



THE Louis Berger Group, INC.

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CANA

CONVERSATION

Date 12.16.08 Time 10am

RECORD

Name: Craig Thatcher

Organization: **Cape Cod NS**

Phone: 508-487-2100

RE: Rulemaking process, rationale

Working with Cape Lookout National Seashore on an ORV management plan and would like to get some insight from you regarding the evolution of Off-road vehicle regulations at **Cape Cod**. 95-97 rulemaking process.

I see a rule was made as a result of the process, I'm curious about the rationale for some of the elements of the rule. We're looking into how this rationale might be applied to other parks.

- a. Was there a **major issue** that precipitated the ORV management plan? Initially, limited accessibility due to piping plover nesting activities. 13 pairs in park when plovers were listed, (eventually increased to 80 or 90 nests). Subsequently, there were concerns about erosion occurring in the inner dunes. In the mid-90s, plover protection became more of an impetus for rulemaking.
- b. Did you establish a **carrying capacity** to determine a cap on ORV use? What type of area did it include (was it a specific destination, or a larger area with multiple visitor destinations contained within it?) Looking at 1995 data, which showed that park-wide, the total number of permits issued was between 3,100 and 3,200. The rationale included adding 10% and capping the number of permits at 3,520. Actual visitor use has not exceeded 500 per day under this system.
- c. How were the requirements on the **size, weight and length of the vehicle** chosen? 15 mph chosen arbitrarily as a safe speed. No weight and size restrictions were identified, but two self-contained vehicles areas are seen to eliminate the need for size requirements.
- d. How were **permit costs** derived? Were they based on carrying capacity or other data? Looked at what other towns are charging. Numbers also adjusted based on seasonal pressures. Adjustments made to weekly and seasonal to adjust for cost of program.

A quick history:

Since the creation of Cape Cod National Seashore (CCNS) in 1961, off-road vehicle (ORV) operations have been regulated by either the CCNS or the towns. During the 1960s and 1970s, ORV trails and routes were extensive. There was a five-year ecological study done on the impact of ORV's in CCNS which was completed in 1979. An ORV Management Plan was implemented in April 1981. This addressed the erosional issues and eliminated most of the inner dune corridors. Conservation Law Foundation and others filed suit in April 1981 to terminate all ORV use at CCNS. US District Court issued a Memorandum of Decision that the 1981 Plan was adequate to protect resources, but NPS needed to conduct a fuller analysis of appropriateness of ORV use under the legislation and of user conflicts/space allocation issues.



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Amended Record of Decision on the ORV Management Plan implemented in 1985. This addressed the user conflict issues and established ORV areas and non-ORV areas. 17.5 miles of existing ORV corridor was eliminated and 8.5 miles of corridor remained. Further restrictions included an ORV season between April 15 and November 15 (limited access pass for specific reasons in off-season). Most of the remaining ORV corridor was on the outer beach below the Spring high tide line and the high tide berm crest.

Negotiated Rule of 1997 addressed the issue of piping plover nesting closures that reduced the open ORV corridor to less than 0.3 miles in 1995.

The negotiated rule amended the ORV Management Plan and set dates when some sections of the corridor would open (July 1 and July 21). It also added a night fishing area. 2006 was the first year the distribution and timing of protective buffers for piping plover broods resulted in complete daytime closure of ORV access. The 8.5 mile ORV corridor was closed in the daytime for 14 days in late June and early July, and over 31 days, 0.2 miles or less was open to ORVs.

The ORV EA of 2007 allowed for more managerial flexibility based on beach conditions and nesting patterns.

Q: Was there a major issue that precipitated the ORV management plan?

A: Initially, limited accessibility due to piping plover nesting activities. 13 pairs in park when plovers were listed, (eventually increased to 80 or 90 nests). Subsequently, there were concerns about erosion occurring in the inner dunes. In the mid-90s, plover protection became more of an impetus for rulemaking.

The 1981 ORV Management Plan was implemented to address erosional issues. The 1985 amendments were due to the 1984 district judge ruling. The 1998 Negotiated Rule amendments were due to significant ORV corridor closures. The 2007 amendments were due to a total ORV closure.

F: Under the OHV management rulemaking, there are prescribed ORV use areas. How were these areas identified?

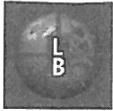
Working off the established ORV corridor identified in the 1985 ORV Management Plan, the negotiations led to limiting access to some areas by opening them later in the season while an additional nighttime fishing area was added to the corridor.

Q: Did you establish a carrying capacity to determine a cap on ORV use? What type of area did it include (was it a specific destination, or a larger area with multiple visitor destinations contained within it?)

ORV users don't drive to one specific location. They can park anywhere along the open corridor.

A: (amended below).

F: How was the original number of permits (3,100 to 3,200) determined? Have there ever been any issues as a result of the permit cap being put in place? Does the current visitor use of up to 500/day in these areas impact resources (i.e. have there been any related issues/problems)?



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The highest annual total of ORV permits sold in recent history prior to 1995 was approximately 3,100 permits. They added 10% and capping the total number of permits at 3,400. Actual numbers of vehicles on the beach at one time has not exceeded 500 vehicles.

(Issues with permit cap) In 1998 permits sold out in early September and the Fall fishermen were unable to buy permits. In 1999, 200 of the seasonal permits were converted to weekly permits. These permits are resold every seven days, so there are never more than 3,400 permits at any one time.

In 2004 the seasonal permits sold out in 10 days. Seven changes were made to permit sales that included total numbers sold per day, advanced sales on weekly permits, and price adjustments between the seasonal and weekly permits.

(Issues with impact to resources) There is the potential for more user conflicts because visitors are recreating in closer proximity. But the resource impact is minimal because the corridor is established below the Spring high tide line where no vegetation grows and the ocean tides cause much more significant impact when considering erosion. We also overlay ORV use on the corridor after adequate protection is provided for the animals.

Q: How were the requirements on the size, weight and length of the vehicle chosen?

A: 15 mph chosen arbitrarily as a safe speed. No weight and size restrictions were identified, but two self-contained vehicles areas were established near to access points and are seen to eliminate the need for size requirements.

Q: How were permit costs derived?

A: Were they based on carrying capacity or other data? Looked at what other towns are charging. Numbers also adjusted based on seasonal pressures. Adjustments made to weekly and seasonal to adjust for cost of program. The ORV permit system is a cost recovery program. We have adjusted seasonal and weekly permit price ratios to take pressure off the seasonal permits, which sold out in 10 days in 2004. The towns with ORV programs have a resident and non-resident permit. Our seasonal ORV permit prices are comparable to their non-resident prices.

F: What specific costs does the program cover (i.e. issuance of permits, natural resource protection)?

The ORV cost recovery program pays for personnel involved in permit sales, in bird monitoring, and in regulation enforcement. It pays for dumpsters, portable toilets, and other miscellaneous supplies, materials, and equipment associated with the ORV program. It has also paid for costs associated with specific research related to ORV impacts and studies related to ORV activities.

Written by Josh Schnabel

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