

From: [Mike Murray](#)
To: [David Vela](#)
Cc: [Art Frederick](#)
Subject: ORV issue update
Date: 09/03/2008 10:41 AM

Hi David,

I have been extremely busy, as I am sure you have too, but wanted to give you an update on the ORV planning issue, which includes storm clouds on the horizon. This is what I submitted yesterday for the 3-week out report.

NPS continues to implement the consent decree signed by U.S. District Court Judge Terrence W. Boyle on April 30, 2008, that settled a lawsuit brought by environmental groups against the Interim Protected Species Management Strategy. Under the consent decree, CAHA has experienced an increase in the number of breeding pair of piping plover from 6 pair in 2006 and 2007, to 11 pair in 2008. The bird breeding season has concluded and many areas have reopened to visitor access. As of August 26, of 67 miles of ocean shoreline, 36.6 miles were open to ORVs and pedestrians, an additional 29.4 miles were open to pedestrians only, and 1 mile remained closed to all access due to resources protection measures. The Seashore is experiencing a record year for sea turtle nesting. As of August 29, there have been 112 sea turtle nests with 102 false crawls in 2008, compared to a yearly total of 82 nests and 114 false crawls in 2007. Forty-seven (47) nests have already hatched, 65 nests remain to hatch, and resource protection measures remain in place around the unhatched nests, which in some circumstances has affected access past the nest closure. The most recent meeting of the Seashore's negotiated rulemaking committee was held June 17-18, 2008. Since then six subcommittees have been meeting to work on agenda planning and to discuss management approaches and/or to develop draft proposals on ORV routes and areas, vehicle characteristics, village beaches, natural resource protection, and ORV permits. Some of the latter five subcommittees have made good progress toward developing proposals for the full committee to consider; some have not. There continues to be significant tension between the ORV proponents-local government representatives and the environmental-pedestrian proponents on the respective subcommittees. There have been violations of subcommittee agreements on confidentiality by leaking draft pre-decisional proposal documents to the press. There have been continued attacks in the press against the environmental representatives and via local posters and web-board postings against the local committee members who support environmental protection and pedestrian access in non-ORV areas. Four additional 2-day committee meetings are currently funded and scheduled, with the next meeting to occur on September 8-9, 2008. Topics will include various subcommittee proposals and a discussion of the assessment survey recently prepared by the DOI Office of Collaborative Action and Dispute Resolution (CADR), which determined that despite the perception of a lack of progress, almost all committee members support continuing the process. A House National Parks Subcommittee hearing is scheduled for September 11 on legislation introduced by Congressman Walter Jones (R, NC-3) and Senators Richard Burr (R, NC) and Elizabeth Dole (R, NC) to rescind the Consent Decree and reinstate the Interim Strategy until the long-term ORV management plan and regulation can be completed.

The feedback from the committee in the CADR report was that, among other things, NPS should play a more directive role in making clear the legal and policy constraints

for what is appropriate and not appropriate concepts for consideration in the planning process. (The comments are due in large part to the difficulty that opposing factions, generally the environmentalists and the ORV advocates, are having in negotiating with each other. Typically, they each tend to present diametrically opposed proposals, with little overlap, to each other to consider, then have significant difficulty even discussing compromises on key issues.) Since receiving the report, I have consciously become more assertive in providing NPS input, feedback on respective proposals, in reminding members of the legal requirements and policy constraints (which the Solicitors and I front-loaded at the start of the process, but now that the negotiations are underway the different factions are coming up with their own interpretations that are sometimes widely inconsistent with ours), and in giving them an idea what the NPS approach to certain issues might be if there is no consensus .

As I have become more assertive (I believe in a thoughtful, deliberate, non-threatening way) at the request of the committee, some ORV stakeholders and local officials are becoming disillusioned with me, NPS and the process. As an aside, the environmentalist proposals usually would clearly meet the requirements of the executive order and policy. (Destry Jarvis, along with several lawyers and biologists represent the key environmentally groups.) While proposals from the ORV groups sometimes disregard the mandates. The theme of my assertiveness is that whatever plan we come up with, it will need to meet the requirements of the ORV executive orders, legal mandates, and NPS policy in order for it to be legally sufficient and approved by NPS. I also stress that there can be many ways of meeting the requirements, not just the way proposed by the environmental stakeholder, so the goal of negotiations should be to explore mutually agreeable options that will satisfy the requirements.)

In any case, there now appears to be a deliberate effort by some of the ORV stakeholder and community officials to undermine the negotiation process by releasing draft predecisional subcommittee proposals to the press (presumably to stir up opposition to draft initial proposals from the environmentalists and encourage support of the proposed legislation to overturn the consent decree), by inundating the park with numerous information requests, and by stirring up a variety of peripheral committee issues that distract the facilitators and the committee from getting its primary work done, which is to help NPS prepare an ORV management alternative and proposed regulation.

Our next committee meeting is Mon-Tues Sept 8-9. Should be interesting, given all the "stirring the pot" that is going on. I am also trying to schedule briefings and Dan Wenk and Lyle Laverty in the next few weeks to brief them on draft NPS alternatives that we want to provide to the committee (well before we would normally release such information if we were only doing the NEPA process) and on the status of what is going. Once I get something scheduled I'll let you know. I would like to brief you first, so you can give me feedback or direction on what I am going to present to Dan, etc. At this point I am not ready to brief, because we are swamped with getting ready for the committee meeting.

Feel free to call if you have any questions or concerns. We will do the best we can to keep plodding ahead, but I expect there will be some rough spots along the way.

Mike Murray
Superintendent

0021918

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

CONFIDENTIALITY NOTICE

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure.