

002227

**From:** [bobdavis](mailto:bobdavis)  
**To:** [Ackleybc@aol.com](mailto:Ackleybc@aol.com); [Mike\\_Murray@nps.gov](mailto:Mike_Murray@nps.gov)  
**Cc:** [hardhead@embarqmail.com](mailto:hardhead@embarqmail.com); [ccboucher@cox.net](mailto:ccboucher@cox.net); [warren@darenc.com](mailto:warren@darenc.com); [pfield@cbuilding.org](mailto:pfield@cbuilding.org); [rcf@fisherccs.com](mailto:rcf@fisherccs.com)  
**Subject:** Re: Fwd: (no subject)  
**Date:** 11/25/2008 03:38 PM

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Hi Mike ! Allow me to clarify : I do not argue what the Organic Act says nor any case law ( including Yellowstone) that interprets that Act. I argue that the Enabling Legislation placed provisions on the Organic Act for CAHA which take precedence over any NPS policy. I agree that NPS must protect wildlife resources but must do so while providing public access to the waterline and adjacent beach for those activities specifically dictated by congress. There are many ways to protect wildlife that can still accommodate public access. Past and proposed dependence upon distance buffers that deny access clearly violates the Enabling Legislation. Where is my error in understanding the words "provided, provisions and shall" ?

----- Original Message -----

From: <Mike\_Murray@nps.gov>  
To: <Ackleybc@aol.com>  
Cc: <davisrb@embarqmail.com>; <hardhead@embarqmail.com>; <ccboucher@cox.net>; <warren@darenc.com>; <pfield@cbuilding.org>; <rcf@fisherccs.com>  
Sent: Tuesday, November 25, 2008 10:52 AM  
Subject: Re: Fwd: (no subject)

>  
> Hi Bob,  
>  
> Thank you for your comments. I respect your right to interpret the NPS  
> Organic Act and CAHA enabling legislation in your own way; however, the  
> DOI  
> Office of the Solicitor and NPS disagree with many of your opinions that  
> are contrary to official agency policy and legal precedent. "Conservation  
> is to be predominant" and "This is how courts have consistently  
> interpreted  
> the Organic Act" are factual statements taken directly from NPS Management  
> Policies 2006 (section 1.4.3). The Yellowstone case is simply the most  
> recent example of how a court has interpreted the Organic Act. That case  
> cites other cases. For more cases, try Googling "NPS Organic Act court  
> ruling" (or any variation of that phrase).  
>  
> Recreation is, in fact, an important part of the legislated purpose of  
> Cape  
> Hatteras National Seashore. However, there is no sound legal basis for  
> your assertion that the recreational portion of the CAHA legislation  
> exempts CAHA from the Organic Act or from requirements to protect park  
> resources on the beach. After our many RegNeg meeting discussions about  
> the legal mandates, including the requirements of the Executive Orders and  
> NPS regulation, the Organic Act, and the enabling legislation, it is  
> surprising that you continue to suggest there is any legal basis for doing  
> so. Though you may disagree, NPS must develop an ORV plan that meets the  
> legal requirements for resource protection.  
>  
> With regard to the slide show, it was simply an informative presentation  
> to  
> be used or not used as the Committee sees fit. The pie charts were  
> intended to show the relative affect of various CAHA ORV management  
> alternatives on the beaches to be affected by the ORV management plan,  
> which, in fact, does not include Pea Island NWR. As a reminder, the  
> Groundrules for the regulatory negotiation committee state:  
>  
> Management of ORV use at Pea Island National Wildlife Refuge  
> (PINWR) will not be included in the negotiated rulemaking  
> process, as the Refuge is under exclusive administration of the  
> USFWS rather than NPS and under a different set of laws and  
> regulations [16 USC § 668dd(a)(1)]. (Plus the following  
> footnote) The Committee acknowledges that for a number of years  
> ORVs were allowed on PINWR, however those miles have been lost  
> to ORV use. While management of that area is outside the scope  
> of the plan/EIS and regulatory negotiation, the Committee takes  
> official notice of this reduction in the original area open for  
> access by ORV. The Committee also notes that the USFWS has  
> prohibited off-road driving within the Refuge since the  
> mid-1970's.  
>  
> Thank you for your ongoing interest and participation in the negotiated  
> rulemaking process!  
>  
> Mike Murray  
> Superintendent  
> Cape Hatteras NS/ Wright Brothers NMem/ Ft. Raleigh NHS  
> (w) 252-473-2111, ext. 148  
> (c) 252-216-5520  
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>  
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> 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.  
>  
> -----Ackleybc@aol.com wrote: -----  
>  
> To: [mike\\_murray@nps.gov](mailto:mike_murray@nps.gov)  
> From: [Ackleybc@aol.com](mailto:Ackleybc@aol.com)

0022228

> Date: 11/21/2008 12:17PM  
> cc: davisrb@embarqmail.com, hardhead@embarqmail.com, ccboucher@cox.net,  
> warren@darenc.com  
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