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Subject: Re: Please review: Revised Permits/Passes draft
Date: 11/07/2008 03:39 PM
Attachments: [PermitPassv_lee_comments.doc](#)

Thanks Lee. Your comments are helpful.

Regarding the last section on commercial fishing, you are right that your concern will create a political hot potato.

QUESTION: Does it make any difference that the Seashore's 1937 enabling legislation states specifically that "**the legal residents of the villages shall have the right to earn a livelihood by fishing within the boundaries**"?

The specifics of how that provision of the enabling legislation is implemented (which villages it applies to, etc.) is further defined in a special regulation on commercial fishing, under which the park issues a commercial fishing permit. The Seashore has never collected a fee for this permit, presumably because the permit is used to administer the fishing right authorized by the enabling legislation. Commercial fishermen have always been excluded from some of the ORV management restrictions imposed by NPS on recreational ORV use at CAHA; excluded via local policy and/or compendium, although obviously the restrictions have never been formally incorporated into an ORV management plan or promulgated as a special ORV regulation. ORV use by commercial fishermen is clearly different than recreational ORV use. Ideally, we would simply add some provisions on ORV use into the existing commercial fishing permit. Or perhaps, we need to change our use of terminology and not refer to commercial fishermen as "ORV users" but call them something else such as "authorized vehicles."

I am copying the Solicitors who are working with us on this issue to get their input on whether NPS can legally treat commercial fishermen differently than recreational ORV users. My sense all along has been they we could do so because of the enabling legislation, and the sense of the RegNeg committee seems to be that we should treat them differently since those individuals who commercial fish are part of the cultural history of the area.

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11/05/2008 10:52 AM

To Mike Murray/CAHA/NPS@NPS
cc Jane Anderson/WASO/NPS@NPS, Jane Moore/WASO/NPS@NPS, Pat Ludwick/CAHA/NPS@NPS, Paul Stevens/CAHA/NPS@NPS, Steve D Thompson/CAHA/NPS@NPS
Subject Re: Please review: Revised Permits/Passes draft 

Mike

thank you for the opportunity to comment on the permit proposal. It was well thought out, and addressed many of our concerns. While I did make a number of comments on the permit section overall I think the proposal is a great starting point.



PermitPassv lee comments.doc

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PERMIT/PASS/FEE CONCEPTUAL FRAMEWORK**Draft 11/5/08****Issues to be discussed**

- How do we best balance easy access to the permit/pass (internet, self-serve kiosks, etc.) and sufficient and effective education?
- Can we be creative enough to find a way to have a single permit/pass, rather than two separate ones (one for beach access and one for entrance to beach parking) that is described below?

Approach

The Cape Hatteras National Seashore Beach Permit and Pass system will:

- Provide education to all or most users of the beach;
- Ensure equity across beach users;
- Encourage and support appropriate beach behavior; and,
- Collect fees for compliance and enforcement, operations, maintenance and improvements, related to ORV and pedestrian use of beaches and associated facilities.

The permit and pass system may be comprised of:

- A special use permit for off-road vehicle driving; and,
- An entrance pass for *parking* in National Park lots that provide pedestrian access to the beach.

The permit and pass system will include a fee. This fee will be the same across both the permit and entrance pass (the charge for a permit or a pass would be the same amount). The ORV permit will be accepted for parking in NPS lots in lieu of the entrance pass (i.e., the permit serves as both a beach driving permit and entrance pass).

The following details this possible two-prong approach.

The special use permit is authorized and guided by:

- 16 USC 3a - (PL 103-1138, Title I, November 11, 1993, 107 Stat. 1387)
- *NPS Management Policies 2006* Section 8.6

The entrance pass is authorized and guided by:

- Federal Lands Recreation Enhancement Act (FLREA) – (16 USC 6801-6814; PL108-447, Division J, Title VIII)
- *NPS Management Policies 2006* § 8.2.6
- NPS Director's Order 22 (DO-22) and Reference Manual 22 (RM-22): Recreation Fees

Comment [LD1]: 3a is the legal authority only for collecting and retaining cost recovery charges. If Hatteras has special statutes for off road vehicles that would be the legal authority, otherwise it would be 16 USC 1 - 4. Guidance documents also include regulations and EO/RM-53.

Special Use Permit

The Off-Road Driving Special Use Permit is required for all off-road vehicles or operators regardless of time of day or time of year or location of use.

- A *driver-issued* permit would require that the driver carry some kind of permit (i.e., a hang tag). This is the best way to ensure the operator of the vehicle has met the requirements and education attached to the particular permit.
- A *vehicle-issued* permit would be assigned to the registered owner of the vehicle and the permitted vehicle would be identified by some kind of sticker affixed to the vehicle. The permittee could allow others to operate the permitted vehicle (similar to the registered owner of a boat allowing others to operate his/her boat); however, anyone operating the vehicle would be held responsible for compliance with the regulations, so it puts some burden of responsibility on the registered owner to ensure that any other operators who are allowed to use the vehicle are aware of the regulations.

Permits would be available on a *weekly, monthly or annual* basis. There would be no numerical limit on the number of permits issued.

Education is required in order to obtain a permit. The applicant is required to read information and/or watch an educational video that provides education on park regulations, vehicle characteristics, vehicle operation, natural resource protection, and instruction on how to access information on the current status of beach access. Education will include significant information focused on natural resource protection/mitigation. Educational materials will make clear that the Superintendent shall have authority to close ad hoc any part of the beach for safety, resource purposes (chiefly birds, turtles, and certain endangered grasses), and when conditions of crowding or undue stress on the resource show that reasonable limits have been reached. The applicant is required to sign the brochure or a form noting they had watched the video.

Every vehicle on the beach must carry the *required minimum equipment* as detailed in the terms and conditions of the permit.

Permits could be *available* in-person at a limited number of stations, and/or at special computer kiosks that could be established at various locations throughout the Outer Banks. For instance, local in-person permit distribution locations could include: the Whalebone Junction Welcome Center, NPS Buxton Ranger Station or Lighthouse Visitor Center, and the NPS Ocracoke Ranger Station or Visitor Center. Local government, welcome centers, and/or interested businesses such as area hotels, bait and tackle shops, outfitters, and tour

Comment [LD2]: The form should include the terms and conditions applicable to the permit. This are what law enforcement will be enforcing through visitor education and citations.

operators could also make permits available. Permits should be available by Internet, if feasible.

Comment [LD3]: Where ever the permits are available it is important that the park obtain a signature agreeing to the terms and conditions of the permit.

Law enforcement will periodically patrol the beach and may issue tickets for failure to be permitted, excessive speeding, and so forth. The special use permit can be revoked for a “major violation” (needs to be defined) and/or a number of “minor “ violations. Violations that endanger people or damage wildlife may result in loss of obtaining a future special use permit. A standard system of fines and penalties is approved by the U.S. District Court, announced by NPS, and listed in required educational information.

Comment [LD4]: Being denied the ability to obtain a permit in the future is a penalty and would need to be part of the penalties approved by the court.

The Park will keep *accurate records* of the number and types of permits issued each time period, and keep cumulative totals as the year progresses, by week, month, season, and annually. NPS will retain basic, appropriate registration data on each permittee when they apply the first time, and annually add any record of violations. In the second year of the program, every driver with an unblemished, violation free record may apply for permit renewal through the mail, with no additional administrative process required. If there are new educational materials, this can be sent to each applicant with the renewal sticker(s) and card(s).

Comment [LD5]: Accurate records can only be maintained with the cooperation of any off-site non-NPS permitting locations.

The park should prepare and distribute an *annual report* to document the number and type(s) of permits issued, the amount of fee revenue/cost recovery received, a summary of how the fee revenue was expended, any significant issues or changes that were implemented in the permit program, and the number and types of violations committed by (or the number of violation notices issued to) both permitted and unpermitted ORV users.

Comment [LD6]: It needs to be made clear that cost recovery simply reimburses the park for costs incurred in the management of the permitting program. There really are no discretionary expenditures.

Entrance Pass

The Entrance Pass is required for all users of NPS parking facilities that provide access to the beach. These may include both centralized, developed parking facilities, such as those at the life guarded beaches, as well as smaller, more scattered facilities on federal lands.

Passes may be issued to a vehicle or individuals. Passes would be available on a *weekly, monthly or annual* basis. Passes shall be *displayed* clearly on the dashboard or in the window of the vehicle.

Education is required in order to obtain a pass. The applicant is required to read information that provides education on park regulations, natural resource protection, pedestrian safety, and instruction on how to access information on the current status of beach access.

Education will include significant information focused on natural resource protection/mitigation. Educational materials will make clear that the Superintendent shall have authority to close ad hoc any part of the beach for safety, resource purposes (chiefly birds, turtles, and certain endangered grasses), and when conditions of crowding or undue stress on the resource show that reasonable limits have been reached. The applicant is required to sign the brochure.

Passes might be *obtained* on kiosks or stations to the entrance of more major parking facilities (such as at the life guarded beaches), via self-pay electronic stations, and or in more remote locations, via self-pay means such as in-ground metal tubes other secure deposit containers. America the Beautiful/National Parks and Federal Recreation Lands Passes will be accepted as the parking entrance pass. The ORV permit will also be accepted for parking in NPS lots in lieu of the entrance pass.

Law enforcement would periodically patrol parking lots and issue tickets for failure to pay, as needed.

The Park will keep *accurate records* of the number of passes issued each time period, and keep cumulative totals as the year progresses, by week, month, season, and annually. The park will also prepare and distribute an *annual report* to document the number and type(s) of passes issued, the amount of fee revenue received, a summary of how the fee revenue was expended, any significant issues or changes that were implemented in the program.

Commercial Fishing

Commercial fishing activity within Cape Hatteras National Seashore is regulated by 36 CFR 7.58 (b); however, that section does not address ORV use by commercial fishermen. In the new ORV regulation, ORV use by commercial fishermen could be addressed as follows:

- Commercial fishing vehicles/operators must obtain an ORV permit to drive on the beach (*Comment: As a practical matter, NPS could issue single, combination fishing/ORV permit to commercial fishermen.*)
- The Superintendent shall waive permit fees for commercial fishermen.
- The Superintendent may exempt commercial fishermen, who are actively engaged in authorized commercial fishing activity, from restrictions or requirements applicable to recreational ORV use, provided such exemptions do not jeopardize public safety or resource protection and as long as such exemptions are authorized subject to the terms and conditions of a permit.

Comment [LD7]: I'm sure this is a political hot potato, but if we look on this as a commercial operation the commercial use authorization legislation does not allow the waiving of cost recovery charges. If you waive charges you are waiving t hem for BOTH permitted activities.

Comment [LD8]: Waiving some of the conditions for one user group weakens our ability to enforce the terms and the conditions of the permit on other user groups.