

0019573

From: [Mike Murray](#)
To: sampearsall@TNC.ORG
Cc: [Jim Lyons](#); [Aaron McCall](#); jdeblieu@TNC.ORG
Subject: RE: FW: "Press Release: NPS REOPENS SEASONALLY CLOSED VILLAGE BEACHES TO ORV USE"
Date: 09/18/2006 12:09 PM
Attachments: [040506 Negotiated Rulemaking Feasibility Assessment Report \(Final\)\[1\].pdf](#)

Thanks Sam.

We do plan to proceed with negotiated rulemaking. NPS is preparing a Notice of Intent (NOI) to conduct Negotiated Rulemaking to be published in the Federal Register. The NOI will take 2-3 months of review up through NPS, DOI, GSA and OMB before it is published. Then it will be open for a 30-day public comment period, then NPS will review comments and make final recommendations to the Secretary's Office (which is where the official appointment of participants will occur). Each step of this process will take some time to complete, so realistically we hope to have participants appointed in time to officially meet this coming Spring (May?). Prior to then, there are several things involved in the process.

The negotiated rulemaking process and related procedures are being coordinated for NPS by the U.S. Institute for Environmental Conflict Resolution (ECR). Their website is www.ecr.gov. As background, nationwide NPS has previously used the RegNeg process to develop ORV regs at Cape Cod NS and at Fire Island NS. NPS is currently using the process to develop a dog leash reg at Golden Gate NRA). ECR specializes in using this and similar processes involving the development of negotiated federal regulations, so we are receiving the best process guidance available in the federal government. ECR (with NPS money) hired a pair of contractors, Consensus Building Institute (www.cbuilding.org; Patrick Fields) and Resolve (Robert Fisher). CBI/Resolve conducted a feasibility assessment (**see attached report**) and made recommendations about whether to proceed with negotiated rulemaking here. The report also provides useful background information about the issues and some of the stakeholders' points of view. During the feasibility assessment process, the contractors had extensive contacts with many of the stakeholders, so most of the participants have already had some orientation to how the process will work. (Unfortunately, neither you, Aaron nor I, nor several other "newer" proposed participants were involved during the feasibility assessment process; but we will have opportunities to get up to speed as this moves forward.)



040506 Negotiated Rulemaking Feasibility Assessment Report (Final)[1].pdf

At this point in the process, ECR will be conducting an evaluation of stakeholder satisfaction to determine if CBI/Resolve should be the facilitators for the negotiations. (Are stakeholders comfortable/confident with them or not?) Once that is completed we anticipate holding 2 workshops (yet to be scheduled) for the proposed participants some time this winter, one to go over how the negotiated rulemaking process works and the second to provide background information on the issues. If things go well with the NOI and participant appointment process, we hope to have the first working meeting before next summer (May?).

Thanks again for your interest and willingness to participate. I hope this information is helpful. Please let me know if you have any questions.

Mike Murray
Superintendent
Cape Hatteras NS/ Wright Brothers NMem/ Ft. Raleigh NHS
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▼ "Sam Pearsall" <sampearsall@TNC.ORG>

"Sam Pearsall"
<sampearsall@TNC.ORG>

09/15/2006 03:08 PM AST
Please respond to
sampearsall

To: <Mike_Murray@nps.gov>
cc: "Aaron McCall" <ajmccall@TNC.ORG>, "Jim Lyons" <12lbtest@usa.net>, <jdeblieu@TNC.ORG>
Subject: RE: FW: "Press Release: NPS REOPENS SEASONALLY CLOSED VILLAGE BEACHES TO ORV USE"

Hi Mike,

I definitely didn't mean to read more into the re-opening than is actually there. This exchange has been educational for me, in that I think I now understand better just what I have signed up for.

My intent is to stay open-minded and available to your process. Thanks for all of the time and energy you have invested in working on this issue and in providing further explanation to the TNC team. Meanwhile, please, please call us if you need us.

A few questions: Is the negotiated rule-making going to happen? Is a target date on the table? Will the mediator meet with the individual parties prior to the beginning of formal negotiations? I consider this last to be a good practice for getting acquainted and learning and discussing the rules of the negotiations in a non-adversarial environment.

Cheers, Sam

Sam Pearsall, Ph.D.
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-----Original Message-----

From: Mike_Murray@nps.gov [mailto:Mike_Murray@nps.gov]
Sent: Thursday, September 14, 2006 11:40 PM
To: jdebliu@TNC.ORG
Cc: Aaron McCall; Sam Pearsall; Jim Lyons
Subject: Re: FW: "Press Release: NPS REOPENS SEASONALLY CLOSED VILLAGE BEACHES TO ORV USE"

Jeff and Sam,

You may have read something into recent communications from me that simply is not there. .
We do not intend to reopen all the beaches in front the villages.

I realize the recent press release about reopening of the "beaches in front of the villages" was non-specific about what exactly would reopen; however, the last Beach Access Report (Sept 1) indicated the seasonal closure areas that would reopen Sept 16. It includes in front of the tri-villages, Avon and Ocracoke, but NOT Buxton or Frisco-Hatteras. The beach in front of Buxton Village (from 1.5 miles south of Ramp 38 to 0.4 miles north of Ramp 43) will remain **closed** to ORVs as a safety closure. The beach in front of Frisco and Hatteras Villages (currently from 1.1 mile south of Ramp 49 to just north of Ramp 55) will remain closed to ORVs as a safety closure (admittedly, the Beach Access Report did not mention the rationale on this one, but it also did not indicate it would reopen). I acknowledge the lack of specificity has contributed to the confusion (we thought we were just reminding people what we had already said we were going to do in the Beach Access Report). We will issue another press release to clarify the information.

My intent remains to continue to maintain similar winter access in front of the villages as has occurred in recent years and to defer creation of new policy to the

negotiated rulemaking process. As you might imagine this displeases some people. While this approach works for long-standing closures that have remained unchanged since the 1970's, it is more ambiguous about several closure situations that have changed since 2004. There is disagreement about whether the 0.4 miles south of Ramp 43 should be reopened as occurred in 2005 and about NPS apparently reducing the safety closure south of Ramp 49 by 0.6 miles earlier this Spring (I say "apparent" because I do not recall approving the change but at this point I believe it occurred). On the former situation, frankly I am not willing to take on the ORV community over 0.4 mile of beach that was reopened in the off-season by my predecessors. The negotiated rulemaking process will resolve this in due course. Based on recent feedback from several folks about the latter situation and my belated recognition that a 0.6 mile change has occurred under my watch, I am in the process of re-evaluating the situation south of Ramp 49. Don't know yet how I will resolve it.

With regard to Superintendent's Order # 7, which you may have heard about, it provides no significant change in past policy, which is admittedly flawed. It does identify, rather than avoid mentioning as the previous SO# 7 did, the "seasonal closures" in front of the villages, based on current approximations of the seasonal closures originally identified in the 1978 interim ORV management plan; but this is not a "set up" to justify reopening all those areas. We are just trying to reveal the actual rationale that has been invisible for so long. There has been some location creep in some of the boundaries after Hurricane Isabel. SO# 7 also provides for safety closures but does not specifically identify any existing or ongoing safety closures.

Despite what you all may think based on the longevity of the "year round" closures in front of some villages, NPS has apparently never designated permanent closures or pedestrian only areas. The 1978 interim ORV management plan, which was never approved but appears to be the basis for past practices over the years, emphasized that all closure types (seasonal closures in front of villages; safety closures due to

narrow beaches; and resource closures due to bird or turtle nesting) were not "permanent" but were "temporary". I can only assume that under that approach previous superintendents rationalized that the year-round closures in front of some villages were based on either the seasonal and/or safety closure criteria, or a combination of both (seasonal during the summer and safety during the winter). I know that is what I am having to rationalize now to try to "freeze" the status quo. I'm not defending or disputing the past actions; just saying the policy is flawed, has not been implemented with consistency (e.g., location creep), and needs to be reassessed and revised during negotiated rulemaking so that the location, reason for and longevity of the closures is clear. Again, I do acknowledge the disagreement about the location of the transition line south of Ramp 49 and am re-evaluating that.

In closing, may I say that every day in this job is a learning experience about the challenge of improving communications in a polarized situation and trying to bring order to a chaotic situation. I sincerely hope that this message addresses your most important concerns and the next press release will resolve any confusion among the general public. I do appreciate your feedback since it helps me evaluate and improve the effectiveness of the information we are putting out to the public.

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-----"Jeff DeBlieu" <jdeblieu@TNC.ORG> wrote: -----

0019578

To: "Michael B. Murray" <Mike_Murray@nps.gov>
From: "Jeff DeBlieu" <jdeblieu@TNC.ORG>
Date: 09/14/2006 11:51AM
cc: "Aaron McCall" <ajmccall@TNC.ORG>, "Sam Pearsall"
<sampearsall@TNC.ORG>, "Jim Lyons" <12lbtest@usa.net>
Subject: FW: "Press Release: NPS REOPENS SEASONALLY
CLOSED VILLAGE BEACHES TO ORV USE"

Dear Mike:

It appears as if I was too late with my comments. I still think my concerns about setting precedents for the negotiated-rulemaking committee are valid and hope you will take them into consideration.

Reading through the announcement, when I reached the section that warns pedestrians and their children to watch out for ORVs, I got the feeling that NPS beaches may not be a very good place to be if I'm not driving a truck or a jeep myself.

Could you or someone on your staff provide me with the following information?

- (1) Were the areas Jim referred to in his email (Lighthouse beach to ramp 43 and ramp 49 to ramp 55) traditional pedestrian areas where ORVs were restricted? Since when and/or for how long?
- (2) If so, how did they originally become pedestrian beaches and when did the NPS begin opening them to ORVs?
- (3) With this opening, which beaches in the seashore will be pedestrian only?
- (4) As of September 16, how many miles of seashore will be pedestrian-only and how many miles will be open for ORVs?
- (5) Does the NPS believe that's an appropriate ratio?
- (5) Are there any areas that are closed to ORV use that you classify or regard as traditional pedestrian beaches that should remain that way in perpetuity?

Thanks for your help.

And again, if you plan to meet with any organizations or agencies to discuss these issues, The Nature Conservancy would like to be included in the discussions.

Jeff

-----Original Message-----

From: Cyndy Holda@nps.gov [mailto:Cyndy_Holda@nps.gov]
Sent: Wednesday, September 13, 2006 9:29 AM
Subject: "Press Release: NPS REOPENS SEASONALLY CLOSED VILLAGE BEACHES TO ORV USE"

(See attached file: 091206 Fall Beach reopenings.doc)

National Park Service News Release
FOR IMMEDIATE RELEASE: DATE September 13, 2006
CONTACT: 252-473-2111

NPS REOPENS SEASONALLY CLOSED VILLAGE BEACHES TO ORV USE

Outer Banks Group Superintendent Mike Murray announces the reopening of Cape Hatteras National Seashore beaches that have been seasonally closed to off-road vehicle (ORV) use in front of Hatteras Island villages on

Saturday, September 16th. Some areas may still experience closures where the beaches are too narrow and unsafe for ORV use, and possibly for nesting sea turtles.

Sections of Seashore ocean beaches may be temporarily closed to ORV use when narrowness of the beach might compromise visitor safety. These temporary closures also help reduce the danger of damage to personal property, dunes, or adjacent private lands. Narrow areas of ocean beach temporarily closed to ORV use are assessed monthly by park rangers and re-opened if the beach width has expanded. Ocean beach areas open to ORV use are patrolled regularly to monitor for safety concerns such as drop-offs and ledges.

Threatened or endangered species of sea turtles visit or nest on Seashore beaches and are protected by federal regulations. Sea turtle nesting season generally ends in August but it may take up to two months after eggs are laid for the nests to hatch. Temporary resource closures will be removed once the nests hatch.

Since the Outer Banks' beaches continue to experience high visitation in September, the National Park Service offers the following safety tips for all beach goers:

Pedestrians

- Be alert to vehicles driving on the beach. Set up beach paraphernalia in areas outside of ORV pathways. Watch children as they may not be attentive to ORVs and can be hard to see from a vehicle.
- Keep your dogs on a leash.
- Do not dig large holes in the ORV pathways. Large holes in the sand can be dangerous to other people and vehicles as well as nesting sea turtles.
- Take your trash and equipment with you when you leave.

ORVs

- Only 4-wheel drive vehicles have the tire traction for beach driving on the Seashore. Do not drive on the beach in a two-wheel drive vehicle, including front-wheel drive.
- It is recommended to lower tire pressure to 20 PSI due to the soft sand.
- Any law applicable to vehicle use on a paved road in NC also applies to ORVs on Seashore beaches.
- The speed limit is 15 mph in front of the villages or within 100 feet of pedestrians, wildlife, and other vehicles; and 25 mph in other locations open to ORV use.
- Pedestrians have the right-of-way. Watch out for people on the beach. Small children and sunbathers may be hard to see with changing terrain conditions.

· Stay off the dunes! Drive only on that portion of the beach which lies between the foot of the dunes and the ocean. When possible, drive on the portion of the beach just below the high tide mark. Avoid getting too close to the water.

· Be aware of the tide. High tides can sometimes cut off sections of the beach.

#NPS#