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**Cape Hatteras National Seashore 2nd Collaborative Workshop:
Current Regulations and Setting the Stage for Negotiated Rulemaking
Avon, NC – May 21-22, 2007**

Draft Notes

The list of workshop participants is on file with the Superintendent's office at Cape Hatteras National Seashore.

REQUESTS

- Provide participants with information about court rulings on relevant legal definitions and issues.
- Have the solicitor's office representatives at reg neg meetings. (This followed a request for an independent legal team, which NPS and the Solicitor's Office did not consider feasible.)
- The NPS NEPA economic analysis consulting firm should meet with the committee to understand current issues, hear suggestions of which businesses and interests need to be surveyed, and give committee members information about the data collection and economic analysis.
- Provide comments on the FWS economic analysis when it becomes available during the 60-day comment period.
- CAHA staff should bring a large map of CAHA to reg neg meetings that indicates current closures by type, access paths, etc that participants can refer to.
- Look into North Carolina laws about tape recording meetings.

NEXT STEPS

- The Environmental Assessment for critical habitat for wintering Piping Plover (under NEPA) will be released soon and will be announced via press release, in the federal register, and in the local papers. The public comment period will last 60 days. There is no need to repeat or resend comments submitted last year. A public hearing will likely occur on June 20, 2007 at the Fessenden Center from 4-7pm. Then FWS will make final decision about whether to re-designate critical habitat areas by this fall or winter. FWS will send the announcement to CBI to send to workshop participants.
- Pete Benjamin will check if the Piping Plover recovery plan breaks out the 2000 breeding pairs required for recovery into particular regional units.
- Mike Bryant will look into FWS raptor restoration programs in the area.
- Sandy Hamilton will check if the Golden Gate negotiated rulemaking committee developed groundrules regarding research projects and, if so, will share them with proposed representatives and alternates.
- Heather Goeddeke will research whether individual rental properties and commercial fishermen are considered small businesses for economic analysis.

While these notes summarize presentations on federal statutes, regulations, and policies they are not intended as a complete description of these requirements. For complete and accurate information, please see the specific federal statute, regulation, or policy, and for

DRAFT

details about the presentations, please see the PowerPoint presentations given during the workshop, found at <http://www.cbuilding.org/hatteras/>.

Mike Murray – Welcome and Status Update

Mike Murray, Superintendent of Cape Hatteras National Seashore¹, welcomed participants. He told participants that:

- A. The Notice of Intent (NOI) to establish a negotiated rulemaking² committee is being reviewed in Washington, D.C. The White House is in the process of reviewing the list of proposed members and alternates. Once that is approved, either as is or with changes, the NOI can be published and there will be a public comment period of at least 30 days. NPS must then finalize the charter, and publish a Notice of Establishment of the Committee and a Notice of the first meeting date. Probably at the earliest, the reg neg might start by January 2008. It is not yet known if this group will meet again prior to the start of the reg neg.
- B. The [decision document \(FONSI\) for the](#) Interim Protected Species Management Strategy for Cape Hatteras National Seashore likely will be released in the next few weeks. [\(Note: The FONSI was approved on July 13, 2007.\)](#)
- C. The public scoping comment period closed March 16 on the ORV Management Plan and EIS. NPS received over 4000 comments and is reviewing them.

Introductions of Participants and their Organizations

Workshop participants introduced themselves, the organization they represent, and described how they communicate with members, how their organizations make decisions, and their interests/what is at stake in developing an ORV management plan. The information provided by participants is found in Attachment A.

Review of NPS Regulatory Framework and Constraints

Mike Murray (Superintendent, CAHA), Mike Stevens (DOI Solicitor's Office, Southeast Region) and Jason Waanders (DOI Solicitor's Office) gave an overview of some of the key statutes, regulations and other authorities within which NPS operates at CAHA. These included the Organic Act as amended, NPS Management Policies 2006, Cape Hatteras National Seashore Enabling Legislation, the National Environmental Policy Act (NEPA), ORV Executive Orders, NPS ORV regulation, ground transportation use and management at CAHA, and recent visitation trends. The presentation can be found at <http://www.cbuilding.org/hatteras/>. The NPS Management Policies 2006 document is available online at <http://www.nps.gov/policy/MP2006.pdf>.

¹ Cape Hatteras National Seashore and the abbreviation CAHA are used interchangeably in these notes.

² "Reg neg," Negotiated Rulemaking and regulatory negotiation are used interchangeably in these notes.

DRAFT

Some participants asked presenters for the definitions of certain terms (e.g. the term “values” in “Park resources and values”), and asked how NPS identifies which species are protected beyond species listed under the Endangered Species Act. The NPS Management Policies 2006 represent the NPS’ best effort to express the Organic Act. They are internal policies and adherence is mandatory for NPS staff. Although there is disagreement among courts, the more recent court decisions indicate they cannot be enforced against the Park Service in court even if groups do not like how NPS is applying them.

The Park’s Name

The name of CAHA is the Cape Hatteras National Seashore Recreational Area, as established by a 1940 amendment to the enabling legislation creating CAHA. That amendment changed the name to “national seashore recreational area” from “national seashore,” and permitted hunting (likely for migratory waterfowl) for the first time in a unit of the National Park System. Mike Murray indicated that the term “recreational area” ~~probably~~ was used to justify hunting at CAHA without setting precedent for hunting in more traditional types of parks.

In ~~1945~~1954, an NPS internal memo said the name Cape Hatteras National Seashore would be used except on legal documents. From 1965 on, including in amendments to the enabling legislation, Congress has used the name Cape Hatteras National Seashore. Early deeds used the “recreational area” name, while more recent deeds do not. Under the General Authorities Act Congress directed the NPS to manage all units of the National Park system under the same standard of “non-derogation of park resources and values” regardless of name.

Ground Transportation Use and Management on CAHA

Some participants asked if some level of harm to the resource could be allowed. They were told that determining this would be part of the reg neg discussion, and neither impairment nor unacceptable impacts would be allowed. Historic and pre-existing ORV routes at CAHA are not managed by special regulation, and by allowing ORV use on these routes NPS is out of compliance with the Executive Orders and other legal requirements.

National Environmental Policy Act (NEPA)

NEPA requires federal agencies to prepare, for every proposed “major federal action significantly affecting the human environment,” a statement of the action’s environmental impacts, including alternatives and their impacts. The goal is to get the best information before making decisions. The National Parks Omnibus Management Act (1998) and the Organic Act, plus NPS’ NEPA guidance found at Director’s Order 12 (DO-12), all require rigorous application of scientific and technical information in the planning, evaluation and decision-making processes and a reasoned connection between technical and scientific information and the final agency action.

DRAFT

Other Policies and Constraints

NPS Management Policies (2006) say all reasonable efforts will be undertaken to make NPS facilities, programs and services accessible to and useable by all people, including those with disabilities. The Architectural and Transportation Barriers Compliance Board (U.S. Access Board), a federal agency focusing on ensuring access to federally funded facilities for people with disabilities, will issue later this year a proposed federal guideline for federal outdoor developed areas (including trails, campgrounds, piers, boardwalks, etc.). (Note: the proposed guideline was issued on June 20, 2007.) In addition, any proposed plan coming out of a reg neg must be operationally and financially sustainable to implement (because of the Anti-deficiency Act, among other legal requirements). NPS can only commit to something that is financially feasible.

Recent Visitation Trends at CAHA

In recent years, the number of visitors to CAHA has been steady at approximately 2.2 million visitors per year. CAHA had its greatest number of visitors in 2003, most likely due to the Wright Brothers' memorial celebration. NPS collects visitation data with traffic counters and counts of people on the ferry to Ocracoke.

Themes in Participant Discussion

Some participants requested guidance about legal terms, want to use excellent and credible scientific information, and want to know where there is and is not flexibility in what can be developed in the reg neg. They would like attorneys present throughout the reg neg who can address and answer legal questions (the Solicitor's office will be responsible for reviewing any rule put forward by the reg neg committee for legal sufficiency, and consequently will be actively involved in the reg neg.) They also mentioned the current lack of guidance for CAHA staff on how to address recreational user conflicts.

US Fish and Wildlife Service Considerations

Mike Stevens (DOI), Pete Benjamin (FWS, Raleigh Field Office) and Mike Bryant (Pea Island National Wildlife Refuge) presented on considerations of the US Fish and Wildlife Service (FWS). They provided an overview of FWS' statutory obligations including the Endangered Species Act, the Migratory Bird Treaty Act and the Administrative Procedure Act. To view their slides, please go to: <http://www.cbuiding.org/hatteras/>.

Endangered Species Act (ESA)

Section two of the ESA states that is a policy of Congress that all federal departments and agencies must seek to conserve endangered and threatened species. In the case TVA v. Hill (1978), the Supreme Court said the ESA reflects a conscious decision by Congress to give species protection priority over "primary mission" of federal agencies. Consequently, species protection is a key priority for all agencies regardless of their other priorities. The ESA describes, among other things, how species come to be listed as endangered (at risk of extinction) or threatened (at risk of becoming endangered), how

DRAFT

FWS designates critical habitat for species, how FWS plans for species recovery and delisting, and how other federal agencies consult with FWS.

Under Section 7 of the ESA, FWS works with federal agencies to help them meet their ESA obligations. An ‘action agency’ defines and reviews its proposed action to determine if it may affect listed species or habitats. FWS provides technical expertise. An agency can fulfill its obligations through informal consultation if the agency and FWS agree that the action will not affect listed species or their critical habitat. If the action agency determines an action “may affect” listed species or their critical habitat, then formal consultation is necessary. The action agency prepares a biological assessment. If it is determined that an action is likely to adversely affect the species or critical habitat FWS renders a biological opinion. Under the ESA, jeopardy occurs when an action is reasonably expected, directly or indirectly, to diminish a species’ numbers, reproduction, or distribution so that the likelihood of survival and recovery in the wild is appreciably reduced.

Parties other than federal agencies may apply for a permit to allow take of listed species incident to a lawful activity. In doing so, the party must submit for FWS approval a habitat conservation plan. Federal agencies may receive an incidental take statement in the biological opinion that allows a specified level of incidental take.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act was enacted for the US to abide by international treaties and only applies to migratory birds native to the USA. It identifies actions that are not permitted and sets penalties for violations. The ESA and the MBTA have different definitions of “take.” The scope of “take” under the MBTA is more limited than under the ESA, and entails activities such as pursuing, hunting, killing, capturing or collecting of birds, eggs, and nests.

Administrative Procedures Act

This act applies to all federal agencies, and provides that final agency actions are reviewable by a court, which may compel agencies to take or complete action that was unlawfully withheld or unreasonably delayed. The court also may invalidate agency action that is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

USFWS Roles and Responsibilities

The mission of the FWS is “working with others, to conserve, protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people.” The primary responsibility is conservation of “federal trust resources” including federally listed species, diadromous fish, migratory birds, and national wildlife refuges. There are 60 endangered species in North Carolina under FWS jurisdiction, including seven at Cape Hatteras: Piping Plover, Seabeach Amaranth, and five species of sea turtle (Loggerhead, Green, Leatherback, Hawksbill, and Kemp’s Ridley).

DRAFT

At present, there are not currently any designated critical habitat areas for wintering piping plover in CAHA due to a 2004 court ruling. The FWS has proposed to designate critical habitat for wintering Piping Plover in four units within CAHA. After FWS releases its draft economic analysis, Environmental Assessment (EA) under NEPA, on critical habitat for wintering Piping Plover, there will be a press release and public hearing.

- *Piping Plover and Recovery*: Piping Plover are threatened everywhere, and are endangered in the Great Lakes. Each of three populations (Great Plains, Great Lakes, Atlantic Coast) has its own recovery plan. Recovery is defined as 2000 breeding pairs in all the populations.
- *Sea Turtles*: FWS and NMFS share jurisdiction over the sea turtles. The recovery goal for Loggerheads is 800 nests in NC. The number of nests tends to be in the 400s-700s, depending on the year, with maybe 600 as the average.
- *Seabeach Amaranth*, an annual that grows from NY to SC, is the NC listed plant.

FWS and the Reg Neg

Pete Benjamin is the proposed representative for FWS for the reg neg, and expects to have any consensus document approved at least by the regional director. Pete would be signing any non-jeopardy biological opinion, while a jeopardy biological opinion would be signed by the regional director in Atlanta. DOI will coordinate comments under a proposed rule.

Pea Island

Mike Bryant is the Refuge Manager for Pea Island. Pea Island was established in 1938 by an Executive Order from President Roosevelt. It was set aside as a refuge and breeding ground for migratory birds and other wildlife. The 1997 National Wildlife Refuge Improvement Act provided that wildlife should be managed by managing its habitat. On Pea Island, FWS monitors for the species and closes areas as necessary.

Pea Island is not part of the reg neg. While it is within the seashore, it is a separate entity managed as a national wildlife refuge, and certain uses including beach driving were eliminated 30 years ago. In the just completed management plan for the next 15 years ORV use is not permitted.

Participants asked about raptor restoration on Pea Island. FWS isn't restoring raptors there, though they are gathering data from raptors that use the refuge already.

Etiquette Suggestions and Proposed Groundrules for the Regulatory Negotiation

At the February collaborative workshop, several participants asked the facilitators to prepare suggested etiquette for stakeholder interaction prior to the formal beginning of a reg neg. The facilitation team prepared and distributed etiquette suggestions (see Attachment B). The overarching themes are that when stakeholders interact, the facilitators recommend civility, no personal attacks or name-calling, explaining your own

DRAFT

(not others') motivations, and letting the facilitators and other stakeholders know if there is something important coming up to avoid surprises. An example of the "No Surprises" policy would be to provide advance notice that their organization will be publishing an article or a response to an article tomorrow and it is quite harsh.

The facilitators noted that conflict itself is not the problem, rather it's how the conflict is handled and the process is a primary cause for eroded relationships. People should feel free disagree on substance, without focusing on the person. People participating in the reg neg will be representing themselves, their constituents, and the reg neg process. A civil and respectful tone is important to get past personality conflicts and focus on the problems. They suggested that until the reg neg officially begins, people should consider the etiquette suggestions and how they would like to be treated, treat each other accordingly, and let them know if anyone has concerns.

Formal groundrules for a negotiated rulemaking committee will be developed once the committee is convened. Suggestions for future groundrules include: not characterizing another group's perspective to the media – only describe your own views, and any interviews with the media or researchers may not interrupt meetings and must instead happen at other times (during breaks or lunch).

Facilitators asked participants if they were individually willing to follow the proposed etiquette. Many indicated they would, knowing this is an informal agreement until the committee is formed. Some participants expressed the following reservations about the proposed etiquette:

- There may be consequences (e.g. damage to trust) if participants say they will follow the proposed etiquette and then do not.
- Heads up (bullet three) –
 - if one stakeholder does something, other stakeholders or their organizations might feel a need to respond. The facilitators ask that in doing so, the stakeholder be strong on substance and respectful, considering the style and tone of any messages;
 - due to rulemaking requirements, FWS cannot give people much advanced notice of regulatory actions, but they will do their best.

General Plenary Discussion

Public Participation, Federal Advisory Committee Act (FACA) and the Freedom of Information Act (FOIA)

- Will people who do not have a seat have a way to participate? Meetings will be open to the public, posted pursuant to the Federal Advisory Committee Act (FACA), there will be a time for public comment and likely a way to submit written comments. Subcommittees may be able to involve others.
- Will there be a website or public forum to keep the public updated? The team has not yet decided whether to create a website.
- Meetings are open to the public, and the press is permitted to attend.

DRAFT

- Mediators can protect their communication with the NPS and stakeholders, and those may not be FOIA-ble. When facilitators send large group emails, they assume it could be shared broadly. CBI also assumes that emails might be accessible by peoples' colleagues within organizations.
- If you have documents you would like to keep confidential, submit them directly to the mediators, not to NPS. If you submit them to NPS directly, they may be FOIAble. If something is submitted to the mediators, the mediators can submit that to NPS (if so desired) and it remains confidential.

Working Relationships

- The facilitators noted that one of the secrets to success in this collaborative process will be in building and maintaining relationships. Participants will need to develop constructive working relationships, although they do not necessarily need to like each other.
- If you want to give a public comment on behalf of yourself, be clear who you are representing (your org, the reg neg?). Say you do not speak on behalf of the committee, and follow established etiquette or groundrules.
- Can stakeholders ask others to apologize for or remediate past actions? The group should address things from today going forward. Facilitators would like participants to try to talk directly with each other, with their assistance as needed.
- There will be disagreements, and the idea is for the reg neg to be single forum to look at, address, and solve them whenever possible.
- There may be non-ORV issues that arise between stakeholder organizations, in which case stakeholders should bear in mind the etiquette suggestions.
- There is concern about lawsuits filed from within the committee.
- The diversity of the participants is important. This group needs to focus on ORV driving. There are lots of other agendas amongst the groups, but this committee needs to work together to figure out an ORV plan.
- The facilitators and participants worked hard to develop a pre-convening list that was submitted to NPS to be reviewed by DOI and White House. When the review is done, it will be either the proposed list or a modified one. There will then be a 30-day public comment period on the proposed list, after which DOI can make changes. The facilitators requested that the proposed representatives and alternates do not work to "unseat" each other. They asked that comments be submitted in the context of constructive collaboration.

Visioning Presentation and Exercise

Robert Fisher introduced the concept of visioning, which leads to goals, objectives and action. The purpose of this exercise is for participants to start to consider individually and creatively what they would like to see in the future based on the idea that we already have the tools and resources to solve the problem at hand, taking from the past, and dreaming what is possible for a preferred future. The goal eventually will be to create a provocative vision for the future, then manage the present from that perspective.

DRAFT

Participants shared their individual ideas, first in small groups and then with the larger group, on three questions. The following is a compilation of those individual ideas presented by many different participants, and does not represent a participant's or the group's agreement with any or all of the ideas or how they were expressed.

1. *Who benefits from CAHA?* Everybody. All living things. Future generations. Residents of the village. Workers. Other parks. Visitors. Native flora and fauna. People who never come to the park. North Carolina residents who use the tax revenue.
2. *What are the characteristics of an "effective management system"?* Flexibility. Flexibility of finding alternative routes. Ability to respond to environmental change. Common sense. Legacy. Parity. The power and finances to implement. Adaptability/adaptive/adapt. Meets rules of mandates to preserve, protect and make available to use and enjoyments. Meets all legal requirements. Allows for survival and recovery of endangered species. Science-based. Manage habitat versus habitat managing us. Survive, and preserve all wildlife. Looking ahead to different types of visitors with signage and education. Time component: considering future generations. A plan that works with existing and future NPS personnel. Sustainable across factors (personnel, resources, generations, social, environmental). People understand the reasons for action.
3. *If you could wave a magic wand . . .* Fair and equitable access and reasonable resource protection. Endow everyone with mutual respect for each other and the resource. Unbiased managers to do the job. Key needs of constituencies are met. Perfect science, or adherence to the precautionary principle. Partnerships that foster effective management. Birds be allowed to adapt to humans. Increased public amenities like restrooms, campgrounds and ramps. Access to public science and the ability to act with that knowledge. Truly wilderness experiences in the Park. Create habitat. Common sense instead of safety closures, trust in and accountability of users. When everyone looked at this park, they would be satisfied. Everyone is happy, reasonable access, NPS can get on with other issues. Money to implement. World peace. Adequate funding for various Park division (from enforcement to interpretation to resource management). Account for and adapt to rising population and potential sea level rise. Recovered bird and turtle population. Healthy living for recreation, healthy bodies, healthy minds, general well-being. Completing this process while half of us are still alive.

Getting and Using Information

Sandy Hamilton and Heather Goeddeke (NPS, Environmental Quality Division), presented an overview of the regulatory analysis requirements, the Regulatory Flexibility Act, and data, science and decisionmaking in the NEPA process. For full details of their presentations, please see: <http://www.cbuiding.org/hatteras/>.

DRAFT

Regulatory Analysis Requirements

Federal agencies are required to do regulatory analysis. The first stage of the analysis is to determine if a regulatory action is “significant.” If it is, then a detailed cost/benefit analysis must be completed and submitted to the Office of Management and Budget (OMB) for review. This analysis is an attempt to monetize all costs and benefits of regulatory alternatives and to determine whether the benefits of regulatory action outweigh the costs. The economic analysis will look at the CAHA area specifically.

Regulatory Flexibility Act

In addition, analysis must be done to determine whether the regulatory action would impose a “significant economic impact on a substantial number of small entities.” Small entities include small businesses, non-profits and small governmental jurisdictions that operate on less than \$5M a year. If this analysis indicates no significant economic impacts, NPS so certifies and no additional analysis is required. If there will be significant economic impact on a substantial number of small entities, NPS must prepare a regulatory flexibility analysis, which analyzes the effectiveness of alternatives to minimize that impact.

During discussion some participants expressed the importance of the economic study, as decisions on CAHA management have a significant effect on local businesses and on other NC residents. They stated it must be transparent and credible, have community involvement in its design and analysis, and provide for input early in the process before the scope is completed. Some participants also requested that the NPS consultant performing the economic analysis:

- study the actual local effects,
- work with the reg neg committee to identify businesses, including businesses in the villages south of the bridge,
- conduct work here on the ground,
- reach out deliberately to the community, and
- include data from the Dare County Tourism Board and Dare and Hyde counties.

Some participants also want to know what data is being collected. The source of the local economic information included in the FWS economic analysis as part of the revisited critical habitat determination also was questioned.

Data, Science and Decision-making in the NEPA Process

NEPA requires that all federal agencies use the natural and social sciences in planning and decision-making that may have an impact on human environment. High quality data developed by experts needs to be available before decisions are made and must be available to public officials and citizens. For NPS decision-making, the National Parks Omnibus Management Act provides that the Secretary of the Interior has to ensure the results of scientific study are fully and properly used for park management decisions. The public administrative record must show how data was used to make decisions. Studies are to focus on resources and values that are specifically recognized in the enabling legislation and other environmental laws. There are approved criteria and methodologies for particular types of data collection.

DRAFT

OPEN DISCUSSION

The comments and questions summarized here were general comments made, topics raised and questions asked over the course of the workshop:

- ORVs are not the only way to access CAHA.
- Tourism is king.
- We're looking at a critical habitat designation with an economic analysis component, and we don't know how that data was collected.
- Do FACA committees have fixed number of participants? Under the Negotiated Rulemaking Act Reg Neg the limit is 25 seats unless increased by the Secretary of the Interior. In this case, the Solicitor's office agreed with a committee of 28 seats.

Meeting Summary and Note Taking

The workshop was not being tape recorded. A meeting summary, not minutes, will be written by the facilitation team and shared. Going forward, participants asked how the facilitators will reflect group agreements and topics covered without minutes. The facilitation team will prepare (and share) meeting summaries and will track "provisional agreements." Once the committee starts formulating propositions, the facilitators will start using a single text procedure where all potential agreements are contained in one document. The summaries also will track open issues and disagreements, and may note provisional and conditional agreements.

Communication with the Facilitation Team

The facilitators will interact with all committee members and even interested members of the public, and sometimes separately with individuals or small groups. They will be clear in emails whether they are communicating with a small versus a large group. The facilitators requested feedback and appreciate when stakeholders direct concerns about how they are managing the process directly to them.

Web Postings

Some participants shared concerns about particularly vicious web postings directed at them or others. One participant suggested that if someone sees a web posting they are concerned about, they should let the website moderator know (what the concern is and why) so that he or she can determine if action is necessary. Disagreements are fine, but violent rhetoric and how the ideas are communicated can be harmful and detrimental to the reg neg process. Some participants from organizations maintaining websites indicated that threats and violent content will not be tolerated.

Researchers and the Media

Can graduate students or others interested in researching or covering the reg neg process interview participants? People on the committee can make individual decisions about whether or not to participate in any research. The committee could develop groundrules

DRAFT

on this. Meetings are and will be open to the public. Mike Murray introduced Lavell Merritt who is studying the process and may be contacting participants.

Definitions of Consensus

A participant asked how consensus will be defined, quantified, and how we will know when we reached it. The US Institute for Environmental Conflict Resolution (which has been involved and funded the assessment and workshops) has a set of principles on collaborative problem solving, one of which is that a collaborative group defines consensus together at the beginning of a process and decides what will happen if consensus is not reached. The facilitators pointed out that in the Assessment Report they recommend based on the experience at Fire Island that consensus be defined as the whole group minus one, so that one person cannot hold the whole group hostage, and that NPS has to be in the group saying yes for consensus to be reached. The group also must decide about the decisionmaking role of members versus alternates. They generally assume that a member or alternate's absence is the same as abstaining or not dissenting. The committee would determine when to move on to new topics of discussion, with support from the facilitators.

The facilitators also described that consensus is a process with basic protocols in addition to a decision rule (e.g. a way to come to agreement). Generally when using a consensus process, participants may not simply say no. Rather, any participant who says that they disagree with something being proposed must (a) explain why, and (b) propose an alternative that would meet some interests other than his or her own. This means that committee members must work to meet their own interests *and* the interests of other parties. Because most public processes are generally democratic/simple majority/Robert's Rules of Order, consensus is something that committees learn and become more comfortable with over time.

To test consensus, participants in consensus processes are often asked to indicate their comfort with a proposal. The spectrum of options includes: I love it, I like it, it is adequate and I won't oppose it, or I can't support it. The committee would decide where the cutoff point would be along this spectrum to say that consensus had been reached. Certain pieces of an agreement may be informally tested for consensus, and the facilitators will not test for final consensus until a whole package has been prepared. This enables participants to see the overall picture with the possibility that even if they do not like some of the outcomes they might like the overall outcome. That allows for tradeoffs among issues.

Beach Tours

Workshop participants attended two beach tours on Tuesday May 22, one in the morning to Cape Point and one in the afternoon to Bodie Island Spit. This gave participants a chance to hear presentations from the NPS about management initiatives and challenges and to hear from each other what resources and experiences they value in those particular places.

DRAFT

Attachment A: Participant Introduction of Organizations

Participants introduced themselves and their organizations early in the workshop. They described their organizations, how their organizations reach out to their members, how their organization makes decisions, and what their organization's stake is in ORV management. This is a simple summary of the answers to those questions. The first name in the final column was the one to speak on behalf of the organization.

Organization	Who Spoke	How the organization reaches out to members	How organization makes decisions (& how decision-making would work in a reg neg)	Stake in ORV management on CAHA
Outer Banks Visitors Bureau – represents tourism boards, responsible for promotion and marketing for Dare County, a public authority, funded by a dedicated tax	Carolyn McCormick		Needs to go back to the organization for approval by the leadership. Board of Directors, appointed by Dare Board of Commissioners, would ratify the decision.	Want to increase visitation in the off-season and ensure that visitors enjoy themselves. Believe in protecting what makes us great – our natural and cultural resources.
Cape Hatteras Anglers Club – Surf fishing club with over 700 members established 1957. Run fishing tournaments, do fund raising, give scholarships, donate time to NPS. \$20 annual dues for adults.	Larry Hardham	Monthly bulletin to all members. Will use the bulletin to keep members abreast of the reg neg. Monthly board meetings.	Authorized to make decisions for the organization at the table.	Dedicated to maintaining free and open access to the seashore. The organization's constitution says it is the watchdog for anyone who wants to limit access to the seashore.
American Sportfishing Association (ASA) – the oldest trade group in the sportfishing industry, 900 members, mostly retailers, employ 600,000+ people. Care about fisheries, conservation issues.	Bob Eakes		Authorized to make decisions for the organization at the table. Bob is an elected member of the ASA board.	Want beach access of all kinds to enable people to fish and recruitment of anglers.
Outer Banks Preservation Association (OBPA) – formed in 1975, 3700 members.	John Alley	Newsletters, email communication, and in-person meetings.	Decisions are made by the board of directors, which meets weekly year round. Meetings are open to the public.	Want to achieve an ORV plan that protects the resources of the area, our unique cultural traditions and our economy.
The Wilderness Society (TWS) and the Natural Resources Defense Council (NRDC).	Destry Jarvis			Want to uphold the NPS Organic Act. Seek natural and abundant natural species, and provide a high quality

DRAFT

TWS is a national organization formed the 1930s with 400,000 members. NRDC is a national organization founded primarily by USFS retirees in the late 1960s. These scientists and lawyers wanted to improve the quality of information about the environment and to litigate to seek solutions on things like the Clean Air Act and Clean Water Act. NRDC has a public lands program.				visitor experience for people who come to CAHA, and balance those to uphold the Organic Act, which requires areas to be preserved for future generations.
The Nature Conservancy (TNC) – an international organization with over one million members. Seek to promote the biodiversity of life by protecting the land and water that animals and plants need to survive.	Aaron McCall	Internet, mailings.	Authorized to make decisions for the organization at the table.	Want a management plan that incorporates all interests and protects the natural resources.
National Audubon Society, North Carolina State Office – Audubon formed in 1800s. The North Carolina office opened in 1902. Have 600,000 members in the United States.	Walker Golder		Authorized to make decisions for the organization (the NC Office) at the table. The North Carolina Office has a Board of Trustees.	Want to conserve birds and the habitat they depend on.
Coalition for National Park Service Retirees – a national organization, started in 2003. 550+ members. Only open to former NPS employees.	Rob Milne	Communicate daily electronically.	Authorized to speak for the organization and any agreement needs to go back to the organization for approval by the leadership. The Board would have final approval.	Want to uphold the Organic Act in all its facets, including the ongoing balance of use, enjoyment, and resource management to keep the resource intact for future generations.
Hatteras Landing Homeowners Association – represents non-resident property owners of 37 home sites and 7.5 acres of	Jeffrey Wells		Authorized to make decisions for the organization at the table, pursuant to a Board resolution.	Safety, preservation, access, and home-owners having a voice.

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Outer Banks Chamber of Commerce and the Dare County Tourism Board – protect economic and business interests of members.	Scott Leggat		Authorized to make decisions for the organization at the table by the Board.	Economic interests, quality of life, cultural and historic preservations of traditions. Want a positive, fair outcome.
Watersports Industry Association of America – a national group of kiteboarders, kayakers, surfers, etc.	Matt Nuzzo		Authorized to make decisions for the organization at the table by the Board. Matt and Trip are members of the Board.	Want people to be allowed to continue to use the beach as they do now. Interested in increasing access for vehicles so people can kiteboard where they want to, and also to preserve the Park. At stake is losing some watersport sites.
NC Wildlife Resources Commission – research shore birds, do surveys, work with sea turtles. Most of our constituents are hunters and fishermen.	Dave Allen		Needs to go back to the organization for approval by the Director's Office, which can make a decision or take any decision to the commission.	Want to maintain access for fishermen on the coast.
North Carolina Marine Fisheries Commission – formed 1822. State agency, responsible for the stewardship of the state's marine and estuarine resources.	Wayne Mathis		Needs to go back to the organization for approval by the leadership. The Chair of the Commission (which is nine members appointed by the governor) appointed the representative and alternate.	Want conservation and maximum access to resources for all users. Want to keep commercial interest going as the state's economy is intimately connected to access to beaches, estuarine resources etc.
Hatteras Village Civic Association – represents all (approximately 800) citizens in Hatteras Village.	Roy Kingery		Needs to go back to the organization for approval by the leadership. The Board, seven elected members, will make the final decision.	Want balance and access, mostly with vehicles. This is very important to merchants and residents. We feel there needs to be an open effort to have harmony with all interests.
North Carolina Beach Buggy Association – a non-profit founded on Cape Hatteras. Has 4700+ members, all the group's work centers here except	Jim Keene	Quarterly newsletter to members. meeting of Board of Officers and Directors, which	Authorized to make decisions for the organization at the table by the 13-member Board of Officers.	Preservation of and access to the beach.

DRAFT

for scholarships in high schools in the area. Sponsor the Junior Ranger Program, give scholarships. Most members are from North Carolina and Virginia.		is open to all members, and quarterly newsletters.		
Defenders of Wildlife – a 60 year old non-profit based in Washington, D.C. with approx 500,000 members nationwide, plus 2-300,000 internet activists.	Jason Rylander		Authorized to speak for the organization at the table. Approval process not yet clear.	Want to protect endangered and threatened species and their habitats. Want to ensure that wildlife resources are preserved for future generations.
Avon Property Owners' Association – which has 800 members, including 405 property owners.	Pat Weston	Phone, email, letter writing, annual meetings.	Authorized to make decisions for the organization at the table by the seven member Board of Directors and the membership.	Keep up the historical uses of the beach – camping, hiking, fishing, water sports, bird watching, through adequate access for senior citizens and those who are physically challenged, preservation of wildlife but not to the detriment of others, preservation of the seashore as we know it.
Rodanthe-Waves-Salvo Civic Association – which has 200 members.	Pat Weston	Phone, email, letter writing, annual meetings.	Authorized to make decisions for the organization at the table by the Board.	Keep up the historical uses of the beach – camping, hiking, fishing, water sports, bird watching, through adequate access for senior citizens and those who are physically challenged, preservation of wildlife but not to the detriment of others, preservation of the seashore as we know it.
Recreational Fishing Alliance (RFA) – 50-year old coalition representing over 315,000 families and sport fishermen and women, and also shore access programs.	Patrick Paquette		Authorized to speak for the organization per the Director of RFA, and any agreement may need to go back to the organization for approval.	Want fishermen's access for resource and property management. Want to preserve lifestyle of mobile/ORV beach fishing, protect history and way of life of recreational sport fishing.
Cape Hatteras Bird Club – founded 1988 for the enjoyment of birds and nature. 170	Ricky Davis		Authorized to make decisions for the organization at the table, but might choose to put	Preservation and protection of habitat. Promoting birding ethics.

DRAFT

members, represent the birding community. Also have support from the North Carolina Bird Club (900 members). Promote understanding and conservation of Outer Banks, educate members and the public about protection of habitats and birds.			any agreement to a majority vote by the membership.	
Ocracoke Civic and Business Association – a non-profit representing businesses and individuals on the island. Started over 30 years ago to give voice to people and promote tourism. [Note: OCBA’s involvement is in lieu of a seat for the County, which deferred its representation to the OCBA]	David Esham	Monthly meetings.	Needs to go back to the organization for approval by the elected board.	Want things to stay as they are, and would like to maintain or increase access points.
Cape Hatteras Recreational Alliance – supports walking, beachcombing, fishing, birding, etc. Members mostly walk and drive, some are residents, some visitors.	Jim Lyons	Email, informal meetings.	Authorized to speak for the organization at the table. Approval process not yet clear. Jim is the President of the Board of Directors.	Want convenient, local, safe pedestrian access in the national seashore. Want to protect the rights of users to enjoy natural seashore appropriately.
Cape Hatteras Business Allies – 185 local business members.	Judy Swartwood	Email, fax, mail.	Authorized to make decisions for the organization at the table by all members.	Want to preserve and have access to the park. Want to balance animal and human needs.
Frisco and Hatteras Homeowners’ Coalition – 400 mostly non-resident property owners, some local business owners, some vacationers.	Stephen Kayota		Needs to go back to the organization for approval by majority vote of members. Four people are on the Board of Directors.	Favor pedestrian-only access in front of villages on Hatteras Island. Want pedestrian safety, solution to enforcement problems, and preservation of traditional pedestrian areas.

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Attachment B: Proposed Etiquette

**CAPE HATTERAS NATIONAL SEASHORE
POTENTIAL REGULATORY NEGOTIATION MEMBERS AND ALTERNATES
SUGGESTED “ETIQUETTE” PROTOCOLS
PRIOR TO INITIATION OF THE NEGOTIATION**

- Potential members and alternates are encouraged to speak with one another informally face to face, via phone, and otherwise, about off-road driving, species protection, or user conflicts, including on potential legal and other possible actions.
- Potential members and alternates are encouraged to conduct themselves and their respective organizations in a manner that promotes joint problem solving and collaboration, and to consider the input and viewpoint of other participants.
- Potential members and alternates will provide via the mediators a “heads up” of any major action such as publications, legal filings, or administrative filings related to off-road driving, endangered species, and related issues as part of opening dialogue, keeping one another informed, and avoiding “surprises.”
- Potential members and alternates will deal with disagreements constructively and seek to understand the interests behind any disagreements. Potential members and alternates will avoid making personal attacks, comments, or characterizations of other potential members or alternates in public comments, comments to the media, on public emails, public websites, and publications in order to preserve and build working relationships.
- The Mediators and the National Park Service will keep potential members and alternates aware of upcoming events and of the status of administrative approvals for the Committee.
- Potential members and alternates should feel free to contact the mediation team at any time about substantive or process issues related to the potential regulatory negotiation and its workings.

May 22, 2007

#1451
(A11A)

Summary of Regulatory Analysis Requirements

Regulatory analysis is a tool Federal agencies use to anticipate and evaluate the likely consequences of regulatory actions. Regulatory analysis is intended to provide sufficient information to *reasonably* determine:

- Whether regulatory action is needed,
- Whether the benefits of regulatory action can justify its costs,
- Whether a particular regulatory action will maximize net-benefits within statutory and judicial constraints, and
- Whether a regulatory action will impose significant impacts on small entities.

Two types of regulatory analysis are generally required: *cost/benefit analysis* and *regulatory flexibility analysis*. General guidance is available from DOI on when and how to conduct these analyses at <http://www.doi.gov/nrl/RegWeb/Reghlp1.htm>.

Cost/Benefit Analysis

Cost/benefit analysis is required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995, and the Regulatory Right-to-Know Act of 1999.

The first step is to conduct a threshold analysis to determine whether the proposed regulatory action is “significant.” A significant regulatory action may:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Order 12866.


The agency generally determines which regulatory actions are significant. However, OMB may unilaterally determine significance (EO 12866 §6(a)(3)(A)).

If a regulatory action is significant, the agency must conduct a detailed cost/benefit analysis and submit it to OMB for review (EO 12866 §6(a)(3)(B) and (C)). Detailed guidance is available from OMB on the preparation of cost/benefit analyses at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>.

Cost/benefit analysis attempts to monetize all costs and benefits of regulatory alternatives. Costs and benefits should be quantified in some meaningful way when

#1451
CAMA

Data, Science & Decisionmaking



National Park Service
Environmental Quality Division

Presented May 22, 2007 at the
2nd Collaborative Workshop
Cape Hatteras National Seashore

1

NEPA Information Requirements

- In Section 102 of NEPA Congress directs all agencies to use the natural and social sciences in planning and decisionmaking which may have an impact on man's environment




2

Data Collection

(DO 12 Handbook 2.1, 2.8)

"Quality data will help in making quality decisions"



3

NEPA Information Requirements

(Council on Environmental Quality 40 CFR 1500.1(b))

- Environmental information must be available to public officials and citizens before decisions are made.
- The information must be of high quality.



4

Science in Decision-making

(NPOMA 1998, Sec 206)

- The Secretary of the Interior shall “assure the full and proper utilization of the results of scientific study for park management decisions”
- If an NPS action may cause a significant adverse effect on a park resource, the administrative record shall reflect how resource studies were considered

9

Science in Decision-making

NPS Director’s Order 12 requires...

“an adequate and public administrative record must reflect the manner in which park unit resource studies have been considered, alternatives examined, mitigations incorporated, and final decisions reached” if an NPS action may cause an adverse effect on park resources (Sec. 4.6)

10

Science in Decision-making

NPS Director’s Order 12 requires...

“rigorous application of scientific and technical information in the planning, evaluation and decision-making processes” (Sec. 4.3)



11

Science in Decision-making

NPS Director’s Order 12 requires...

“articulation of a reasoned connection between technical and scientific information and the final agency action” (Sec. 4.3)



12

Unavailable Data

(40 CFR 1502.22)

40 CFR 1502.22 requires us to...

- Explain the relationship between the information and impact prediction
- Summarize existing credible scientific evidence and evaluate impacts with it



17

Bottom Line: Why Data is Important to Both Reg-Neg and NEPA

- A rulemaking such as this one is a federal "agency action" subject to NEPA.
- Court decisions mandate that agencies take a 'hard look' at impacts of the agency action (including alternatives).
- An EIS that has "general statements" about 'possible' effects and 'some risk' rather than analysis doesn't hold up.
- An EIS with "conclusory remarks, statements that do not equip a decision-maker to make an informed decision" does not succeed.

(Defenders of Wildlife v. Bruce Babbitt 2001, Neighbors of Cuddy Mountain v. USFS, 1988; NRDC v. Hodel, 1988)


18

Bottom Line...


- For NPS the 'hard look' as defined by Director's Order 12 includes the
 - "rigorous application of scientific and technical information in the planning, evaluation and decision-making processes",
 - and
 - "articulation of a reasoned connection between technical and scientific information and the final agency action"

19


#1451
CAHA

U.S. Fish and Wildlife Service 
Roles and Responsibilities

The mission of the U.S. Fish and Wildlife Service is, "working with others, to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people."

U.S. Fish and Wildlife Service 

- Our primary responsibility is conservation of "federal trust resources" including:
 - Federally listed species
 - Diadromous Fish (Strippers, Shad, River Herring, Sturgeon, Eel) *part in ocean, part inland*
 - Migratory Birds
 - National Wildlife Refuges

U.S. Fish and Wildlife Service 
in North Carolina

Several FWS Divisions in North Carolina Including:

- Fisheries
- Law Enforcement
- Migratory Birds
- Refuges
- Ecological Services

**U.S. Fish and Wildlife Service
Endangered Species Program**

- Listing and Critical Habitat
- Recovery Planning and Implementation
- Consultation with other Federal Agencies

**U.S. Fish and Wildlife Service
Listing and Critical Habitat**

Wintering Piping Plover

- Economic Analysis and Environmental Assessment will be released soon.
- Public Comment period reopened. Closes 60 days after date of announcement. No need to repeat or resend previous comments
- Public Hearing will likely occur on June 20, 2007, Fessenden Center, 4:00 to 7:00 pm.

would
move back to
led
Regs
delayed

units in NC - 4 est @ CATHA
were challenged. last June
new proposed rule - old one
inc. things that were not
critical habitat. all now
w/in CATHA. Econ assessment
EA will be soon (w/ k or s)


**U.S. Fish and Wildlife Service
Endangered Species Recovery**

Piping Plover

- 3 Populations
 - Great Plains
 - Great Lakes
 - Atlantic Coast
- Atlantic Coast Population
 - 4 Recovery Units (population targets for each)
 - North Carolina in Southern Recovery Unit
 - North Carolina is southern extent of breeding range
 - North Carolina is northern extent of wintering range for all three populations.

listed as one
entirely - deliv
management.

each population has a
recovery plan.
~~with 2000 breeding~~
South unit goal of
400 breeding pairs 8/11
Short of rec goal
placers all yr. Rel.

	<p>U.S. Fish and Wildlife Service Interagency Consultation</p> 
	<p>Agencies can fulfill obligations through informal consultation if agency and FWS agree that action is "not likely to adversely affect" listed species (no take)</p> <p>If lead agency determines action "may affect", then formal consultation is necessary</p> <p>Lead agency prepares a Biological Assessment</p> <p>FWS renders its Biological Opinion. If "no jeopardy" issues and Incidental Take Statement</p>

may affect but ...

likely to adversely affect.

	<p>U.S. Fish and Wildlife Service Migratory Bird Treaty Act</p> 
	<p>Executive Order regarding federal agency responsibilities</p> <p>FWS offers technical assistance to agencies</p> <p>FWS issues permits for take of migratory birds</p> <p>FWS works with the States and others on conservation</p> <p>FWS work with States to set hunting regulations</p> <p>FWS law enforcement investigates violations</p>

May 22, 2007

#1451
CAIA

Summary of Regulatory Analysis Requirements

Regulatory analysis is a tool Federal agencies use to anticipate and evaluate the likely consequences of regulatory actions. Regulatory analysis is intended to provide sufficient information to *reasonably* determine:

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- Whether the benefits of regulatory action can justify its costs,
- Whether a particular regulatory action will maximize net-benefits within statutory and judicial constraints, and
- Whether a regulatory action will impose significant impacts on small entities.

Two types of regulatory analysis are generally required: *cost/benefit analysis* and *regulatory flexibility analysis*. General guidance is available from DOI on when and how to conduct these analyses at <http://www.doi.gov/nrl/RegWeb/Reghlp1.htm>.

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The first step is to conduct a threshold analysis to determine whether the proposed regulatory action is “significant.” A significant regulatory action may:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Order 12866.

The agency generally determines which regulatory actions are significant. However, OMB may unilaterally determine significance (EO 12866 §6(a)(3)(A)).

If a regulatory action is significant, the agency must conduct a detailed cost/benefit analysis and submit it to OMB for review (EO 12866 §6(a)(3)(B) and (C)). Detailed guidance is available from OMB on the preparation of cost/benefit analyses at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>.

Cost/benefit analysis attempts to monetize all costs and benefits of regulatory alternatives. Costs and benefits should be quantified in some meaningful way when

May 22, 2007

monetization is not reasonably possible. Finally, costs and benefits must be qualitatively described if quantification is not reasonably possible.

The cost/benefit analysis must reasonably demonstrate that the benefits of the regulatory action justify its costs (EO 12866 §1(b)(6)).

Regulatory Flexibility Analysis

Regulatory flexibility analysis is required by Executive Order 13272 and the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act.

The first step is to conduct a threshold analysis to determine whether the regulatory action would impose a “significant economic impact on a substantial number of small entities.” Small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions.

If the threshold analysis indicates no significant economic impacts on a substantial number of small entities, the agency so certifies and no additional analysis is required.

If the threshold analysis does indicate significant economic impacts on a substantial number of small entities, the agency must prepare a detailed initial regulatory flexibility analysis to be made publicly available with the proposed regulation. This analysis is also reviewed by the Small Business Administration’s Office of Advocacy. After public review, the agency must prepare a final regulatory flexibility analysis to be made publicly available with the final regulation. Detailed guidance is available from SBA on the preparation of regulatory flexibility analyses at <http://www.sba.gov/advo/laws/rfaguide.pdf>.

The initial and final regulatory flexibility analyses must analyze effective alternatives that minimize the impacts of the regulatory action on small entities.

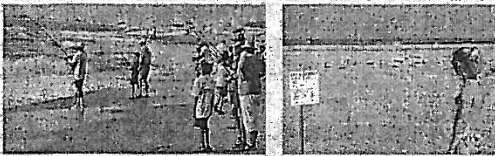
Contact for Economic Support

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National Park Service

Review of NPS Regulatory Framework and Constraints
RegNeg Workshop, May 21, 2007



Mike Murray, Superintendent, CAHA
Mike Stevens, DOI Solicitor, SE Region
Jason Waanders, DOI Solicitor, WASO

National Park Service

Overview

- Organic Act & General Authorities Act
- 2006 Management Policies
- CAHA enabling legislation
- ORV use requirements (Executive Orders and 36 C.F.R § 4.10)
- Brief background of ORV use and Management at CAHA
- CAHA General Management Plan
- National Environmental Policy Act (NEPA)
- Other Policies and Constraints

National Park Service

NPS Organic Act, 16 U.S.C. § 1 et seq.

- "...the fundamental purposes of said parks... is to conserve the scenery and the natural and historic objects and wildlife therein 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."

General Authorities Act (16 U.S.C. § 1a-1 et seq.)

- Directed that the various types of NPS areas be managed as one "National Park System" consistent with the purpose statement in the Organic Act.

National Park Service

NPS Management Policies 2006

1.4.4 Prohibition on Impairment of Park Resources and Values

- NPS must leave park resources and values unimpaired.
- Though NPS has discretion to allow impacts within parks, it is limited by this statutory prohibition on impairment.

1.4.6 What Constitutes Park Resources and Values

- Very broadly defined; also includes opportunities for enjoyment to the extent it does not impair.

National Park Service

NPS Management Policies 2006

1.4.5 What Constitutes Impairment

- An impact would more likely constitute impairment if it affects a resource or value that is:
 - Necessary to fulfill specific purposes identified in the establishing legislation of the park, or
 - Key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park, or
 - Identified in the park's general management plan or other relevant NPS planning documents as being significant.

National Park Service

NPS Management Policies 2006

1.4.7 Decision-making Requirements to Identify and Avoid Impairments

- An NPS decision-maker must consider the impacts of the proposed action and determine, in writing, that the activity will not lead to an impairment of park resources and values.

1.4.7.1 Unacceptable Impacts

- These are impacts that fall short of impairment, but are still not acceptable within a particular park's environment.
- NPS will avoid impacts it determines to be unacceptable.

National Park Service

NPS Management Policies 2006

1.5 Appropriate Use of the Parks

- When proposed park uses and the protection of park resources and values come into conflict, the protection of resources and values must be predominant.
- Preferred forms of enjoyment are those that are uniquely suited to the superlative natural and cultural resources found in the parks and that
 - 1) foster an understanding of and appreciation for park resources and values, or
 - 2) promote enjoyment through a direct association with, interaction with, or relation to park resources.

7

National Park Service

NPS Management Policies 2006

1.7 Civic Engagement

- Civic engagement will be viewed as a commitment to building and sustaining relationships with neighbors and other communities of interest—both near and far.
- The goal of civic engagement will be to reinforce the Service's and the public's commitment to the preservation and stewardship of cultural and natural heritage resources.

8

National Park Service

NPS Management Policies 2006

1.8 Environmental Leadership

- The Service has an obligation to demonstrate and work with others to promote leadership in environmental stewardship.
- The Service will (1) fully comply with the letter and the spirit of the National Environmental Policy Act and the National Historic Preservation Act, and (2) continually assess the impact its operations have on natural and cultural resources so that it may identify areas for improvement.

9

National Park Service

NPS Management Policies 2006

4.4.1 General Principles for Managing Biological Resources

- The National Park Service will maintain as parts of the natural ecosystems of parks all plants and animals native to park ecosystems.

4.4.2 Management of Native Plants & Animals

- Whenever possible, natural processes will be relied upon to maintain native plant and animal species and influence natural fluctuations in populations of these species.

10

National Park Service

NPS Management Policies 2006

4.4.2 Mgt. of Native Plants & Animals (cont.)

- The Service may intervene to manage populations or individuals of native species only when:
 - Management is necessary because a population occurs in an unnaturally high or low concentration as a result of human influences and it is not possible to mitigate the effects of the human influences; or
 - To protect rare, threatened, or endangered species; or
 - (Other conditions identified in the policy are not directly relevant to the current CAHA situation)

11

National Park Service

NPS Management Policies 2006

4.4.2.3 Management of Threatened or Endangered Plants and Animals

- NPS will survey for, protect, and strive to recover all species native to national park system units that are listed under the Endangered Species Act.
- NPS will manage state and locally listed species in a manner similar to its treatment of federally listed species.
- NPS will inventory other native species that are of special management concern to parks (such as rare, declining, sensitive, or unique species and their habitats) and will manage them to maintain their natural distribution and abundance.


12

National Park Service


1937 Report to Congress (to accompany H.R. 7022)

- “The fact that these barrier islands are almost inaccessible from the mainland, has preserved them from private and commercial recreational development...The area is rich in bird life...The area is particularly adapted to the concentrated use for water sports...”


Oregon Inlet Ferry 1934



Snow Geese



Nags Head 1936




13

National Park Service

CAHA Enabling Legislation*
(50 Stat. 669, August 17, 1937)

“...said area shall be, and is hereby, established, dedicated, and set apart as a national seashore for the benefit and enjoyment of the people.”

16 U.S.C § 459



*No record exists of any debate or protest of the legislation.


14

National Park Service

CAHA Enabling Legislation (continued)

“The legal residents of villages...shall have the right to earn a livelihood by fishing within the boundaries...subject to such rules and regulations as the said Secretary may deem necessary in order to protect the area for recreational use...” 16 U.S.C § 459a-1

Beach Fishing 1935



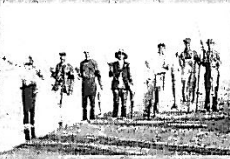
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National Park Service

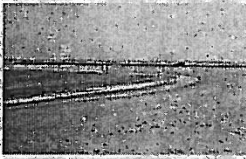
CAHA Enabling Legislation (continued)

“Except for certain portions of the area, deemed to be especially adaptable for recreational uses, particularly swimming, boating, sailing, fishing, and other recreational activities of similar nature, which shall be developed for such uses as needed, ...” 16 U.S.C § 459a-2

Surf fishing 1935



Cape Hatteras 1934




16

National Park Service

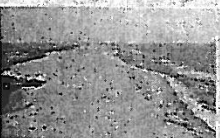
CAHA Enabling Legislation (continued)

“...the said areas shall be permanently reserved as a primitive wilderness and no development of the project or plan for the convenience of visitors shall be undertaken which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing in the area.” 16 U.S.C § 459a-2

Shipwrecks north of Cape Hatteras 1934



Beach north of CAHA Light 1934



17

National Park Service

1940 Amendment to Enabling Legislation

- The words “national seashore recreational area” are substituted for “national seashore” wherever such words are used in the Act.
- Hunting shall be permitted.

Why change the name?


- First time hunting authorized within a national park.
- “recreational area” was used to justify allowing hunting at CAHA and not set a precedent for hunting within the more traditional types of Parks.

18

National Park Service

NPS Director Conrad Wirth's
"Letter to the People of the Outer Banks"
 Published in *The Coastland Times*, October 31, 1952

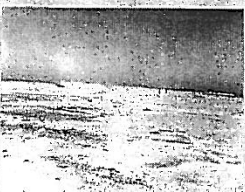
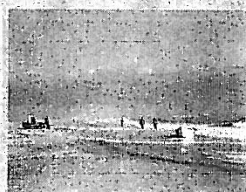
"...when the lands...become public property there will always be access to the beach for all people, whether they are local residents or visitors from outside. However, it will be necessary to establish certain regulations, such as to designate places for vehicles to get to the beach, in order to reduce sand dune erosion to a minimum..."



19

National Park Service

CAHA Established January 12, 1953
 By Order of the Secretary of the Interior
 Oscar L. Chapman

Rodanthe Beach 1952 Beach Fishing 1956 20

National Park Service

Exec. Order 11644 (1972) as amended by E.O. 11989 (1979)
Use of ORV's on Public Lands

- Defines off-road vehicles as "any motorized vehicle designed for or capable of cross-country travel on or immediately over...natural terrain."
- Directs agencies to develop and issue regulations and administrative instructions to provide for...designation of areas and trails where the use of ORV's may be permitted, and areas where ORV's may not be permitted.
- ORV's may be allowed only in locations where there will be no adverse impacts on the area's natural, cultural, scenic, and esthetic values; and in consideration of other existing or proposed recreational uses.
- Directs agencies to immediately close a designated off-road vehicle route whenever the use is causing or will cause unacceptable impacts on...resources.

21

National Park Service

36 C.F.R. § 4.10

- Operating a motor vehicle is prohibited except on park roads, in parking areas and on routes and areas designated for ORV use.
- Routes and areas designated for ORV use shall be promulgated as special regulations. Routes and areas may be designated only in national recreation areas, national seashores, national lakeshores, and national preserves.

22

National Park Service

NPS Management Policies 2006

8.2.3.1 Motorized Off-road Vehicle Use

- ORV use in national park units is governed by Executive Order 11644 (Use of Off-road Vehicles on Public Lands, as amended by Executive Order 11989).
- As required by the executive order and the Organic Act, superintendents must immediately close a designated ORV route whenever the use is causing or will cause unacceptable impacts on park resources.

23

National Park Service





ORV Use in the National Park System

- "System" has a total of 391 units, including 18 national recreation areas, 10 national seashores, 4 national lakeshores, and 18 national preserves (50 units)
- ORV use occurs at 13 units (4 NRA, 7 NS, 0 NL, 2 NPr)
- NPS areas with ORV use with special regulations (8): Assateague Island NS, Big Cypress National Preserve, Cape Cod NS, Fire Island NS, Gulf Islands NS, Gateway NRA, Lake Meredith NRA, Padre Island NS
- NPS areas with ORV use without special regulations (6): Cape Hatteras NS, Cape Lookout NS, Curecanti NRA, Glen Canyon NRA, Wrangell-St. Elias National Preserve, Lake Meredith NRA* (*has special regulation but ORV use extends beyond the designated area)

24

National Park Service

Brief History of Ground Transportation on Hatteras Island

1.  Cape Hatteras 1848
Beach driving pre-dates the park.
2.  Beaches and sand trails in the 1940s
Beaches and sand trails were the primary transportation routes until...
3.  New highway completed in 1954
4.  Bridge Completed in 1963

26

National Park Service

Brief History of NPS Efforts to Manage ORVs at CAHA

- 1978 "interim ORV management plan" was never approved or finalized.
- 1984 GMP stated that "selected beaches will continue to be open for ORV recreational driving and in conjunction with surf fishing."
- 2004 Superintendent's Order # 7 established 150-ft ORV corridor.


25

National Park Service

CAHA General Management Plan (1984)

Planning Perspective

- The beach is highly resilient to human activity and can accommodate heavy visitor use.
- Planning objectives for the ocean/beach unit are
 - to allow a wide range of unstructured beach and water oriented active recreational activities;
 - to provide for adequate visitor access over the dunes while protecting them from overuse; and
 - To concentrate visitor use at selected points, allowing for a more wilderness-type experience between points.

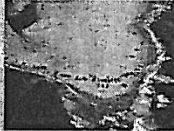



27

National Park Service

CAHA General Management Plan (1984)

Visitor Use: "Appropriate oceanside activities, including swimming, sunbathing, fishing, surfing, beachcombing, and picnicking will continue... Selected beaches will continue to be open for ORV recreational driving and in conjunction with surf fishing in accordance with existing regulations."

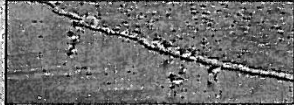

28

National Park Service

CAHA General Management Plan (1984)

Natural Resource Management

- NPS will update as necessary an existing plan regulating ORV use in order to reduce visitor use conflicts and to protect dunes, vegetation, wildlife, and cultural resources.
- Of the listed species, only the loggerhead sea turtle... is potentially threatened by park-related activities, specifically ORV use.
- ORV use is temporarily restricted on beach segments containing nests.

29

National Park Service

National Environmental Policy Act (NEPA)

42 U.S.C § 4332

- Requires federal agencies to prepare, for every proposed "major federal action significantly affecting the human environment," a statement of the action's environmental impacts, including alternatives.

30

National Park Service

Council on Environmental Quality (CEQ)
NEPA Regulations, 40 C.F.R. Part 1500

- a. 40 C.F.R. § 1501.3: Agency may prepare an environmental assessment (EA) for actions that do not require an environmental impact statement (EIS) but are also not categorically excluded from NEPA; EA is also way to determine whether need to prepare EIS.
- b. 40 C.F.R. § 1508.9: EA is more concise analysis. If no significant impact, agency prepares FONSI. If significant impact, agency must prepare EIS.

31

National Park Service

NPS NEPA Process

- National Parks Omnibus Management Act and the Organic Act provide legal context.
- NPS Director's Order 12 (DO-12) provides policy guidance.
- NPOMA and DO-12 require:
 - rigorous application of scientific and technical information in the planning, evaluation and decision-making processes.
 - a reasoned connection between technical and scientific information ... and the final agency action.

➤ Analysis in a NEPA document is key to knowing whether impairment is a possibility.

32

National Park Service

NPS Management Policies 2006
8.2.4 Accessibility for Persons with Disabilities

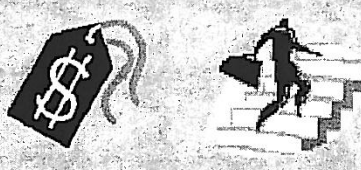
- All reasonable efforts will be undertaken to make NPS facilities, programs, and services accessible to and usable by all people, including those with disabilities.
- To the highest degree reasonable, people with disabilities should be able to participate in the same programs and activities available to everyone else.
- What is "reasonable" will be determined only after careful consultation with persons with disabilities or their representatives.

33

National Park Service

Funding Constraints

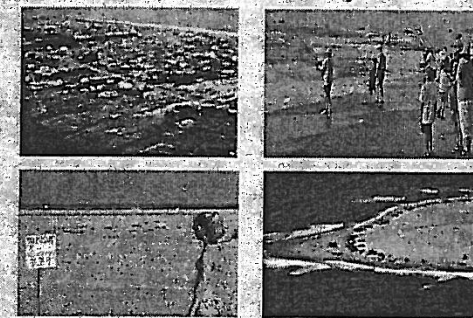
- The "plan" must be operationally and financially sustainable to implement (Anti-Deficiency Act, etc.)



34


National Park Service

Cape Hatteras Today




35


National Park Service




Thank you for your time and attention.

36

	<p>U.S. Fish and Wildlife Service </p> <p>Roles and Responsibilities</p>
	<p>The mission of the U.S. Fish and Wildlife Service is, "working with others, to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people."</p>

	<p>U.S. Fish and Wildlife Service </p>
	<ul style="list-style-type: none">■ Our primary responsibility is conservation of "federal trust resources" including:<ul style="list-style-type: none">- Federally listed species- Diadromous Fish (Stripper, Shad, River Herring, Sturgeon, Eel) <i>part in ocean, part in land</i>- Migratory Birds- National Wildlife Refuges

part in ocean, part in land

	<p>U.S. Fish and Wildlife Service </p> <p>in North Carolina</p>
	<p>Several FWS Divisions in North Carolina Including:</p> <ul style="list-style-type: none">• Fisheries• Law Enforcement• Migratory Birds• Refuges• Ecological Services

**U.S. Fish and Wildlife Service
in North Carolina**

Asheville *Raleigh*

dam Removal/ fish passage

**U.S. Fish and Wildlife Service
Ecological Services**

Ecological Services Programs include:

- Partners for Fish and Wildlife
- Coastal
- Environmental Contaminants
- Project Planning
- Endangered Species
- Public Affairs

← work w other federal agencies

**U.S. Fish and Wildlife Service
Endangered Species Program**

Endangered Species in North Carolina

- 60 Extant species of Plants and Animals under FWS Jurisdiction
- 7 species under FWS Jurisdiction at Cape Hatteras:
 - Piping Plover
 - Seabeach Amaranth
 - Sea turtles (Loggerhead, Green, Leatherback, Hawksbill, and Kemp's Ridley)

Some no longer occur in NC or occur @ all

**U.S. Fish and Wildlife Service
Endangered Species Program**

- Listing and Critical Habitat
- Recovery Planning and Implementation
- Consultation with other Federal Agencies

**U.S. Fish and Wildlife Service
Listing and Critical Habitat**

Wintering Piping Plover

- Economic Analysis and Environmental Assessment will be released soon.
- Public Comment period reopened. Closes 60 days after date of announcement. No need to repeat or resend previous comments
- Public Hearing will likely occur on June 20, 2007, Fessenden Center, 4:00 to 7:00 pm.

would
move back
ded
Reg 15
delayed

units in NC - 4 est @ CAHA
were challenged. last June
new proposed rule - old one
inc. things that were not
critical habitat. all now
with CAHA. even assessment
EA will be soon (w/ors)

**U.S. Fish and Wildlife Service
Endangered Species Recovery**

Piping Plover

- 3 Populations
 - Great Plains
 - Great Lakes
 - Atlantic Coast
- Atlantic Coast Population
 - 4 Recovery Units (population targets for each)
 - North Carolina in Southern Recovery Unit
 - North Carolina is southern extent of breeding range
 - North Carolina is northern extent of wintering range for all three populations.

listed as one
entity - auto
management

each population has a
recovery plan.
~~with 2000 breeding~~
South unit goal of
400 breeding pairs still
short of the goal
planned all yr. Rel.

**U.S. Fish and Wildlife Service
Endangered Species Recovery**

Sea Turtles

- Fish and Wildlife Service shares jurisdiction with the National Marine Fisheries Service
- North Carolina is the northern extent of the breeding Range
- Recovery goal for Loggerheads of 800 nests in North Carolina

Seabeach Amaranth

- Annual plant that ranges from New York to South Carolina

on Beach

in water

range 400-700 deep season weather

avg 100 ish

**U.S. Fish and Wildlife Service
Interagency Consultation**

The Service works with Federal Agencies to help them meet their obligations under Section 7(a)(1)

Rapid development along the Atlantic Coast is making State and Federal coastal lands ever more important to the long term conservation of coastal species

The Service also works with Federal Agencies under Section 7(a)(2) to ensure their actions do not jeopardize the continued existence of listed species

USFWS provides technical expertise

advise fed agencies on


Census of endangered species

works w/ military

**U.S. Fish and Wildlife Service
Interagency Consultation**

The Service also works with Federal Agencies under Section 7(a)(2) to ensure their actions do not Jeopardize the continued existence of listed species

Lead agency responsible for determining the scope of the action, making initial effects determination and initiating consultation

U.S. Fish and Wildlife Service Interagency Consultation	
Agencies can fulfill obligations through informal consultation if agency and FWS agree that action is "not likely to adversely affect" listed species (no take)	
If lead agency determines action "may affect", then formal consultation is necessary	
Lead agency prepares a Biological Assessment	
FWS renders its Biological Opinion. If "no jeopardy" issues and Incidental Take Statement	

may affect but
likely to adversely affect.

U.S. Fish and Wildlife Service Migratory Bird Treaty Act	
Executive Order regarding federal agency responsibilities	
FWS offers technical assistance to agencies	
FWS issues permits for take of migratory birds	
FWS works with the States and others on conservation	
FWS work with States to set hunting regulations	
FWS law enforcement investigates violations	

#1451
CAHA**May 21 Beach Social – Details**

You and a guest are invited to attend a traditional Outer Banks barbecue dinner on the beachfront!

DATE: Monday May 21, 2007

TIME: 5:30-8:30 PM

LOCATION: The Kinnekeet Shores Oceanfront Beach Club in Avon, North Carolina. The Club is immediately adjacent (south) of the Avon Fishing Pier. In case of inclement weather, the Beach Social will be held at the Hatteras Realty conference room in Avon, NC.

MENU: The menu will include BBQ chicken, BBQ pork, potato salad, cole slaw, baked beans, bread and dessert with a choice of soda, bottled water or beer

COST: \$15.00 per person, checks made out to

Pat Weston
Reg Neg BBQ
P.O. Box 976
Avon, NC 27915

We would like to thank Bob Eakes, American Sportfishing Association, Pat Weston, Rodanthe-Waves-Salvo & Greater Kinnekeet Shores Homeowners Inc. and Kinnekeet Shores Resort, for graciously volunteering to organize and provide us with such a beautiful setting for the social event.

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#1451
CAHA

CAPE HATTERAS NATIONAL SEASHORE
2nd COLLABORATIVE WORKSHOP:
CURRENT REGULATIONS AND SETTING THE STAGE
FOR NEGOTIATED RULEMAKING

Proposed Agenda
May 21-22, 2007
Avon Fire Hall, Avon, North Carolina

GOALS

- Discuss etiquette and ideas for reg neg groundrules.
- Provide an opportunity for stakeholders to learn about each others' organizations.
- Review existing regulatory framework and constraints affecting ORV management.
- Explore visioning and individual visions for the future of the Park.
- Discuss information that may be needed by the committee for crafting a consensus.
- Visit selected areas of the National Seashore.

DAY I, Monday May 21

- 10:00 Welcome and Update on the Status of Establishing the Committee and Starting the Process, *Mike Murray, NPS*
- 10:15 Purpose and Agenda for the Workshop, *Patrick Field, CBI*
- 10:30 Introduction to Stakeholders and Potential Participants (3-5 minutes each)
- Who they are, who they represent, how they reach out to their members, how their organizations make decisions
 - What's at stake in developing an ORV management plan (interests, not positions)?
- 12:00 Lunch
- 12:30 Introductions, continued
- 1:00 Review of Regulatory Framework and Constraints, *Mike Stevens, Jason Waanders, Mike Murray NPS*
- Presentation of statutory and regulatory requirements, executive orders, policies, and directives
 - Discussion of implications for the committee's work
- 2:30 Break
- 2:45 US FWS Considerations, *Mike Stevens, DOI, Pete Benjamin, FWS and Mike Bryant, Pea Island National Wildlife Refuge*
- Presentation
 - Discussion of implications for the committee's work

1451
CAHA

ALL

Please find below a brief set of protocols for guiding interaction among potential Reg Neg Committee members and alternates before the Committee adopts groundrules. As you may remember, at our first session in February, we were asked to develop these.

The purpose of these groundrules is to guide people to act in a way that promotes working relationships, respect, dealing with differences effectively and good process.

Please let us know your comments and ideas. We will resend these with revisions once we receive comments and hope that the revised version will be "interim groundrules" you all voluntarily agreed to follow!

THE MEDIATION TEAM

avoid charact. Motivators besides own.

**CAPE HATTERAS NATIONAL SEASHORE
POTENTIAL REGULATORY NEGOTIATION MEMBERS AND ALTERNATES
SUGGESTED "ETIQUETTE" PROTOCOLS
PRIOR TO INITIATION OF THE NEGOTIATION**

- Potential members and alternates are encouraged to speak with one another informally face to face, via phone, and otherwise, about off-road driving, species protection, or user conflicts, including on potential legal and other possible actions.
- Potential members and alternates are encouraged to conduct themselves and their respective organizations in a manner that promotes joint problem solving and collaboration, and to consider the input and viewpoint of other participants.
- Potential members and alternates will provide via the mediators a "heads up" of any major action such as publications, legal filings, or administrative filings related to off-road driving, endangered species, and related issues as part of opening dialogue, keeping one another informed, and avoiding "surprises."
- Potential members and alternates will deal with disagreements constructively and seek to understand the interests behind any disagreements. Potential members and alternates will avoid making personal attacks, comments, or characterizations of other potential members or alternates in public comments, comments to the media, on public emails, public websites, and publications in order to preserve and build working relationships.
- The Mediators and the National Park Service will keep potential members and alternates aware of upcoming events and of the status of administrative approvals for the Committee.
- Potential members and alternates should feel free to contact the mediation team at any time about substantive or process issues related to the potential regulatory negotiation and its workings.

*no Surprises
} Rule*

Focus on Substance, not each other

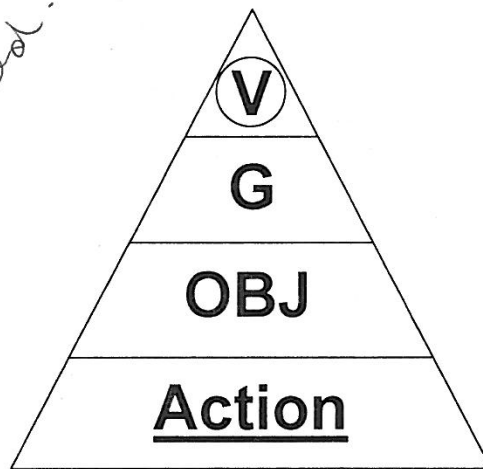
VISIONING

Vision is a representation of the future of the National Seashore. A vision is a guiding image of success formed in terms of a contribution to society. It is an outgrowth of values and convictions, and largely *intuitive* in its origin.

If a management plan is the "blueprint," then the vision is the "artist's rendering" of what the world will look like when the plan is realized. It is a description in words that conjures up a picture for the destination of the work of the Reg Neg Committee, the desired end state once the plan is developed and implemented.

A vision addresses long-term needs, not short-term problems. It presents a view that is compelling, stretching, and achievable in easily understood language. The vision can grow and change to meet new challenges and developments over time.

Appreciate
I query -
already have what
you need.



Questions to Consider:

- Who benefits from the national seashore?
- What do you consider important characteristics of an "effective management system" for off-road vehicle driving in the Park?
- If you could wave a magic wand...
- What's the key to the future?
- What values need to be considered?
- What are the greatest opportunities for optimum benefits?
- What would cause others to endorse the future described in the vision?

KEY:

V	=	Vision
G	=	Goals
OBJ	=	Objectives

II

① Reg-Neg - 2nd Collaborative wkshp. 5/21/07

UNC-TV - story on pupery player closure
NO group agreement or consensus

who are we?
who we represent?
what we care about?
How we make decisions?

Proposed
Member
Presentation
Questions
to
answer.

① Outer banks visitor bureau

- rep dare to tourism bd.
- public authority - funded by dedicated tax
- promotion + mktg of area for tourism
- tourism Bd of directors, would take issues to full board for ratification
- keep everyone happy, increase visitation in off season.
- make sure visitors enjoy themselves

② Lamy Hardham - Cape Hatteras Anglers Club
1957 est, maintain free + open access. watch dog for anyone who wants to limit access
Beng, fishing tournament, local charity work. Scholarships
hours in volunteer programs
786 members

② BOB DAVIS - AIT

\$20 due, monthly bulletins, monthly dinner mtg - minutes in Bob & Larry H. Both to make decisions, Report to Board each month.

③ Bob Eakes - Am-Sport fishing assn.
900 members, retailers + manuf.
Represent 60 million customers.
Fisheries conservation issues - can make a decision, does not need to go to board. main issue is access - w/issue for 6 yrs.

④ John Alley - OBPA

1975 - an org plan that protects resources, cult. traditions, + local economy. Decisions made by Board of directors, meet weekly, mtgs open to public.

⑤ Destry Jarvis - wilderness Socy + NRDC.

WS [1930 - 400,000 members,
Regional offices. Wilderness Act 1964
Federal zoning of public lands

NRDC [Improve quality of info
about environment (CAA) and

③

Interests: uphold NPS organic act, seek natural + abundant populations of native species, high quality of visitor experience.

⑥ Aaron McCaul - TNC

Biodiversity of life, protect level & water. Decisions - most up to date current science, want mgmt plan that inc. interests groups + protects resources thinks will have authority to make decisions

⑦ Walker Golder - Nat. Audubon Soc. ST.
1902 - Conso. of birds + habitats
600,000 members.

Des. mty - St. Board of Trustees, but have auth to make decisions @ table. ~~Partner~~

⑧ Rob M. NP Retirees

2003, over 550, Voluntary open to former NP employees.
Communicates daily electronically - would refer federal Pky to executive council, but before

(4)

Then will make decisions @ the table. Believe in Upholding Organic Act and balance of USE + Resource mgmt

(9) Jeff wells - Hatteras Landers Homeowners President - Safety, present ethics, Access, having a voice on the Island as non-res. property owners. Have a resolution and are (37 home sites) empowered to make decisions.

(10) Scott Leggett. - Outer banks Chamber of Commerce - Quality of life, culture + historic preservation of traditions. SamH (AT) - Can make decisions @ the table.

(11) Matt No 330 - watersports incl. Kajak, Kite Surf.
 1/4 mtgs - decision makers on behalf of group. Allow park to be used as it is now, increasing access, vehicle use on beach.
 Also looking @ preserv park. don't want to lose watersports spots.
 National org

⑤

⑫ David Allan - NCUWC

Research on colonial nesting birds. Most const. hunters + fishermen. Interested in mount access.

NCUWC rep speaks on behalf of agency, for consensus will go to the director's office for approval. Final decision rests w/ director.

⑬ Wayne Mathis - NCMFC, ^{Marine Fisheries Commission} NCDNR

1822, Stewardship of Marine + estuarine Resources, Coastal waters up to 3mi off shore. Carolina Coastal protection plan. 4,000 lic. comm fishermen, 2,5M rec fishermen. Census, preservation, + access to resources for public benefit.

Seafood State economic interests.

Authority - chm of MFC, will brief Commission of mtgs. AH - Sarah Winslow. will inform in writing. Chair will have final word.

⑭ Roy Kingry - Hatteras Village Civic Assn.

Member Board - interest to ensure resident of village + merchants best interests. Process - Roy will report back to

⑥

board, not one person making a decision. about 800 members
Int → diverse interests - need balance. Viability of access is impt to merchants in village. access on lower island is limited.

⑤ Sim Keene - NCBBA David Joyner
SOIC3 chair cry - 1964. work in
Cape Hatteras Scholarships
Sponsor of Jr. Ranger program;
~ 4,700 members, most in NC, VA area;
not for a particular group.
13 member board of directors,
will ~~reach~~ discuss consensus w/ board -
other decision have auth to make -
website, 1/4 mtgs, 1/4 newspaper.

See
MISSION
Statement

⑥ Jason Pylander - Def of wildlife
500,000 members. Species are T+E +
habitats. preserve wildlife resources.
Auth. to speak for org, for sign-off
will inform + consult w/ directors but
Jason makes decision.

⑦ Greater Kinokuni

①7 Pat Weston / Avon Prop ~~Assn~~ - Franks

Depts have
decision authority

1975 Civic Assn.
1993 250 Rod, waus, Salvo - Sunny Duke

405 property owners, about 875 people
can make decisions, meet 1/4
w/ Board of ~~decision~~ directors.

keeping of historical w/ of life +
Recreating, bird watching, photo,
hikey et

access for Semast Phys. challenged
Because of enjoyment. Maint.
Uniqueness of islands.

①8 Patrick Paquette - Res fishy Alliance

Rights mobile sports fishermen
for fishermen access. MSF coalition
of sport fishing clubs, preserve cultural
lifestyle of on beach fishing

RPA auth to negotiate and for
MSF - may need consult but have
auth to sign off - sport fishy
2nd lgst outdoor activity,

①
 (P) Ricky Davis - Cape Hatteras Bird Club
 1988 - Study of birds + nature. 170
 members. Represent + support from
 Currituck Bird Club (900 members)
 promote understanding, conservation
 of wildlife of outer banks +
 surrounding areas. Represents bird
 community. Support preservation +
 protection of habitat, Birding ethics,
 Representative can speak and
 make decisions at mtg, but membership
 of club req Paper ballot - not always
 works on majority vote

② David Estem - Ocracoke Cove + Bays
 #2 Beach in Country, Non profit,
~~has~~ voice for businesses to
 promote tourism. Monthly mtgs to
 support community functions,
 take back decisions to
 officers. Village is surrounded by NPS
 would not like access points
 lost, would like to see more
 access points. Chg in Beach
 impacts business

9
 20) Simleyans - Cape Hat Rec Alliance
 walking, birding, etc. Some vehicle
 users - Members updated by email
 mtgs, centered w/ convenient safe +
 app. ped. access. Rep can
 make decisions - to be discussed
 further

22) Judy Swartwood -
 local business interests, 185
 businesses, email, fax, + US mail
 to contact. Decisions by NB
 affect businesses. Business owners
 interact w/ a lot of others + understand
 their interests - presu park but
 have access to the pk. Judy has
 authority to make decisions

23) Steven Kayota - Hatt Isl. Homeowners ~~Club~~
 400 non-res + prop owners
 favor ped. only access in front of
 villas.
 enforcement, ped safety, conflicts
~~best~~
 4 directors, decisions based on
 consensus of directors

24) Lowell Merritt - Texas ATM
 Student.

(10)

CRPA - motemzolt Red access (John Couch)

Bob Davis - Cherry Pickery & Regulations

1970 Gen Auth Act - Amend Act -
 One System "National PK System"
 one common std for all PK units
 1978 - Redwoods, no derogation

1916 Organic - NPS can make regs to manage PKs

2006 Mgmt policies - discession from
 Organic act to create policies to
 manage.

Resources + Values - plants, animals, vistas,
 opp to enjoy resources + values -

1.4.7.1 Unacceptable Impacts
 not impairmt, but not accept in PK
 not allowed

1-5 appropriate use

Civic Eng - go beyond minimum

Values - lumped w/ "Resources + values"
 includes human activity - opp to
 enjoy these resources w/out impairmt

(12) Data

- definition of "Values" in legislation
- what are "unique species" who determines this?
 - ↳ Sol. don't know process, need answer to this. Species monitoring ^{inventory} + System (new) is part of this

- Native Species - what is starting date of them living there?

- Marine Species (veg, fish, benthic) - are there any unique? Does CATHA have "unique" species

List

of Species;

managing doc, etc

Carolina Salt Marsh Snake - close to any occurring @ CATHA.

- can pick or choose state or locally listed species managed + do they have to be protected @ the same level? Species usually have diff guidance for mgmt.

- Extent to which ^{NPS} policies are Binding? - cannot be enforced against NPS in court. NPS follows ~~the~~ management policies, Regard as binding Best effort to interpret the organic act.

Rt Son Hwy 12
S of Avon Fishing Pier
K.S. Beach Club

13

1 Auth 1937 Why not called recreation
 amend 1940 area -
 estab 1953 Nat Rec areas "Proj"
 for admin purp shorter name would be
 used. Bt 1961 + 1962 to add nat Seashores est.

till 60's used rec area, around 1965 chng to
 national seashore. does not chng original name.
 Org deeds up till 60's used rec area,
 after 60's use seashore.

Act - Fed gov't would not spend \$ on land,
 needed 10,000 acres of land.

hunting - context was migratory waterfowl
 is this part of the discussion? Not a direct
 focus but could be related to access.

Is enab leg an order of Congress under
 Redwood?

Role of State in hunting + fishing - NPS
 relies on state agency for licensing, go
 by state hunting + fishing regs - Don't
 have teal hunt.

- ① Offroad Vehicle Use - Special Regulation.
36 CFR 7, Special Regs (PK unit Sp)
ONS 8.2.31. mgmp policies

See Slide - Sp Reg vs NCT
History of ORV use

BMP - last one 1984, needs updating

See planning perspectives

Visitor use

NR mgmt - update ORV Plan

Sup order #7, Revised in 2006, more
flexibility in def of safety closure, not
 tied to 100 ft coord. order is in
effect as rewritten.

RT 12 - why built if it is "wilderness" -
part of deed - Roads covered by deed.
Wilderness was before wilderness

Vehicle

Use is not consistent w/ 36 CFR 4.10

wilderness → Quality of Resources @ 1937.
Areas w/ designated wilderness to
edge of the Road - essentially
zoning the land. - Shenn
roads adj. to wilderness are
normal

(B)

ONV Types - personal v. administrative
 30 CFR 1.1 (1.2?) Laws do not apply to
 NPS use.

Process is determining level of acceptability
 in terms of level of impact.

* Formal FACA - worksheet
 explaining regulations.

Isn't there designated ONV Routes (from
 establishment) from the beginning?
 need to be designated by Special
 Regulation

where issue has been litigated +
 know what it means, case law
 would be helpful. Instead of
 re-debating decided issues.

M.M. going to talk about fiscal
 possibility in the future.

Is the park addressing recreational
 conflicts w/ any document? Not through
 addresses & implement docs.

(16)

will look into EO's that address
use conflicts.

NPS does not suppress ADA.

~~+~~ indirect + cumulative impacts under
~~NEPA~~ →

* Inc 20-12 term in handout.

Trends in visitation @ CAHA? fairly
steady over past 2 yrs.
peak in 2003, slight decline (2003 w right
Bros)
2.2 million to CAHA, use traffic
counters on Hwy 12, inc ocracoke ferry

ADA? - not person by person

Recreation access in the public lands -
beach + trail Rec guidelines to come
out soon. will be basic fed
guidance.

what degree of mgmt flexibility?
if it is very specific, pk does not
have discussion. i.e # of cape cod
permits in Reg and not subject to
modify.

(17)

Opportunities + challenges -

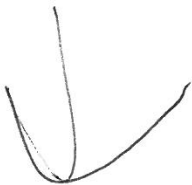
- need for legal Subboundary + guidance

NPS has a legal process (Independent Council)?
 need to ensure Subboundary - need to answer is question "Salient", necessary to move forward.

⊙ of using DEI lawyers + being stakeholders when these groups are serving them.
~~May~~ feel there may be ethical issues.

Solicitor as fact finders, not interpreters
 use as reference - help find applicable laws

Excellent scientific information + Data



(18)

USFWS

Applicable Regs

- ESA, MBTA
- National Wildlife Refuge Systems Admin Act.

ESA - NMFS also has jurisdiction

Economic analysis - impacts of designation

ADDED layer to the consultation process

2 forms of consult. not identical
(jeop, adv. modification)

Sect 4

next step after listing = Recovery
3 - delist, downlist, uplistSect. 7 (a)(2) - Consult w/FWS, Formal
consultation that results in a biological
opinion, if no jeopardy, or jeopardy
incidental take

Section 9 - prohibition on take

Sect 10 - issue permits to allow
incidental take to otherwise lawful
activity - applicant needs a
habitat conservation planSect 11 - enforcement, civil penalties
Criminal penalties, Citizen Suits

(90)

Occupied vs Unoccupied - homes, access, etc?
 habitat that is occupied @ the time
 of listing - occupied by species not people

Section 10 - who allows for the permit.

NOAA would issue the permit

Incidental take statement vs Section 10
 permits (fed vs. non fed)

Critical habitat - designation throughout
 part of reason is b/c homes were
 included - land adjoining house
 could be critical habitat.

How often are recovery plan
 mandated to be updated? 5 yr
 review of species is a requirement.
 contents of the plan, no requirement for
 updating.

what does "Jeopardize exist. mean"
 diminish survival + Recovery appreciably

MBTA - commitment of US for migratory
 birds btw countries

Native to US

50 CFR 10.13 - list of
 species.

② MBTA

destruction of habitat alone NOT MBTA violation.

2003 FWS Policy Memo - See regarding CWR

EO 13186 - Now MBTA applies to the NPS

Draft interagency MOU b/w FWS + NPS, near final draft.

take in ESA vs MBTA

looking into answer @ both

Commercial vs non-commercial take?

B/C MBTA deals w/ other countries, does it carry more weight?

why were some birds chosen + not others - protects ~~the~~ birds that migrate between them. listed @ family level.

comes to agency priorities - focus on species that are rare, declining, or special migrant concern.

(21)

Releasing hawks @ Pea Island
contrary to recovery.

Administrative procedures act, provides
additional standards for judicial
Review of federal agency actions.

Pete Benjamin.

(A) look for Fed Reg notice on
critical habitat.

economic analysis - has anyone talked to
residents? contracted out, doc has
input from @ least OBPA.

when released will be fed Reg,
press release, local paper notice
also send to Reg-ney email.

concerned public hearing less than 30
days, seems hurried.

Any other deq. critical habitat
CATA? Not at CATA but @ CARO.

FWS decision pts → Pete B primary for
consensus document need to be
vetted to regional director or
director. Will sign any non-
Sleep opinion, Separately by Reg Dir.

(22)

Comt on proposed rules from Region.

If Secondary finding what happens, opinion has reasonable + prudent alts. then up to agency to see if they can implement. If pick an alt measure, likely agency has to redo all compliance.

PD
to
get
info

what is current # of pr of FTPL and how long must goal be maintained? in 200's?? 400 in Southern Unit is goal.

Do they count fledglings? yes count. Survival, have criteria for fledgling success

FTPL have to be over 2,000 over 2 5-yr cycles - min of 10 prs. | will not break down by region for recovery

USFWS issues permits to USDA wildlife services @ airports. would deal w/ PAA in Sec 7 cons. if endangered species @ Beach

(23)

Species protected where ever they occur

Mike Bryant - Pea Island NWR

1938 - as a refuge and breeding ground for migratory birds. Fee simple acquired.

"Other wildlife" inc T+E Species.

1997 NWRIS Improvement Act.

management of Populations through mgmt of habitat.

(*) Pea Island not on the table → entirely on to itself, Comprehensive Consu. Plan ^{get}

Compatibility determination -

1- look @ use, need to be compatible wildlife depend. Rec. part of 6 uses, if no is it compatible?

does it interfere w/ purpose of Refuge or mission of refuge system?

shorebirds now, move through in leg waves in spring - winter JPR uses Beach for roosting

Raptor Restoration → capture band + release
Not releasing new birds!

(27)

raptors are highly migratory

diff w/birds + demerle ch - No
at pea island do not seem to
grow crops for birds.

Tues 5/22 07

Etiquette -

interactions w/ media, legal issues, etc.

Facilitator + Mediator → could be w/group
or indiv. • let team know when feel
something wasn't done right.

Represent groups and put aside
personal agendas.

Don't speak on behalf of other orgs -
only speak for your own position.

Role of people who don't have an
org → have committee mems, A/T,
interested public - mtgs open,
time to allow public mtg,
Submit written cmt to committee

(25)

public mtg - sending things to a public authority make them public
 Some mediator comm. w/ park are NOT FOIA-able.

Q- NEPA mtg can speak as indiv but want to be aware of groups interests. want to be aware of your group; Reg. as a whole. Be clear about who you are representing.

Q- would help if agenda + action items were posted. A lot of questions and the public would like to know - make mtg summaries available to the public.

Remediate prior violations? can not erase past, would like to focus on today going forward.
 Need a discussion of imperatives of any messages, diff in news, etc.

Chat rooms - things may appear that are not opinion of group - communicate so it can be addressed.

(26)

Public relations - once it is broken, it's broken
 If one person does it, hard not to
 respond.

know we are not @ a starting point, and
 will have to adjust before becoming
 "official"

NO Surprises Rule - Reduces anger

Grad student research - don't feel NPS
 has has right to consent to interviewers.
 individuals feelings? would like a heads
 up about possible calls, want to know
 they are legitimate.

Need heads up on ^{confidential docs} ~~controversial~~
 especially w/ a public authority.

Ground rule → would like to see outside
 interviews at other times besides the
 mtg.

Mike E - would encourage group to
 develop ground rules on this.

Concerned about students impacting
 dynamics, don't want them to try to
 facilitate.

27

want to get GAOA protocols out for an example.
do not develop a report in the middle of the process.

need to figure out state law; tape recording

Issues
w/ bullet
#3

USFWS - Rules cannot be as draconian as bk
of the way rule making works.

bullet #3, think needs more teeth - need
ability to respond back

Substance - about how you respond, not if
you respond.

look @ what extent to moderate websites.

when meet as a group - need to address
bullet #3, give it teeth - need education,
things everything that can be done.

want to also address those who initiate
legal action - do not want that
disruption.

Question

about + public cmt, that it is

for public, not proposed participants.

28

visioning - build on past and dream what might be.
 way of manage present from future

Benefits

wildlife, visitors, ~~people~~, future generations
 business owners, gas Co, @ manufactures
 Contractors + mediators,

non-users those who hold future

effective management system
 = affordable, (simpler than new or add. funding)
 - Variety of visitor exp w/out unacceptable impacts
 - no unacceptable impacts
 - looks/address all associated impacts
 - protects wildlife
 - provide alt. means of transp-

COST effective

Wand-converger belt
 everyone ~~is~~ happy
 Abundant pop of Native wildlife



(29)

Group ideas
 who benefits - communities, other pks
 everyone, Citizens of NC,

Characteristics:

flexibility, common sense, logic, finances,
 adaptability, meets diverse mandates of NPS,
 meets legal req, prov for survival + recover
 science based, enforcement, education
 manage habitat vs habitat management.
 provide for survival + prot of all
 wildlife, consider future visitation trends
 (ie bilingual), respond to env. chg
 time component for future generations,
 works w/ future personnel, sustainable
 public understands reasons for actions
 for maintenance.

magic wand:

Fair + equitable access + resources
 Resource protection
 mutual respect for each other + Resources
 unbiased managers
 key needs of constituencies are met
 Perfect Science - precautionary principle
 Birds would adapt to the humans
 Increased public amenities
 truly wilderness experiences
 create habitat

+ ability to
 use
 know

(30)

- Common Sense instead of Safety closures.
 - everyone Satisfied
 - money to implement
 - adequate funding for pt clusters
 - envision effects of rising population + rising sea level.
 - rebound bird + turtle populations
 - healthy living, recreation, mental health
 - general well being
- Gathering Data -

Significance under RFA - determined by situation

- Concerned about geographical area covered, when process moves along will be taken into consideration.

looking @ qualified indiv. - use experts in the field

Small business - does this inc indiv. rental properties? If indiv are a second home - want to make sure they are paying taxes

Commercial fishermen = small business?

(32)

OB Tourist Bureau does not include Hyde Co.
Isolation creates a problem for
national guidelines.

Lg Span - Spills outside area - need
Contractor on the ground.
When economic data are collected,
reach out to the community.
Some businesses may not be
represented by chamber of commerce
tourism bd, need to beat bushes +
find people.

Livelihoods chged over yrs. - Commercial
fishing → tourism, chg of way of
life on the island.
Weekly house rental owners also
sm businesses.

Suggest that look @ current data from
Cape Cod area - decline, in area
bk of closures Wethly, Toro,
Cape Cod Chamber of Commerce.

have a sow and then have mads to
accommodate it.

Everything done affects tourism - Closure of
Cape Pt = closing gate to tourism

(33)

make \$ b/w easter + thanksgiving.

Use of data + cred Sci Lit →

does that apply to both esent Nat?
NEPA both nat + Soc Science.

Nat Fks cm. mgmt act - more toward nat
Resour.

Data - econ info related to wildlife, etc.

Tourism bd has data - broken down

do not collecting tax
properties

Tourism on website

Hy de Co = Okracoke

Data based on gross receipts.

track \$ and people (yrly economic
Impact Study).

Access - other ways to access. Access @ Search
in other places.

would like make sure use real data =
need to find data from all not just
one. Don't extrapolate. Has to be
some extra polation.

Need real data not false data

(34)

Usable methods - for econ analysis

of NE Fisheries Data

Cost Effect

want Current Chart w/ areas open to
Peds, CNS, etc. Lg map.
fluid, done day before mtg.

Business loans Structured - ^{man gages} higher in
Summer, lower in winter

for OSTUS econ study - please
direct cmts to them.

What is Concensus → group be involved in
defining Concensus Group will define to
address unique situations.

Process is part of Concensus, cannot just say no,
Wk to meet own interest + interest of
others.

one party can hold group hostage thus
minus Rule

Looking at "It's ok enough that I
won't oppose it" need to also
define what will happen to you don't
Reach Concensus,

(35)

May informally test Cencensus issue by
issue, but formally on date pgs.
who determines when we go to next
issue

W/out minutes, look @ Summary
Single list procedure, + St record of team
Advisory comm