

**From:** [Allison Pena](#)  
**To:** [Mike Murray](#)  
**Cc:** [Arato, Christine](#); [Stover, Doug](#); [jason.waanders@sol.doi.gov](mailto:jason.waanders@sol.doi.gov); [Evans, Michael](#); [Hamilton, Sandra](#); [Jones, Tommy](#)  
**Subject:** RE: Dr, Barbara Garrity Blake, TSP Comments  
**Date:** 03/30/2010 02:52 PM  
**Attachments:** [100%Final\\_TSP\\_Draft\\_Study.draft NPS notes.mbm.docx](#)

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I agree with both the superintendent's and Jason's comments. As it is organized now I think it would be hard for Dr. Garrity-Blake to understand/make any appropriate changes - that she thinks necessary - and that stay within bounds of the Scope of Work for this report.

I thought we were going to accept Dr. Garrity-Blake's report (Christine and others emphasized that the NPS had shown "due diligence" ) and submit the edits and typo errors, but not go into the philosophical differences/changes or quote directly from the reviewers as many of these comments were for the team to digest not to pass on "as is" to the contractor.

Probably the most important part of the report for the park is the following:

Page 21, Conclusion: As stated, the "conclusion" is very broad and relies heavily on reciting general statements from the National Register guidelines, which sets us up for multiple interpretations of what the conclusion really is. Some people will interpret the broad language as meaning the sites are eligible as TCPs in an overly broad context. **If we understand the previous sections of the report correctly, the conclusion seems to be that the four sites have the characteristics of TCPs in relation to commercial beach seine fishing (only), but not in the context of ORV use or recreational hook-and-line fishing. If that is, in fact, the conclusion, then the report should state it as clearly as that. In any case, the conclusion needs to be more specific than what is currently stated.**

Once Doug has reorganized and consolidated the comments we should see it before it goes to Dr. Garrity-Blake.

Regards,

Allison

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Allison H. Pena  
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Acting Regional Ethnographer & NAGPRA Coordinator  
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▼ [Mike Murray/CAHA/NPS](#)

Mike  
Murray/CAHA/NPS

03/30/2010 09:55 AM

To "Stover, Doug" <Doug\_Stover@nps.gov>  
cc "Pena, Allison" <Allison\_Pena@nps.gov>, "Arato, Christine" <Christine\_Arato@nps.gov>, "Evans, Michael" <Michael\_Evans@nps.gov>, "Hamilton, Sandra" <Sandra\_Hamilton@nps.gov>, "Jones, Tommy" <Tommy\_Jones@nps.gov>, jason.waanders@sol.doi.gov  
Subject RE: Dr, Barbara Garrity Blake, TSP Comments

Doug,

I agree with Jason's comments. The document needs some basic editing to consolidate the comments from different individuals into one set of "NPS comments" and to present them in a way that the comments are being made to Barbara (and not to the internal group of reviewers) I also suggest moving the general comments from the end of the document to the beginning and integrating them with the few general comments I made. Attached is a version with edits of my original comments, shown in track changes.



100%Final TSP Draft Study.draft NPS notes.mbm.docx

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▼ ["Waanders, Jason" <JASON.WAANDERS@sol.doi.gov>](mailto:Jason.WAANDERS@sol.doi.gov)

"Waanders, Jason"  
<JASON.WAANDERS@sol.doi.gov>

03/30/2010 09:22 AM

To "Stover, Doug" <Doug\_Stover@nps.gov>, "Murray, Mike" <Mike\_Murray@nps.gov>, "Evans, Michael" <Michael\_Evans@nps.gov>, "Pena, Allison" <Allison\_Pena@nps.gov>, "Jones, Tommy" <Tommy\_Jones@nps.gov>, "Arato, Christine" <Christine\_Arato@nps.gov>, "Hamilton, Sandra" <Sandra\_Hamilton@nps.gov>, "Murray, Mike" <Mike\_Murray@nps.gov>

cc

0025836

Subject RE: Dr, Barbara Garrity Blake, TSP  
Comments

---

Jason Waanders  
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-----Original Message-----

From: Stover, Doug  
Sent: Monday, March 29, 2010 5:11 PM  
To: Murray, Mike; Stover, Doug; Evans, Michael; Pena, Allison; Jones, Tommy; Arato, Christine; Waanders, Jason; Hamilton, Sandra; Murray, Mike  
Subject: Dr, Barbara Garrity Blake, TSP Comments

Thank again team,

Attached are the comments, please review before I send the comments to Dr, Barbara Garrity Blake, TSP 100% Final Study.

(See attached file: 100.Final TSP Draft Study.docx)

Doug Stover  
Historian/Cultural Resource Program Manager Cape Hatteras NS/Fort Raleigh  
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Tel: 252-473-2111x153  
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**From:** [Christine Arato](#)  
**To:** [Doug Stover](#); [Michael Evans](#); [Allison Pena](#); [Tommy Jones](#); [Christine Arato](#); [jason.waanders@sol.doi.gov](mailto:jason.waanders@sol.doi.gov); [mike.stevens@sol.doi.gov](mailto:mike.stevens@sol.doi.gov); [Sandra Hamilton](#)  
**Subject:** Re: Fw: Comments on draft final report  
**Date:** 03/29/2010 06:19 AM  
**Attachments:** [Comments on DRAFT Final Report.mbm.032410.docx](#)

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Colleagues:

Here are some quick comments on Dr. Garrity-Blake's draft. I defer to you all regarding the imprudence and inappropriateness of Dr. Garrity-Blake's references to ORV issues and closures. I do think that these comments are extraneous, and detract from her task of analyzing the NRHP eligibility of the sites. However, I believe that Dr. Garrity-Blake's final report makes a strong start toward a finding of eligibility for TCPs at the four sites of interest, but do not believe that her analysis presents conclusive evidence which will permit NPS to make a determination of eligibility at this time. I want to draw the clear distinction between my opinion that NPS cannot determine the sites eligible *based on the provided documentation* and what I believe to be a premature conclusion that the sites are ineligible as TCPs.

In her final draft, Dr. Garrity-Blake corrected many deficiencies of her earlier draft, particularly in her strengthened definition of the traditional community in question. In my view, much of what other commentators have categorized as "filler" contributes to a useful and necessary analysis of a discreet, traditional community with an identity defined by multiple cultural markers that differentiates this traditional community (or communities) and its cultural practices from the identities and activities of residents in the eight villages area. The web of activities described, including dory construction and repair, packing and trucking, and net production and repair underline the importance of commercial fishing to the continued persistence of these traditional communities.

However, more information is necessary to make a DOE, particularly which links these traditional cultural practices to specific sites. I have not seen the SOW which tasked Dr. Garrity-Blake with analyzing the four sites of interest, but assume that these sites were identified by the park in response to the initial NCBBA request for TCP consideration. If this is the case, then NPS has allowed Outer Banks residents who are probably not members of the traditional communities to determine the research agenda. Perhaps we can clarify how Dr. Garrity-Blake came to focus on these four sites during our call. NR Bulletin 38 specifies that it is the community which identifies both the resources that are central to their sustained identity and practices and the values which they attribute to them. If this is not the case, then the study is flawed with regard to the identification of sites to which the traditional community has attributed value. Dr. Garrity-Blake provides little evidence of specific and directed consultation to ascertain such attributions, though NPS shares responsibility for this deficiency if, in fact, the park restricted analysis to the four specified sites of interest.

The guidelines for identifying TCPs focus on site-specific cultural practices in order to demonstrate that a particular constellation of practices at a particular place are at the core of group identity. However, the transient nature of commercial fisheries presents both philosophical and practical challenges in considering sites associated with the tradition of beach haul seining. Nonetheless, obstacles to a substantiated DOE are not insurmountable.

By definition, the hunters follow their quarry. Dr. Garrity-Blake provides data for beach seine permits issued in Dare and Hyde counties, suggesting that the historically-rooted community participates in the beach seine fishery in the areas of interest. However, the extent and attributed significance of beach haul seining needs to be further specified. Dr. Garrity-Blake's "sample of captains" strongly suggests that the current participants of this fishery are members of the defined historically-rooted community, but her analysis does not get to the heart of the question: namely, are the specified areas central to these cultural practices? Do community members limit their fishery participation to these areas, or do they apply for permits and participate in crews outside of the vicinity? How do *they* describe the boundaries

of *their* areas of interest? It seems that more can be made of the “stories, legends, traditions and beliefs attached to these areas” (p.20); as the analysis now stands, the case is strong for beach seining as a traditional cultural practice but inconclusive with regard to specific areas.

Dr. Garrity-Blake’s assertion that the sites of interest are a TCP as a locus of sink net fishing is a bit more tenuous. The boundaries, as currently defined, do not include the locales for these practices. Again, this point regarding boundaries emphasizes the key deficiency of the draft. However, I do think that Dr. Garrity-Blake’s discussion of the drop netters is relevant because it contributes to an understanding of the historical and continued importance of commercial fisheries to the traditional community. For example, what is the relationship between the drop netters and the beach fishers? Given the different equipment required for these two types of commercial fisheries, is it likely that these are overlapping occupational groups? Are these two discreet occupational groups? How do the communities choose between the two activities? Again, who are the traditional practitioners and what values do they attribute to site-specific cultural practices?

I fear I may be the lone dissenter. In any case, I trust that we’ll discuss the way forward this afternoon.

Until then,  
C.

Christine Arato  
Senior Historian/Acting NHL Program Manager  
Southeast Region  
100 Alabama Street, SW Atlanta, GA  
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▼ [Christine Arato/Atlanta/NPS](#)

----- Forwarded by Christine Arato/Atlanta/NPS on 03/29/2010 08:04 AM -----

**Mike  
Murray/CAHA/NPS**

03/24/2010 09:31 AM

To Doug Stover/CAHA/NPS@NPS, Michael Evans/Omaha/NPS@NPS, Allison Pena/JELA/NPS@NPS, Tommy Jones/Atlanta/NPS@NPS, Christine Arato/Atlanta/NPS@NPS, jason.waanders@sol.doi.gov, mike.stevens@sol.doi.gov, Sandra Hamilton/DENVER/NPS@NPS

cc

Subject Comments on draft final report

**From:** [Michael Evans](#)  
**To:** [Mike Murray](#)  
**Cc:** [Allison Pena](#); [Christine Arato](#); [Doug Stover](#); [jason.waanders@sol.doi.gov](mailto:jason.waanders@sol.doi.gov); [mike.stevens@sol.doi.gov](mailto:mike.stevens@sol.doi.gov); [Sandra Hamilton](#); [Tommy Jones](#)  
**Subject:** Re: Comments on draft final report  
**Date:** 03/24/2010 02:56 PM  
**Signed by:** CN=Michael Evans/OU=Omaha/O=NPS

---

To all,

I went through the draft a couple of times and jotted down a few things, then I read everyone else's comments. My thoughts are in line with many of those expressed by everyone else so far. I am available anytime between now and April 2 for a phone call. I am out on April 4-5, and on travel April 13-30.

I think the definition of "community" is better, but still lacking detail. Because of this, it is not clear to me whether the "community of Outer Banks residents" considers beach haul fishing to be a traditional or cultural practice of the "community" or just the much smaller group of local beach haul fishermen feel this way. Besides this fishing practice, there does not seem to be any specific traditional practices or beliefs that tie the "Outer Banks community" to the specific beaches in question, other than a sense of them being "our beaches." I think that maybe the beach haul fishermen comprise a particular kind of "community," but I still see the *practice* of the fishing method being what is most important to them, and not these particular beaches, except in so far as that they need beaches somewhere within the fishing area to launch their boats. So, they need beaches, but probably not these beaches exclusively or all the time. A beach may be closed for either management reasons or weather-related reasons, but as long as they can get to a suitable beach to launch their boats, the traditional practice is preserved. [As a side note, even though the Supreme Court case on the USFS G.O. Road from many years ago was not TCP-related, it does show that even if impacts occur to culturally significant areas, agency actions can be allowed because the significant cultural activities can occur elsewhere with no loss to the meaning of the activity.]

Based on what we know, I do not think these four beaches can be categorized as traditional cultural properties as I understand the concept.

With regard to somebody's question of why only these four beaches are mentioned in the document, and not all the other beaches where beach haul fishing occurs, it is my understanding that the author was directed to only look at these four beaches. This is not a complete CAHA TCP survey document, nor do I think it was supposed to be. In addition, in general it is possible for adverse impacts to occur to a TCP, even if the community that values them can identify other, non-impacted areas that hold the same kind of significance and have the same traditional practices associated with them. Places or properties do not have to be one-of-a-kind in order to be identified as a TCP.

Some of you noticed problems with terminology in the document, so I will only emphasize a couple of them. The continued use of the phrase "traditionally associated" needs to be changed. The use of the word "site" in this kind of context is probably peculiar to cultural resource management and National Register related work (often exacerbated by archeologists using the word "site" to designate some tangible *thing* in particular) and a different word can probably be found to express what is meant by "site." The issue of "boundary" has been brought up for years with regard to how TCPs are to be defined since the National Register criteria for a property requires specific boundaries and sometimes important and significant places don't have a don't have a hard-and-fast boundary like a line on the ground. In this instance it should not be a problem since the boundaries of the places fluctuate due to natural causes, not social or cultural ones. (The latter are much harder to deal with sometimes.) I reject the sink net fishing that has been added--this section needs to be dropped from the discussion since it is not relevant to the beaches.

I have mentioned a few times to some of you on the phone that I think this effort got started backwards, due in large part to the pressure applied by various local and not-so-local

proponents of unfettered beach access and use. Normally, we would go to a park, location, area, etc., and ask ourselves "are there any traditional communities here?" Based on common sociological criteria of what constitutes a "community" (which the present document touches on, but does not expound upon fully), we would investigate whether such communities exist in the area and document their important characteristics. Then we would ask ourselves the question "are there any places [properties in NR terminology] important to this community in such a way that the places are integral to their cultural system and cultural identity?" Through historical research and ethnographic interviewing methods we would examine whether any such places exist and document the pertinent important information about those places. For this current CAHA case, it appears to me that the process started with the place, at which point the search was on for a "community" that was attached to them. Perhaps because of all the publicity about the issues surrounding beach access and use, I believe the author found it hard to be objective and felt there was a need to justify the beaches as TCPs, rather than go through the steps we would normally do.

If anyone has questions about what I've written above, please do not hesitate to call me.

Mike Evans

/s/ Michael J. Evans, Ph.D.  
Chief, Ethnography Program and  
Senior Cultural Anthropologist  
Midwest Region, National Park Service  
612-345-0019

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▼ [Mike Murray/CAHA/NPS](#)

Mike Murray/CAHA/NPS

03/24/2010 06:31 AM

To Doug Stover/CAHA/NPS@NPS, Michael Evans/Omaha/NPS@NPS, Allison Pena/JELA/NPS@NPS, Tommy Jones/Atlanta/NPS@NPS, Christine Arato/Atlanta/NPS@NPS, jason.waanders@sol.doi.gov, mike.stevens@sol.doi.gov, Sandra Hamilton/DENVER/NPS@NPS

cc

Subject Comments on draft final report



**\*\*CONFIDENTIAL DELIBERATIVE COMMUNICATION - NOT FOR DISTRIBUTION\*\***

All,

0025841

See comments below from Jason Waanders, Mike Stevens and Sandy Hamilton. Attached are my comments. I propose that once the cultural resource advisors have had a chance to review the report and prepare comments too, we share those comments with all those addressed on this email and schedule an NPS and SOL conference call to discuss next steps. If you all are amenable to this approach, I will ask Cyndy Holda to coordinate setting up a call for this group some time next week.

[attachment "Comments on DRAFT Final Report.mbm.032410.docx" deleted by Michael Evans/Omaha/NPS]

Thanks,

Mike Murray  
Superintendent  
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----- Forwarded by Mike Murray/CAHA/NPS on 03/24/2010 09:04 AM -----

**Sandra  
Hamilton/DENVER/NPS**

To "Stevens, Mike" <Mike.Stevens@sol.doi.gov>, "Waanders, Jason" <JASON.WAANDERS@sol.doi.gov>, "Murray, Mike" <Mike\_Murray@nps.gov>

03/23/2010 10:24 AM

cc

Subject RE: final draft

Ditto.

I also noticed that despite the assertion in the email to Doug Stover that the final report clarified the description of who the traditional community is and dropped the term "traditionally-associated peoples," there is still ambiguity about who the "community" is. e.g. p. 6 "The controversies surrounding periodic closures of these areas reflect a strong community attachment to these places and a desire to continue using them." The controversy around periodic closures has far less to do with the sink net or beach haul seine fishing community or a "historically-rooted people" community, than with the Dare County tourism / recreational fishing / retired to the beach to fish interests that have fomented much of the controversy. The term "traditionally-associated people" still appears on pages 8 and 9 (last paragraphs), page 10 (third paragraph), and "traditionally-associated community members" appears on page 18 (2nd paragraph). In other places in the document "historically rooted people," "native islanders, and "island people appear. The identification of a "community" remains murky.

Has Michael Evans taken a look at this?

Sandy Hamilton  
Environmental Protection Specialist  
National Park Service - Environmental Quality Division  
Academy Place



0025842

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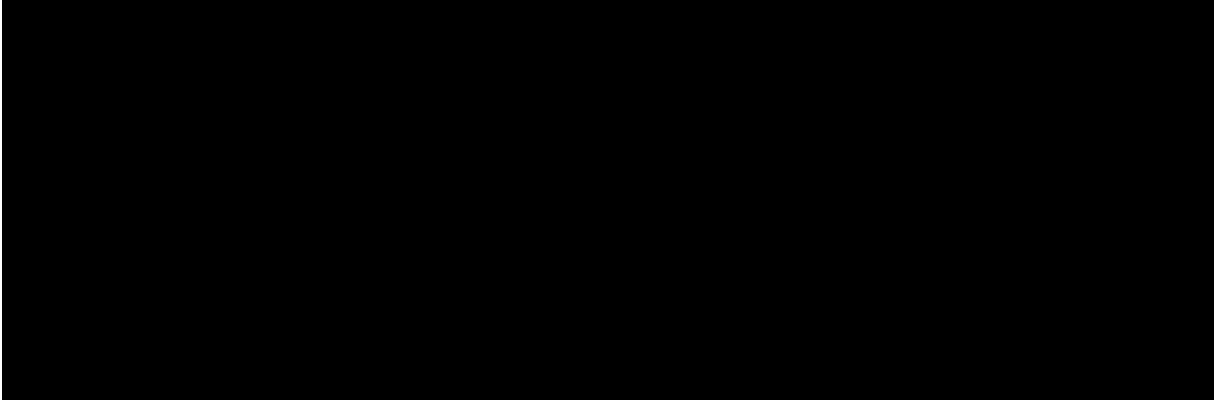
"Stevens, Mike"  
<Mike.Stevens@sol.doi.gov>

To "Waanders, Jason" <JASON.WAANDERS@sol.doi.gov>,  
"Murray, Mike" <Mike\_Murray@nps.gov>, "Hamilton,  
Sandra" <Sandra\_Hamilton@nps.gov>

03/23/2010 06:23 AM

cc

Subject RE: final draft

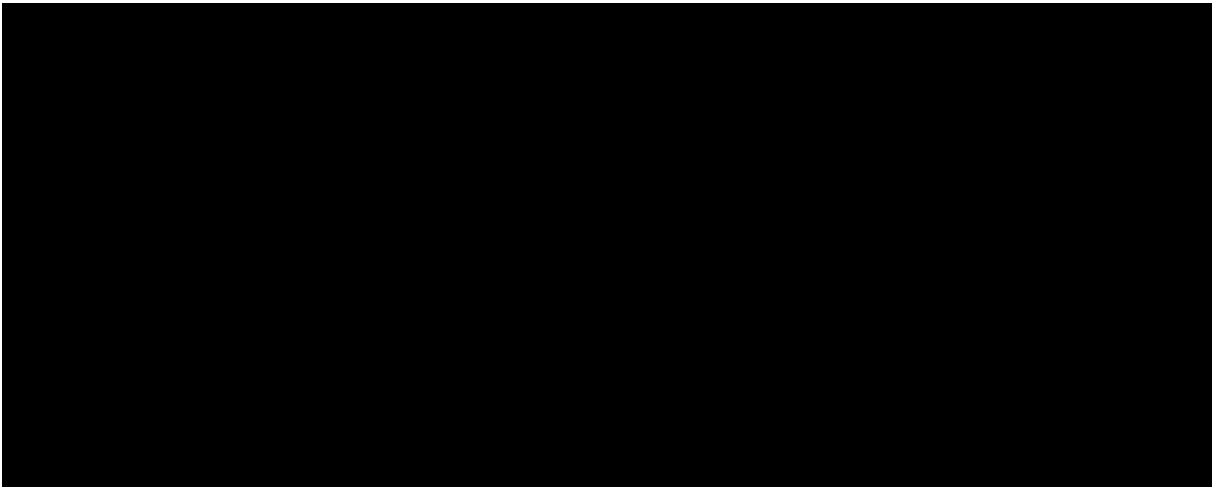


Michael Stevens  
Attorney-Adviser  
Office of the Regional Solicitor  
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-----Original Message-----

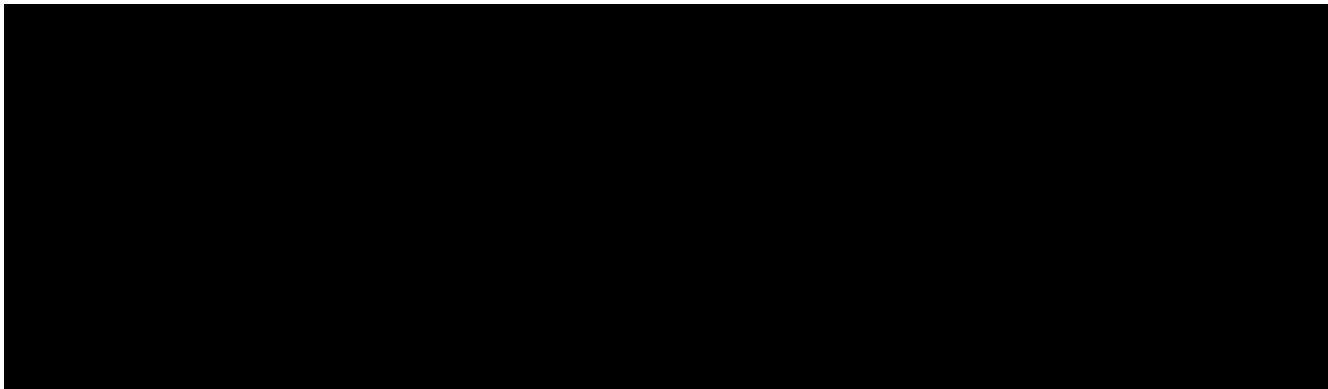
From: Waanders, Jason  
Sent: Monday, March 22, 2010 3:32 PM  
To: Murray, Mike; Hamilton, Sandra; Stevens, Mike  
Subject: RE: final draft



0025843

**From:** [Waanders, Jason](#)  
**To:** [Murray, Mike](#); [Hamilton, Sandra](#); [Stevens, Mike](#)  
**Subject:** RE: final draft  
**Date:** 03/22/2010 01:47 PM

---



---

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

From: Murray, Mike  
Sent: Monday, March 22, 2010 2:47 PM  
To: Hamilton, Sandra; Waanders, Jason; Stevens, Mike  
Subject: Fw: final draft

See below FYI. Please send any comments to me in the next day or two.

Thanks,

Mike Murray  
Superintendent  
Cape Hatteras NS/ Wright Brothers NMem/ Ft. Raleigh NHS  
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----- Forwarded by Mike Murray/CAHA/NPS on 03/22/2010 02:45 PM -----

Doug  
Stover/CAHA/NPS

03/22/2010 02:13  
PM

To  
Mike Murray/CAHA/NPS@NPS, Darrell  
Echols/CAHA/NPS@NPS, Thayer  
Broili/CAHA/NPS@NPS

cc

Michael Evans/Omaha/NPS@NPS,  
Allison Pena/JELA/NPS@NPS, Tommy  
Jones/Atlanta/NPS@NPS, Christine  
Arato/Atlanta/NPS@NPS

Subject

Fw: final draft

The 100 % final draft is in

Doug Stover  
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Fax: 252-473-2595

----- Forwarded by Doug Stover/CAHA/NPS on 03/22/2010 02:06 PM -----

bgb@coastalnet.co  
m

03/22/2010 01:23  
PM

"Doug\_Stover@nps.gov"  
<Doug\_Stover@nps.gov>

To

cc

Please respond to  
bgb@coastalnet.co  
m

final draft

Subject

Dear Doug,

Please find attached the final draft of our "Ethnographic Study Analysis of Cape Hatteras National Seashore." As per comments on the draft, I have made the following changes:

1. Clarified the description of who the traditional community is, and dropped the term "traditionally-associated peoples".
2. Broadened the discussion of what the areas of interest mean to native banks residents, and focused on a more general description of commercial fishing rather than a narrow focus on beach seining. I also included sink netting in a addition to beach seining as a specific activity dependent on the areas of interest.
3. Clarified that beach driving and surf fishing, although not without historical antecedents, could not be definitively linked to today's activities as an enduring tradition.

Please let me know if there is anything else I can do.

Thanks, Barbara Garrity-Blake(See attached file: Ethnographic Study Analysis of Cape Hatteras National Seashor1 final report.pdf)

**100% FINAL DRAFT COMMENTS: ETHNOGRAPHIC STUDY  
ANALYSIS OF CAPE HATTERAS NATONAL SEASHORE**

- General Comments

*(move general comments from end of these notes to here)*

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~~Do the NPS cultural resource advisors agree with the conclusion? In other words, is the conclusion adequately justified and supported by the information described in the document?~~

While interesting to read, much of the report after page 6 comes across as a compilation of material that happened to be available (i.e., “filler”), rather than a focused analysis of the specific questions about the four sites. For example, page 1, paragraph 3 states that: “Cultural resources are properties, not people...” but then the report is almost entirely about people and their activities that take place away from the four sites. There is very little description, if any, documenting the association of those activities with these particular four sites. Does this mean the association is not well documented, or does not exist? If the “activities” are “traditional” and “cultural,” but not inherently limited to or associated with the four sites, are the four sites really TCPs? If “yes,” then why are other beach areas where commercial beach seine fishing occurs in the Seashore (there are many) not also TCPs?

There continues to be a number of relatively small factual and terminology errors in the document ~~that need to be corrected before NPS could accept the report as a final product. NPS should not accept the product unless the errors are corrected.~~

Specific Comments

Page 1, last paragraph: Should the verbs used in most sentences be past tense? (e.g., line 2: should it be “...we evaluated...”; line 3: “...we reviewed and analyzed data...”). In present tense as written, it sounds more like a recitation of a prescribed “process” (is it?), rather than a description of what was actually done.

Page 2, paragraph 2, beginning with: “The areas provide habitat and nesting grounds for a variety of wild animals, including ~~sea turtles and~~ shorebirds (e.g., piping plovers, least terns, American oystercatchers, and black skimmers) and sea turtles (e.g., piping plovers, least terns, American oystereatchers, and black skimmers).” (Comment: Because of the dynamic nature of the shoreline, sea turtles rarely nest at the inlets, although some do nest either side of Cape Point. ~~We suggest~~*I would* listing shorebirds first, since they have

a much greater effect on access at the four sites. It is—"American oystercatchers," not "oyster catchers".)

Page 2, last paragraph: Use the correct terminology for the designated critical habitat, which is: "They are also part of U.S. Fish and Wildlife Service designated critical habitat for wintering piping plover."

Page 2, footnote: Re-write the footnote to state the following: **"In January 2006, the National Park Service issued the *Interim Protected Species Management Strategy* to provide for the protection of beach-nesting shorebirds and sea turtles, and a beach dwelling plant species, pending the development of an ORV management plan and special regulation. As the result of a lawsuit filed on behalf of two environmental groups regarding the *interim strategy*, Seashore beaches, including the four sites considered in this analysis, are currently being managed under the terms of a 2008 U.S. District Court-ordered consent decree requiring pre-nesting closures, expanded buffers, and night driving restrictions during the breeding season. Under the consent decree, an ORV management plan must be completed by December 31, 2010."** (Comment: The word "undermined" is a very subjective term reflecting only one point of view on what is, objectively, a very polarized issue. Given that the language is not attributed by reference to a particular source or stakeholder group (i.e., one side does think the process was "undermined" by the lawsuit, the other side does not think that), it comes across as the author's conclusion, which is not adequately supported. In any case, negotiated rulemaking was simply one phase of the planning process – a phase that has long-since concluded and is not particularly relevant to the TCP issue at this point. The proposed legislation was voted down in subcommittee in 2008 and there has been no action on it in 2009-2010; so the legislation is a moot point too and should not be referenced. It is not relevant to the report.)

Page 3, line 2: Not sure where "**16.5 miles**" came from, but its use herein is confusing. Bodie Island Spit is generally considered to be from Ramp 4 south to Oregon Inlet, a distance of approximately 2.1 miles. Bodie Island District, for NPS administrative and operations purposes, extends from Ramp 1 to Ramp 27, a distance of approximately 15.8 miles of Seashore beaches (Pea Island NWR not included). Therefore, we suggest ~~would~~ re-wording the first sentence as follows, so it is factually correct: **"Bodie Island Spit, which lies within the Bodie Island District of park management, runs 2.1 miles from Ramp 4 south to Oregon Inlet (Figure 1)."** Comment: The critical habitat unit at Bodie Island Spit also begins at Ramp and extends south. Figure 1 in the report shows only the southern (approximately) 1.6 miles of the spit (i.e., beginning approx. 0.5 miles south of Ramp 4).

Page 3, lines 3-4: Use the correct terminology: "...U.S. Fish and Wildlife Service designated critical habitat for wintering piping plover."

Page 3, line 7: Change "...depending on sea turtle and bird nesting seasons..." to "depending on shorebird nesting activity." *Comment: Sea turtles rarely, if ever, lay a nest south of Ramp 4. ~~We are not aware of any documented cases of it occurring. I cannot recall it occurring, but have not asked staff to do a thorough records check to confirm that it has never occurred ever.~~*

Page 3, general: Beach seine fishing rarely, if ever occurs, at "Bodie Island Spit." (It commonly occurs north of Ramp 4, but that is not the "spit".) State fishing regulations prohibit commercial fishing south of Ramp 4 to Oregon Inlet, except for an approximate 3 month period from about January 1 to April 1 each year. A long-time CAHA ranger reports that in the past 10 years, he has only seen beach seine fishing occur south of Ramp 4 only about four times in total. Does that limited amount of use (i.e., an average of less than once every two years) support a conclusion that the beach seine fishermen's cultural identity is closely associated with this particular site? (~~We~~ could see the association with the area north of Ramp 4 where the Wanchese-based beach seine fishermen routinely fish, but that is not the focus of the analysis.)

Page 4, lines 3-4: Use the correct terminology: "...U.S. Fish and Wildlife Service designated critical habitat for wintering piping plover."

Page 4, line 9: "...Cape Point has been (~~add~~) **periodically** closed to ORVs due to ~~turtle~~ ~~and~~ shorebird (~~add~~) ~~and~~ **sea turtle** nesting. (*Comment: Shorebird breeding activity is the primary reason for closures.*)

Page 4, line 10: "The interior portion of the cape is ~~periodically~~ (~~add~~) **typically** designated as a "resource protection area."

Page 5, lines 2-3: Use the correct terminology: "...U.S. Fish and Wildlife Service designated critical habitat for wintering piping plover."

Page 5, line 3: Change "The beach runs about four miles south of Hatteras Village..." to "**The spit runs approximately 2.7 miles south from Ramp 55 to the inlet...**" *Comment: Ramp 55 (the end of the pavement adjacent to the Graveyard of the Atlantic Museum) is the practical boundary of Hatteras Inlet Spit and consistent with the applicable critical habitat unit description. The spit has experienced significant erosion and shortening in the past few years. "2.7" is the current mileage from Ramp 55 to the inlet.*

Page 6, lines 2-3: Use the correct terminology: "...U.S. Fish and Wildlife Service designated critical habitat for wintering piping plover."

Page 6, line 7: "A resource protection area is ~~sometimes~~ (add) **typically** implemented..."

Page 10, last line: Change "(e.g. wiener roasts...)" to "(e.g., wiener roasts...)" (i.e., add a *comma*)

Page 12, third paragraph from the bottom: "Numerous fisheries are prosecuted in Pamlico Sound..." Given the primary definitions of "prosecute" (*Webster's College Dictionary*) relate to legal proceedings against a person, the use of this term here makes it sound initially as if illegal fishing activity is occurring. ~~WeI~~ suggest the author use "practiced" or "conducted" instead, so the statement is less confusing.

Pages 13-14: While the "sink net fishing" discussion is interesting, it is not relevant since (as stated on page 14, lines 3-4) sink netters do not fish from the beach. Could probably eliminate the entire sink net discussion; it comes across as "filler."

Page 14, third paragraph from the bottom, last line: "The porpoise fishery was prosecuted..." Same comment as above about "prosecuted." Use "practiced" or "conducted" instead, so the statement is less confusing.

Page 16, second paragraph from the bottom, delete first sentence and delete "however" from the second sentence: "~~Further research would be required...~~" Based on available information, ~~however~~, we can conclude that..." *Comment: While ~~weI~~ understand the first sentence to mean, in principle, that "this is not a comprehensive description of anybody and everybody who could potentially participate in beach seine fishing," ~~weI are concerned-think~~ it sets us up for stakeholders to say the report is incomplete and we need to do further study. The finding that matters in this report is stated in the second sentence (minus the "however").*

Page 20, Step 4, first paragraph, line 2: "...(36 CFR 60.4)as..." Add a *space* between "(36 CFR 60.4)" and "as"

Page 21, Conclusion: As stated, the "conclusion" is very broad and relies heavily on reciting general statements from the National Register guidelines, which sets us up for multiple interpretations of what the conclusion really is. Some people will interpret the broad language as meaning the sites are eligible as TCPs in an overly broad context. If ~~weI~~ understand the previous sections of the report correctly, the conclusion seems to be that the four sites have the characteristics of TCPs in relation to commercial beach seine

fishing (only), but not in the context of ORV use or recreational hook-and-line fishing. If that is, in fact, the conclusion, then the report should state it as clearly as that. In any case, the conclusion needs to be more specific than what is currently stated.

- Definition of "community" is better, but still lacking detail. Because of this, it is not clear to me whether the "community of Outer Banks residents" considers beach haul fishing to be a traditional or cultural practice of the "community" or just the much smaller group of local beach haul fishermen feel this way. Besides this fishing practice, there does not seem to be any specific traditional practices or beliefs that tie the "Outer Banks community" to the specific beaches in question, other than a sense of them being "our beaches." I think that maybe the beach haul fishermen comprise a particular kind of "community," but I still see the *practice* of the fishing method being what is most important to them, and not these particular beaches, except in so far as that they need beaches somewhere within the fishing area to launch their boats. So, they need beaches, but probably not these beaches exclusively or all the time. A beach may be closed for either management reasons or weather-related reasons, but as long as they can get to a suitable beach to launch their boats, the traditional practice is preserved. [As a side note, even though the Supreme Court case on the USFS G.O. Road from many years ago was not TCP-related, it does show that even if impacts occur to culturally significant areas, agency actions can be allowed because the significant cultural activities can occur elsewhere with no loss to the meaning of the activity.]

Based on what we know, I do not think these four beaches can be categorized as traditional cultural properties as I understand the concept.

With regard to somebody's question of why only these four beaches are mentioned in the document, and not all the other beaches where beach haul fishing occurs, it is my understanding that the author was directed to only look at these four beaches. This is not a complete CAHA TCP survey document, nor do I think it was supposed to be. In addition, in general it is possible for adverse impacts to occur to a TCP, even if the community that values them can identify other, non-impacted areas that hold the same kind of significance and have the same traditional practices associated with them. Places or properties do not have to be one-of-a-kind in order to be identified as a TCP.

Some of you noticed problems with terminology in the document, so I will only emphasize a couple of them. The continued use of the phrase "traditionally associated" needs to be changed. The use of the word "site" in this kind of context is probably peculiar to cultural resource management and National Register related work (often exacerbated by archeologists using the word "site" to designate some tangible *thing* in particular) and a different word can probably be found to express what is meant by "site." The issue of "boundary" has been brought up for years with regard to how TCPs are to be defined since the National Register criteria for a property requires specific boundaries and sometimes important and significant places don't have a don't have a hard-and-fast boundary like a line on the ground. In this instance it should not be a problem since the



boundaries of the places fluctuate due to natural causes, not social or cultural ones. (The latter are much harder to deal with sometimes.) I reject the sink net fishing that has been added--this section needs to be dropped from the discussion since it is not relevant to the beaches.

- In her final draft, Dr. Garrity-Blake corrected many deficiencies of her earlier draft, particularly in her strengthened definition of the traditional community in question. In my view, much of what other commentators have categorized as “filler” contributes to a useful and necessary analysis of a discreet, traditional community with an identity defined by multiple cultural markers that differentiates this traditional community (or communities) and its cultural practices from the identities and activities of residents in the eight villages area. The web of activities described, including dory construction and repair, packing and trucking, and net production and repair underline the importance of commercial fishing to the continued persistence of these traditional communities. NR Bulletin 38 specifies that it is the community which identifies both the resources that are central to their sustained identity and practices and the values which they attribute to them. The guidelines for identifying TCPs focus on site-specific cultural practices in order to demonstrate that a particular constellation of practices at a particular place are at the core of group identity. However, the transient nature of commercial fisheries presents both philosophical and practical challenges in considering sites associated with the tradition of beach haul seining. Nonetheless, obstacles to a substantiated DOE are not insurmountable.

By definition, the hunters follow their quarry. Dr. Garrity-Blake provides data for beach seine permits issued in Dare and Hyde counties, suggesting that the historically-rooted community participates in the beach seine fishery in the areas of interest. However, the extent and attributed significance of beach haul seining needs to be further specified. Dr. Garrity-Blake’s “sample of captains” strongly suggests that the current participants of this fishery are members of the defined historically-rooted community, but her analysis does not get to the heart of the question: namely, are the specified areas central to these cultural practices? Do community members limit their fishery participation to these areas, or do they apply for permits and participate in crews outside of the vicinity? How do *they* describe the boundaries of *their* areas of interest? It seems that more can be made of the “stories, legends, traditions and beliefs attached to these areas” (p.20); as the analysis now stands, the case is strong for beach seining as a traditional cultural practice but inconclusive with regard to specific areas.

Dr. Garrity-Blake’s assertion that the sites of interest are a TCP as a locus of sink net fishing is a bit more tenuous. The boundaries, as currently defined, do not include the locales for these practices. Again, this point regarding boundaries emphasizes the key deficiency of the draft. However, the discussion of the drop netters is relevant because it contributes to an understanding of the historical and continued importance of commercial fisheries to the traditional community. For example, what is the relationship between the drop netters and the beach fishers? Given the different equipment required for these two types of commercial fisheries, is it likely that these are overlapping occupational groups? Are these two discreet occupational groups? How do the communities choose between

the two activities? Again, who are the traditional practitioners and what values do they attribute to site-specific cultural practices?

- there is still ambiguity about who the "community" is. e.g. p. 6 "The controversies surrounding periodic closures of these areas reflect a strong community attachment to these places and a desire to continue using them." The controversy around periodic closures has far less to do with the sink net or beach haul seine fishing community or a "historically-rooted people" community, than with the Dare County tourism / recreational fishing / retired to the beach to fish interests that have fomented much of the controversy. The term "traditionally-associated people" still appears on pages 8 and 9 (last paragraphs), page 10 (third paragraph), and "traditionally-associated community members" appears on page 18 (2nd paragraph). In other places in the document "historically rooted people," "native islanders, and "island people appear. The identification of a "community" remains murky.
- On the first page it notes that cultural resources are "properties, not people. While recognizing that the four points/spits in question could only qualify as "sites," there is no discussion of how a site is defined for these purposes or how these points/spits might fit that definition.

Instead there is discussion of uses and closures. How does the fact that there are ORV closures relate to whether it's a "site" (particularly since the report now says that ORV use is not connected to the "tradition" of the TCP)? These references to closures for resource and other purposes pervade the document, though their relevance is seldom clear.

Defined the 4 points/spits, the remainder of the report offers no evidence tying the traditional activities at issue to these specific sites. Yes, we all know they're popular fishing spots, but they're not the only ones. Does traditional commercial fishing occur ONLY at these 4 points/spits? Is there really any principled basis for designating a TCP at these 4 points/spits and only at these 4 points/spits (i.e., none of the rest of the Seashore or anywhere outside the Seashore)?

- I predict that the following sentences from the conclusion of step 2 will be often quoted: "Sustained loss of access would affect the integrity of these cultural practices that continue to occur in Bodie Island Spit, Cape Point, Hatteras Inlet, South Point, and adjoining beaches. Continued access and use insures that the integrity of association between people and place is maintained...." What constitutes "sustained" loss of access? What is necessary for "continued" access? I don't think that a under a common-sense reading of these terms, the closures contained in the preferred alternative or indeed any of the alternatives in the DEIS would constitute either a "sustained" loss of access, or a denial of "continued" access. But since we are not always dealing with common sense, do you think it would be fruitful to get clarification from the author about what she meant by either of those terms?