

From: [Mike Murray](#)
To: [David A. Goodwin](#)
Subject: Re: Safety closure clarification needed?
Date: 10/20/2006 08:26 AM

Thanks for your comments Dave. All aspects of ORV management within the Seashore will be on the table during negotiated rulemaking. That seems to be everyone's understanding; however, there is strong disagreement among stakeholders about where and how the "slate" should be adjusted or maintained at the moment. I appreciate hearing what you think about it.

Mike Murray
 Superintendent
 Cape Hatteras NS/ Wright Brothers NMem/ Ft. Raleigh NHS
 (w) 252-473-2111, ext. 148
 (c) 252-216-5520
 fax 252-473-2595

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▼ ["David A. Goodwin" <dave@obpa.org>](#)

**"David A.
 Goodwin"**
<dave@obpa.org>

10/19/2006 01:47
 PM AST

To: <Mike_Murray@nps.gov>
 cc: "Wayne Mathis" <dheel@bigfoot.com>, "Natalie
 Kavanaugh" <nataliesusanperry@hotmail.com>, "Larry
 Hardham" <hardhead@beachaccess.com>, "John Couch"
 <guitarcouch@earthlink.net>, "John Alley"
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 <johna@midgettrealty.com>, "Ted Hamilton"
 <tedsalvo@earthlink.net>
 Subject: Re: Safety closure clarification needed?

Hi Mike,

I'm sure you have been a very busy person these last few weeks. At least with the summer season over, things should quiet down somewhat.

Regarding the Frisco-Hatteras beach "temporary" closure, I find the idea of renaming this closure ludicrous. The closure is what it is: an effort to mollify the ocean-front property owners who think that the beach belongs only to them. The Buxton beach closure is much more reasonable since the beach width there would be a problem.

I remind you that the Frisco-Hatteras beach closure is a temporary closure which was reopened in the fall of 2004 as the beach width allowed for the resumption on ORV use per Section 9, Special Protection of the Public Lands of the Draft Interim ORV Management Plan of 1978:

"Annually, on September 10, areas of heavy pedestrian use, closed to ORVs seasonally in summer since 1974 to preserve public safety and minimize use conflicts, are normally totally reopened to off-season ORV use. In September 1978, about 28 miles of National Seashore beach, including portions both inside and outside established seasonal closures, were found at normal high tide to be too narrow for use by ORVs without danger to vehicles or damage to adjacent dunes and private property. This condition arose during a stormy preceding winter followed by a summer deficient in normal beach accretion. Acting under authority of 36 CFR Sec. 4.19(b)(2), the Superintendent, by appropriate signing, temporarily closed to ORVs the narrow beach sections, with public information in area newspapers and information available by mail, at Headquarters, Pea Island National Wildlife Refuge, and at all local National Park Service installations. Each segment temporarily closed for narrow beach will be reopened when conditions at the site warrant reopening."

On-site inspections have determined that the beach in this area has accreted to the point that ORV use could be reinstated (with the possible exception of the "Izzy Inlet" area). Obviously this area was subsequently closed because of illegitimate ocean-front property owner objections.

Also, even though the above referenced Section stated that public notice had been made for these closures, evidence of this has not been found. These closures were never afforded public input or comment, but were instituted purely as a NPS internal action. It is against policy for NPS to arbitrarily close areas of the Seashore to public use without affording public involvement. It is akin to rulemaking without formal process.

At present, CAHA is using the Draft Interim ORV Management Plan of 1978 (as modified & published on the NPS/CAHA website) as the means to manage ORV use within the Seashore. This is evident by the continued use of ORV corridors in the Zone 1 areas of the Seashore. CAHA has stated many times that the modified Draft Interim ORV Management Plan will be used to manage ORV use until the new ORV plan is promulgated. There is nothing in the Draft Plan that gives the ocean-front property owners preference over the public's right to access public lands, particularly during the winter season. Seasonal closure is a different issue & one that we endorse.

It has been agreed that for the up-coming reg-neg to be successful, the reg-neg committee must start with a "clean slate" - EVERYTHING must be on the table. The continued closure of the Frisco-Hatteras beaches does NOT constitute a "clean slate". If CAHA is sincere about keeping everything on a "level playing field" for the reg-neg, these closures will be immediately lifted.

The ORV advocates will be fighting to protect their interests. Let those stakeholders fight for their interests at the reg-neg table like the rest of us. DO NOT give one group an illegitimate advantage over the others going into the negotiation process.

David Goodwin

dave@obpa.org

<http://obpa.org>

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

From: <Mike_Murray@nps.gov>

To: <dave@obpa.org>

Sent: Wednesday, October 18, 2006 3:19 PM

Subject: Safety closure clarification needed?

> Hi Dave,

>

> I hope you are doing well and having a good autumn. I've been swamped with
> lots of external and internal issues, in addition to trying keep the ORV
> management and RegNeg process moving forward. I hope to issue an
> announcement soon about holding the first RegNeg workshop in January. Will
> copy you with that information when it is ready.

>

> Since mid-September I've been receiving a number of inquiries from all
> sides of the issue about the status of the "safety closures" in front of
> Buxton and Frisco-Hatteras. The questions are legitimate. See my response
> to Ginny Luizer below. The policy is confusing. I am considering issuing a
> beach access update and including a clarification of the closures in front
> of Buxton and Frisco-Hatteras. I'm considering explaining the policy issue
> and recharacterizing those closures simply as "interim administrative
> closures" until the negotiated rulemaking process can make recommendations
> on what the long term policy should be. If I do this I would want to use a
> neutral term, so that nobody views the change as precedent setting or a
> significant shift in policy, as we approach the start of negotiated
> rulemaking.

>

> How does this sound to you? Would this help reduce confusion, or make
> things worse? Any feedback you could provide would be appreciated.

>

> Mike Murray

> Superintendent

> Cape Hatteras NS/ Wright Brothers NMem/ Ft. Raleigh NHS

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> ----- Forwarded by Mike Murray/CAHA/NPS on 10/18/2006 03:07 PM -----

>

> Mike

Murray

> To: "Jim and Ginny"

> <topsynturvy@earthlink.net>

> 10/17/2006 04:16

cc:

> PM EDT Subject: Re: Safety Closures(Document link:

Mike Murray)

>

>

>

>

> Hi Ginny,

>

> Thanks for asking the question. I've found the policy behind the
> long-standing winter closures in front of several of the villages,
> including Frisco-Hatteras, and its implementation over the years can be
> confusing. The draft 1978 interim ORV management plan identified only
> three types of closures: summer seasonal closures in front of the villages,
> resource closures to protect bird and turtle breeding areas, and safety
> closures for areas with narrow beach. However, it is also clear that some
> areas in front of villages have been consistently closed during the winter
> for many years whether or not it exactly fit the criteria for one of those
> types of closures. There may have been other reasons behind these
> closures; however, if there were, they are not clear. As a result, I have
> struggled with the issue of the winter closures, how to treat them, what to
> call them and on what criteria to base them pending the start of negotiated
> rulemaking.

>

> I think the policy needs to be clarified; however, at this point I am
> planning to defer doing so to the negotiated rulemaking process. The
> winter closure policy has implications for various user groups and whatever
> I do unilaterally will undoubtedly be controversial. To do this issue and
> other related ORV access issues justice, I think we need to have an open
> discussion with opportunities for public input before I or the NPS simply
> change the policy. I have heard that the NPS unilaterally closed some of
> these areas without discussion in the past. To that I can only state that
> it is my intention to find solutions to these issues rather than exacerbate
> the conflict. I, and I'm sure other stakeholders, will ensure that this
> specific policy gets addressed during the negotiated rulemaking process in
> the months ahead. This does not necessarily mean we need to wait 2-3 years
> for the final rulemaking to be completed to address this. The Negotiated
> Rulemaking Feasibility Report recommended that the Committee through its
> charter be authorized to advise NPS on actions related to ongoing ORV use
> management issues during the negotiation process, in addition to developing
> the ORV regulation. If this occurs, we could likely make interim changes
> in the winter closure policy or other specific policies as soon as the
> Committee discusses the specific issue and provides a recommendation or
> some advice.

>

> Please understand that deferring this issue to the negotiated rulemaking
> process should not be construed that I necessarily agree with the status
> quo or think it is the best approach. I know the policy is a very
> sensitive issue with opposing view points that deserve to heard.
> Meanwhile, I acknowledge that the current situation sometimes seems
> inconsistent with the stated rationale or criteria.
>
> I would appreciate your patience and understanding as we try to work toward
> solutions. Thank you again for your inquiry.

>
> Mike Murray
> Superintendent
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>
> "Jim and
Ginny"
> <topsynturvy@cart> To: "Mike Murray"
> <Mike_Murray@nps.gov>
> hlink.net>

cc:
> Subject: Safety

Closures
> 10/15/2006

09:20
> AM

AST
> Please respond

to
> "Jim and
Ginny"

>
>
>
>
>
> During the past 2 weeks several visitors have asked me why the beach in
> front of Frisco and Hatteras Villages are still closed. As per your press

- > release of 9/15, I reported that the closures were ORV safety closures.
- > The visitor's didn't quite understand this explanation. I told the
- > visitors that the safety closures for Frisco and Hatteras Villages were
- > based upon the condition of these beaches observed when 2 hurricanes were
- > passing off shore and that the beaches were, in fact, quite narrow at that
- > point in time. Furthermore, I told the visitors that I did witness a
- > considerable amount of pedestrian traffic during the last to 2 weeks of
- > Sept. (due in part to some sort of Surfing event).
- >
- > I did tell the visitors that, as per the press release dated 9/13, the NPS
- > is scheduled to reassess these areas within the next few days.
- >
- > "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."
- >
- > Based upon the facts
- > 1. that the beach area in front of Frisco Village is currently wider
- > than that area between ramp 49 on the closure,
- > 2. that the portion of beach in front of the parking area at ramp 55 is
- > at least as wide as the area immediately south of the closure, and
- > 3. that pedestrian traffic has decreased significantly, with most users
- > being fisherman and women instead of sunbathers, swimmers, and
- > surfers,
- > I respectfully request that you give serious consideration to opening these
- > beach fronts so that those who are not technically handicapped but don't
- > have the stamina to make long walks to these areas as the puppy drum and
- > specks. start to show up in good numbers may participate in the fall season
- > for these species.
- >
- > Thank you
- > Virginia Luizer
- >
- >
- >
- >