

**Cape Hatteras National Seashore 3<sup>rd</sup> Collaborative Workshop:  
Current Regulations and Setting the Stage for Negotiated Rulemaking**  
Nags Head, NC – October 22-23, 2007

**Meeting Notes<sup>1</sup>**

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

**Welcome, Agenda Overview and Participant Check In**

The meeting began with a welcome from Mike Murray, Superintendent of the Cape Hatteras National Seashore.<sup>2</sup> Patrick Field, co-facilitator from the Consensus Building Institute, gave an overview of the intent and agenda items for the two days. The workshop participants shared their views on current issues and concerns, including the lawsuit concerning Cape Hatteras National Seashore filed recently against NPS and others, the recently filed Notice of Intent to Sue, and the implications for the Negotiated Rulemaking (Reg Neg).<sup>3</sup>

**Scope of the Regulatory Negotiation and Relation to the NEPA Process, the Interim Species Management Plan, Section 7 Consultation, and Other Efforts**

Sandy Hamilton, National Park Service (NPS) Environmental Quality Division (EQD), presented how the Reg Neg will be linked with the Hatteras National Environmental Policy Act (NEPA) process.<sup>4</sup> Before NPS can make a rule or certain decisions they must go through an environmental planning process. The Hatteras NEPA process will include outreach, education, and other topics that go beyond what will go into a rule. The plan is for the committee's consensus alternative to become the NEPA preferred alternative, and if not then NPS would come back to the committee to discuss. Ideally, the proposed rule and the draft Environmental Impact Statement (EIS) will be published simultaneously, and committee members will attend any public comment meetings. NPS will review public comment on the draft EIS, and would like the committee to do so, before the committee refines a consensus agreement on a recommendation for a final rule. If the committee does not reach a consensus, then at least differences will be understood, as will the way the differences factor into NPS decisionmaking. The Record of Decision (ROD) is signed by the NPS regional director, and the ROD or a ROD Summary is published in the Federal Register.

A coordinated timeline is important, so the committee's work is available to the NEPA process, and the information developed by the NEPA group is available to the committee.

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<sup>1</sup> While these notes summarize presentations on federal statutes, regulations, and policies they are not intended as a complete description of those requirements. For complete and accurate information, please see the specific federal statute, regulation, or policy. Workshop presentation materials are at <http://www.cbuiding.org/hatteras/>.

<sup>2</sup> Cape Hatteras National Seashore, CAHA, the Seashore, and Cape Hatteras are used interchangeably.

<sup>3</sup> Negotiated Rulemaking and Reg Neg are used interchangeably.

<sup>4</sup> See the presentation and handout/timeline at: <http://www.cbuiding.org/hatteras/>.

Laying this out in the beginning of the Reg Neg hopefully will prevent disputes later on about the two processes going in different directions.

Some workshop participants want to be sure the alternatives are on the table in the NEPA process, and they want the Reg Neg committee to discuss the analysis, including the socio-economic) analysis, that has been done.

***DISCUSSION AND QUESTIONS:***

Discussion with participants included the following key themes and issues (which have been grouped for clarity):

*The Starting Point:* NPS must consider “current action continued into the future” (status quo) as one of the NEPA alternatives. Some participants want the starting point for negotiation to be a beach entirely open for driving, as it was in the 1970s. Written comments from organizations and individuals are welcome on the preliminary options developed for the NEPA process.

*Options NPS Can Consider:* NPS can only consider legal alternatives, and must describe why any alternative is deemed not reasonable. Some participants want the committee to get information on the alternatives NPS has looked at, including those that have been rejected. NPS will let the public know the options that have been determined not to be reasonable because they are outside of NPS’ mandates or technical or financial capacity. NPS will need to comply with federal guidelines on serving people with disabilities that were developed by the U.S. Architecture and Transportation Compliance Board. Some participants want to discuss with NPS whether a management option is legal. NPS will look at requests to test new management strategies or pilot projects on a case-by-case basis, and the Solicitor’s Office advises NPS if an approach is legal or not a reasonable alternative. NPS will leave a place for the committee’s consensus agreement among the alternatives to be fully evaluated.

*Cost Evaluation:* NPS must consider the cost of implementation when reviewing options, and there will be a cost description for each alternative. NPS hopes to think creatively about funding concerns and options.

*Science and Background Information:* NPS will make Reg Neg background materials available to the public. NPS’ reference list of all the documents publicly available is being developed. Information will be available to the committee to assess the different alternatives and understand the impacts and impacts analysis. Committee members will decide collectively what information is most important for them to review. Some participants noted that new relevant data should be welcomed in the Reg Neg.

*If the Committee Does Not Reach Consensus:* The intent is that if the committee fails to reach consensus on a complete alternative, NPS will incorporate components that are agreed to into a final alternative assuming they are compatible. If there are two options on an issue, NPS will decide which option to include in the list of reasonable alternatives. Alternatively, NPS may decide to include both options in different alternatives.

*Timeline:* Some participants expressed concern that if the committee negotiates according to the draft timeline, DOI might not keep pace on the NEPA process. Without a Reg Neg, the NEPA process could take until 2010, and the NEPA schedule is currently moving as fast as it can regardless of the Reg Neg. All NPS can do is keep DOI informed of the importance of proceeding along the timeline.

*Proposals:* A concern was raised about the packaging of elements of agreements and revealing information – for instance a stakeholder group might indicate a willingness to give something up in exchange for something else and then later on the two pieces might be separated. It will be important for participants to be clear about the circumstances or conditions under which a given option would be acceptable. Nothing will be put into a packaged consensus agreement that is not agreed to by the committee as provided in the groundrules. Ideally, the group discussion and interaction will generate ideas that may not have been thought of or considered.

### **Intent Behind the Legal Action and Discussion**

Derb Carter of the Southern Environmental Law Center (SELC) shared his perspective on the lawsuit filed last week by SELC on behalf of National Audubon and Defenders of Wildlife.<sup>5</sup> The lawsuit is aimed at the Interim Management Plan that has been adopted by the Park to manage the seashore until a final plan is put in place. The parties are challenging that the Interim Plan must be sound enough to protect the resources.

Mr. Carter highlighted several things that the lawsuit is *not*:

- a challenge to a final plan that could emerge from the Reg Neg or any other process
- a request that the court decide or order what could be in a final plan
- a challenge to what process the Park uses to develop a final plan
- a request to entirely prohibit driving on the beach

He explained that National Audubon and Defenders of Wildlife chose to file in late October for three reasons:

- (1) The organizations have a longstanding concern about the Interim Plan. The Park did not choose the environmentally preferred alternative. The Park asked what they need to do to meet a minimum level of protection, were told, and the Interim Plan falls short even of that minimum in terms of resource protection.
- (2) The organizations have concerns about the real and measurable loss of resources CAHA is required to protect. 2007 was the worst year for waterbirds and shorebirds on Cape Hatteras since records have been kept. The declines are significant, and the parties attribute a significant cause of that to regulation of ORV activities that have an adverse effect on shorebirds and nesting activities. The complaint details the species

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<sup>5</sup> See <http://www.southernenvironment.org/cases/hatteras/index.htm> for information on the legal action.

decline numbers. These organizations have millions of members who expect them to step forward when wildlife is not protected, and they felt they had to step forward.

- (3) The organizations have concerns that if the Interim Plan stays in place, as is, for several more years while a Final Plan is developed, given the trends, there would be no birds left to argue about or protect.

The organizations are present at the workshop and are interested in continuing participation in the Reg Neg and being at the negotiating table to develop a long-term plan. The organizations decided that immediate action was more important than participating in the Reg Neg. The attorneys who signed the complaint were asked to affirm that it was accurate and verifiable, and both Mr. Carter and Jason Rylander indicated that to the best of their knowledge it is true and correct.

Mr. Carter noted that there are other groups participating in the Reg Neg who have brought related lawsuits that are currently in litigation. Mr. Rylander noted that since 2005 several Notices of Intent to Sue have been filed with NPS, and the organizations believe they have been up front in expressing their concerns. The organizations also described their process for initiating litigation. At National Audubon the national board and top staff must approve. At Defenders of Wildlife, the vice president for conservation law, the vice president and president of the organization, and a litigation committee must approve.

***DISCUSSION AND QUESTIONS:***

Participants' comments addressed the following key themes and issues:

- A request to look at the effect of climate change on bird populations.
- No organizations represented at the meeting have called for removal of any other organization, though some individuals' rights to fill certain seats have been challenged at different times.
- There is a desire for all parties at the table to be committed to the negotiation process.
- The protocol participants agreed to at the last workshop included no blindsiding, no surprises. It is the breaking of that agreement rather than the filing of a lawsuit that upset some proposed Reg Neg representatives and alternates. They wish the parties filing the suit had let them know ahead of time that the suit was coming.
- The increase in ORV management on the beach is correlated to the decrease in Piping Plover, which suggests that the more closures the lower the success rate.
- There's a concern that representing clients in lawsuits might limit the topics and flexibility of certain participants or their ability to talk openly and honestly. The representatives of the organizations responded that the lawsuit is about the Interim Plan and they have not committed to anything with respect to the long-term plan.
- The distinction between ORV supporters and environmentalists should not be drawn in black and white, there is a lot of overlap and the stakeholder groups participating have multiple, varied interests.
- There was a request for the organizations to drop the lawsuit.
- Let's move forward with the Reg Neg.

## Information Needs

Mike Murray and Sandy Hamilton of NPS presented on information and data relevant to Cape Hatteras National Seashore (a) that are already available, and (b) that NPS has identified as needed.<sup>6</sup> The bibliography NPS has compiled of relevant documents is over ten pages long, and will be available in the near future. Participants said they would like digital copies of all documents, so NPS will look into making one set available digitally to all participants.

NPS needs to do a cost benefit and regulatory flexibility analysis, and has hired Lois Berger to assist with the NEPA process. Louis Berger has subcontracted with Research Triangle Institute (RTI) to do the economic study plan. RTI will develop a study plan and then get feedback on it. The Office of Management and Budget (OMB) must approve it before the study is carried out, and the study could be done by RTI or another entity.

### ***DISCUSSION AND QUESTIONS:***

The following are the main themes and participant comments from the discussion (grouped for readability):

*Vogelsong Study:* There are concerns about the Vogelsong study, how and when data was collected, and whether it provides useful economic data.

*Parking and Traffic Data:* Consider which types of parking should be included (only legal, informal, spots in towns, those along Highway 12, those on private property, spots provided by Dare County), and evaluate all types to understand current parking demands. Some parking spots have been lost in the past decade or two. Traffic data on the number of vehicles on the beach being collected by NPS is not yet available. The goal of that collection is to make data available on an ongoing basis that would show use at different times of day and year. The technology for that traffic count is designed for non-road areas, is remote, and tracks traffic past a fixed point. Parking spots must have walkways to the beach to count as beach access. Beach parking should not be considered a solution to the parking problem.

*Dark Skies Research:* The NPS night skies team will come do a baseline inventory at Cape Hatteras and will come back to do more detailed research if requested. Involve the county to develop a dark skies ordinance if appropriate. Assess sources of ambient light pollution, including private, county, and utility lighting, ORVs, homes along the beach. Consider how lights at night affect shorebirds and sea turtles.

### *Other Information Requested:*

- Whether global warming could be influencing shorebirds.
- Viewscapes.
- What happened at Cape Cod National Seashore when they implemented rules on off-road driving? What effect did the regulations have on the number of visitors, changes in visitor behavior, and the economic impact on villages near that Seashore?

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<sup>6</sup> See the presentation materials at <http://www.cbuiding.org/hatteras/>.

- The average visitor and their opinions.
- The economic impact if you allowed driving on places where driving isn't currently allowed such as in front of the villages.
- Reproductive success rates on colonial water birds and some other species.
- Wildlife in areas surrounding CAHA to learn where the wildlife is going.
- The staffing, resource and enforcement implications for implementation of any consensus agreement.
- All complaints on CAHA, not just safety violations, and whether they involve visitors.
- Predation reports, summarizing Cyndy Holda's weekly updates and predator control data.
- Tourism (in different seasons) and commercial and recreational fishing. Review an entire year to understand the full cycle. Each season is very distinct.

*Please Include on the Resource List:* the "Geomorphic Effects of Beach Driving" study and management plans of other areas.

*Other:* The weekly Beach Access Reports are very helpful. There was a desire for NPS to share CAHA budget information (income vs. services) with the committee, since money will be a factor in the final decision. NPS is open to accepting a high quality economic study for topics beyond what NPS will be analyzing funded by another entity if it followed approved protocol. It is very important to many participants that studies undertaken on CAHA be conducted by objective, credible scientists who have demonstrated expertise in that area of study, that all the area of study (methods then results) be sent out for peer review, and that all those comments get sent to this committee so everyone can see them. A participant suggested that people involved in the Reg Neg commit to support (and lobby for in advance) a budget increase for NPS as needed to implement any consensus outcome.

### **What is Contained in an ORV Rule**

Mike Stevens, of the Department of Interior's Solicitor's Office (SOL) and Sandy Hamilton (EQD) presented what's included in an ORV rule.<sup>7</sup> They described the process mandated by statute and agency policy that any agency must undertake to promulgate a rule. At the end of the Reg Neg, the Reg Neg committee might not write the rule itself, but would develop the rule's intent and purpose, and then an experienced rule-writer would write the actual text. Sandy explained the steps of getting a rule approved. The Americans with Disabilities Act will apply and economic impacts on small businesses also will be considered, as required by the NEPA and rulemaking processes.<sup>8</sup>

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<sup>7</sup> See <http://www.cbuilding.org/hatteras/> for presentation materials and details on the different requirements that ORV regulations must follow, including requirements for public participation and input.

<sup>8</sup> See [www.accessboard.gov](http://www.accessboard.gov) for the new requirements.

## Considering NEPA and Regulatory Analysis Related to Socio-Economic Issues

Carol Mansfield, a senior economist at RTI, presented the protocol RTI is developing for how to do the economic analysis required by NEPA.<sup>9</sup> They'll start to do the analysis after the plan has been approved. In the coming months, they'll be contacting stakeholders to learn which businesses are likely to be affected by a regulation and what data they might have. The goal of the analysis will be to present the net benefits for each alternative, and to compare each alternative to the baseline. RTI will start by giving an overview of how things stand currently, then look at how things would likely be different with an alternative management plan, and then project that scenario out ten years. In the end, RTI will be looking at overall net benefit, which they'll do by evaluating what is expected to happen in different sectors and evaluating the various users that will be affected by the different management plan alternatives.

### ***DISCUSSION AND QUESTIONS:***

Participant discussion and questions centered on the following themes (grouped for readability):

*Geographic Scope:* The study will look at as broad a geographical scope as necessary, depending on the geographical reach of the regulation. This could mean businesses on the whole island, Currituck County, state-wide impact (Dare County is one of four donor counties in North Carolina), transportation corridors as most people drive here, and international impact as there are international visitors and some local businesses are selling products internationally.

*Suggestions for Data and Information to Include In the Research:* Local resident spending (both mean and range); revenue received by businesses and people who rent out their houses and earn revenue and may not report it; people who don't currently visit the beach but might in the future (they are hard to get data on); impacts to future investment (on building lots, construction and resale of homes) compared with baseline projections; surf fishermen (who are on the beach primarily in the spring and fall); occupancy rates at motels, campgrounds and rental units following years with closures; commercial and recreational fishing industries; visitor cancellations due to storms, gas prices, housing markets; Park's value to park users as well as non-users (OMB isn't receptive to most methods for measuring this, although it can be an important part of discussing alternatives); people who visit year after year and don't participate in tourism-related activities; a time horizon longer than 10 years (which is short for conservation interests); Currituck County; visitor rates on other national seashores such as Cape Cod after extensive closures; regional ripple effects of closures.

*Potential Sources of Information:* Visitors' bureau from food and lodging tax; Department of Transportation; five island management companies; rental agents (to find landowners of rental properties). RTI will look for verification of information provided by businesses, including asking a range of people their predictions. They generally find consistency across the range of anecdotal evidence.

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<sup>9</sup> See Carol's presentation slides at: <http://www.cbuiding.org/hatteras/>.

*Concerns About the Vogel song Study:* Some participants expressed concerns about the Vogel song study, including the lack of data collected in the villages. Researchers will use data that has previously been collected then internally evaluate for each study's quality and methodology to determine how best to use it. RTI would identify any concerns they heard about the study. OMB will not permit RTI to use studies that are not high quality. RTI will make all assumptions transparent and if the Vogel song numbers are very different from what's in other surveys they will be separated out. The NEPA process is the place to challenge the study, and participants should forward any complaints in writing to Sandy Hamilton, and she will forward them to NPS' chief social scientist.

*Opportunities for Additional Studies /A Visitors' Survey:* RTI is *not* planning to do a visitation study at this time, although they will do what NPS requests. The plan being developed is to survey businesses rather than visitors. Surveying visitors is expensive.

If RTI does a visitors survey, the questions would fit with actual proposed alternatives to provide information on analyzing and comparing the alternatives. RTI is open to additional research done on relevant issues by contractors who are trusted by OMB. Organizations in Dare County, possibly including the visitor's bureau, would be interested in potentially funding additional work if RTI developed the plan for a visitors' survey. RTI could prepare the protocol for a survey of visitors. A participant requested the survey attempt to capture the reactions of residents who might decide to leave depending on the regulations that are put in place. Any additional survey must meet survey standards and OMB approval. Others cautioned against accepting money from stakeholders who might be trying to advance particular positions. Carol welcomed participants to be in touch with her about the study and other potential efforts.

*Other:* Do the study through an entire year because use and visitation in each season on Cape Hatteras is so different (RTI plans to survey businesses as close to the high season as possible). The discount rate must be justified because the rate for conservation and commercial interests may be different (RTI usually does their analysis with a 3% and 5% discount rate). Any segment of visitation that decreases may have a large impact on Dare County revenue because it might lead to a decrease in tourism-related tax revenue.

Individuals who want to give input can do so and the facilitators will coordinate with stakeholders and the NPS about the plan for the study.

### **Discussion on Draft Groundrules**

Participants reviewed the draft groundrules, which were developed by the facilitators as a starting point for discussion and distributed to participants at the end of the first day of the workshop.<sup>10</sup> The goal is to get feedback on the draft during this session and over the coming weeks so that when the committee is convened they can be approved relatively quickly and unanimously. The participants then went through the draft groundrules section-by-section.

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<sup>10</sup> See the draft groundrules at: <http://www.cbuiding.org/hatteras/>.



***DISCUSSION AND QUESTIONS:***

Participants raised the following ideas, question and concerns (grouped together for readability):

*What Constitutes Consensus:*

- In the feasibility assessment consensus was proposed as -- all members minus one, so that one person couldn't block the group and if more than one member had significant challenges the group would have to address them. NPS must be part of any consensus. The committee will finalize the definition of consensus once it is formed. This not a majority voting process and the goal is to be closer to unanimity than a majority.
- Should consensus be -- minus one, two, three, four, or five, or 80%. Some participants were concerned that minus one or two might give a small number of people a lot of power to block a decision. Others felt strongly that getting close to unanimity is important.
- A group of three, such as the parties that sued recently, should not be able to block an agreement everyone else supports.
- There is a concern about the time needed to complete the Reg Neg process and consensus minus two or three might be faster to reach than consensus minus one.
- Some opposed minus three because of how seats were allocated to different stakeholder groups, and an entire stakeholder group could be left out.
- There is a concern there could be spoilers at the table who will undermine agreement.

*Confidentiality in the Negotiations:*

- How can participants be frank and have a problem-solving perspective if people might use what is said against them?
- Meetings of the full committee will be public, and anything said in public should be considered "on the record."
- The goal is to create a forum for people to be creative and explore new ideas without having that creativity used against them.
- Committee members will need to be clear which documents can and cannot be distributed to the public.
- There are ways for the facilitators to keep information confidential.

*Lawsuits:*

- Everyone can reject an outcome by suing or taking other actions. If people can sue why would they negotiate in good faith?
- If people reach consensus on particular items in a consensus agreement, they are saying they will support (or not oppose) those items in public forums.
- It is unlikely that a judge would support a suit brought by one of the decision makers who signed onto an agreement in a consensus rulemaking.
- Can an attorney representing a client in a lawsuit and sitting on the committee be flexible and fully participate in discussions? Attorneys can negotiate a long-term plan.

*Representation and Participation:*

- FACA approvals are for individuals to sit at the table, not for organizations, so if both the member and the alternate filling a seat leave, a new individual will have to be approved.
- In organizations where a proposed representative or alternate left over the past months, those organizations have put forward new representatives, who are being reviewed with other proposed representatives and alternates.
- Should the groundrules enable committee members to demand that someone be removed?
- Committee members will have the option to abstain or stand aside from a decision if they don't want to block forward momentum and they cannot agree to something. There are gradations of saying -- No. (Clarify in section VB how people who "stand aside" are counted in consensus.)

*Role of Alternates:*

- Expand on alternates' role and how that will function. Upgrade the role of alternates so they are as important as the representative (section IV).
- Clarify in the groundrules that alternates can work on committees. Clarify whether people other than representatives and alternates can be on committees.
- Committee members will be the ones deliberating and deciding. If a committee member can't be present, the alternate should be able to step right in because they've been attending meetings. They don't have any catching up to do, so the committee doesn't miss a beat if a member is absent. In some groups when the alternate has specialized expertise the alternate can participate on occasion.

*Enforcement of Groundrules:*

- What's the sanction or penalty for those who don't follow the groundrules? They will be called on it, and will have to address it more seriously, perhaps involving the entire committee. Eventually, people could be removed from the committee by the Secretary of the Interior Department.
- Enforcing Part VIII, section C will increase the value of what we are trying to do, and non-enforcement will decrease its value. If nothing is enforced, there is no value to the groundrules. People need an enforced reason to sit at the table. You shouldn't be allowed to do whatever you want and get to participate and develop the rule.
- There are zealots in all our groups whose language we will not be able to control (Section VI C). We appear to be following the groundrules when we are together but in the broader world be breaching them. Parties will deal in public and respond to each other as they feel they need to. By accepting the groups on the committee, the DOI accepted them in their normal behaviour.
- Section VIII B has been violated already and is invalid without teeth. How can Section VIII B – not using offers against another member – be enforced if members retain the right to sue?
- We agreed informally at the last workshop to no surprises, and there have been surprises without any enforcement of the groundrules or an apology.

*The Dual Role of FWS:*

- Fish and Wildlife Service is participating in the negotiation, why are they identified as a separate reviewing agency (Section VI B)? FWS has a participatory role on the committee and will operate under the committee's rules in that role. NPS will send the biological assessment on the preferred alternative to the FWS for consultation under the ESA when the proposed rule is published in the Federal Register, and FWS will have to fulfill that statutory role. FWS representatives will commit to the good faith language in the groundrules. FWS would not sign an agreement then write a jeopardy opinion. It's the FWS representatives' job to not consent if a rule would violate our statutory obligations. FWS is at the table because they think it is better for them to be part of the process than outside of it, and they still have a dual role.

*Submitting a Minority Report:*

- Clarify written comments and brief written comments in Section VII B. Use the same language throughout the groundrules. Clarify whether participants could submit written statements.
- Some would like the option for minority reports to be submitted to NPS on issues when there's no consensus (Section VI F). This could be useful in encouraging someone to stalemate the negotiation. If there is not consensus on an issue, the group will work together to write a report about the disagreements on that issue.

*Excluding Pea Island from the Reg Neg:*

- Section III C states that Pea Island will not be included in the Reg Neg, yet some said it should be part of the Reg Neg because
  - the Park enabling legislation says recreational aspects of Pea Island are administered by NPS,
  - NPS owns the beach-front and sound-front on Pea Island,
  - it was once open for driving,
  - the negotiation is supposed to be able to consider everything,
  - it is considered by some to be the first "take" or removal of driving permission from the Park,
  - hundreds of people fish there and the management is important,
  - a previous Superintendent mentioned it would be on the table when people were asked to participate in a Reg Neg.
- FWS has the authority to manage Pea Island. The Reg Neg is an NPS, not FWS, rulemaking. FWS uses different processes to review appropriate uses and management of refuges. If the refuge would be discussed the FWS representatives on the Reg Neg would be different.
- If Pea Island is not included in the Reg Neg, provide an explanation beyond that it is owned by FWS.

*Park Name:*

- Include Recreational Area in the groundrules and other Reg Neg documents, and if not, provide an explanation of when the name was changed beyond what was presented at a previous workshop.

*Other:*

- Clarify the chair role (Section VII G).
- Include all activities that occur on the beach (including surfing, kiteboarding, windsurfing, etc.) not just “recreation” in Section II, first paragraph.
- Reword Section VI F so it doesn’t start with non-consensus.
- Be consistent in the groundrules about the specific action being proposed (see Section I paragraph 2 “publish a regulation,” and Section VIII C “issues related to ORV use on the seashore”). Be consistent about how the guidelines will apply.
- Change the word “democratic” in Section VIII D.
- Use NPS as a channel for communication between committee members and facilitators to ensure that participants receive emails and materials.
- Explain Section 8 C “voluntarily curtail other means....”
- Consider use of wireless and laptops during meetings for representatives to have access to particular materials.
- Clarify whether the Reg Neg committee will produce a report.
- At Reg Neg meetings (versus public workshops), committee members will be seated at a table in the center of the room. Alternates and the public will be asked to sit around the room in the “audience.” Discussion will be for committee members, among committee members. There will be time for public comments.
- Mike Murray is the “designated federal official” required by the Federal Advisory Committee Act to keep records and perform the other requirements.

**Calendaring**

Participants identified dates they are not available to meet in 2008 and provided feedback on their scheduling preferences. CBI will take this information, plus any additional details people provide them with in the coming week or two, and develop a proposed schedule for Reg Neg meetings into 2008.

**Next Steps and Wrap Up**

Pat Field noted that everyone came to this meeting and sat together for two days and respectfully talked through things despite a lawsuit being filed last week that was a surprise to many. He encouraged participants not to underestimate this accomplishment and to view the Reg Neg process as the way to work out differences and develop the plan.

In closing, Mike Murray quoted Yogi Berra: “you can observe a lot just by watching.” He offered the following observations. Reg Neg is a relatively expensive process and if it does not have a chance of proceeding, let’s not waste the government’s money and everyone’s time. Everyone wants to start working on issues, and the next time we meet there will be a formally appointed committee. It isn’t going to be easy, and we’ll continue to build trust, and choices are simple: create the plan the traditional way or through Negotiated Rulemaking. The discussion, dialogue and input through Reg Neg even if we don’t reach consensus is far superior for me than traditional public comment, which is comment rather than real dialogue which will be very valuable in the long run. Reg Neg is the right way to

go. I appreciate everyone who shows up and continues to be passionate about the issue. We have the opportunity to solve this so our successors aren't dealing with these same issues.

**Action Items:**

| <b>Task</b>  | <b>From</b>      | <b>To</b>      | <b>Deadline</b> |
|--|------------------|----------------|-----------------|
| Submit written comments on the Vogel song Study to Sandy Hamilton ( <a href="mailto:Sandra_Hamilton@nps.gov">Sandra_Hamilton@nps.gov</a> ).  | Participants     | Sandy Hamilton | ongoing         |
| Distribute current draft groundrules for feedback.   | CBI              | Participants   | 10/26/07        |
| Submit final feedback on 2008 calendar.  | Participants     | CBI            | 10/31/07        |
| If you don't want Carol Mansfield to have your contact information for her economic study, email Ona by November 1 ( <a href="mailto:oferguson@cbuidling.org">oferguson@cbuidling.org</a> ). | Participants     | Ona Ferguson   | 11/1/07         |
| Submit additional comments on draft groundrules.   | Participants     | CBI            | 11/7/07         |
| Distribute/post all handouts and presentations from meeting ( <a href="http://www.cbuidling.org/hatteras/">www.cbuidling.org/hatteras/</a> ).  | CBI              | Participants   | 11/9/07         |
| Complete and distribute summary of Workshop 3.   | CBI              | Participants   | 11/16/07        |
| Get any final feedback on 2008 calendar and draft meeting schedule.  | CBI              | Participants   | 11/16/07        |
| Provide copies of the documents on the reference list to all participants, preferably on CD or in a web-based document depository.   | EQD              | Participants   | TBD             |
| Incorporate suggestions into new draft groundrules.  | CBI              | Participants   | 12/3/07         |
| Review legal issues about Pea Island and the name of the Park.   | NPS/Mike Stevens | Participants   | 12/14/07        |
| Review comments and revise Reg Neg/NEPA coordination steps as appropriate.   | NPS/CBI          | Participants   | 12/14/07        |