

Briefing Statement

Bureau: National Park Service
Issue: (CAHA) Off-Road Vehicle Regulation
Park Site: Cape Hatteras National Seashore
Date: August 6, 2004

Background:

- Vehicle use along Outer Banks beaches long predates authorization of Cape Hatteras National Seashore in 1937. Prior to the paving of North Carolina State Highway 12 in 1954, local residents and visitors used the beaches for transportation on the islands. Local commercial fishermen transported their boats and drew their nets using vehicles along the beaches. Many drivers preferred to use the smooth, more consolidated beaches than the sandy, rough vehicle trails on the interior of the islands. The completion of the Bonner Bridge connecting Bodie and Hatteras Islands in 1963 eased access to Hatteras Island, which resulted in increased vehicle use of beaches for recreational purposes.
- The 1972 Executive Order 11644, amended by 1977 Executive Order 11989, required certain federal agencies permitting Off-Road Vehicle (ORV) use on agency lands to publish regulations designating specific trail and areas for this use. Title 36, section 4.10 of the *Code of Federal Regulations* implements the executive orders by requiring units of the national park system allowing ORV use to designate use areas by special regulation. In 1973 and 1990, Cape Hatteras National Seashore (the Seashore) submitted draft regulations through the Southeast Regional Office (SERO) to the Washington Office. A regulation was never published.
- In 1978 the Seashore issued a draft of "A Proposed New Plan for Management of Off-Road Recreational Use in Cape Hatteras NS" that proposed, among other things, reductions in ORV access ramps and an ORV permitting system. Some ORV user groups, highly critical of the proposed plan, organized specifically to ensure that the NPS would not limit ORV use and to propose an alternate plan. Given the vigorous resistance from ORV user groups, the NPS published a second draft "Interim Management Plan" that largely reversed major aspects of the initial plan and ensured the status quo. Today these groups maintain great interest in the ORV issue and are deeply suspicious of NPS intentions.
- ORV use has increased significantly since 1972. Informal counts by rangers on busy holidays now list as many as 2,200 ORVs at one time on the 39 miles of Seashore beaches open to ORV use.
- Environmental groups have repeatedly expressed concern about increased threats to Seashore resources and visitor conflicts due to ORV use. Recently they have become more organized, as did the ORV proponent groups in 1978, in their opposition to ORV use. Proponent groups now view potential litigation based on the absence of a regulation as a serious threat to continued ORV use. Both groups urge quick resumption of planning and development of a regulation.
- In June 2004, the National Parks and Conservation Association, the Wilderness Society, and the Natural Resources Defense Council filed a petition for rulemaking on the ORV management issue at the Seashore.

Current Status:

- In January 2004, the Seashore and SERO met to identify the appropriate course of action. Subsequent to this meeting, the Seashore, SERO and EQD (NPS Environmental Quality Division) had already begun initial planning to: 1) use Negotiated Rulemaking (REGNEG), if

feasible, to draft the required regulation, and 2) concurrently draft an ORV Management Plan using the NEPA process. A project agreement has been prepared. The attached schedule outlines tasks, dates, and responsibilities related to these concurrent processes. The timeline reflects our best effort to run the two processes concurrently.

- In the Spring of 2005, a "third party neutral" would conduct a situation assessment of the probability of success of proceeding with REGNEG, culminating in an Assessment Report. If the assessment is favorable, REGNEG will proceed and a Federal Advisory Committee, comprised of stakeholder representatives and the NPS, would draft the regulation by a consensus process. If the assessment is unfavorable, the NPS will use the traditional planning process to develop the regulation and ORV management plan.
- The project agreement specifies objectives, roles and responsibilities in the planning process and anticipates that EQD will provide overall management of the project.
- EQD will also be the COTR for a NEPA contractor who will provide services in Phase 1 of the NEPA planning process. EQD submitted a purchase request for the NEPA contract in June to SERO who will be contracting the services. The due date for the Cost Proposals from the contractors is August 12, 2004. A start date for the NEPA contractor has not been determined, but is forecast to be on board for the November 2004 internal scoping meetings.
- EQD has drafted a task agreement with the U.S. Institute for Environmental Conflict Resolution (the Institute), a federal program established by Congress to assist parties in resolving environmental conflicts. When the agreement is finalized the Institute will contract for third party neutral services from a list of qualified Alternative Dispute Resolution providers. The draft task agreement is currently under review by the Washington Office and the Seashore staff.
- EQD has started a search for legal references that includes laws, regulations, and legal precedents relevant to the ORV issue. Both the Seashore and EQD are compiling lists of ORV documents including maps, past ORV plans, correspondence, draft regulations, reports, scientific research and articles to develop a library and bibliography for use during the planning. They are comparing files and sharing documents to assemble a complete set of reference materials and administrative record.
- The Seashore is assembling a list of approximately 25 potentially interested parties who will be contacted by the third party neutral during the situation assessment.
- Funds budgeted for the situation assessment, will be transferred from EQD to the Institute when the task agreement is finalized. Current estimates, however, show a shortfall in funding for the situation assessment. A reduction in the number of trips or in the number of stakeholders required for the assessment is under consideration to help reduce costs.

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