

From: [Mike Bryant@fws.gov](mailto:Mike_Bryant@fws.gov)
To: [Mike Murray@nps.gov](mailto:Mike_Murray@nps.gov)
Cc: [Pete Benjamin@fws.gov](mailto:Pete_Benjamin@fws.gov); [Scott Lanier@fws.gov](mailto:Scott_Lanier@fws.gov); [Dennis Stewart@fws.gov](mailto:Dennis_Stewart@fws.gov)
Subject: Re: Fw: Pea Island Off the Table for REG-NEG
Date: 10/26/2007 10:57 AM
Attachments: [pic22190.jpg](#)

Hi Mike,

It troubles me that the Solicitor feels a need to review this issue. Here's some information that I hope helps you.

The Organic Act for the refuge system is the National Wildlife Refuge System Improvement Act of 1997 (P.L. 105-57) which amends the National Wildlife Refuge System Administrative Act of 1966 (16 U.S.C. 668dd-ee). Under this law uses of a refuge must be found compatible with the purpose of the refuge and the mission of the refuge system to be allowed. The mission is articulated in this law.

The Purpose of this refuge is found in the: Executive Order Establishing Pea Island Migratory Waterfowl Refuge [No. 7864] [F.R. doc. 38-1026; Filed, April 9, 1938]. to effectuate further the purposes of the Migratory Bird Conservation Act (45 Stat. 1222) ordered that all lands owned or controlled by the United States within the described area in Dare County, North Carolina, be,, reserved and set apart, subject to valid existing rights, for the use of the Department of Agriculture (now the DOI) as a refuge and breeding ground for migratory birds and other wildlife (bold emphasis added):

The ESA puts emphasis on the definition of other wildlife: (other wildlife in Federal Trust, i.e., piping plover & loggerhead sea turtle on this refuge)

While the refuge is within the boundaries of the Cape Hatteras National Seashore Recreational Area the recreational uses NPS administers will not be allowed on the refuge when they are inconsistent with the purpose of the refuge per this seashore's enabling legislation.

I reiterate that my decision is that beach driving is both inconsistent with the purpose of the refuge and not compatible with the mission of the refuge system or the purpose of the refuge. In this context, if a use is inconsistent and/or not compatible it will not be allowed. There is no reason to discuss this with the REG-NEG FACA Team since the decision has been made that the use is not compatible and this has been communicated to the Team by me.

You should have in your files the old agreements between our two offices and a record of the communications between our respective Regional Offices and our two field offices over the past 40 years. The current public use infrastructure and operations on Pea Island National Wildlife Refuge reflect the implementation of agreements and communications between our two agencies. These communications and agreements interpret, clarify, and set the limits on our responsibilities and roles as they relate to administration of recreation within the refuge.

I recommend that Mike Stevens consult with the Solicitors with whom we often work: Alan Palisoul in WO and John Harrington in Atlanta. Respectfully, they provide opinions and I make the decision and the decision has been made.

I would be happy to discuss this with you.

Mike

(Embedded image moved to file: pic22190.jpg) Mike Bryant, Project Leader
USFWS
North Carolina Coastal Plain Refuges Complex
P. O. Box 1969 (shipping: 708 N Hwy 64)
Manteo, NC 27954
office: 252-473-1131 ext. 222 cell: 252-216-7505
fax: 252-473-1668
mike_bryant@fws.gov

Mike_Murray@nps.gov

10/25/2007 09:38 AM

mike_bryant@fws.gov

pete_benjamin@fws.gov

Subject
Fw: Pea Island Off the Table for REG-NEG

To

cc

Hi Mike,

At our recent ORV negotiated rulemaking workshop (with Pete in attendance) the issue of Pea Island NWR being "off the table" was raised again. See message below regarding the legal basis for the ORV groups to continue to question the issue. Mike Stevens from the Solicitors Office in Atlanta will review the issue.

Since you know much more about Pea Island NWR history, legislation, etc. than I do, are there any key relevant statutes, policies or documents, that I should make Mike Stevens aware of to consider during his review?

Any input you can provide to help us identify the most relevant documents and focus our efforts would be appreciated.

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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----- Forwarded by Mike Murray/CAHA/NPS on 10/25/2007 08:25 AM -----

"Ted Hamilton"
 <tedsalvo@earthli To: "Mike (CHNS SUPT)
 Murray" <mike_murray@nps.gov>
 nk.net> cc: "David joyner"
 <djoyner@beldar.com>, "Frank Folb Jr."
 <fsifolbfamily@earthlink.net>, "Jim Keene" <jkeene@franklineq.com>, "John
 (OBPA)
 10/23/2007 05:23 Couch"
 <guitarcouch@earthlink.net>, "John Alley" <johna@midgettrealty.com>,
 PM AST "John Alley"
 <johna@midgettrealty.com>, "Larry Hardham"
 Please respond to <hardhead@embarqmail.com>,
 "Croker's Mom" <buxtonbeachmotel@earthlink.net>,
 tedsalvo "David A. Goodwin (OBPA)"
 <dave@obpa.org>, "longcaster@charter.net"
 <longcaster@charter.net>,
 "Wayne Mathis" <dheel@bigfoot.com>, "Patrick (RFA)
 Paquette"
 <basicpatrick@aol.com>, "Cyndy_Holda@nps.gov" <Cyndy_Holda@nps.gov>
 Subject: Pea Island Off the
 Table for REG-NEG

Mike,

Below are the documents and sections I referred to at today's REG-NEG Workshop re Pea Island. Probably a useful starting point for the lawyers. From the NCDOT Supplement to the Bonner Bridge Replacement SDEIS (14 Feb 2007) Chap 5 Sec 5.2.2.1 (last para) indicating NPS actually owns the ocean and sound sides of Pea Island.

The complete SDEIS document is available at <http://www.obtf.org/>

"As discussed in Section 5.2.2.1 of the SDEIS, in the Refuge area, the NPS would be involved in

any permitting decisions in the area outside of the Refuge's boundaries, but within the Seashore's

boundaries. This would apply to the area between the mean high tide level and the mean low tide

level on the ocean-side, as well as the area between the mean high tide level and 150 feet (45.7

meters) beyond the shoreline on the sound-side. This situation would occur with the nourishment

component of the Phased Approach/Rodanthe Nourishment Alternative on the ocean-side of the

Refuge. The permit would be issued by the Seashore Superintendent. The Superintendent must

conclude that the bridge would not impair park resources."

Below is the web site where I got the info from the Enabling Legislation.

http://caselaw.lp.findlaw.com/cascode/uscodes/16/chapters/1/subchapters/lxiii/sections/section_459a-3..html

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

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.

Cheers Ya'll

Ted A. Hamilton

(aka Salvo Jimmy)