free operation of the Park.