

From: [Mike Murray](#)
To: [Danny Rosenkrans](#)
Subject: Re: Hearing: The Impacts of Unmanaged Off-Road Vehicles on Federal Land
Date: 03/04/2008 02:51 PM
Attachments: [Kemphorne Hearing Invite 031308.pdf](#)
[CAHA ORV Lawsuit 030408.doc](#)

Danny,

Here is our latest, updated briefing statement. We historically do not have good data on the total number of ORV users, though we have recently installed traffic counters to start collecting such data. I would assert that ORV use at CAHA is not "unmanaged," there are a number of applicable management plans and regulations that apply (interim protected species management strategy, various state and NPS traffic and recreational use regulations - can send more on this if you are interested). I would also say that the guidance we are working under does NOT meet the requirements of the executive orders or 36 CFR 4.10 and do NOT constitute a legally sufficient ORV management plan and regulation. We are being sued over the interim plan, while we continue to work on developing the ORV management plan and regulation, the latter through the negotiated rulemaking process.

Please let me know if you need anything else.



CAHA ORV Lawsuit 030408.doc

Mike Murray
Superintendent
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▼ [Danny Rosenkrans/WRST/NPS](#)

**Danny
Rosenkrans/WRST/NPS**

03/04/2008 11:17 AM

To: Mike Murray/CAHA/NPS@NPS, Damon Doumlele/BICY/NPS@NPS, Vicki Snitzler/WRST/NPS@NPS, Bruce Rogers/WRST/NPS@NPS, Russ Wilson/CALO/NPS@NPS, Brian Sweatland/GLCA/NPS@NPS, Kevin Schneider/GLCA/NPS@NPS, Dave Roberts/CURE/NPS@NPS, Connie Rudd/CURE/NPS@NPS, Cindy Ott-Jones/LAMR/NPS@NPS

cc

0020533

Subject Hearing: The Impacts of Unmanaged Off-Road
Vehicles on Federal Land

Park Superintendents and staff:

The OLCA-NPS received the official notification of the pending March 13th ORV hearing yesterday.

The Subcommittee on National Parks, Forests and Public Lands of the Committee on Natural Resources will hold a hearing on *The Impacts of Unmanaged Off-Road Vehicles on Federal Land* on Thursday, March 13, 2008, at 2:00 p.m., in Room 1324 of the Longworth House Office Building.

I have spoken with most of you already and want to thank you for the information you have provided to date. Note that the ORV hearing focus is on "impacts of unmanaged Off-Road Vehicles on Federal Lands". The BLM will represent the Department as well as respond to questions. Please ensure that we have your park's most recent briefing statement on your ORV planning, compliance, legal, rule making and related issues. We will brief the person testifying at the hearing early next week so if possible please respond by midday on Friday.

It would be helpful if you could provide some statistics on the number and types of ORV users as well significant park resources at risk. In addition, if there is something unique to your park regarding ORV use that may arise during the questioning and of which we should be aware, please craft the question and provide an brief answer. We realize you are very busy, so do not allocate a lot of time preparing a response to this email, but do provide any easily accessible information or important questions/answers.

Again thanks for your effort.



Kemphorne Hearing Invite 031308.pdf

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----- Forwarded by Danny Rosenkrans/WRST/NPS on 03/04/2008 10:04 AM -----

0020534

BUREAU: National Park Service
MEMBER: Congressman Walter Jones, Senator Elizabeth Dole, Senator Richard Burr
ISSUE: Off-road Vehicle (ORV) Management and Related Lawsuit
PARK: Cape Hatteras National Seashore (CAHA)

Key Points:

- NPS is required by Executive Order and NPS regulation to develop an ORV management plan and regulation if NPS continues to allow off-road vehicle (ORV) use at CAHA. NPS has not met these requirements.
- CAHA has prepared and implemented an Interim Protected Species Management Strategy (Interim Strategy) to provide guidance until a long term plan and regulation can be developed.
- CAHA has begun the development of an ORV plan/EIS and will start the negotiated rulemaking process to develop a special regulation in January 2008.
- Three environmental groups, who are also participants in the negotiated rulemaking, filed a complaint on October 18, 2007 alleging inadequacies in the NPS interim strategy. Plaintiffs filed a motion for a preliminary injunction (PI) on February 20, 2008, requesting the court to close six key sites to ORV use on a year-round basis.
- Dare and Hyde Counties and a collation of ORV and fishing groups have filed as interveners. The judge has yet to rule on that motion.

Background:

- ORV use predates the establishment of CAHA and has become a popular method of access for other recreational pursuits such as swimming, fishing and water sports.
- Executive Order 11644 (1972), amended by Executive Order 11989 (1977), requires certain federal agencies permitting ORV use on agency lands to publish regulations designating specific trails and areas for this use. Title 36 CFR § 4.10 requires NPS to designate ORV use areas and routes by special regulation. In 1973 and 1990, CAHA submitted draft regulations through the SE Regional Office (SERO) to the Washington Office. The regulations were not promulgated.
- While the number of human visitors to the Seashore has grown to around 2.2 million in 2007, the populations of federally threatened piping plover (*Charadrius melodus*) and various other protected shorebird species [common terns (*Sterna hirundo*), least terns (*Sterna antillarum*), gull-billed terns (*Sterna nilotica*), black skimmers (*Rynchops niger*), and American oystercatchers (*Haematopus palliatus*)], as well as the occurrence of federally threatened seabeach amaranth (*Amaranthus pumilus*) have declined within the Seashore.
- On June 7, 2004, environmental groups submitted a petition to NPS to develop regulations for ORV use at CAHA.
- Defenders of Wildlife filed two Notices of Intent to Sue NPS (May 2005 and December 2006) alleging that a failure to manage vehicle use on CAHA beaches was a violation of the Endangered Species Act (ESA), the Executive Orders, and NPS regulation.
- On January 18, 2006, NPS released an Interim Protected Species Management Strategy/EA (Interim Strategy) for federally protected shorebird, sea turtle and plant species. On August 14, 2006, the U.S. Fish and Wildlife Service issued a Biological Opinion (BO), which found that the Interim Strategy was not likely to jeopardize the T&E species, or destroy or adversely modify designated or proposed critical habitat. The BO was amended on April 24, 2007 to include performance measures as quantifiers of incidental take.

- On December 11, 2006, NPS published a Notice of Intent to develop an ORV management plan and environmental impact statement (plan/EIS). Public scoping ended March 16, 2007. NPS received over 4,000 comments.
- On June 28, 2007, NPS published a Notice of Intent to establish a negotiated rulemaking committee to develop an ORV regulation for CAHA.
- On July 13, 2007, the Regional Director signed a Finding of No Significant Impact (FONSI) to finalize the Interim Strategy.
- On July 17, 2007, U.S. District Court Judge Terrence Boyle, based on a beach driving traffic violation case, issued a court order stating that without an ORV plan, ORV use at CAHA is prohibited and it is a violation to operate an ORV on CAHA without prior authority from DOI or its designee. The order did not enjoin ORV use at CAHA and NPS continued to allow ORV use under the Interim Strategy.
- Under the Interim Strategy, in mid-July 2007 when peak breeding season resource protection measures were in effect and visitation was at its peak, beach access was as follows: Of approximately 62 miles of beach, 4.5 miles (7%) were completely closed to protect resources, 28.8 miles (46%) were open to ORV use, and 57.8 miles (93%) were open to pedestrian use. Pedestrian areas included seasonal ORV closures in front of the villages and ORV safety closures of narrow beaches were deemed unsafe for ORV use.
- On October 18, 2007, Defenders of Wildlife and The National Audubon Society, represented by the Southern Environmental Law Center (SELC), filed a complaint in the U.S. District Court for the Eastern District of North Carolina challenging the Interim Strategy. The Plaintiffs requested, among other things, that the Court order NPS to restrict ORV use at CAHA to provide adequate resource protection and minimize user conflicts until a long term ORV management plan and regulation can be developed. The complaint was amended on December 19, 2007 to include USFWS as co-defendant and to include Endangered Species Act claims related to both the NPS Interim Strategy and the FWS biological opinion.
- On November 28, 2007, attorneys for Dare and Hyde Counties and ORV groups filed a motion to intervene in the case and were subsequently granted Intervenor status by Judge Boyle.

Current Status:

- The CAHA negotiated rulemaking was formally established on December 20, 2007. The Committee has held two meetings on January 3-4 and February 26-27, 2008, making good progress during each meeting.
- CAHA conducted public meetings on January 14-17 and opened a public comment period ending February 15, 2008 on preliminary alternative options for the ORV plan/EIS.
- On February 20, 2008, Plaintiffs filed a motion for a preliminary injunction (PI) requesting to court to direct NPS to completely close the six key breeding sites (Bodie Island Spit, Cape Point, South Beach, Hatteras Spit, North Ocracoke, and South Ocracoke) to ORV use on a year-round basis. The six sites are also the most popular fishing areas currently accessed by ORV users.
- On February 26-27, 2008, the second meeting of the CAHA negotiated rulemaking was held in Kill Devil Hills, NC. The meeting was well attended and despite the tension caused by the lawsuit was generally productive.

Prepared by: Michael B. Murray, Superintendent, 252-473-2111 x148

Date: March 4, 2008

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March 3, 2008

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Honorable Dirk Kempthorne
 Secretary
 Department of the Interior
 1849 C Street, NW
 Washington, DC 20240

Dear Mr. Secretary:

The Subcommittee on National Parks, Forests and Public Lands of the Committee on Natural Resources will hold a hearing on *The Impacts of Unmanaged Off-Road Vehicles on Federal Land* on Thursday, March 13, 2008, at 2:00 p.m., in Room 1324 of the Longworth House Office Building. I cordially invite you or your designee to testify at this hearing.

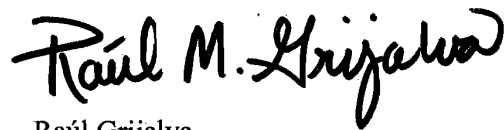
Under Committee Rule 4(b), each witness who is to appear before a Subcommittee of the Committee on Natural Resources must file with the clerk of the subcommittee a written statement of proposed testimony. **This must be filed at least two working days before your appearance. Failure to comply with this requirement may result in the exclusion of your written testimony from the hearing record and/or the barring of your oral presentation of the testimony.** Your oral testimony should not exceed five minutes and should summarize your written remarks. You may introduce into the record any other supporting documentation you wish to present in accordance with the enclosed guidelines.

The Committee on Natural Resources Rules are available on its website at <http://resourcescommittee.house.gov/> and the Rules of the House of Representatives, including clause 2(k) of Rule XI, are available at the House of Representatives' website at <http://www.house.gov/rules.pdf>. Copies can also be sent to you on request.

To fully prepare for this hearing, we request that a copy of your testimony be submitted electronically (in Word or WordPerfect Format Only) to Domenick Carroll at: Domenick.Carroll@mail.house.gov, no later than the close of business on March 11, 2008. Accommodations for individuals with disabilities, including assistive listening systems, interpreters and materials in alternate formats, may be arranged by contacting Domenick Carroll in advance of the hearing (four business days notice is recommended) at the address above or at 202-226-7736 or TTY 202/225-1904.

Should you have any questions or need additional information, please contact Laurel Angell, Legislative Staff at (202) 226-7736 or Domenick Carroll, Clerk at (202) 226-9981.

Sincerely,

A handwritten signature in black ink that reads "Raúl M. Grijalva". The signature is written in a cursive style with a large, prominent "R" at the beginning.

Raúl Grijalva
Chairman
Subcommittee on National Parks,
Forest and Public Lands

Enclosures
cc: Laurie Sedlmayr
cc: Don Hellmann