

Defenders of Wildlife

Dear Ms. Ferguson:

Defenders of Wildlife continues to have grave concerns about the proposed composition of the negotiated rulemaking committee. As proposed, the committee is overwhelmingly biased in favor of off-road vehicle proponents. This imbalance cannot be effectively remedied through reliance on a consensus process. Environmental groups and like-minded interests are woefully underrepresented and will be severely handicapped in deliberations. To ensure full and fair participation—and the likelihood of a successful result—the committee should be restructured. In particular, an astonishing number of proposed representatives are members of the Outer Banks Preservation Association ("OBPA"), giving this organization is grossly disproportionate weight of the committee. Members of OBPA who are proposed to represent other groups include: Bob Eakes, American Sportfishing Association; Frank Folb, Avon Property Owners Association; Larry Hardham and Robert Davis, Cape Hatteras Anglers Club; Pat Weston, Greater Kinnakeet Shores Homeowners Association; David Joyner, North Carolina Beach Buggy Association; Bob Sebress, Ocracoke Civic and Business Association; David Goodwin and John Alley, OBPA; Judy Swartwood, and Cape Hatteras Business Allies. Given that a number of proposed representatives did not disclose their affiliations there may in fact be others.

Moreover, numerous individuals claim dual affiliations with the North Carolina Beach Buggy Association, including: David Masters, who is proposed to represent the Nags Head Surf Fishing Club; Patrick Parquette, the designee for the Recreational Fishing Alliance, and C.A. Dukes of the Rodanthe-Waves-Salvo Civic Association. When one totals the number of proposed designees from business, civic, homeowner, and local government groups who expressly or indirectly support the agenda of OBPA and beach driving organizations, the inherent unfairness of the process is apparent. The commission as proposed is overwhelmingly biased in favor of off-road vehicle interests.

Originally, the Consensus Building Institute proposed a 28-member panel with additional seats for environmental organizations. We believe that the panel must either be expanded to include more environmental organizations or contracted to address the significant overlap in membership of many of the designees in off-road vehicle organizations.

To that end, we are disturbed to learn that the National Parks Conservation Association ("NPCA") will likely not be partaking in this process because of the concerns about their litigation over other unrelated areas of the National Parks System. NPCA is the leading organization in the country dedicated to the preservation of America's national parks and there is no other organization currently proposed that adequately represents their interests. If NPCA's participation in litigation is grounds for exclusion from this committee, what can be said of OBPA and its legal affiliate, the Cape Hatteras Access Preservation Association, which has intervened in that very last case to advance their off-road vehicle agenda.

Although we recognize the desire of CBI and some stakeholders that participants in the negotiated rulemaking focus their attention on this process instead of litigation, Defenders does not support any requirement that would foreclose pursuit of legal remedies necessary to address continuing violations of federal law and policy. But there cannot be a double standard that faces groups like NPCA to leave the process because of their litigation, while turning a blind eye OBPA's own litigation activities, especially where OBPA members comprise no fewer than ten of the committee's proposed representatives and alternatives.

Maintaining a balance of ideological and policy interests on this committee is important not merely as a point of equity, but to permit full and fair debate of the issues. Quite frankly, given the rhetoric that is frequently hurled at environmental groups and some citizen activist by some ORV users—including that some that have been proposed for membership who post on various internet forums—I have concerns about the ability of the proposed committee to work together in an attitude of mutual respect. We note that for the record Mr. Eakes is the owner of the Red Drum Tackle Shop, which maintains public internet message boards, see www.reddrumtackle.com, on which environmental organizations and their representatives, including this writer, are routinely vilified and threatened. One notable post from November 2005 menacingly suggested visiting my

office with "a 44 and a shop vac." This website and others frequently contain personal comments and threatening rhetoric directed towards myself and my organization, as well as others proposed to serve on this committee, including Messrs. Sidney Maddock, Jim Lyons, and Stephen Kayota. While I do not ascribe to those views to Mr. Eakes personally, such websites contribute to an environment of intimidation. If this rulemaking is to be successful, it is imperative that all the participants be willing to address the important issues surrounding management of CHNS without resorts to such tactics. An unbalanced committee significantly increased the risk that the participation of groups in the minority of the committee will be unwelcome and ultimately fruitless. Defenders of Wildlife urges CIB and the National Park Service to reconsider the composition of the proposed negotiated rulemaking committee to provide for the balanced ideological representation that will be necessary to achieve a lasting outcome.

Sincerely yours,

Jason Rylander

Cape Hatteras Business Alliance

Suffice to say, it is no secret that the relationship between the National Park Service (NPS) and the residents and visitors to Cape Hatteras National Sea Shore (CAHA) has been strained for a very long time now. The community here at CAHA will be very slow to recover and trust NPS again. Trust is in very short supply, less than 7 months ago we were ordered off our beaches, despite being told that would never happen. Needless to say the person or persons who will be sitting at the Negotiated Rulemaking table representing the NPS is of utmost importance to us! The fact that these two seats are currently listed as TBA is quite unsettling to me.

Given Superintendent Murray's background and biology and his experiences at Cape Cod, not to mention his willingness to accept a position at CAHA during these very strenuous times, I think he would be the most appropriate choice as the NPS representative to be seated at the table. He is familiar with Cape Cod and what isn't working there and why! HE appears to be reaching out to the community and seems to be sincere as well as concerned about the needs of the Park and the residents. If he is going to stay here and oversee this park, then he should be a participant in the reg-neg process, let him own some of the decisions that will affect this park and the way it is managed. He also is now, a member of our community. Having that NPS seat vacant, when there is a well qualified person here to fill it, makes us somewhat leery and suspicious as to whose name will suddenly appear for that seat. This needs to be rectified ASAP.

Community participation in some Park decisions will go a long way in mending some of these fences. It would be refreshing if for once the needs and desires of this community were not disregarded by the powers that be. If the actual true park users and stakeholders are not directly participating in the process it cannot work! The number one user group happens to be those who live here, the residents of Hatteras Island! We are also the most under represented group and this is a major problem. I dare say we are using the Park more than any members of any National environmental groups you are proposing for participation in this process. You are trivializing the true stakeholders by not allowing them to have direct participation in the process that will affect the lives more than any other persons that may be seated at that table.

If changes are not made in the recommendations, you can never deem the process as successful, no matter what the outcome may be, because it will be seriously flawed in spite of itself. Cape Hatteras National Seashore is very unique and it cannot be molded to fit in a pre conceived stakeholder chart. Was the purpose to find and identify stakeholders or to find stakeholders to fit into a pre conceived idea?

Last census reports 5000 residents on Hatteras Island. Half of those 5000 residents reside in the

villages of Buxton and Frisco. Please keep in mind that these two villages have no other home owner representation. The 6 homeowner groups now being recommended as members and alternates do not encompass the other half of the residents as well as the majority of out of town property owners. So one half of the residents and most of the out of town property owners are well represented, since Frisco and Buxton have the fewest number of weekly rental homes.

The lack of a homeowners group should not mean the half of our represented. The difference in the needs and dynamics of the residents of South Oregon Inlet and these of the Northern Beaches is quite dramatic. Our County agencies and organizations have to balance the needs of the entire County and cannot solely advocate for us on the same level that a local representative can. For example, the Outer Banks Visitors Bureau is a Dare County entity and needs to speak on behalf of all Dare County and of its visitors. While those of us on Hatteras Island are indeed part of the County, and we are co-dependent on each other, our needs and interests are unique to Hatteras Island, just as the needs and the interests of each of our villages is different. The resulting effect on each village by the decision made during reg neg process also needs to be taken into account. If one does not reside in our community, it is difficult for them to see the various needs of each village.

If one were to look at the Counties statistics in the area of tourism and revenues, it would appear that everyone is thriving. However that is not the case here on Hatteras Island. Unlike the rest of Dare County we are located within Cape Hatteras National Seashore, and we are just as dependent on NPS as we are Dare County. Every decision NPS makes affects our community and what may seem like unimportant or trivial items works when it comes to tourism and the big picture may actually be detrimental to those of us who live and work here. Not to mention according to the Parks own statistics, visitor use at CAHA is down by 17%. Visitor numbers have been declining for the past 3 years at CAHA. So what may be viewed as a positive trend in visitor numbers for Dare County and what is actually taking place at CAHA are not always the same.

The Cape Hatteras Business Allies must be given a seat at the table to advocate for those who own & manage businesses here and the self employed. These are the same folks who provide jobs here, so they also represent their employees. Many of these people live in Buxton and Frisco, even if their business or job is located in another village. The residents will still here, they will be the ones left holding the pieces of the final outcome of the reg neg process. The rest will return to their lives status quo, yet they have somehow taken a higher priority over the residents when it comes to seat allocations.

The local business community also speaks to the needs and desires of the visitors. We are the hosts for the National Park Service, and we should be working hand in hand with them to provide for the visitors. We cannot do that if we are not at the negotiation table. It is imperative that we have local representation – we need to advocate ourselves, because nobody else is really in a position to do so. We need to meet the needs of our guests. They are diversified, and as business owners, we participate in balancing the needs of our business, our families, our guests, and the park on a daily basis. We can provide valuable input if we are participating.

This is an opportunity for fence mending. The rules of governing ORV use within the Cape Hatteras National Seashore will affect our economy. The opinion of the hosts the Parks visitors should be desired, we should not have to be in a position of "fighting" for a seat at the table. Mutual respect between the hosts and the Park will go a long way towards visitor enjoyment. The residents, including NPS personnel will benefit from a positive working relationship between the two as well. I am imploring CBI and NPS not to overlook the people who are very much a part of this Park. It is difficult for the residents of for the most part are very angry at the Park. None of us enjoy living this way. This is an opportunity to let the citizens to become involved for a change.

Allocating those citizens to an alternate seat behind the Outer Banks Visitors Bureau is not acceptable. Cape Hatteras Business Allies members (currently 155 and still growing) joined because they agreed with the following statement: "While we recognize The Outer Banks

Chamber of Commerce and The Outer Banks Visitors Bureau, have an important role in this process, we do not feel that they will adequately represent our interests, in this very important matter,"

We have no interest in removing either of the groups and we recognize that they are valuable and their contribution is needed in the process as well. We feel the local business owners also have a valuable contribution to make and are equally important, not to mention directly affected. The requests from the start for a third seat to represent business interests. More specifically local business interests. We are not a forma group as we are real people who have come together as allies, so we may participate in not only our future, but the future of this Park. If we were comfortable being represented by the Bureau, there would be no reason to come together as allies in the first place.

After spending the last 4 months driving up and down Hatteras Island speaking to business folks, many of whom are completely unaware of the entire reg neg process by the way, I feel it would be against the wishes of this group, to accept an alternative position with the Visitors Bureau. I expressed this sentiment in October when it was it was first suggested that CABA be an alternate for the Bureau and my position on this has not changed. Members joined because they have no representation by the groups that were assigned to the business category – the Chamber of Commerce and the Visitors Bureau. (Your statement that CHBA was for those who did not belong to the Chamber was false, that was never the case and we do in fact have many members of the Chamber that joined CHBA as well)

Many were very grateful that someone had actually taken the time to come and personally talk to them, I cannot tell you how many times I heard "Thank you for caring" Not everyone fishes and those who don't have really been left out of the loop on this entire matter. I put myself on the line to these people, most of whom were total strangers to me. I was not paid for my time or expenses and left many of my own tasks undone. I have no ulterior motive for doing any of this. I just find it highly unfair to not include those who will be impacted the most, especially when nobody has bothered to inform them of the issue. If my efforts had not been met with support and enthusiasm, I would not have proceeded. I suspected that I was not the only business owner who felt this way, and it has proven to be true. We are the true stakeholders at CAHA. IT takes almost two hours to reach the mainland from Avon and all points south. There are no jobs waiting for all of us in Currituck or Hyde Counties, even if we did choose to commute 4 hours a day. We have nothing to fall back on.

While the majority of the groups have an alternate for the same organization, and usually the same location, CHBA has been recommended as an alternate to a government agency, who will have a paid employee representing it. I am not a paid Dare County employee, nor am I qualified to speak on behalf of tourism for Dare County. While business relies on tourists to help sustain it, the free enterprise system on which our country was founded cannot speak effectively through a government agency. The needs and responsibilities of government and small business are vastly different, even if working to achieve the same goal. Not only that, but to this island itself over 60 miles long. IT is difficult enough to work on the issues here. I do not have the extra time (2 ½ hours driving time alone) and personal resources to take trips up to the Northern beaches to work with my partner, and I have my own business to run. Yes, there are phones and e-mails, neither of which are as effective as face to face communications. Why bother to sit at a negotiating table at all if this can be accomplished with technology?

I realize that I am addressing a government agency when directing my comments to NPS through CBI but, I am trusting that there is a real person reading this who is genuinely concerned about the people who live, work and visit CAHA as well the validity of the reg neg process. If the quest for "balance" and seat limitations at the table is more important than actually identifying and verifying who the true stakeholders are, the in the process is doomed to fail. IT would be a disgrace to invest the time and money in to a process that was flawed from the onset, because it was not flexible enough when it came to seat numbers.

I have contended from the start that the seats allocated in the "Other users" category were going to be hard to fill, because the majority of activities enjoyed by the visitors to CAHA require beach access. Most of the visitors, who are not just here on a day trip, need access to the beach by ORV in order to pursue the activity they came here to enjoy to start with. I have watched this category change and morph into nothing more than a waste of valuable seats. It is now filled with contrived organizations that do not need to meet the criteria of CBI set forth to start with. This gives me great apprehension as to the changes of the reg neg groups that don't meet the criteria, and it is insulting to those of us that do. To assign seats for the sake of feigning that everyone is represented is self-defeating. It is a waste of everyone's time.

My suggestions follow:

I would strong urge you to assign the Outer Banks Visitors Bureau a seat in the other users category. The are tasks with representing ALL visitors to Dare county, for whatever reason they have gone for visiting, not just for CAJA, so it would be perfectly logical to have the Bureau in that category.

The Cape Hatteras Bird Club was acceptable, but for some reason now appears to be promoting 4x4 use instead of bird watching (with or without 4x4 use). Please find out what it is they are actually doing and assign them to the proper category.

There is a homeowners group as well, the Hatteras Frisco Homeowners Coalition. They belong in the homeowners category, if they are even a legitimate group, their credibility is compromised here, since nobody can join, contact or learn anything about them. Move them or lose them.

Real Keteboarding is a business being represented by their employees. This business either needs to join CHBA, as several other watersports businesses have done or should encompass other watersports and represent ALL watersports, not just themselves. To represent only themselves, requires little or no effort. To reach out to other watersports folks on the island and join together as a group requires work on their part and that does not appear to be happening.

The Cape Hatteras Recreational Alliance is another group which compromised credibility. The person representing this group lives in our community, but there is no community outreach to join this group. In fact requests for information have fallen on deaf ears. IF this group of 40 people really exists for recreational purposes, perhaps they can band together with the watersports folks since watersports are also form of recreation that is not well represented. Perhaps the Visitors Bureau can reach out to the watersports crowd and can serve as an alternate with the visitor bureau. I'm not sure reg neg is even viable here at CAHA under the current recommendations.

I am also e-mailing the list of Cape Hatteras Business Allies members as well as the letter that folks agreed upon when joining. Please consider the letter as one comment signed by 155 businesses or 155 repetitive comments, but do not discount them as they are from real stakeholders. I will be mailing you copies of the actual contact information and signatures of the business owners via the US Mail so that there will be no questions as of the legitimacy of CHBA.

Once again thank you for your time and consideration in this matter.

Sincerely
Judy Swartwood
Judy Swartwood
Cape Hatteras Business Allies

Cape Hatteras Business Allies
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TO: Patrick Field
Consensus Building Institute

As a Hatteras Island business owner and/or manager, I agree that local business concerns were not adequately represented by the proposed list of potential stakeholders that are currently under consideration for recommendation by CBI to the National Park Service in the upcoming Negotiated Rulemaking Process for ORV use at Cape Hatteras National Seashore.

This acknowledges my participation in Hatteras Island Business Allies and I support Judy Swartwood, owner of Buxton Beach Motel, as the representative of my business interest as a concerned stakeholder on Hatteras Island.

Beach access for everyone is a very complicated issue and is difficult to keep abreast of the ever changing issue, particularly for those who do not reside or work here.

The business community stands to lose the most if these decisions are made by solely by the parties that do not have true understanding of our business needs. We feel it is important for Hatteras Island businesses to have their own representative with a primary seat at the negotiating table, one which is familiar with the uniqueness of the island and the beaches – a representative who understands our particular concerns and issues. While we recognize the Outer Banks Chamber of Commerce and The Outer Banks Visitors Bureau, and have an important role in this process, we do not feel that they will adequately represent our interests, in this very important manner.

Serving the visitors to Cape Hatteras National Seashore, while residing and working within the private boundaries of the Seashore itself, requires balancing the needs of the National Park Service, the residents, the business community as well as the visitors. We practice this on a daily basis and can provide valuable input into the process.

Thank you for your consideration in this matter.

American Sport Fishing Association

Hi Sandy-

As you may recall, we met and discussed the Interim Plan proposals for Cape Hatteras in Washington last fall. I am writing to you because I understood that you were on the team that was developing the proposal. If you are not the right person to explain this issue (below), I would appreciate a reference to the right person.

I have just received and am in the process of reviewing the Interim Species Plan for Cape Hatteras National Seashore. At first glance it is clear that a number of our concerns have been addressed and an adaptive management approach is being sought. However, I remain mystified about one point in particular. The plan contemplates buffers for foraging plover chicks of up to 3000 ft on either side of a nest. When I compare this with the earlier proposal for Cape Lookout, which is immediately south of CHNS, the maximum buffer proposed is 600 feet. I cannot understand this discrepancy, especially in light of the fact that Cape Lookout sustains a much larger population of plovers. Can you shed some light on this? I realize the final proposal for Cape Lookout has not been released, but the comment document has no buffers in excess of 600 feet.

Thank you for any help. Carol

Carol A Forthman
Director of Ocean Resource Policy

American Sportfishing Association
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140993

Hello Ona,

As a private citizen, I would like to submit the following comments regarding Defenders of Wildlife being a stakeholder in the reg neg process. I trust that CBI is aware that the residents, beach users and Dare County itself to name a few – had to contribute a substantial sum of money to defend against a "Critical Habitat designation for Wintering Piping Plover" this designation was put into place as the direct result of a legal action against the USFW, brought on by Defenders of Wildlife! The designation was overturned by a Federal judge, however it was costly!

Do you really think folks joined the DOW so they could be stakeholders in the CAHA ORV management plan? Or to sue the USFW or threaten to sue NPS is that why folks join DOW or was it to actually "help wildlife"? While these big National groups claim to represent tens r hundreds of thousands of people. I don't think that is the reality of it though, do you? Their members are not going to be making their voices heard, unless it is a through an on-line petition site. One set up so clueless supporters of theirs, can sign. Since Defender's stake in CHNS isn't important enough for them to even mention on their website, I find highly unlikely their members are even aware that they are being used as stakeholder pawns at CAHA! Yes you can make the argument that habitat protection helps wildlife, but is the membership actually aware they are raping our National Park System with lawsuits as means of preventing American people from using their Parks?

This same group filed a 60-90 (?) day intent to sue this past Spring Yes the number of days has long passed but the action itself was never rescinded at least not that anyone hear has heard! It is still there, it only needs to be resurrected so to speak....just ad feathers and poof- there it is! Defenders actually preys on the unsuspecting kink hearted people of our fine county, who want to do the right thing and "help wildlife". Truth be known, these poor folks really have no earthly idea what Defenders is actually doing, but contribute their money anyway 'cause it all sounds good and well. The American people are for the most part kind and generous people, and give freely however that does not mean they are informed.

I think it is important to keep in mind that OBPA has members from all over the country that joined specifically because of beach access issues! OBPA is not made up of 30,000 members that sent in \$10 because their name was on a mailing list in the national membership drive- members who freely joined merrily so they could receive a free tote bag or umbrella for doing so! Nobody joined Defenders of Wildlife because they wanted to severely restrict the use of or ban the use of ORV's at Cape Hatteras National Seashore! Think about it, Defenders doesn't even mention Cape Hatteras or Piping Plovers on their website.

I am honestly confused- how is it exactly that Defenders of Wildlife are considered stakeholders here at Cape Hatteras? I do understand how their constant threats and legal actions serve to disrupt our lives however. I certainly hope they will not be filing any "Intent to sue" against this Spring, against NPS- if so they should *not* be permitted to participate in the reg neg process, should the NPS decide to move forward with the reg neg.

Thank you,
Judy Swartwood.

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The preferred alternative, Option D, for piping plovers is an improvement over current management. However, certain actions are lacking which may cause problems for plover recovery at CAHA in the long run. These actions are included in Option B. They are:

1) Under Option D CAHA will commence fencing and monitoring on April 1, rather than March 15. As monitoring improves, CAHA may find that territory establishment does occur between March 15 and April 1, as has been documented at many places on the Atlantic Coast. Failure to protect breeding areas during this time could result in failure of some pairs to breed. CAHA should at least retain the option of closing PIPL areas on March 15, and AMOY monitors surveying between March 15 and April 1 should be trained to recognize PIPL breeding activity.

2) Protection of a 10 m strip of ocean backshore outside of "recent" breeding sites. If management is successful, the PIPL population will grow and may be able to expand beyond the spits and Cape Point. I recommend including a plan to protect (ie, fence in the pre-nesting period) areas outside of the recent sites if the populations at the recent sites grow. Also, at "recent" sites a 10 m strip of backshore should be protected under Option D.

3) Option D will protect MOSH, but it's not clear that there will be a buffer zone around the MOSH. CAHA should at least retain the option to add a buffer if birds using MOSH are observed to be subject to disturbance.

4) Option D doesn't mention use of interpretive, informative signs, as Option B does. Signs are one of the most common and effective forms of outreach on the Atlantic Coast and should be included at resource closures, especially those near high public use areas. Many agencies may have some already made and available, if cost is a factor.

5) Only red and gray fox are mentioned under predator control. Where predator control is given as a line item, other potential predators should be recognized and it should be reiterated that CAHA is working on a separate predator management plan to address other types of predators.

I disagree with the assertion that there is no impairment of piping plovers under Option A. The population declined sharply under current management, putting the entire future existence of the resource at CAHA in doubt. That would seem to constitute "impairment" as is defined in the document.

For sea turtles, Option D does not address any of the negative impacts of current management, while Option B does. Trying to seek funds for research is a worthy objective, but resource protection should occur while the funds are sought.

I also want to note an errata in the USGS Piping Plover protocols. Page 32, item 4, last line should read "Management should revert to items 1-3 of Option B if plovers are documented in the area." It appears, however, that CAHA has recognized the error and followed the spirit of the recommendation.