

Mike Murray/CAHA/NPS  
11/01/2009 02:11 PM

To lfox@louisberger.com  
Sandra Hamilton/DENVER/NPS@NPS, Jami  
cc Hammond/Atlanta/NPS@NPS, Britta  
Muiznieks/CAHA/NPS@NPS  
bcc  
Subject Comments on Chapters 1 and 2

Lori, I have a few comments.

### Chapter 1

Page 1: Line spacing seems off (too big) between lines 12-13, 29-31, and 35-37. Check with Sandy to be sure you are using the latest language (from Sandy and Jason Waanders) for the first paragraph under "Need for Action."

Page 2, Line 16: edit ending as follows: Change ",,2007a). consent decree" to " ...2007a), **as modified by the consent decree.**

Page 7: Line 4: Change "64 miles" to "68 miles" which is more consistent with current mileage and amount of miles that are shown later in Routes and Areas Table

Page 21, at end of line 2 after "...origin." add: **The permitting portion of the 1978 draft plan was controversial and was removed before release of the 1978 Draft Interim Management Plan: Off-Road Vehicle Use, Cape Hatteras National Seashore (NPS 1978a).** (Comment: Can move this text from lines 31-33.) Lines 12-24: Remove indent. Margin should align with text of paragraph below it. Lines 31-33: Delete text that was moved to end of line 2, where it is better placed. Line 36: Treat as new paragraph. Insert line space between lines 35 and 36.

Page 23, line 20: Change "Additional public meetings were held in January 2008..." to: **An additional public comment period was held in January - February 2008 on the ORV Preliminary Options Workbook to examine the range of alternatives...** (Comment: There were no public meetings on the workbook.)

Page 31, line 14: "An ethnographic study for the Seashore was completed in late 2005..." (Comment: The study was not approved or released by NPS until Feb 2006, so the unqualified date of 2005 is misleading.)

Page 31, lines 25-38: Edit paragraph as follows:

In addition to ethnographic resources, the Cape Hatteras Preservation Alliance submitted a request to the North Carolina Department of Cultural Resources (NCDCCR) for Bodie Island Spit and adjoining beaches, Cape Point and adjoining beaches, Hatteras Inlet and adjoining beaches, and South Point Ocracoke and adjoining beaches to be recognized as Traditional Cultural Properties (TCPs). The NCDCCR responded to this request in a letter dated June 2, 2009, stating that adequate information was not provided for the National Register Advisory Committee to determine if the sites should be placed on the Study List as properties that appear to be potentially eligible for listing in the National Register of Historic Places at TCPs. The letter further stated that a significance ascribed to a property in only the last 50 years cannot be considered traditional, and that the application focused on the past 50 years. The NCDCCR also stated that **in order to make the case that the sites qualify as TCPs worthy of preservation, documentation must be presented to substantiate the community's historically rooted beliefs, customs, and practices as they relate to recreational fishing and identify the "living community of people" who have established a pattern of land use reflected in the cultural traditions valued by its long-term residents. Further, documentation must show that the four sites are the specific places that played a significant role in the**

community's historically rooted beliefs, customs, and practices and that those beliefs, customs, and practices are integral to the community's cultural identity. The letter pointed out that most of the application's text appeared to focus on the past fifty years when recreational fishing at the sites has almost completely supplanted commercial fishing, a long-established practice (although not necessarily a traditional cultural practice as interpreted by the National Park Service) and the application provided no historical documentation to establish that recreational fishing practices of the past fifty years have a direct relationship and continuity with the traditional beliefs, customs, or practices associated with historical commercial fishing patterns on the Outer Banks. The NCDCCR concluded that, based on the limited information in the application, there appears to be little if any justification that the properties qualify as TCPs. ~~The letter further stated that a significance ascribed to a property in only the last 50 years cannot be considered traditional, and that the application focused on the past 50 years. The NCDCCR also stated that the application provided no historical documentation to establish that recreational fishing practices of the past 50 years has a direct relationship and continuity with the traditional beliefs, customs, or practices associated with historical commercial fishing patterns on the Outer Banks.~~

Page 34, lines 20-24: Edit as shown:

#### **Code of Federal Regulations, Title 36, Section 4.10 Travel on Park Roads and Designated Routes**

This CFR section states that "operating a motor vehicle is prohibited except on park roads, in parking areas and on routes and areas designated for off-road motor vehicle use." Additionally, routes and areas designated for ORV use shall be promulgated as special regulations, with designations complying with Executive Order 11644. **Routes and areas may be designated only in national recreation areas, national seashores, national lakeshores and national preserves.** As a result of the plan/EIS and special regulation, the Seashore will be in compliance with this regulation.

Page 34, line 37: Before "... Part 4 of these regulations..." insert: **Part 2 of these regulations establishes resource protection, public use, and recreation regulations applicable to public use of units of the national park system.** Part 4 of these regulations...

Page 47, line 28: edit as follows: Based on these planning efforts, the Outer Banks **road corridor** ~~Scenic byway~~ was officially designated **as a National Scenic By-way** on October 16, 2009.

#### **Chapter 2 (narrative)**

Page 54, line 38: Edit as shown: "...Superintendent's Order #7, as amended in 2006. These actions would include providing **ORV** access throughout the Seashore..."

Page 55, line 39: Insert *space* between "least" and "10 meters"

Page 68, lines 9-11: edit as shown: "...buffer distances were developed using and the practical knowledge of **gained by** NPS resources management staff ~~that has been gained~~ during two years of implementing the *Interim Strategy* (2006-2007)

Page 70, line 19: Insert word as shown: Generally, most areas where there is a **seasonally** designated ORV route... *(Comment: We already said that there would be year-round ORV routes in locations without seasonal issues. Most of the seasonal ORV routes would be open to ORVs during the off-season, but some of those areas would, in essence, be non-ORV year-round.)*

Page 72, lines 1-2: edit as shown: the relative simplicity of the elements of this alternative, implementation would require a ~~reduced~~ **lower** level of park staff and resources **than other action**

**alternatives** and would maximize the efficiency of park operations.

Page 74, line 2: edit as shown: ...through zone-, **subject to resource closures.**

Page 75, lines 44-45, edit as shown: During the shorebird breeding season, a shoreline pedestrian access route **corridor** would be established at Bodie Island Spit, and ORV access routes **corridors** would be established at Cape Point and South Point. These routes **corridors...**

Page 77, line 16: change "avoid" to "prevent"

Page 80, lines 15-40: edit as shown:

### **No Restrictions on ORV Use**

~~Prohibition of~~ **Unrestricted** ORV use at the Seashore would not meet the purpose, need and objectives of this plan/EIS. The purpose of this plan is "to develop the basis for regulations and procedures that manage ORV use/access in the Seashore to protect and preserve natural and cultural resources and natural processes, provide a variety of appropriate visitor use experiences while minimizing conflicts among various users, and promote the safety of all visitors." ~~Prohibition of~~ **Unrestricted ORV use** would not provide for a variety of appropriate uses and therefore, not meet the plan need. Also, the need of the plan, including providing consistent management of ORV use, would not be addressed. ~~Prohibition~~ **Unrestricted ORV use** would not meet many of the plan's objectives that relate to managing ORV use, for example, the following three Visitor Use and Experience objectives would not be met if ORV use was completely prohibited:

Ensure that ORV operators are informed about the rules and regulations regarding ORV use at the Seashore.

Manage ORV use to allow for a variety of visitor use experiences.

Minimize conflicts between ORV use and other uses.

~~In addition to not meeting the purpose, need, and objectives of this plan, ORV use is a historical use at the Seashore that has been accounted for in Seashore planning document. Management goals related to ORV use are included in the Seashore's General Management Plan, which states, "Selected beaches will continue to be open for ORV recreational driving and in conjunction with surf fishing in accordance with the existing use restrictions" (NPS 1984, 21). Providing for this use would occur in the context of the overall planning objective of preserving the cultural resources and the flora, fauna, and natural physiographic condition, while providing for appropriate recreational use and public access to the oceanside and soundside shores in a manner that will minimize visitor use conflict, enhance visitor safety, and preserve Seashore resources. ORV use preceded the establishment of the Seashore and management of this use, rather than prohibition, continues to be the intent of the NPS. Because a complete prohibition of ORV use does not meet the purpose, need and objectives of this plan and because ORV use is a historical use that is accounted for in Seashore plans and policies, elimination of all ORV use at the Seashore was not carried forward for further analysis. (Comment: This last paragraph does not make sense relative to "unrestricted ORV use.")~~

Page 79, line 23: add: "...areas: **on Seashore land.**

Page 83, line 16; add BOLD as shown: "...automatically opening **all** closed areas after the breeding season..."

Page 86, lines 30-32: edit as shown:

...these sensitive areas. ~~These a~~ **A**lternatives would not offer the same level of seasonal night driving restrictions, with less hours closed each night, providing a somewhat lesser level of protection than alternatives **C and D**.

Page 86, line 38: "... could provide **result in** long term threats..."

Page 87, line 5: change "mpg" to "mph"

Page 87, line 12 -15: edit as shown:

establishment of ORV and non-ORV areas would reduce **the potential for as well as the** perception of visitor conflict issues. Although actual visitor conflict issues may or may not exist with these two uses in the same area, providing non-ORV areas would **eliminate the potential for conflicts in those areas and** address the feeling of those who perceive there could be a conflict or other safety issue.

Page 87, lines 26-37: edit as shown:

All alternatives offer a wide range of visitor use opportunities, including ~~commercial fishing~~, vehicular use, recreational fishing, swimming, walking, sunbathing, and other general beach recreation, **and commercial fishing**. However, the intensity of recreational use allowed under a particular alternative could lead to resource degradation or risks to health and safety. Alternative A allows the most intense levels of ORV and pedestrian use which could potentially lead to environmental degradation and safety concerns and only meets this criterion to some degree. Alternative B provides additional protection of natural resources through the establishment of larger buffers, ~~preesting closures for American oystercatchers~~, and restrictions on night driving for sea turtle protection. However, this alternative does not directly address the level of recreational use and any safety or environmental concerns that may be associated with increasing visitor use patterns. **Under alternative B** and ~~through this alternative~~, which bases closures on species behavior, there is the potential for large areas of...

Page 88, line 8: edit as shown: "... (alternatives **B**, C, D, E, and F) meeting it to a larger degree than alternatives A ~~or B~~.

Page 88, lines 24-25: Alternatives C, E, and F would have **negligible to minor adverse impacts** on (WHAT) businesses, with a greater level of impact to those businesses within the Seashore, and as such, would meet this criterion to a moderate degree. **NEED TO PROVIDE CONTEXT FOR IMPACTS - IS IT WITHIN THE ROI? THE VILLAGE BUSINESSES? OR THE SMALL BUSINESSES? THIS MUST BE PRECISELY WORDED TO CORRESPOND TO THE IMPACTS SUMMARY TABLE!!!!**

Page 89, line 19, 35, and 40: Need to decide the alternative(s) referenced "meet" or "met" the objectives, and use the same verb tense at all three locations.

I'll send comments about the Chapter 2 tables under separate message.

Thanks,