

From: [Mike Murray](#)
To: [Wayne Mathis](#)
Bcc: [Paul Stevens](#); [Cyndy Holda](#)
Subject: Re: FW: Is "Collective Punishment" for vandalism justified on Hatteras Island Residents and Tourists?
Date: 06/23/2010 09:00 AM

Wayne,

I appreciate you sharing this information with me. The National Park Service is a Federal agency that is mandated to conserve the natural and cultural resources in the parks and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. Whether one agrees with the requirements of the consent decree or not, park staff and I have no choice but to comply with the law and with the court order. The vandalism incidents are indeed unfortunate. To keep things in perspective, many resource closure violations occur during the breeding season (i.e., people illegally entering posted resource protection areas); however, only a few of the violations have involved actual vandalism that has triggered the consent decree requirement to expand the closed area.

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"Wayne Mathis"
<dheel@bigfoot.com>

06/20/2010 05:05 PM	To "Mike Murray" <Mike_Murray@nps.gov> cc <hammondtooke@gmail.com> Subject FW: Is "Collective Punishment" for vandalism justified on Hatteras Island Residents and Tourists?
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Mike:

Perhaps you will be interested in the following example of how all too many members of the public view the current management policies under which you are operating. Mr. Hammond-Tooke's dissertation (attached) is typical of that attitude. It is a pity that the National Park Service is viewed by so many responsible residents, and citizens at large, as a hostile, occupying regime with all the sensitivity of the Nazis under Hitler.

While you and I both appreciate that those operating conditions are imposed on you by what I personally consider to be an inappropriate fiat of judicial activism perpetrated by a Judge who was either so stupid as to be unqualified to hold his office, or worse, was in collusion with paid shills for third-party interveners who crafted the language in the decree.

I hope that in your capacity as Superintendent you will use your authority to craft a reasonable balance between public access and resource protection in any forthcoming regulation, and that regulation will embody the principles of multiple use and adaptive management in what Congress intended to be a "National Recreational" facility rather than merely another dedicated Wildlife Refuge.

Wayne Mathis

Arthur:

I appreciate your thoughts.

As you wished, I am taking the liberty of forwarding your comments to Mr. Mike Murray, the Superintendent of the Outer Banks Group including CAHA, for his personal edification.. As I expressed to you, I believe that Mr. Murray had invested a lot of his personal professional "capital" in attempting to arrive at a management plan that balanced the various competing factions' interests in a regulation that would serve the optimal public interest. Unfortunately this objective was stymied and died aborning.

Wayne

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

From: Arthur and Mary Hammond-Tooke
[mailto:hammondtooke@gmail.com]

Sent: Monday, June 14, 2010 10:00 PM

To: Wayne Mathis

Subject: Is "Collective Punishment" for vandalism justified on Hatteras Island Residents and Tourists?

Wayne,

I much enjoyed the time we spent together last week, especially your mantra of seizing control over the battlefield.

We did not discuss together the issue of "collective punishment" for vandalism imposed on guiltless tourists and HI residents by the NPS under the consent decree.

The June 1, 2010 NPS Press Release on the closure of Ramp 49 due to vandalism the NPS says: "The court ordered consent decree mandates that if a confirmed deliberate act that disturbs or harasses wildlife or vandalizes fencing, nests, or plants occurs, the National Park Service (NPS) shall automatically expand the buffers. As a result of the violation, Ramp 45 is closed. The expansion will remain in effect until shorebirds have finished using the respective areas for breeding activities. Under consent decree modifications approved in June 2009, NPS is not required to expand the buffer if information from the public or developed by NPS leads to the apprehension of a violator. If a buffer has been expanded because of vandalism, as is the case here, and subsequent information leads to violator apprehension, NPS may retract the expansion."(see http://www.preservebeachaccess.org/newsreleases/nps_ped_vandalism.pdf)

As you know, Section 33 of the Fourth Geneva Convention (to which USA is a signatory) prohibits collective punishment:

"No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible." [Laws and Customs of War on Land \(Hague IV\); October 18, 1907, Article 50](#)

"No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited." [Convention \(IV\) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, Part III : Status and treatment of protected persons, Section I :](#)

Provisions common to the territories of the parties to the conflict and to occupied territories, Article 33

"Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations." [Convention \(IV\) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, Part III : Status and treatment of protected persons, Section III: Occupied Territories, Article 53](#)

"International law also prohibits an occupying power from imposing collective punishment on the occupied population." [Amnesty International](#)

"No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible." [Laws and Customs of War on Land \(Hague IV\); October 18, 1907, Article 50](#)

The fact is that while the US is a signatory of the Fourth Geneva Convention it has not ratified the Section 33 protocol.

The US debate over Israel's embargo of Gaza shows that US legal opinion whether collective punishment can ever be legitimate is ambivalent, at best. Thus no slam-dunk counter-move seems possible!

Nevertheless, to retain legitimacy the NPS and the Judge might do well to consider the following suggested caveat:

"If an instance of collective punishment is justifiable, then it ought to be possible to publically communicate that in a persuasive fashion. If no one can clearly articulate why collective punishment is being applied and what the intended result is, then chances are it is indefensible." See <http://www.rethinkme.org/?p=370>

Perhaps this thought might be pertinently presented to both the Judge and the Superintendent!

Regards

Arthur

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