

**ALTERNATIVE OPTIONS WORKBOOK**

OPTION 1.A.2 et. al.

**I. PREAMBLE**

In the winter of 2005 a visitor from New England expressed her dismay that the National Park Service (NPS) was about to allow Off Road Vehicles (ORV'S) to drive on the pristine beaches of the Outer Banks. This is an example of a typical lack of public understanding of the history and life on these islands.

The Cape Hatteras National Seashore Recreational Area (CHNSRA) can provide many types of enjoyable experiences to many people. This is similar to those multi-tool gizmos that many of us have in the bottom of our tool boxes. It provides a lot of functions which are not always the best for every application which is why the tool box contains so much other stuff.

Not all expectations can be realized to their fullest. The park can not be only a virgin wilderness nor can it be a wild playground. Aspects of both will continue to endure for the benefit of all.

The park superintendent is charged with the responsibility of operating the CHNSRA in such a manner as to maintain the values of the park for the public enjoyments both now and into the future. Objectives include:

1. Prevention of conflict among the users of the recreational beaches
2. Preserve the flora and fauna along with physiographic conditions which exist in all areas other than the beaches
3. Protect wildlife regulated by the Migratory Bird Treaty Act (MBTA) and Endangered Species Act (ESA) throughout the park both on the beach and elsewhere.

The protection of wildlife and preservation of public recreation are not either/or issues neither are they points of compromise or balance. They are separate mandates that need be addressed as such in these proceedings. Other mandates such as the American Disabilities Act must also be considered.

Our forefathers showed great wisdom in the creation of this National Seashore for the recreation of the public. They would be proud to witness the multitudes which flock to this park unit on every holiday. This admirable purpose can continue into the future as the nations population continues to expand. The NPS now needs to address the appropriate changes to best serve the future increased utilization of this unit. Projected population growth for North Carolina has been set at 53% over the next 20 years. This will have a profound effect on CAHA. Any ORV regulation for the Outer Banks needs to be very flexible. Ocean level fluctuation and major storm events can drastically alter beach conditions. Portions of the islands and even whole villages can disappear.

An ORV regulation could be very simply stated: "The public can drive wherever the NPS allows". Such a statement is not possible because of the evolutionary NPS policies on resource protection. Any ORV regulation is of little value when major portions of the beaches are closed for wildlife protection This condition will have greater impact as future wildlife stocks recover. The NPS needs to manage the wildlife instead of limiting visitor access.

The NPS needs to adhere to the basic laws which govern this park unit. The enabling legislations of 1937 and 1940 are the two laws which are most frequently misunderstood and wrongly applied even though they are presented in plain language rather than convoluted legalese. Although an appreciation of the history and development of this country's first national seashore aids in its understanding, we are in the final analysis bound by the laws as written.

## **CHNSRA**

### **II. HISTORICAL BACKGROUND**

#### **A. Organic Act**

1916: Congress passed the "Organic Act" which created the National Park system to "...conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such a manner as will leave them unimpaired for the enjoyment of future generations."

#### **B. Enabling Legislation + Information**

1. 1917 the first automobiles traveled on these beaches and sand trails. The first vehicle to vehicle Accident was in 1920.
2. 1937 Congress established Cape Hatteras National Seashore
3. 1938 NPS prepared a prospectus for Cape Hatteras
4. 1940 Congress renamed the new unit as Cape Hatteras National Seashore Recreational area and allowed public hunting
5. 1952 Conrad Wirth as director of NPS published letter in Coastland Times
6. 1953 Land acquisition for Recreational Area was completed
7. 1957 Cape Hatteras Anglers Club was founded.
8. 1958 the Recreational Area was dedicated
9. 1964 North Carolina Beach Buggy Association Founded.
10. 1970 Congress passed the General Authorities Act saying that all units of the NPS have equal legal standings in a national system and that all units of the system will be managed in accordance with their individual statutory directives
11. 1978 Congress passed the Redwood National Park Act which augmented the 1916 Organic Act and provided that activities shall "not be exercised in derogation of the high values and purposes for which these various areas have been established except as may have been or shall be directly and specifically provided for by Congress."

#### **C. Discussion**

The history and phrasing of the enabling legislation clearly shows the intent of Congress was to establish a national seashore whose primary or major purpose was to serve the recreational needs of the public.

In statements of law or regulation one is expected to find a statement of principal followed later by possible exceptions. Thus the 1937 law could have started with a declaration for preservation of wilderness. It did not! Significantly the phrasing started with the delineation of recreational activities and area as the exception to all other areas within the new seashore.

Just in case their intent was not clear enough Congress amended the law in 1940 and changed the name to become "The Cape Hatteras National Seashore Recreational Area". This amendment also provided for public hunting.

Important elements of CHNSRA creation were:

1. The villages on Hatteras and Ocracoke Island were not purchased to form CHNSRA. Villages were encouraged to develop a tourism based economy
2. The sand beaches of both ocean and sound were to be dedicated and developed for recreational pursuits. Several forms of recreation were listed to exemplify shore line activities. No provisions were made for wildlife protection on these areas of beach
3. All other portions of the island were to be "permanently reserved as a primitive wilderness and no development of the project or plan for the convenience of visitors shall be taken which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing in this area"
4. Historical and other significant areas were to be to acquired and preserved
5. The existing migratory bird refuge (Pea Island) was to be part of the CHNSRA and administered jointly by NPS and Fish and Wildlife Service (F&WS) (originally Dept. of Agriculture). Public recreation within Pea Island was to be administered by NPS with joint approval of F&WS
6. CHNSRA is primarily to be administered as a recreational area. Recreational uses will be regulated so as to prevent conflict among recreational users and provide safety to the public
7. NPS was to provide access to the beaches for everybody.
8. COMMENT:

The 1937 and 1940 acts of Congress have not been rescinded nor amended. They are both in full force regardless of any other interpretations or policies to augment any other legal requirement. These acts trump some aspects of the Organic Act. The Redwood (1978) Act reinforces the direction that no agency can alter the recreational purpose of these beaches; this right is reserved to Congress. The 1970 General Authorities Act indicates that the NPS must administer CAHA according to its enabling legislation regardless of any general park policy.

The unique wording found in the "Exception" clause of USC459a is of considerable interest. Recreational usage was not merely to be allowed, but a mandate was established to develop those uses. This would anticipate construction of lifeguard/first aid stations, shower and changing rooms, restrooms, fish cleaning stations, refuge removal, sound side docks and launch ramps, ORV air stations, scenic overlook platforms, pedestrian ramps, vehicle parking, informational theaters, campgrounds, and wildlife interpretive viewing.

The specific recreational activities of swimming, boating, sailing, and fishing all require interaction with the waterline and some areas of the beach. Every inch of shoreline is not only suitable but "adaptable" for these recreational uses. Even though the word "beach" is not found in this legislation it is clearly the major portion of this park which meets the mandate for recreational use. Fresh and salt water ponds within the interior "primitive wilderness" also qualify to be developed for

recreation purposes which explains why the word “beach” was not used otherwise the ponds would have been excluded from development. Beach use and access were further addressed by Conrad Wirth in 1952 in his efforts to sell the Recreational Area program to the islanders and their elected representatives.

D. Executive Orders: 11644, 11989 and 13352

Presidential orders to control ORV use in the National Parks were precipitated by damage on wilderness areas with motor sports groups using motor cycles, All Terrain Vehicles (ATV's) and 4 wheel drive vehicles. Much of this group viewed our national parks as a venue for motor thrill adventures which caused long lasting physical damage to the environment e.g. everglade trees and fragile desert crypto biotic soil crust. Much of this type recreation was a new use of an existing park system.

Compare this to the CHNSRA experience where motor sports have never been allowed. ORV use has been and continues to be regulated:

1. Beach access only at designated ramps
2. Vehicle speed regulated
3. No driving on dunes
4. Driving restricted to open beach areas
5. Driving restricted in front of villages and major pedestrian use areas
6. ORV's utilized for access to remote areas for other recreational pursuits
7. ORV travel on beaches was not a new use of the park but an early mode of transportation when CHNSRA was developed. Beach driving is a cultural and historic use of the park
8. Visual changes of the sand beach from ORV's are only temporary and removed by the next tidal or weather event
9. Soundscapes are rarely disturbed by muffled engines against the noise of wind and waves pounding upon the sand.

Regardless of these differences, the executive orders require that CAHA have a formal plan to regulate ORV use within the Recreational Area.

The Organic Act and presidential executive orders have been interpreted to require that resource protection shall prevail over recreational use in any event of conflict.

Here on the CAHA beaches there has been no need for conflict except when the NPS or F&WS have chosen to interpret the MBTA and ESA such as to bar the public from their lawful use of their beaches. One problem appears to lie in the attitude that all natural processes take precedence over human needs. This is entrenched in the NPS management policies or guidelines which they apply to all units within their system. The “Mom Nature knows best” syndrome has been disastrous in its applications to CHNSRA. Relief for Hatteras Village after Hurricane Isabel required the intervention of the head of Homeland Security to overcome the agitation of resource advocates. Refusal to relocate the majority of sea turtle nests has consistently squandered half the eggs laid on our beaches. This is an appalling failure of NPS stewardship. Our history has shown that the NPS has managed public access instead of managing the wildlife resources. This systemic failure must be confronted in the establishment of an ORV plan.

It has appeared that under the “natural approach” any wildlife species that landed on part of our beaches, then that particular area was owned by the species. There have been times when portions of the recreational beach were even set aside

as an attraction prior to a species arrival on the scene. Frequently these reservations were in areas of prime recreational interest which guaranteed to promote later conflict. No thought or effort was made to attract wildlife to another area (existent or created) whereby conflict could be minimized.

The area at Cape Point illustrates two problems created by NPS that need correction:

1. Dredge Hole Habitat: This body of salt water also known as "Salt Pond" by recent NPS personnel was created by dredge operations pumping sand onto the beach to stabilize the lighthouse. In the 1970-1980 time period, the pond was surrounded by bare beach and was prime habitat successfully used by a myriad of Piping Plovers and other shore birds. In a well intentioned, but misdirected effort to protect a few patches of grass and wildlife the surrounding beach was roped off which allowed additional grass and dunes develop which completely destroyed the prime bird habitat. Plovers were forced to use unprotected front beach areas at Cape Point for nesting.
2. Wintering Habitat and Pre-Nesting Closures: The closure of large areas of beach for wintering birds has allowed grass and dune growth which further reduced available beach habitat and unduly concentrated recreational use of those beaches. This is a special problem at the inlet spits. The establishment of pre-nesting enclosures at Cape Point has compounded the problems for survival of bird species. Not only has the NPS failed to correct the dredge pond loss of habitat, but they have intentionally lured the Plovers to a place of danger where nest survival will be low. Habitat needs to be re-established at Cape Point and the spits by suitable grading the land contour. The water level of the dredge hole may need to be controlled by drain or dam to maximize forage flats.

F&WS personnel have examined portions of CHNSRA beaches to evaluate for primary constituent elements and declare a stretch of beach eminently suitable for a wildlife species and then projected the need for denial of public access along the beach front. These are problems with this approach:

1. A local interpreter (regardless of qualifications) has just changed a law (the enabling legislation). If there is any real conflict between laws, he has usurped the right of the courts
2. Our beaches are dynamic. Any decision made at one point in time may be completely altered within a few days or one major weather event
3. Beach closure for wildlife protection has been a common management tool at other units of the NPS system whose enabling legislation called for a balanced administration or even prioritized natural resources versus public access. This tool is not appropriate in Cape Hatteras whose enabling legislation clearly reserves the beaches for recreational purposes. No closure can prevent public access to the water line.
4. F&WS assessment of habitat elements has ignored the fact that they are viewing a recreational beach instead of a raw canvas composed only of land topography. The CHNSRA beaches come completely equipped with people and all their trappings. ORV's, children, babies, pets, screen houses, wind breakers, play pens, porta-potty enclosures, ice coolers, bar-b-ques, cook stoves, surf boards, boogie boards, skimmers, sail boards,

kite boards, fishing tackle, horse shoes, bocce ball, volley ball/nets, footballs, frisbies, kites, baseballs/bats, model airplanes/cars, golf clubs, binoculars, telescopes, chairs and books, various tubes and floats, buckets/shovels, dip nets and bags to collect shells. These are the leisure activities of humanity that are part and parcel of the CAHA recreational beaches. There is an ebb and flow of activities that varies with time. There are periods of early morning, night and winter when the beaches are devoid of such activity and are cherished by those who seek solitude on these multiple use beaches.

Public access must be maintained as a factor in F&WS evaluation. If such access is deemed to be a threat to MBTA or ESA species then some protective measures need to be incorporated into the proposed management of the species at that site or the site considered unsuitable for habitat.

There are many methods available to protect wildlife.

- a. relocation of species: Do not forget the 13 miles of refuge available at Pea Island
- b. protective fencing and cages
- c. predator traps
- d. landscape alterations: Always incorporate formation of natural barriers to prevent chicks from wandering outside the protected area.
- e. monitors and escorts
- f. alternate habitat development

All of these methods are more costly to the NPS than the erection of symbolic fencing to exclude the public. Budgeting would be required and the NPS management must be capable of fresh approaches to resolution of conflict.

Predators such as foxes, raccoons, otter, mink, muskrat and cats were all present as part of the wildlife in 1937 and are to be protected and preserved. Any of these species caught in traps would need to be released unharmed.

### III. NPS RESPONSIBILITIES

#### A. Introduction

The Outer Banks are truly wonderful places to live and visit. The islands are constantly changing with the interplay of sand, water and weather. Because of this dynamic nature the CAHA needs a very flexible management of resource protection and ORV operation within the park.

The enabling legislation directs that recreational use is the primary purpose for management of the sand beaches within the park. Due to the remote condition of most of these beaches ORV operation was the traditional and continues to be the major means of public access.

#### B. Beach Trails

Trails dedicated only to ORV use are nor necessary not should they be established within CHNSRA. A network of access ramps, multiple use trails and mitigation trails should serve all the public needs.

Multiple use trails. These trails can be defined as that area of beach which lies between the water line and the toe of the dune. In the absence of a finite dune an approximate line where vegetation covers more than half of the surface area would serve as the landward border.

The multiple use trail (MUT) is the fundamental unit for the Recreational area Beaches. This is the historical practice for public use of the beaches which has proven to satisfy the greatest number of park visitors since the Recreational area was established..

Properly functioning multiple use trails can be witnessed any holiday at the crowded beaches near the inlets, Cape Point and the south beach of Frisco. People, children, pets and trucks are everywhere in a glorious celebration of the human spirit. Groups are playing volley ball, pitching horse shoes or bocce' ball. They are enjoying picnics, parties and individuals are running, walking, reading, sleeping, bathing, fishing, kite flying and riding a variety of water boards.

Under these crowded conditions vehicles must be driven more slowly than 25 mph and extra caution exercised to protect children at play. This has been a very successful recreational use of the beaches and should be allowed to continue. These trails should extend from Coquina beach to Ocracoke Inlet and both sound and ocean wherever physically possible.

The wide variety of visitor beach activities is a reflection of the range of activities reported by the NPS for the whole park in the Visitor Use Study of July 2002:

**Table 7: Most important reason for visiting  
Cape Hatteras NS**

N=237 comments	
Comment	Number of times mentioned
Lighthouse	54
Beach/beachcombing/seashells	33
Fishing/charter fishing	18
Historical significance	17
Swimming	14
Beach access	13
Beauty of the area/scenery	12
Camping	9
Uncrowded/solitude/low population	8
Surfing/windsurfing	8
First time visited/seeing different area	3
Live/visit nearby	3
Family beach	3
Sightseeing	3
Unspoiled nature/no development	3
Ocean/seashore	3
Educational purpose (teach/research)	3
Vacation	3
General interest/to see it	2
Enjoy the park	2
Cleanliness	2
Inspiration/atmosphere/emotionally moving	2
Peaceful/quiet/relaxing	2
Birds/birdwatching	2
Other comments	15

#### C. Seasonal Closures:

With increased visitor use special attention needs to be given to pedestrian, swimming, and surfing beaches.

1. Village beaches where houses are located adjacent to the beach should be closed to ORV traffic during the summer season from Memorial Day to

Labor Day. These beaches need to be open to ORV the rest of the year. The past practice of ORV closure during the winter months in front of the villages must be discontinued. This practice has created illegal private beaches out of public lands since there is not provision for public parking to access the beach in those locations.

2. The following bathing beaches should also have seasonal ORV closure when life guards are present:
  - a. Oregon Inlet campground
  - b. Buxton beach at light house site
  - c. Ramp 43 parking area
  - d. Frisco campground
  - e. Bath house near sandy bay
  - f. Ocracoke campground

Such closure would require that ORV ramps and access roads be provided on both sides of the campgrounds to allow by pass. Lacking such by pass, a fixed ORV corridor would be needed on the beach in front of those areas. Parking areas should be provided near the campground entrances and of sufficient size to accommodate both overflow and non camping visitors. These parking areas should have handicap accessible wooden walk ways to access the beach. The present parking area in Frisco should be moved or extended closer to the campground entrance and ramp 49 moved further west. This would shorten the ORV access trail and provide space for the pedestrian walkway from the parking lot.

#### D. Safety Closure

If a beach is passable at low tide but not passable at high tide it should be considered open for ORV use at the drivers risk with cautionary signage at ramp and constriction.

Portions of beach which are not passable through the lowest stage of tide should be closed to ORV operation with appropriate signage at ramp and closure site.

“Passable” is a judgment call. If an average skill driver can maneuver and emerge with “dry wheels”, it should be considered “passable”. The presence of erosion cliffs and deep flowing drains should be evaluated on their own merits. Demonstrated passage should prevail over conjecture.

Flooding of access and interdunal roads are issues for immediate correction. Close communication between rangers and other NPS personnel in the field with maintenance crews is imperative.

#### E. Mitigation Process

There may be times when temporary beach closure will be necessary for resource protection. Sea turtle nests which are laid in unsuitable areas should always be relocated to a safe location. Those nests laid at the base of a dune in an area suitable for survival would be expected to cause a temporary (two week) beach closure. Some beach areas chosen by other species may not be amenable to species management and thus require temporary ORV closure to the water line. Public access to water line must not be denied. NPS can choose whether ORV, horse or pedestrian would be preferred, but at least one must be allowed by USC459a mandate.

To anticipate such closure of a recreational beach would require a mitigation network. A system such as currently utilized at Cape Lookout National Seashore would be proposed, namely:

1. ORV sand trail behind the primary dune line parallel to the beach.



2. Ramps every mile connecting the trail to beach access. On Hatteras we would probably need hard surfaced ramp humps over the dunes where State Highway 12 could be threatened by ocean wash through.
3. Signage of milepost numbers at each ramp would be desired. Such signage would benefit park personnel and interaction with the visiting public. All trails should be given names and signage.

F. Wildlife Closures:

Recreational access along the beach front must be retained according to the enabling legislation. By virtue of the distances involved along these beaches most of this access must be provided by ORV. This can be accomplished by good management of the wildlife. Closures need to be defined by bird reaction rather than by set distances.

Creation or restoration of historical habitat such as dredge pond can have major impacts on reduction of conflict between wildlife and recreation. Habitat creation and restoration may become the pivotal management tool of the future.

In areas of heavy ORV use such as spits and points unfledged piping plover chicks need to be protected by exclusion from multiple use trails.

The young of American oyster catchers and sea turtles have required temporary closure to the water line with the present management plans. Again, new management must provide for some form of public access to the water line.

Mitigation trails will help bypass any problem areas until better management can be developed.

G. Sea Turtle Management:

There are three directions for future sea turtle management for nests and hatchling survival:

1. Dumb: continuation of the past programs using NCWRC guidelines. Every year 40% or more of this animal resource has been squandered because of an irrational fear of the unknown. Recent sand temperature studies have shown that the fear of sex ratio changes by relocation were unfounded and are no longer a valid reason to prevent relocation. The loss would be even greater if there was an accounting of hatchlings that didn't make it past the gauntlet of ghost crabs on the way to the sea.
2. Semi-Smart: Turtle nests could be relocated to a few central corrals on safer beach areas. Concentration would allow better surveillance with fewer personnel for predator control and prevent the prior weather losses. Central corrals are being operated successfully by F&WS at Back Bay Refuge in Virginia. Predator control is provided by simple nest cages.
3. Smart: Build an incubator facility to produce whatever sex ratio of hatchlings necessary for enhancement of this species survival. With proper marketing this could be a fee producing tourist attraction and a valuable site for scientific advances.

IV. ORV REGULATIONS

A.. Designated Corridors for ORV Use:

1. ORV travel is allowed on that area of sand beach between the water line and the toe of the sand dune facing the water; either ocean or sound. In the absence of an established dune the landward boundary would be delineated by the presence of heavy vegetation (greater than 50% ground cover).

2. ORV travel is allowed along designated interdunal roads, access roads and access ramp approaches. Travel will be confined within clearly marked boundaries established by NPS on each side of these roads and approaches.
3. ORV travel is prohibited in all other non paved areas of Cape Hatteras National Seashore Recreational Area
4. ORV travel is prohibited within designated enclosures.

#### B. Legal

1. ORV's must be "street legal". They must meet all of the requirements of the state of North Carolina for use on the public highways. They must be registered with a visible license and the operator must have a valid permit or license Liability insurance is necessary
2. Operators must adhere to posted speed limits and exercise caution when near pedestrians and other beach users. Slower speeds may be advisable due to the constant change in sand conditions
3. Operators must have vehicle under control at all times. Doughnut patterns or swerving into water line are prohibited
4. Drag racing is prohibited.
5. Pets must be kept inside vehicle or on a 6 foot leash when out of the vehicle. Dogs may exercise under voice control such as during retriever training in a location and manner which does not interfere with other beach users and wildlife
6. Overnight camping on the beach is prohibited
7. Opened containers of alcoholic beverages are prohibited in vehicles.

#### C. Safety and Courtesy

Following are recommendations to ensure a safe and pleasurable experience of driving in Cape Hatteras National Seashore Recreational Area.

1. NPS does not provide towing. Consult the local phone directory for nearby garages that provide towing services. Such service is usually available in each of the villages located within the park
2. Four wheel drive vehicles with sufficient high ground clearance are recommended for the soft sand and deep ruts likely to be encountered on these beaches. Uphill approaches to ocean side ramps are frequently extra soft and deeply rutted. Popular all wheel drive road cars usually don't have sufficient ground clearance to get you off the beach
3. Drop tire pressure in parking areas before entering ramp or access road. This is really important. Tire pressures of 30psi or more, act like circular saws and dig straight down into the sand. The higher the tire pressure and more powerful the engine the quicker you will bottom on the frame. Pressure ranges of 18-20 psi will negotiate most of the beach conditions. In a really bad spot a drop to 12-15 psi may be needed. Don't guess at this – use a pressure gauge. After leaving the beach remember to re-inflate the tires as soon as convenient. Highway speeds at 18-20 psi will cause premature wear on the tires and may affect handling characteristics of the vehicle
4. Before entering the ramp check to ascertain that the four wheel drive system is operational
5. Do not drive to the top of a ramp for a quick look with 2 wheel drive or high pressure tires. Use the parking lot near the ramp and walk over to

satisfy your curiosity. Forward motion is sometimes necessary to maintain in order for a vehicle to negotiate a ramp. Vehicles leaving the beach have the right of way at ramps.

6. If the vehicle begins to bog down in deep sand do not try to "gun" your way through. Back up and assess the situation. You may need to select a different route. Walk around and evaluate the conditions. Recheck the tire pressures. Extended running in hot sand can boost the tire pressure and decrease the "float" needed to handle the beach conditions. Beware of drainage from an over-wash pond above the berm which can be like "quick sand"
7. Carry a flat board and jack to change wheel or help get out after you have buried the vehicle down to its frame
8. Cell phones or ham radios are very useful when in trouble or to report a problem. Dare County dispatcher phone number is 252-473-3444
9. Don't drive through salt water unless your vehicle is made of plastic and pressure treated wood. Remember that the beach sand contains salt crystals. Under wash the vehicle at the end of day. Be aware that rain water filled holes in sand trails quickly become salt.
10. Carry a flashlight with extra batteries, tire pressure gauge, jug of fresh water and first aid kit with plenty of sun screen lotion. A 12 volt portable air compressor is a useful device
11. If you enjoy parking with the doors open so you can listen to the car radio all afternoon don't expect the car battery to start your engine when the tide is rising and it's time to go home.
12. While driving on the beach at night, it has long been considered to be courteous and not shine head lights upon the water or fishermen who are trying to catch red drum or striped bass. However, it is most important to use head lights at all times to prevent accidents or damage to wildlife
13. Carry spare trash bags. Pack out more than you pack in.

D. Permit System.

A system for beach driving permits is not recommended. Presence of the enclosed villages and multiple access points would make a permit system costly, cumbersome and difficult to enforce.

In the event that beach driving permits are required; all of the funds generated must be dedicated to ORV purposes e.g.

1. Maintenance of access roads and ramps
2. Maintenance of interdunal roads
3. Air pump stations at ramps
4. Fish cleaning stations at ramps
5. Trash receptacles and maintenance at ramps
6. Public education on ORV driving within the park.

Funds generated by the system will not be spent on administration or enforcement costs of the system.

Robert B. Davis  
P. O. Box 1224  
Buxton NC 27920  
Email: [davisrb@embarqmail.com](mailto:davisrb@embarqmail.com)

# LII

Legal Information Institute

Collection home

## US CODE COLLECTION

Search



Donate

Prev | Next

TITLE 16 > CHAPTER 1 > SUBCHAPTER LXIII > § 459a-1

### § 459a-1. Administration, protection, and development; commercial fishing by residents; hunting

Release date: 2004-04-30

The administration, protection, and development of the aforesaid national seashore recreational area shall be exercised under the direction of the Secretary of the Interior by the National Park Service, subject to the provisions of sections 1, 2, 3, and 4 of this title, as amended: Provided, That except as hereinafter provided nothing herein shall be construed to divest the jurisdiction of other agencies of the Government exercised on August 17, 1937, over Federal-owned lands within the area of the said Cape Hatteras National Seashore Recreational Area: Provided further, That the provisions of the Federal Power Act [16 U.S.C. 791a et seq.], shall not apply to this national seashore recreational area: And provided further, That the legal residents of villages referred to in section 459 of this title shall have the right to earn a livelihood by fishing within the boundaries to be designated by the Secretary of the Interior, subject to such rules and regulations as the said Secretary may deem necessary in order to protect the area for recreational use as provided for in sections 459 to 459a-3 of this title: And provided further, That hunting shall be permitted, under such rules and regulations as may be prescribed by the Secretary of the Interior in conformity with the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755) [16 U.S.C. 703 et seq.], as follows:

- (a) Upon the waters of the sounds included within the national seashore recreational area,
- (b) in the area north of the Currituck County line,
- (c) on Ocracoke Island, and
- (d) within not more than two thousand acres of land in the remaining portion of said national seashore recreational area, as shall be designated by the Secretary of the Interior; except on lands and waters included in any existing or future wildlife or migratory bird refuge and adjacent closed waters.

Search this title:

Search Title 16

- Notes
- Updates
- Parallel authorities (CFR)
- Your comments

Credits

About us

Prev | Next  
Send email

# LII

Legal Information Institute

US CODE COLLECTION

Collection home

Search

Donate

Prev | Next

TITLE 16 > CHAPTER 1 > SUBCHAPTER LXIII > § 459a-2

## § 459a-2. Preservation of natural features; acquisition of additional property; reversion of property on failure of conditions

Release date: 2004-04-30

Except for certain portions of the area, deemed to be especially adaptable for recreational uses, particularly swimming, boating, sailing, fishing, and other recreational activities of similar nature, which shall be developed for such uses as needed, the said area shall be permanently reserved as a primitive wilderness and no development of the project or plan for the convenience of visitors shall be undertaken which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing in this area: Provided, That the Secretary of the Interior may, in his discretion, accept for administration, protection, and development by the National Park Service a minimum of ten thousand acres within the area described in section 459 of this title, including the existing Cape Hatteras State Park, and, in addition, any other portions of the area described in section 459 of this title if the State of North Carolina shall agree that if all the lands described in section 459 of this title shall not have been conveyed to the United States within fifteen years from August 17, 1937, the establishment of the aforesaid national seashore recreational area may, in the discretion of the said Secretary, be abandoned, and that, in the event of such abandonment, the said State will accept a reconveyance of title to all lands conveyed by it to the United States for said national seashore recreational area. The lands donated to the United States for the purposes of sections 459 to 459a-3 of this title by parties other than said State shall revert in the event of the aforesaid abandonment to the donors, or their heirs, or other persons entitled thereto by law.

In the event of said abandonment, the Secretary of the Interior shall execute any suitable quitclaim deeds, or other writings entitled to record in the proper counties of North Carolina stating the fact of abandonment, whereupon title shall revert to those entitled thereto by law and no further conveyance or proof of reversion of title shall be required.

Search this title:

Search Title 16

- Notes
- Updates
- Parallel authorities (CFR)
- Your comments

Credits

About us

Prev | Next

Send email



Legal Information Institute

Collection home

US CODE COLLECTION

Search



Donate

TITLE 16 > CHAPTER 1 > SUBCHAPTER LXIII > § 459a-3

Prev | Next

§ 459a-3. Migratory bird refuges not to be affected

Release date: 2004-04-30

Notwithstanding any other provisions of sections 459 to 459a-3 of this title, lands and waters on or after August 17, 1937, included in any migratory bird refuge under the jurisdiction of the Secretary of Agriculture, within the boundaries of the national seashore recreational area as designated by the Secretary of the Interior under section 459 of this title, shall continue as such refuge under the jurisdiction of the Secretary of Agriculture for the protection of migratory birds, but such lands and waters shall be a part of the aforesaid national seashore recreational area and shall be administered by the National Park Service for recreational uses not inconsistent with the purposes of such refuge under such rules and regulations as the Secretaries of the Interior and Agriculture may jointly approve. The proviso to section 459 of this title shall not limit the power of the Secretary of Agriculture to acquire lands for any migratory bird refuge by purchase with any funds made available therefor by applicable law.

Search this title:

Search Title 16

- Notes
- Updates
- Parallel authorities (CFR)
- Your comments

Credits

About us

Prev | Next

Send email

LII

For information about...

US CODE COLLECTION

Collection home

Search



Donate

Prev | Next

TITLE 16 > CHAPTER 1 > SUBCHAPTER LXIII > § 459

**§ 459. Cape Hatteras National Seashore Recreational Area; conditional establishment; acquisition of lands**

Release date: 2004-04-30

When title to all the lands, except those within the limits of established villages, within boundaries to be designated by the Secretary of the Interior within the area of approximately one hundred square miles on the islands of Chicamacomico, Ocracoke, Bodie, Roanoke, and Collington, and the waters and the lands beneath the waters adjacent thereto shall have been vested in the United States, said area shall be, and is, established, dedicated, and set apart as a national seashore recreational area for the benefit and enjoyment of the people and shall be known as the Cape Hatteras National Seashore Recreational Area: Provided, That the United States shall not purchase by appropriation of public moneys any lands within the aforesaid area, but such lands shall be secured by the United States only by public or private donation.

Search this title:

Search Title 16

- Notes
- Updates
- Parallel authorities (CFR)
- Your comments

Credits

About us

Prev | Next

Send email

Friday, October 31, 1952 THE COASTLAND TIMES, MANTOE, N. C.

A LETTER TO THE PEOPLE OF THE OUTER BANKS

When I visited with you earlier this month, I told you that we would study further some of the problems that were bothering you and see if some adjustments in the boundary of the Cape Hatteras National Seashore Recreational Area could be made to meet our joint problems more satisfactorily. This we have done. Rather than make another three-day trip to your Islands, I believe that the best way to get the results of these studies to all of you in a clear and concise way is to print them in your local paper. Victor Meekins has agreed to see that every family on Ocracoke, Hatteras, and Bodie Islands, south of Whale Bone, gets a copy.

This issue of The Coastland Times contains a set of maps and descriptions which show in detail the new boundary lines for the Cape Hatteras National Seashore Recreational Area. In general, the new lines leave more room for expansion around the towns and they bring in the boundary at Pamlico Sound to within 150 feet of the shores of Ocracoke and Hatteras Islands. The new boundary lines have the approval of the Secretary of the Interior; and I have discussed them with Mr. George Ross, Director, North Carolina Department of Conservation and Development, who also approves of them.

During the week of October 6, I met with many of you individually and in public meetings held in the towns of Ocracoke, Hatteras, Avon, and Rodanthe, to answer questions about the Cape Hatteras National Seashore Recreational Area project. We discussed its purposes, boundary lines, and the programs for its acquisition and development. Congressman Herbert C. Bonner and others joined in several of the meetings and discussions. You asked many questions; many of these were on how the establishment of the Recreational Area would affect you personally, your business, or your property. I hope, and believe that those questions were answered to the satisfaction of those who asked them.

In the public meetings, you brought out four main points:

1. Many of you were uncertain as to just where the Recreational Area boundary lines would be around the communities and felt that not enough room was being left for community expansion.
2. There was the question as to the rights of individuals to continue commercial and sport fishing.
3. There was concern as to whether your present hunting rights would be affected.
4. There was a feeling that once the Recreational Area is established the local people would be denied access to the ocean beach.

I wish to re-emphasize the answers to these questions, with the aid of the accompanying maps.

As to the first question, I promised you that we would restudy the boundaries and change them if necessary and desirable. The study was based on a personal visit to all of the communities and the Recreational Area, as well as the statements made to me by many local people personally and in public meetings. Our studies showed that the old Recreational Area boundary lines were too confining, so we have changed them in all cases by moving the boundary lines around the communities closer to the ocean. On the ocean side of the towns, the new, approved boundary lines include in the Recreational Area only those lands along the ocean which are necessary to protect and control the sand dunes, to re-establish them where necessary, and hold them to protect the communities from the intrusion of the ocean. The National Park Service intends to resume the sand fixation work that it started in the 1930's and more firmly establish the dunes.)



The boundary line has also been changed on the Sound side. It has been moved in to a distance of 150 feet from the shore lines of Ocracoke and Hatteras Islands, except in front of the communities, and the offshore islands outside of that line are eliminated from the Recreational Area. The boundary line of the Cape Hatteras National Seashore Area does not extend in front of the communities on the Sound side. In the case of Bodie Island it was more practical to describe a meets and bounds line, as shown on the accompanying maps, than it was to use an irregular line 150 feet offshore.

In regard to fishing and hunting (questions 2 and 3),—under the basic legislation authorizing the Cape Hatteras National Seashore Recreational Area, fishing and hunting rights in the Sound were reserved to the people. That being the case there is no real need to include Pamlico Sound waters in the Recreational Area. This is so because the North Carolina fishing and hunting laws and regulations and those of the Federal Government which have been in effect for a great many years in the Sound area will still apply to waters both inside and outside the Recreational Area boundaries. Therefore, the new boundary line in the Sound has been set only 150 feet offshore from Hatteras and Ocracoke Islands. That is purely an arbitrary distance. It brings the line close enough in so that everyone can know definitely where it is. Due to the irregularity of the shore line, it may be necessary to make minor adjustments in some places so that any small offshore islands will be either wholly in or wholly out of the Recreational Area. In other words, the line won't split any islands.

The following larger islands are excluded from the Recreational Area:  
 Off Bodie Island—those among others: Pond, Grun, House, Warren, Headquarters, Belle, Bowser, Cedar, Cutoff and Herring Shoal, Big Tim, and Little Tim Islands.  
 Off Hatteras Island—these among others: both Great Island, Midgett, Noache, Bull, Big, and Kings Islands.  
 Off Ocracoke Island—these, among others: Outer Green, Cockrel, and Negro Islands.

The guarantees in the laws relating to hunting and continuation of commercial fishing in the waters of the Sounds will apply within this 150 feet offshore strip exactly as they do outside of it. The State and Federal fishing and hunting regulations within this strip cannot be affected by any National Park Service regulation.

The law says that hunting will be permitted on Ocracoke Island, on the waters of the Sounds and on not more than 2,000 Island Refuge and its waters. The law requires the Secretary of the Interior to designate the 2,000-acre hunting area would be selected by a committee composed of two representatives of the State of North Carolina, to be designated by the Governor, and one each from the Fish and Wildlife Service and the National Park Service of the Department of the Interior. The National Park Service will move toward the establishment of this committee and the designation of these lands at the earliest possible moment, after the lands have been acquired. Of course, no part of the 2,000 acres will be in the Pea Island Refuge.

Concerning access to the beach (question 4),—when I met with you I explained that when the lands for the Recreational Area are acquired and become public property there will always be access to the beach for all people, whether they are local residents or visitors from the outside. However, it will be necessary to establish certain regulations, such as to designate places for vehicles to get to the beach in order to reduce sand dune erosion to a minimum; to manage ocean fishing where large numbers of bathers are using the beach; and to confine bathing to certain areas.

These latter are safety measures, as it would be dangerous to permit surf fishing where there are large numbers of people in bathing and, likewise, fishermen would not want bethers to interfere with their fishing.

With the changed boundary lines in the Sound and the enlargement of the areas excluded for community expansion, as indicated on the accompanying maps the establishment of the committee to determine the 2,000 additional acres of land on the islands to be open to hunting, and making clear the problem of access to the ocean beach, I feel that we have found a reasonable solution that meets the needs of the Recreational Area. I might add that if, at any time, the State is in a position to build a road on Ocracoke, we can easily reach agreement on the right-of-way for it.

Now, a word concerning the future development of the Area. As stated above, the National Park Service proposes to resume the sand fixation work; to re-establish the natural plant and wild-life within the area; and to provide access to the beach for everybody. We plan also to tell the story of the sea. Cape Hatteras has perhaps one of the most interesting and heroic sea histories in the entire United States, if not in the world. It is the plan of the National Park Service to establish a museum to tell the story of the sea, and especially the part that the Cape Hatteras coast line and you people have played in it. The fascinating history of the Outer Banks, combined with the story that is told at the Wright Memorial and at Fort Raleigh on Roanoke Island will make this part of North Carolina one of the most important tourist objectives in the United States.

As our plans move forward we will call upon the people of the communities on Ocracoke, Hatteras, and Bodie Island to work with us in establishing the museum. Many of you have relics of the past and stories of great accomplishments handed down through your families that are needed to record and relate this history. It is hoped that when the museum is ready you will see fit to donate or loan appropriate objects for exhibit purposes. When our plans are formulated in more detail they will be made known to you, and we are going to ask for your advice and suggestions.

The National Park Service has always believed in free enterprise, and has practiced it in all the areas of the National Park System. In the case of the Cape Hatteras National Seashore Recreational Area, we expect the people in the communities on the Islands of Ocracoke, Hatteras and Bodie to take care of the tourists. No developments for tourist accommodations are planned or will be permitted on government property. Consequently, the property within the communities will, without any doubt, have an increasing commercial value because of the existence of the Recreational Area; its greatest value will be for use in taking care of the public.

You have never experienced this kind of a development before, but we in the National Park Service have seen it many, many times throughout the United States when national areas are established. Business interests outside of your communities know what this development is going to mean to the communities; they are already among you and are acquiring land in anticipation of the establishment of the Area. They know that there will be a large influx of people and that land values will rise.

-4-

I would like to give you a word of caution: Hold your lands within your communities; don't let outside speculators come in and take over; join together and you people in the communities whose families have lived there for generations care for the visiting public yourselves and enjoy the prosperity that you so rightfully deserve because of your long occupancy of these lands.

The National Park Service and its staff stand ready to cooperate with you at all times in the development of your communities, if you want us to. I hope we can work together as partners, and that we can look forward to a long and pleasant association that will bring enjoyment to millions of visitors and prosperity to you.

In closing this message, I should like to thank the people of all the communities for the reception given us when we met with you on October 6, 7, 8 and 9, and for the frankness of your remarks, which enabled us to work out our joint problems.

Sincerely yours,  
CONRAD L. WIRTH  
Director, National Park Service

October 27, 1952