

0020071

**From:** [Mike Murray](#)  
**To:** [ackleybc@aol.com](mailto:ackleybc@aol.com)  
**Bcc:** [Cyndy Holda](#); [Mike Murray](#)  
**Subject:** Re: Request for documents  
**Date:** 09/28/2007 04:18 PM  
**Attachments:** [9-17-07 Request for documents.wpd](#)

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Hi Bob,

I apologize for the delayed response. With Mark Hardgrove gone, I've been swamped and have been struggling to keep up with email. Most of the information you have requested is available but will take some time to retrieve and copy. Some of the information you have requested, I am not aware of its existence, but we will take a look. You can expect a response in several weeks.

In general terms the fundamental difference between the Seashore and the Refuge has to do with how the land was acquired. Most of the Seashore land was acquired by the State then transferred to NPS in a handful of deed transfers. Each deed was a little different, but most have language that the State retained title to and control of all public roads and highways then laid out and established on such lands, and the right to lay out and establish other highways and roads on such lands as deemed necessary by the State. With regard to highway 12, this translates into the State has a legal right to maintain the road on the Seashore lands donated by the State. NPS therefore has a legal basis for being accommodating in working with the State regarding highway maintenance and location. We still have to be concerned about protecting park resources, but there is no absolute legal constraint about the State doing what it reasonably needs to do to maintain the highway. With regard to the "wilderness" issue, and why did they build a road if the land were meant to be wilderness, I believe the State had already started or had completed the highway on the Seashore prior to the land transfer (one deed I've seen was dated July 6, 1953). In any case, in my judgment, the deed language would have allowed them to do so.

I am not an expert on the Refuge requirements or policies. Mike Bryant would be the best source of information. As I understand it the Federal government purchased the Refuge lands and hold fee simple title to it without any deed restrictions such as found in the Seashore deeds. Highway 12 through the Refuge exists within a right-of-way agreed to by the federal land owner (now FWS) and the State. Compared to the Seashore situation, the State has no legal right that I am aware of to "take" FWS land for maintaining the road or to move the right-of-way. As I understand it, the 1997 Refuge Improvement Act, considered the "organic act" for wildlife refuges, and the regs and policies that resulted from it established the compatibility determination requirement that is the legal basis for the FWS concern about moving the highway within the Refuge. They apparently cannot agree to it without being in conflict with the law and related legal requirements.

I hope this helps. Once Steve Thompson returns from vacation, we will work on pulling together the available information.

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To: mike\_murray@nps.gov

cc:

Subject: Request for documents

09/17/2007 05:16  
PM AST

Dear Mike,

The 1916 Organic Act addressed the conservation of wildlife within the National Park Service. Unlike Cape Hatteras, most park units consider resource protection to predominate over visitor usage throughout the park area as established by their enabling legislations.

It is my understanding of our 1937 enabling legislation that wilderness preservation was to be applied to those portions of the Cape Hatteras National Seashore Recreational Area that were not adaptable for recreational uses. The beaches were directed to be preserved for the recreation of the public.

The argument could be made that this park unit was not created simply by its enabling legislation but rather that it evolved over the period of time from 1937 to 1953 or perhaps 1958. Thus documentation from this time period would be important to establish any special purposes or unique status of this unit within the park service. This information has obvious implications as we enter into the Neg Reg process.

The preservation of the 1937 wilderness was a strong concept yet the state built NC 12 right through the center of that wilderness. Why did this occur? What are the documents of agreement for this "right of way"? Were there any special conditions which pertained to that portion of NC12 in the Pea Island section? What justification is there for Fish and Wildlife to attempt denial of NC12 with their support of the long bridge proposal? What agreements exist between NPS and F&WS as provided by the enabling legislation? Pea Island was part of the Recreational Area and public access was to be provided by the National Park Service.

Do your archives have any documents other than the Organic Act which provide for the protection of wildlife specifically on the beaches and primary dunes of Cape Hatteras National Seashore Recreational Area prior to its final establishment in 1953 or its dedication in 1958? Which year should be used for closure of this search?

I am sure your staff has already researched this time period since your recent posting in Manteo. I would appreciate your personal opinions on the matter.

Sincerely.,

Bob

(Robert B. Davis)

0020073



9-17-07 Request for documents.wpd

Request for documents 9/17/07

1. NC and NPS agreements for establishing and maintaining NC 12
2. Same documents as above which might pertain separately to Pea Island
3. NPS and F&WS agreements as provided by the enabling legislation with regard to the recreational uses in Pea Island
  - a. Initial agreement
  - b. Subsequent agreements which showed changes
  - c. current agreement
4. Any directions which call for protection of wildlife on the beaches over the time period 1937 to 1953 or 1958 whichever is relevant
5. Formal declarations of 1953 and 1958 announcements as to the Recreational Areas creation