

**From:** [Mike Murray](#)  
**To:** [Bob Eakes](#)  
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**Bcc:** [Cyndy Holda](#); [Thayer Broili](#); [Paul Stevens](#)  
**Subject:** Re: EO 12962  
**Date:** 10/30/2008 10:40 AM  
**Attachments:** [Rec Fish revised EO 10-1-08 \(2\).pdf](#)

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Bob,

The Solicitors have reviewed Executive Order (EO) 13474, which amended EO 12962 on recreational fishing, and advised me that it probably does not change anything with regard to ORV management at Cape Hatteras and it definitely does not change anything with respect to access. The only provision directly relevant to "access" was already in the older (Clinton) EO, which directs agencies such as NPS at an agency-wide level to provide access for recreational fishing "where practicable." That sort of agency-wide direction does not mean much in terms of specifics at the level of an individual park unit.

The main change in the new EO is the addition of a unit-specific element on fishing, directing NPS to ensure that recreational fishing is managed as a sustainable activity in park units. So as long as it is consistent with other laws, parks are now expected to permit recreational fishing as an activity. That would be a pretty big deal for a park that does not currently allow fishing, but at CAHA we have always allowed recreational fishing and there is no question that we will continue to allow it. The amended EO adds the requirement that recreational fishing be managed so as to be "sustainable," but does not give any guidance as to what that means. Given that the purpose of the overall amendment is to "conserve, restore and enhance aquatic systems to provide for recreational fishing opportunities nationwide" it would be hard to justify interpreting this EO to mean unlimited access for recreational fishing. The new provision is still subject to the "where practicable" qualifier from the original EO, so it does not mean that people should necessarily be able to fish anywhere they want if access is limited due to other constraints such as resource protection.

Finally, the language at the end of Section 1 (d) of the amended EO, "...or activities under any Federal authority, consistent with applicable law" makes it clear that the new EO does not relieve the agency of complying with other existing legal requirements, which in our case includes the Organic Act, the ORV EO's and the NPS ORV regulation. Section 2 goes on to say that the order does not create any right or benefit by any party against the government, which is further indication that the EO is not intended to pre-empt compliance or authorize noncompliance with other requirements.

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To "Mike Murray" <mike\_murray@nps.gov>  
cc "Mike Stevens" <mike.stevens@sol.doi.gov>

10/26/2008 04:56 PM

Subject

Hello Mike,

Again I would ask you to look at this executive order and give my community an answer to how this impacts Reg Neg and the decision process and so on.

Thanks,

Bob Eakes



Rec Fish revised EO 10-1-08 (2).pdf