

From: [Jim and Ginny](#)
Reply To: [Jim and Ginny](#)
To: [David_Vela@nps.gov](#)
Cc: [Mark_Woods@nps.gov](#); [Mike_Anderson@nps.gov](#); [Gordon_Wissinger@nps.gov](#); [Sherri_Fields@nps.gov](#); [Larry_Hardham](#); [Jim Keene](#); [John Couch](#); [Mike Murray](#); [Threebuoys@earthlink.net](#)
Subject: CHAPA Meeting With Southeast Regional Director Vela, July 13th
Date: 08/08/2010 12:18 PM
Attachments: [Comment 2010 DEIS Visitor Use.doc](#)

Dear Mr. Vela:

I read the letter from Mr. Hardham, Mr. Keene, and Mr. Scarborough addressing your question

"what can be done to improve the communications, and interactions between the NPS staff and the local/visitor communities, and the overall attitudes (of both NPS staff and park visitors) at the Cape Hatteras National Seashore Recreational Area, (CAHA)?"

While the above referenced letter does a good job of outlining recent events that have led to the current level of distrust, it does not go to the heart of the issue. Stated more specifically, as the Park Service's recount of "The Creation and Establishment of Cape Hatteras National Seashore The Great Depression through Mission 66" clearly demonstrates the establishment of this park was the result of 15 years of intense negotiations between local residents and the DOI. The decision of the residents of Hatteras and Ocracoke to give up control of the beaches in front of the villages and to accept a much smaller amount of private property than originally envisioned was dependent upon the DOI assurances

1. that a new road (Highway 12) would be constructed and maintained by NCDOT on park property (including Pea Island),
2. that access to parks beaches for traditional fishing and recreation would be the primary focus of the park, and
3. that the DOI would stand ready to support the evolution of the fledgling tourist economy that existed at the time the park was proposed.

Since the establishment of the park, the DOI has reneged on the above noted promises. For example,

1. 13 miles of beach on Pea Island was closed to vehicular use and designated as a day light use area,
2. USFWS stopped allowing NCDOT to move highway 12 as per the floating right away agreement,
3. USFWS has attempted to block the replacement of the Bonner Bridge because it has stated that highway 12 is not compatible with the refuge,
4. following Hurricane Isabel, the Park Service, USFWS, and NCWRC issued recommendations that called for minimizing human presence in vast areas of the park, called for abandoning sound side access points as they became unnavigable, called for removing highway 12 on Pea Island and the north end of Ocracoke Island, and called for requiring NCDOT to keep dune

reconstruction as close to highway 12 as possible and to limit the height of said dunes.

Up until the publication of the DEIS and the current comment by DOI stating that the Bridge Replacement should go through another EIS so as to demonstrate that continued maintenance of highway 12 will be compatible with the Wildlife Refuge, most of the above were just recommendations that many thought would never become a reality. As my attached DEIS comment demonstrates, the unprecedented resource management policies outlined in the DEIS and the continued attempts to thwart efforts to replace the ailing Bonner Bridge with an affordable and safe bridge goes beyond threatening the livelihood of the residents of Hatteras and Ocracoke Islands. It threatens our quality of life and our safety.

For example, the DEIS states that there are many leisure time activities available outside of the park. This is not true. Based upon the limited amount of property allocated to the villages and based upon the fact that the NPS has full control over the entire shoreline, there are very few opportunities for leisure activities that do not require access to park property. Furthermore, with respect to access, Mr. Murray has made the statement that access problems result, in part, from the fact that the villages did not think to provide parking areas. Based upon the fact that the villages are not legal entities, it is not possible for the villages to provide for parking areas. Furthermore, since the DOI promised to provide access to the beaches while asking the villages to take responsibility for accommodations, supplies, and services there was no expectation that parking would be the responsibility of private citizens.

As another example, the DEIS and Mr. Murray fail to recognize the fact that the 8 villages of Hatteras and Ocracoke Islands are located "within" park boundaries--that is, the park is literally our back yard. Mr. Murray has even said that the villages are not contained within the park but are instead "adjacent" to the park. This is not true, we depend upon the park for everything from leisure activities, to continuation of our cultural heritage as it existed in the 1930's (some 80 not 50 years ago), and to access to the outside world. If you doubt this, just consider the fact that the road that links the villages (Highways 12) traverses park property. As such an individual cited for speeding on "Highway 12" by a ranger was required to appear in Judge Boyle's federal court. Judge Boyle not only fined the individual but also banned the individual from the park. Now tell me when have you ever heard of a speeding ticket issued for a violation occurring on a state road resulting in a ban from a national park? Also, consider the fact that the DEIS and other federal agencies have made it clear that repairs of breeches formed by storms is not acceptable. Ok, so what happens to our highway then? What are we to do, take a boat from one village to the next? In fact, it seems as if the DOI is not content to wait for the death of our communities but seems intent upon hastening the death of the communities by making it impossible to access the mainland without a boat or plane.

The point is that park policies impact every aspect of our lives. Furthermore, the distrust and poor relations stem from over 60 years of broken promises and, at this

point, almost total disregard for the quality of lives of residents of the villages that are contained "within" the park. As such the only way to repair the relationship with the local communities and to avoid an all out war is for the DOI to recognize the unique nature of this park and the original intent--that is, to provide for recreation and support the economies of the local communities to the "maximum" extent possible without compromising the resource and the wildlife that reside within the park as opposed to continuing with the the current focus of attempting to maintain a "primitive wilderness" within an area that includes established communities that have been in existence long before the DOI established the park.

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May 7, 2010

Mike Murray, Superintendent
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Re: Comment Draft Cape Hatteras National Seashore Off-Road Vehicle Management Plan/Environmental Impact Statement--DEIS

The DEIS describes the NPS preferred alternative in the following fashion:

Alternative F – Management Based on Advisory Committee Input. Alternative F is the National Park Service Preferred Alternative. The NPS used the Negotiated Rulemaking Advisory Committee's Cape Hatteras National Seashore input to create this action alternative, which is designed to provide visitors to the Seashore with a wide variety of access opportunities for both ORV and pedestrian users.(p. xi)

I do not agree that Alternative F provides "visitors to the Seashore with a wide variety of access opportunities." In fact, as I will endeavor to show, Alternative F proposes unprecedented approaches to resource management along with a wide range of new restrictions on visitor use. As such Alternative F dramatically reduces the shoreline available for visitor use and severely limits the variety of access opportunities available for **ALL** visitors.

Unprecedented Approaches to Resource Management

Alternative F proposes a new designation, namely Species Management Areas. Species Management Areas are designed to minimize "human disturbance"¹ and are based upon habitat and species use patterns observed during the past 5 years. The only option for early review of designated Species Management Areas is if species management goals are not achieved or if weather events alter the habitat. If either of these events occur the proposal calls for expansion of the Species Management Areas to facilitate recovery of populations or to take advantage of newly created habitat.² The end result of this new approach to species management is to mandate the closure of a minimum 13-16 miles of beach for the both Spring and Summer seasons, even if habitat becomes unsuitable or species fail to use the area.³

Alternative F defines an unprecedented standard for species management outside of the Species Management Areas--namely, ML1.⁴ ML1 protocols use "larger, longer-lasting buffers" to protect wildlife. While it is not possible to predict the number of miles that will be closed by these unprecedented protocols, it is possible to use the pattern of closures that have resulted from the past two years of management under the consent decree to make a fairly accurate estimate of potential closures. A review of the Beach Access reports for 2008 and

¹ DEIS p. 121.

² DEIS p. 121.

³ The mandated closures include, Ramp 27 (2.2 miles), South of Ramp 30 (1.8 miles), North of Buxton (2.0 miles), South of Frisco (1.4), South Beach (2.9), Hatteras Inlet (1.0 mile), Ocracoke Inlet North (1.1 miles), and South of Ramp 68 (.9 miles) plus 3 miles of floating closures that could include areas not included in ML1 areas (1.5 at ramp 30 and 1.5 at ramp 49). See Table ES-2.

⁴ DEIS p. 65.

2009 shows a pattern of wide-spread full-beach resource closures spanning the period of 5/15 to 8/15.⁵ Based upon the fact the predicted ML1 closures will be added to the mandated Species Management Area closures, it is more than likely that the resource management proposal will relegate access for **ALL** visitors to either the high density village front beaches or 15 miles of shoreline spread over 10 areas. The length of the shoreline available in these 10 areas will likely range from as little as 1/2 mile to a maximum of 2.7 miles.⁶ In effect, the resource management proposal will likely turn the beaches available outside of the village fronts into virtual parking lots with the only opportunity for a remote experience being relegated to pedestrian day use at Pea Island. Furthermore, by reducing access areas to such small spaces, the potential for overcrowding and user conflicts will increase dramatically.

New Restrictions on Visitor Use

The ORV management proposal sets a peak use limit⁷ and adds an ORV permit requirement. The fee associated with the proposed ORV permit will be set to recover the cost associated with ORV management.⁸ The DEIS does not provide any estimate of these costs but if you consider the fact that the annual cost estimate for Alternative F is \$3.7 million,⁹ the cost of a permit could be cost prohibitive for the average visitor. Furthermore, since the purchase of a permit will not guarantee access if the peak use limit has been reached, it is very possible that many visitors will be unable to justify an expenditure for something they may not be able to use. Other new restrictions on visitor use include restrictions on Fall and Winter access to productive fishing grounds¹⁰ and a prohibition of pets in all public places within the park for the period of March 15 to July 31.¹¹

Impact of Alternative F on Visitor Use

NPs asserts that Alternative F provides "visitors to the Seashore with a wide variety of access opportunities for both ORV and pedestrian users." I submit that the unprecedented resource management protocols combined with the newly proposed restrictions on visitor use nearly eliminate quality access opportunities for both ORV or pedestrian users. The projected business revenue losses of 35% to 70% for the seashore villages support this conclusion.¹² The NPS downplays the potential for economic harm by asserting that the long term benefits that would accrue to non ORV users are expected to outweigh the long term moderate to major adverse impacts to ORV users¹³ resulting in a new mix of visitors and new business opportunities. Under this scenario, the NPS projects business revenue losses of 0%.¹⁴ This is utter nonsense. As per the above discussion, during the Spring and Summer seasons non ORV users will be subjected to the same limitations that NPS states will have a long term moderate to major adverse impact on ORV users. Since the seashore has little to offer outside of the beaches and since Spring and Summer visitors account for approximately 70% of all visits,¹⁵ I submit that the projected business revenue decline of 35% to 70% is the most accurate of the three projections offered in the DEIS. In point of fact, as the quote presented below clearly demonstrates, the DEIS recognizes that beach-related tourism is the primary driver for the economy.

⁵ Full-beach Resource closures spanning the period of 5/15 to 8/15 include the 1.9 miles pedestrian access corridor at Bodie Island Spit, Ramp 23 and several sections of beach between Ramp 23 and Ramp 27, several sections within the beach between Ramp 30 and Ramp 34, Ramp 44 and 1.0 mile limited ORV access corridor north of Ramp 44, a portion of the area north of Ramp 29, several sections of the area south of Ramp 55, and nearly all of the 3 mile ORV corridor at Ocracoke Inlet South. (NPS Beach Access Reports 2008 & 2009)

⁶ The 15 miles use areas that will remain open are designated as ORV use areas and include Ramp 2 (2 miles), Ramp 24 (2 miles), Ramp 30 (1.5 miles), Ramp 38 (1 mile), Ramp 43 (.5 miles), Ramp 49 (2 miles), Ramp 55 (1 mile), Ramp 59 (.5 mile), Ramp 68 (1.4 miles), Ramp 70 (2.7 miles). (NPS Beach Access Reports 2008 & 2009) Furthermore, based upon the maps presented in the DEIS the new ramps and trails proposed by the NPS will likely be closed or lead to areas closed ML1 protocols.

⁷ DEIS p. 82.

⁸ DEIS p. 82.

⁹ DEIS, Table ES-2.

¹⁰ DEIS, Table ES-2.

¹¹ DEIS p. 136.

¹² DEIS, p. 562.

¹³ DEIS, p. 559.

¹⁴ DEIS, p. 562.

¹⁵ Park Visitation Statistics--March through August relative to the total.

The natural environment, including beaches and wildlife, provide the primary basis for quality of life on the Outer Banks. As discussed above, beach-related tourism drives the economy of the area. Local residents also receive significant recreational benefits from the area's natural assets. In addition to the Seashore, the ROI includes Jockey's Ridge State Park and Pea Island NWR (Outer Banks Chamber of Commerce 2008). There are also public beaches, marinas, piers, and other recreational outlets. Two categories of outdoor recreation pertinent to the assessment of alternative management plans, recreational fishing and bird watching, are discussed further below using data from the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation. (p. 284)

In addition to considering economic impacts, the DEIS states that the impacts on the resources that contribute to the well-being of the local communities (Quality of Life) must be assessed. In this regard, the NPS gets it right when they note that the beaches provide the primary **basis for the quality of life on Hatteras and Ocracoke Islands**. For example, the seashores beaches have been used by the seashores village residents'

1. as a place to walk without trespassing on private property or dealing with traffic,
2. as a safe place for exercising their dogs,
3. as a place to gather shells, swim, or just lounge,
4. as focal points for socialization, be it taking a ride after work to an area known to be frequented by other residents or a preplanned gathering complete with boogie boards, grills, quate boards, volley ball nets, etc.,
5. as a destination for fishing, either recreationally, commercially, or as a source of food, and
6. as the transportation route that provides access to the mainland.¹⁶

After emphasizing the importance of the beaches both to tourism and to quality of life, the DEIS states that there are other recreational outlets available. Nothing could be further from the truth. Stated more specifically, the creation of the park placed the NPS in control of all the above noted leisure activities, severely limited the seashores residents' ability to create alternative recreational outlets, and, more recently, has contributed to the stress related to accessing critical services. For example:

1. The land acquisition agreements limited the land mass available to the villages to the point where there is precious little land available to create alternatives for exercise and socialization.
2. The land acquisition agreements gave title and control of all the beaches and much of the sound side shores to the park. This agreement eliminates the possibility of creating public beaches.
3. The population of 4,000 people simply cannot, by itself, provide enough demand for private enterprises that might offer additional leisure time activities.
4. Because of lack of demand, many of the gift shops, restaurants, museums, and park facilities either close their doors or restrict their hours of operation during the Fall and Winter months. This leaves the beaches as the sole avenue for leisure activities during the Fall and Winter months.
5. The round trip required to access public beaches, marinas, piers, other recreational outlets, and critical services north of Whalebone Junction requires 2 to 7 hours depending upon the resident's village of origin. Furthermore, this trip requires residents to travel on a road that runs through Park property. The park and U.S. Fish and Wildlife have limited the ability of NC Department of Transportation to protect and/or relocate the road that traverses park property thereby exacerbating the weather related problems that are inevitable in this environment. Finally, U.S. Fish and Wildlife and outside environmental groups have and continue to interfere with NC Department of Transportation's replacement of the failing Bonner Bridge. Failure of this bridge would isolate the residents of the seashores villages.

¹⁶ Testimony presented at public hearings at Ocracoke and Buxton.

Based upon the above, I submit that the ability of seashore residents to continue to use the seashores beaches in a manner consistent with traditional uses is more important to their quality of life than it was prior to the creation of the park when the residents had full control of the land on Hatteras and Ocracoke Islands. In fact, according to the DEIS, NPS's original interest in the Outer Banks which was to preserve 'public access to free beaches, especially for 'people of low income groups,' at a time when many desirable beaches were being quickly developed commercially."¹⁷ Additional evidence of the intent of creating a park for the primary purpose of providing public access to the seashore's beaches can be found in the following statement from the Secretary of the Interior Harold Ickes.

When we look up and down the ocean fronts of America, we find that everywhere they are passing behind the fences of private ownership. The people can no longer get to the ocean. When we have reached the point that a nation of 125 million people cannot set foot upon the thousands of miles of beaches that border the Atlantic and Pacific Oceans, except by permission of those who monopolize the ocean front, then I say it is the prerogative and the duty of the Federal and State Governments to step in and acquire, not a swimming beach here and there, but solid blocks of ocean front hundreds of miles in length. Call this ocean front a national park, or a national seashore, or a state park or anything you please—I say that the people have a right to a fair share of it. Secretary of the Interior Harold Ickes, 1938¹⁸

20 years later, Secretary Ickes' vision was reaffirmed during the dedication of the park when Roger Ernst Assistant Secretary of the Interior stated that the "Outer Banks were judged particularly desirable because of their great potential for public use."¹⁹ That is, the park was never designed to follow the model which emphasized preservation of primitive wilderness or natural processes but rather was designed to be "the first of a new class of national park that safeguarded the seashore from extensive development while guaranteeing the American public unencumbered access to beaches". In the final assessment this new model was judged to be "greatly successful in achieving the essential vision and aims of its founders." In fact, Cape Hatteras National Seashore Recreational Area became an "important model for subsequent similar parks around the country."²⁰

Recommended Solution

I respectfully request that you implement Alternative A (2007 FOSNI Interim Strategy) for the purposes of Species/Resource Management and codify the ORV Management Policies contained therein. With respect to the Interim Plan, as evidenced by facts

1. that there was no final adjunction or admission of the violations claimed by SELC, et al as they related to the Interim Plan,²¹
2. that there were no negative impacts on managed species either during the implementation of the prototype of the Interim Plan in 2005 & 2006 or the first year of the full implementation of the Interim Plan,²²
3. that the more aggressive management approach used in 2008 and 2009 did not result in any marked improvement for managed species,²³ and

¹⁷ "The Creation and Establishment of Cape Hatteras National Seashore, The Great Depression Through Mission 66", p. 26.

¹⁸ "The Creation and Establishment of Cape Hatteras National Seashore, The Great Depression Through Mission 66", p. V.

¹⁹ "The Creation and Establishment of Cape Hatteras National Seashore, The Great Depression Through Mission 66", p. 244.

²⁰ "The Creation and Establishment of Cape Hatteras National Seashore, The Great Depression Through Mission 66", p. 200.

²¹ Consent Decree filed on 4/30/2008.

²² For example, Piping Plover pairs increased from 3 to 11 over the period of 2005-2007. Piping Plover fledged rates for the period were 2.0, .5, and .67. NPS Piping Plover report, p. 9.

4. that the Interim Plan triggers and buffers are consistent with the triggers and buffers utilized at other seashores,²⁴

there is **NO** basis for continuing to ramp up the species protection protocols. Furthermore, continuation of the Interim Plan would leave twice as much room for visitors to spread out thus, add to the variety of experiences available to visitors and would minimize the potential for crowding and user conflicts without denying visitors access.

With respect to Alternative A ORV management policies, the primary argument against this approach is that much has changed since the park was opened in 1955. It is true that the number of visitors has increased, especially during the summer. However, current management policies reflect the responses to these changes (i.e. seasonal ORV closures in high density pedestrian use areas behind the villages and designation of Pea Island as a non ORV/day use area). These changes ensure visitor safety and provide for a vehicle free area for the viewing of wildlife in a natural setting. At the same time the current management policies provide pedestrians and ORV users with 39 miles of shoreline outside of the high density pedestrian use areas. With this much shoreline visitors may seek out the comrade of fellow anglers and other families. Alternatively, there is also adequate space to allow visitors to search out that secluded fishing hole, that perfect wave, or that secluded spot for contemplation.

The NPS also argues that visitor use patterns have changed. For example, the NPS states that recreational fishing has only been practiced for 50 years when it "almost completely supplanted commercial fishing" and that neither recreational or commercial fishing are integral to the "continuing cultural identity of any community."²⁵ This is categorically untrue. As the following excerpt from a letter from Lindsay Warren to Secretary of the Interior Harold Ickes clearly demonstrates, recreational fishing and tourism were major factors as early as 1935. Furthermore, the beach hauling method of commercial fishing was practiced as early as 1930.²⁶

"Conservatively speaking," he emphatically wrote, "this area is the greatest game and fishing spot on the American continent. Visitors go there almost the year round from every section of the nation, and just 18 miles off Hatteras is the Gulf Stream with its unrivaled fishing. If this was made a National Park, it would become one of the most frequented spots in the nation..."²⁷

As further evidence that recreational fishing, commercial fishing, vehicle use, and tourism have been integral to the continuing cultural identity of the communities on Ocracoke and Hatteras Islands for at least 80 years, consider the following quote from the DEIS.

As envisioned in the 1930s, the NPS had hoped to preserve a far more natural environment than it was forced by compromise to accept in the 1950s (NPS 2007f). In 1952, fifteen years after he submitted the act to create Cape Hatteras National Seashore, former Congressman Lindsay C. Warren offered what may be the purest surviving expression of his intent in doing so: "When I introduced the bill for the Cape Hatteras National Seashore in 1937, I would have nothing to do with it unless the people were fully protected forever in their hunting and fishing rights, and unless there was a guarantee of a hard-surface road if the Government came into the picture, and unless all of the villages were exempt. At that time there was very little prospect for a paved

²³ For example during the first full year Piping Plover pairs fell from 11 in 2008 to 9 in 2009. Piping Plover fledge rates for the period remained constant at .64 and .67.

²⁴ Management Protocols from several National Seashores--available upon request.

²⁵ DEIS p. 35.

²⁶ "The Creation and Establishment of Cape Hatteras National Seashore, The Great Depression Through Mission 66", p. 194.

²⁷ "The Creation and Establishment of Cape Hatteras National Seashore, The Great Depression Through Mission 66", p. 19.

road, but I extracted a promise from the NPS that they would favor such a road to be built, whenever possible, either through State or Federal Aid funds. Frankly, I think that this Park will mean more to the people of Dare County than anything that could ever happen to them. I do not say that because I was the author of the bill, but I say it because I had studied the history of all Parks, before I came into the picture back in 1937" (NPS 2007f).²⁸

As per the above, the creation of the park required 15 years of intense negotiation with the residents. In fact the residents were presented with two other options for development--namely, oil exploration and accepting outside developers. The residents' acceptance of the national seashore as their preferred option for development was based upon Conrad Wirth's promise that the **parks' beaches would always be open to all people**, that the park would not compete with the villages for tourists' dollars, and that the NPS would **"stand ready to cooperate with you at all times in the development of your communities, if you want us to."**²⁹ That is, the residents saw the park as a way to retain their primary way of life while still taking advantage of the higher living standard offered by a modern national economy.

Now it is incumbent upon the NPS and the DOI to make certain that they do everything possible to retain the traditional way of life for the residents of the villages of Hatteras and Ocracoke Islands and to live up the agreements that were hammered out over the 15 years that followed the proposal for the park. Alternative A (2007 FOSNI Interim Strategy) for the purposes of Species/Resource Management and codification current ORV Management Policies contained therein is the only option in the DEIS that accomplishes this objective.

And don't give me the tired argument that you can't implement Alternative A because SELC, et al will sue. SELC, et al already told you that, in their opinion, Alternative D is the only legally defensible option. Just a veiled threat or should you take it seriously? Absolutely, based upon past experience you should take the threat seriously. For example, SELC, et al told you they didn't like the Interim Plan and when you didn't listen they filed suit. When SELC, et al found they had a sympathetic judge they filed for injunctive relief and DOI capitulated. As another example, SELC, et al has publically stated their intention to file suit if NC Department of Transportation decides to go forward with the parallel bridge replacement. At some point you have to decide if you are going to follow your dual mandate to protect all interests or if you are going to turn this park into a primitive wilderness and turn the villages that exist within your boundaries into ghost towns. I beg you take the \$1.5 million dollar annual savings that will accrue from selecting Alternative A³⁰ and use it to fight SELC, et al. This is the only way you can fulfill your obligations to the good people of Ocracoke and Hatteras Islands--the people who sold their land to the government and made this park possible.

cc: Jonathan Jarvis, Director, NPS
Ken Salazar, Secretary of the Interior

²⁸ DEIS, p. 13.

²⁹ "The Creation and Establishment of Cape Hatteras National Seashore, The Great Depression Through Mission 66", p. 234.

³⁰ DEIS, p. xxx.