

**NEGOTIATED RULEMAKING COMMITTEE  
1<sup>st</sup> Regulatory Negotiation Meeting**

**Revised Proposed Agenda  
January 3-4, 2008  
Avon Fire Hall**

**GOALS**

- Set in place “infrastructure” for the Committee, including groundrules, workplan and ethics considerations
- Understand the NEPA process and its relation to the Regulatory Negotiation
- Address some specific issues raised last workshop
- Prepare work plan for moving forward
- Review plans for socio-economic study by NEPA contractor

***DAY I, Thursday, January 3***

- 8:00 Breakfast
- 8:30 Welcome to All and Opening of the Meeting, *Mike Murray, NPS, Designated Federal Official (DFO)*
- 8:45 Discussion of roles -- facilitators & DFO, role of Institute, and Committee decides whether to accept the facilitators, *Mike Murray, DFO and Mike Eng, USIECR*
- 9:10 Review of the Agenda for the Two Days
- 9:15 Review the final FACA Charter and Membership: questions and discussion
- 10:15 Break
- 10:30 Review, Revise as needed, and Approve Groundrules
- 11:45 Public Comment  
*Specific comments are requested on the following --*
- Topics before the Committee at this meeting
  - What’s important for the Committee to know as they begin their work?
- 12:15 Lunch
- 1:15 NEPA/Rulemaking Economic Analysis
- Review draft plan for NEPA/Rulemaking economic analysis and data
  - Additional potential design features for socio-economic work and cost considerations
  - Update on Previous Studies and Peer Review
  - Future Coordination
  - Discussion and Comments
- 2:30 NEPA Process and Timeline and links to Regulatory Negotiation

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- 3:30 Break
- 3:45 NEPA Purpose, Need, and Objectives
- Understand how purpose, need and objectives are used in the planning process, what they mean and do not mean for NEPA and Reg Neg processes
- 4:30 Outstanding Discussion Items from Last Meeting
- Pea Island
  - National Recreation Areas, Seashores, and Parks
- 5:30 Adjourn

**DAY II, Friday, January 4**

- 8:00 Breakfast
- 8:30 Review of Day 1
- 8:45 Identify Individually Issues under Broad Topics
- ORV Management Elements
  - Species Protection Options
  - Geographic Specific Management Options
- 9:15 Divide into Small Groups for Discussion
- Identify and detail issues under broad topics
  - Identify principles that might guide consideration of options
- 11:00 Report Back
- 11:45 Public Comment
- Specific comments are requested on the following --*
- Issues to be addressed by the Committee
  - Information to be considered by the Committee
- 12:15 Lunch
- 1:15 Discussion of Report Outs, including views about the preliminary options in the Alternatives Options Workbook and the implications for the Committee's work
- 2:15 Plan the Committee's Work and Timeline
- Review draft Workplan and timeline
  - Lumping "topics" for small group or subcommittee work
  - Schedule for future meetings
  - Agenda topics for next meeting
  - Discussion
- 3:15 Next Steps and Concluding Remarks
- 3:30 Adjourn

*Charter  
2007  
Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management  
at Cape Hatteras National Seashore*

A. DESIGNATION.

The official designation of the committee is the Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore.

B. PURPOSE AND FUNCTION.

The Committee's function is to assist directly in the development of special regulations for management of off-road vehicles (ORVs) at Cape Hatteras National Seashore (Seashore). Executive Order 11644, as amended by Executive Order 11989, requires certain Federal agencies to publish regulations that provide for administrative designation of the specific areas and trails on which ORV use may be permitted. In response, the National Park Service (NPS) published a general regulation at 36 CFR § 4.10, which provides that each park that designates routes and areas for ORV use must do so by promulgating a special regulation specific to that park. It also provides that the designation of routes and areas shall comply with Executive Order 11644, and 36 CFR § 1.5 regarding closures. Members of the Committee will negotiate to reach consensus on concepts and language to be used as the basis for a proposed special regulation, to be published by the NPS in the *Federal Register*, governing ORV use at the Seashore. The duties of the Committee are solely advisory.

C. OBJECTIVES AND SCOPE OF THIS ACTIVITY.

The Committee will serve as an integral part in the NPS development of a proposed special regulation for ORV management at the Seashore. With the participation of knowledgeable affected parties, the NPS expects to develop a practical approach to addressing ORV management and visitor experience issues related to 1) access to beach areas for fishing and other recreational activities; 2) provision of a variety of visitor experiences on the beach, including both ORV and non-ORV experiences; 3) public safety; and 4) protection of beach environments and their associated plant and wildlife communities.

Within the constraints of NPS statutory and policy responsibilities to conserve natural and cultural resources and values and to provide for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Committee will evaluate and address key issues possibly including, but not limited to 1) the designation of specific ORV routes and areas, 2) the periods of the year and times of day during which ORVs may be operated on those routes and areas, 3) other conditions that govern the operation of ORVs

at the Seashore, and 4) other management options for accessing the beach (e.g., walkovers and shuttles). Special ORV regulations for the Seashore would identify criteria used to designate appropriate ORV use areas and routes and would establish consistent ORV management practices and procedures that include the ability to adjust ORV management in response to changes in the Seashore's dynamic physical and biological environment.

The Committee may also provide input, though not necessarily a consensus recommendation, on aspects of protected species management that may affect or be affected by ORV management and that are within the scope of the draft ORV Management Plan/Environmental Impact Statement being prepared concurrently with the proposed special regulations or that directly relate to the implementation of the Seashore's 2007 Interim Protected Species Management Plan. The NPS does not intend to establish a collaborative National Environmental Policy Act (NEPA) process, but rather to encourage information flow between the two processes at appropriate points. The primary focus of the Committee's work will be developing a consensus recommendation on the proposed special regulations.

#### D. MEMBERSHIP.

1. To achieve balanced membership among diverse national, regional, and local interests, membership of the Committee will consist of 30 representatives. Members will be appointed by the Secretary of the Interior (Secretary), and will represent the following interests:
  - a. User groups that have an active and ongoing interest in the management of the Seashore (such as ORV, open access, birding and recreational fishing groups, and other user groups);
  - b. Civic and homeowner associations;
  - c. Commercial fishermen;
  - d. Environmental and natural resource conservation groups;
  - e. Tourism, Visitation, and Business organizations; and
  - f. Federal, State, and county governments.
2. In addition to the principal representatives, alternate representatives will be appointed where possible to 1) ensure adequate representation when principal representatives are unable to attend, and 2) allow for broader participation. If a principal representative and alternate represent different organizations, then they shall be expected to represent the interests of both organizations in their Committee participation.

3. Principals and alternates are appointed for the duration of the negotiation. Any member vacancy on the Committee will be filled by the alternate for that member. If both alternate and principal representative cannot serve, the NPS will endeavor to find a replacement representative to maintain the overall balance of the Committee.
4. Members of the Committee will serve without compensation. However, while away from their homes or regular places of business, members attending Committee meetings approved by the Designated Federal Official (DFO) (see F.2 below) may be allowed reimbursement for actual travel expenses, not to exceed those permitted by the General Services Administration's rules for Federal travelers, in the same manner as persons employed intermittently in government service under section 5703 of title 5 of the United States Code (5 U.S.C § 5703).
5. Poor attendance, lack of participation, not participating in good faith, or other significant violations of the ground rules adopted by the Committee are grounds for a decision by DFO to recommend to the Secretary that a member be removed from the Committee.

E. ETHICS RESPONSIBILITIES OF MEMBERS.

No Committee or subcommittee member shall participate in any specific party matter including a lease, license, permit, contract, claim, agreement, or related litigation with the Department of the Interior in which the member has a direct financial interest.

F. ADMINISTRATION.

1. CHARTER.

The Committee is subject to the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2, and shall take no action unless the charter filing requirements of Sections 9 and 14(b) of FACA have been complied with. The Committee is subject to biennial review and will terminate in accordance with Section G below, unless, before that time, the charter is renewed in accordance with Section 14 of FACA.

2. DESIGNATED FEDERAL OFFICIAL.

The Committee reports to the Superintendent of the Seashore, Manteo, North Carolina. The Superintendent, or in the Superintendent's absence, the Seashore's Chief of Resource Management, will serve as the DFO for purposes of Section 10 of FACA to oversee the management of the Committee. The DFO will be present at all meetings and is authorized to adjourn any meeting whenever he or she determines it to be in the public interest to do so.

3. SUPPORT AND COSTS.

Support for the Committee is provided by the NPS, which may pay for the rental of meeting space, necessary materials and supplies for the meetings, and the services of recording the content of those meetings. The estimated annual operating cost of the Committee, depending on the number of meetings held, is \$220,000.

4. CHAIRPERSON. The DFO will serve as Chair of the Committee.

5. TECHNICAL ADVISORS.

The Chair may accept technical assistance from representatives of other organizations. Areas in which technical assistance may be requested could include beach driving etiquette and outreach, pedestrian access, handicapped access, safety, and protected species. Technical advisors have no authority to make decisions on behalf of the Committee, nor can they report directly to the NPS.

6. WORK GROUPS/SUBCOMMITTEES.

The Committee, in consultation with the DFO, is authorized to form work groups or subcommittees for any purpose consistent with this charter, including issues such as communications and outreach, vehicle equipment and operations, bypasses and alternate routes, or criteria for designating routes and trails. Such work groups shall report back to the full Committee. They have no authority to make decisions on behalf of the full Committee, and they do not report directly to the NPS.

7. MEETINGS AND ANTICIPATED SCHEDULE.

The Committee is expected to meet approximately eight times during its term with a similar number of additional subcommittee meetings, but fewer or more meetings may be held, if necessary. When the schedule is further defined, it will be closely coordinated with the schedule of the concurrent NEPA process.

All meetings will be held at the call of the Chair, after consultation with the Committee. Committee meetings will be called, announced by publication in the *Federal Register*, and held in accordance with the requirements of FACA. Among other provisions, FACA requires open meetings and an opportunity for interested persons to file comments before and after meetings, and make statements during the meeting, to the extent that time permits.

F. DURATION AND DATE OF TERMINATION.

The Committee will terminate on the date the ORV management regulation is published in the *Federal Register*, or 2 years (24 months) after the Committee is established, whichever comes first, unless its charter is renewed in accordance with Section 14 of FACA (see F.1 above) or the Committee is terminated.

G. AUTHORITY.

The Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore is established under the authority of 16 U.S.C. § 1a–2(c), and in accordance with the Negotiated Rulemaking Act, 5 U.S.C. § 561-570. The establishment of this Committee is in the public interest and supports the NPS in performing its duties and responsibilities under the NPS Organic Act, 16 U.S.C. § 1 *et seq.*; Executive Order 11644, as amended; 36 CFR § 4.10; the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*; the enabling legislation for the Seashore, 16 U.S.C. § 459 *et seq.*; and other legal authorities.

Dirk Kempthorne  
Secretary of the Interior

November 26, 2007  
Date Signed

DATE CHARTER FILED \_\_\_\_\_

The filing date of this first charter constitutes the date of establishment of the Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore.

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**Negotiated Rulemaking Advisory Committee for  
Off-Road Vehicle Management at  
Cape Hatteras National Seashore**

**Draft Groundrules**

**Comment [RF1]:** The question of the name "recreation area" will be discussed at the January meeting.

**I. Purpose and Enabling Statement**

The Committee's function is to assist directly in the development of special regulations for management of off-road vehicles (ORVs) by the public at Cape Hatteras National Seashore (the Seashore). It is noted that in the 1940 statute that amended the enabling legislation substituted "National Seashore Recreational Area" for "National Seashore." However, per a 1954 NPS administrative memorandum and subsequent legislation since the 1960's, the Congress, Department of Interior and the National Park Service have consistently used the term "National Seashore."

Executive Order 11644, as amended by Executive Order 11989, requires certain Federal agencies to publish regulations that provide for administrative designation of the specific areas and trails on which ORV use may be permitted. In response, the National Park Service (NPS) published a general regulation at 36 CFR § 4.10, which provides that each park that designates routes and areas for ORV use must do so by promulgating a special regulation specific to that park. It also provides that the designation of routes and areas shall comply with Executive Order 11644, and 36 CFR § 1.5 regarding closures. The Committee will negotiate to reach consensus on concepts and language to be used as the basis for a proposed rule, to be published by the NPS in the *Federal Register*, governing ORV use at the Seashore. The duties of the Committee are solely advisory.

**Comment [RF2]:** The term areas is specified in the cited regulation.

**II. Objectives and Scope of Committee Activities**

The Committee will serve as an integral part in the NPS development of a proposed special regulation for ORV management at the Seashore. With the participation of knowledgeable affected parties, the NPS expects to develop a practical approach to addressing ORV management and visitor experience issues related to: 1) access to beach areas for fishing and other recreational activities; 2) provision of a variety of visitor experiences on the beach including both ORV and non-ORV experiences; 3) public safety; and, 4) protection of beach environments and their associated plant and wildlife communities. The Committee notes that other recreational activities include, but is not be limited to, kite boarding, surfing, wind surfing, paddle boarding, kayaking, sailing, shelling, beach walking, beach sports such as volleyball, swimming, sunbathing, picnicking, wildlife viewing, and photography.



## DRAFT

Within the constraints of NPS statutory and policy responsibilities to conserve natural and cultural resources and values and to provide for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Committee will evaluate and address key issues possibly including, but not limited to: 1) the designation of specific ORV routes and areas; 2) the periods of the year and times of day during which ORVs may be operated on those routes and areas; 3) other conditions that govern the operation of ORVs at the Seashore; and, 4) other management options for accessing the beach (e.g., walkovers and shuttles). Special ORV regulations for the Seashore would identify criteria used to designate appropriate ORV use areas and routes and would establish consistent ORV management practices and procedures that include the ability to adjust ORV management in response to changes in the Seashore's dynamic physical and biological environment.

The primary focus of the Committee's work shall be developing a consensus recommendation on the special regulation. The Committee may also provide input, though not necessarily a consensus recommendation, on related matters. The Charter states the committee may provide input on "aspects of protected species management that may affect or be affected by ORV management and that are within the scope of the draft ORV Management Plan/Environmental Impact Statement being prepared concurrently with the proposed special regulations" or that directly relate to the implementation of the Seashore's Interim Protected Species Management Strategy.

With respect to the parallel NEPA process NPS is conducting, information and input from the committee may be incorporated; however, the content of NEPA documents and the NEPA process are the sole responsibility of the NPS. In this sense, rule making activities of the Committee and the conduct of the NEPA process are complementary rather than formally collaborative, with information flow between the two processes encouraged at appropriate points.

### III. Negotiation Parameters

- A. The focus and starting point of the negotiated rulemaking needs to be on *how* to manage ORV use on CAHA consistent with all applicable laws, regulations, orders, and policies, rather than *if* there will be any ORV use on the beach at CAHA. The proposed regulation developed by the Negotiated Rulemaking Committee (Committee) and recommended to NPS must: (a) be consistent with and comply with all applicable laws, regulations, orders, and policies, (b) provide for a diversity of visitor experience, (c) include enforceable mechanisms to manage ORV use; and (d) be implementable.
- B. To the greatest extent possible, the Committee should build a new management approach to ORV use "from the ground up" that is not

**Comment [RF3]:** The Committee will discuss the implications of the requirement to comply with regulations, orders, and policies at the January meeting.

## DRAFT

necessarily limited to the current Interim Protected Species Management Strategy or any other earlier management approaches. To meet the requirements of the National Environmental Policy Act (NEPA) and to generate new approaches and potential solutions, participating organizations and their representatives need to be willing to explore a range of management options and scenarios, even if they at least initially find those options unappealing or highly unlikely to be acceptable to their constituents.

- C. Management of ORV use at Pea Island National Wildlife Refuge (PINWR) will not be included in the negotiated rulemaking process, as the Refuge is under exclusive administration of the USFWS rather than NPS and under a different set of laws and regulations [16 USC § 668dd(a)(1)]. The Committee acknowledges that for a number of years ORV were allowed on PINWR, north of the Seashore, however those miles have been lost to ORV use. While management of that area is outside the scope of the plan/EIS and regulatory negotiation, the Committee takes official notice of this reduction in the original area open for access by ORV.

#### IV. Participation

- A. The Committee consists of individuals representing interests, organizations or stakeholder groups. Committee members are responsible for expressing the views of their constituency rather than their personal views.
- B. Each organization or stakeholder group shall be represented (“hold a seat”) by a principal and may also be represented, in the absence of the principal, by an alternate. As used in these groundrules, the term “members” includes principals and alternates. The Secretary of the Interior must appoint all members. In the absence of the principal, an alternate will serve as a representative for the member organization or group and assumes all the rights and responsibilities of the member at the table.
- C. The members of the Committee are considered those members (principals or alternates) who are present at the time of deliberation and decision. Consensus is determined by those members (be they the principal or the alternate per “seat”) present for the decision. Consensus reached during the presence of an alternate and in the absence of a principal will be binding upon the principal.
- D. Alternates have an important and valuable role in the process. They should stay abreast of all discussions, issues, and information and be able to represent fully their principal in that principal’s absence. They may “exchange” seats with their principal, as appropriate, when the alternate has a unique knowledge

## DRAFT

or perspective to share. Alternates may also participate actively on subcommittees created by the Committee.

- E. The principal and alternate shall represent an organization or stakeholder group for the purposes of deliberating, reaching consensus, and obtaining ratification of consensus decisions. As ratification is an important step in completing the Committee's work, principals must keep the Committee apprised of the method for seeking ratification from their respective organizations or stakeholder group. The facilitators will work with the principals to ensure that ratification can be accomplished within the Committee's schedule.

## V. Decision Making

- A. The Committee will operate by consensus. Consensus is defined as at least all but \_\_\_\_ member(s) (principal, or in the absence of the principal, his or her alternate) of the Committee (other than NPS) consenting to a final package proposal that seeks to meet diverse interests. NPS must also consent to an agreement for it to constitute the consensus of the Committee.
- B. Members should not block or withhold consensus unless they have serious reservations with the approach or solution that is proposed for consensus. Consent means that members can at least "live with," however reluctantly, the package agreement that emerges. Members may also "stand aside" and not offer their consent, but refrain from blocking agreement and will thus also refrain from future negative comment or action on the consensus. "Stand Aside" members shall not be counted in the determining if the numerical criterion for consensus has been reached.
- C. The principal's absence from a meeting in which consensus will be deliberated or decided will be equivalent to not dissenting. Similarly, if both the principal and the alternate are absent from a meeting in which consensus will be deliberated or decided, the alternates absence will be equivalent to not dissenting
- D. If representatives disagree with the approach or solution proposed, they should make every effort to offer an alternative satisfactory to all members.
- E. All consensus agreements reached during the negotiations will be assumed to be tentative agreements until members of the Committee reach final agreement. Once final consensus is achieved, Committee members may not thereafter withdraw their consensus.

Comment [RF4]: The Committee will determine the number at the January meeting.

## DRAFT

## VI. Agreement

- A. The goal of the Committee is to develop a Consensus Agreement Report that reflects a final consensus by the Committee on the concepts and language to be used as the basis for a proposed special regulation.
- B. If the Committee reaches consensus as defined in V.A. above, at the conclusion of the negotiations, the Committee shall transmit to NPS the Report containing the concepts and language to be used as the basis for a proposed special regulation. NPS will use this Report as the basis for its notice of proposed rulemaking. Prior to submitting a proposed special regulation for federal review approval, and publication in the Federal Register, NPS will circulate a draft to the Committee to check for consistency with the report. The facilitators will be available to work with the Committee to help resolve any differences of opinion about consistency. If informal discussion does not resolve the differences, the Committee may be reconvened to resolve outstanding issues.
- C. If NPS or DOI alter the proposed special regulation in its final issuance after being checked for consistency as in VI.B. above, Committee members may comment positively or negatively on those particular changes.
- D. After the Committee concurs that the language of the proposed rule is consistent with the Consensus Agreement, the National Park Service will submit the proposed rule for review, federal approval, and publication in the Federal Register. If possible, public review for the required NEPA draft Environmental Impact Statement will be concurrent with publication of the proposed rule for public comment. If a final consensus is reached on all issues, NPS will identify the Consensus Agreement as the preferred alternative in the NEPA process.
- E. Committee member organizations and their representatives will refrain from opposing or commenting negatively on the consensus-based language during the rulemaking process and any associated processes and will encourage that their constituents do the same.
- F. If the Committee does not reach consensus on a proposed rule, Committee members will explore the basis of the disagreement(s), and the associated reasons for the differences of opinion, and will discuss what if anything to report to NPS about the Committee's efforts. As envisioned by the Negotiated Rulemaking Act, the Committee, through the facilitators, may transmit to NPS a report specifying any areas in which the Committee reached agreement, as well as the explanation for the disagreements, a description of

**Comment [RF5]:** Under the Negotiated Rulemaking Act, the Committee is required to send a report to NPS.

## DRAFT

the interests that must be satisfied to reach an agreement, and if possible, ways to address the differences. If a non-consensus report is submitted to NPS, and as permitted by the Negotiated Rulemaking Act, any Committee member may include as an addendum to the report additional information, recommendations, or materials.

- G. If the Committee reaches final consensus on some but not all of the issues, NPS will, to the extent possible, include those areas of consensus in the proposed rule and duly consider the dialogue and proceedings generated by the negotiated rulemaking process. Committee member organizations and their representatives may oppose or comment negatively on those aspects of the proposed rule that are not based on a final consensus.
- H. If a final consensus is not reached on all issues, NPS will endeavor to incorporate all areas of consensus into the preferred alternative developed by the NPS to the degree they are compatible with other elements of the preferred alternative.
- I. Stakeholders should note that final, formal rulemaking requires review and approval by various federal entities that are beyond the authority of the National Park Service. These other government entities include the Office of Management and Budget, the Fish and Wildlife Service the Secretary of the Interior, and the President.

**VII. Committee Meetings**

- A. The negotiations will be conducted in accordance with the Federal Advisory Committee Act (FACA).
- B. All meetings of the full Committee will be announced in the Federal Register prior to the meeting and will be open to the public. Brief opportunities for oral public comment will be provided at each meeting. The Committee is not expected to respond to these comments during the oral public comment period. The time and manner of such comments shall be as determined by the facilitators. Members of the public will be permitted to file written comments to the Committee before or after meetings. Comments provided to the Committee will become part of the public record.
- C. Summaries of Committee meetings will be prepared by the facilitators and, after review and approval by the Committee, will be made available to the public. The summaries will identify points of tentative agreement and final agreement and generally be written without attribution. The summaries are

## DRAFT

not intended to be transcripts or detailed meeting minutes, but summaries of key points, issues, and ideas.

- D. Members may request of the facilitators caucuses by and among subgroups of Committee members for the purpose of discussion at any time. The facilitators also may request caucuses. No decisions, however, can be reached outside of full and public Committee deliberations.
- E. The Committee, in consultation with the DFO, may form subcommittees or work groups to advance discussion, generate options, and develop preliminary proposals. Subcommittees or work groups must be created by the full Committee, have a clear charge, and ensure participation of a diversity of interests. Any subcommittee or work group is not a decision body. Alternates may participate actively in subcommittees and workgroups. Non-committee members may participate on subcommittees or workgroups as determined by the full Committee.
- F. The facilitators will be responsible for developing an agenda for all meetings of the Committee and the agenda will be distributed ahead of time. This agenda will be developed in consultation with the Committee and under FACA must be approved by the DFO.
- G. The Committee, in consultation with the DFO, may accept technical assistance from representatives of other organizations. The Committee by consensus may also seek technical assistance from its members' own organizations. Areas in which technical assistance may be requested could include beach driving etiquette and outreach, pedestrian access, handicapped access, and safety. Technical advisors have no authority to make decisions on behalf of the Committee, nor can they report directly to the NPS.

**VIII. Safeguards for Members and Representatives on the Committee**

- A. Any member of the Committee may withdraw from the negotiations at any time by notifying the DFO in writing.
- B. All members must act in good faith in all aspects of these negotiations. Members agree that specific offers made in open and frank problem-solving conversations will not be used against any other member in future litigation or public relations. Good faith requires that individuals not represent their own personal or organization's views as views of the entire Committee, and that the views and opinions they express in the Committee deliberations are consistent with the views they express in other forums. Members and alternates

## DRAFT

understand that a decision to take legal, political or media action may seriously compromise negotiations.

- C. Participating organizations and their representatives commit to making the negotiated rulemaking process the primary and central focus of their efforts to address issues related to ORV use on the Seashore and to voluntarily curtail using other means to influence the proposed regulations during the negotiated rulemaking process. This does not mean participating organizations are relinquishing or waiving any legal rights. Principals and alternates understand that a decision to take legal, political or media action may seriously compromise good faith negotiations.
- D. Members commit to the principles of decency, civility, and tolerance. Parties must be willing to envision and shape a future for all users and people interested in the Seashore, including descendants of families living on the Outer Banks when the Seashore was established, current property owners and visitors, and those that care about the accessibility, ecology, or preservation of the national seashore and national parks. Parties also must be willing to accept there are different views (locally, regionally, and nationally) and the different stakeholders each have a legitimate interest and right to be part of determining the solutions. Committee representatives must exercise leadership within their respective constituencies to foster a climate of joint problem solving on the Committee and publicly, to keep their constituencies informed, and to ensure their constituents support rather than undermine the process.
- E. Committee members will not attribute statements to others involved in this negotiated rulemaking, seek to present or represent the views or position of other members or alternates, nor attempt to speak on behalf of the Committee as a whole in or to the media. "Media" for these purposes includes the press, television and radio, websites, and any other public information distribution mechanism. Committee members will abide by these groundrules in all communications during the negotiated rulemaking process in and out of Committee meetings. The Committee, in consultation with the DFO, may appoint a media point of contact, if it so desires.
- F. NPS or the Committee, with the facilitators, will periodically review and assess the Committee's progress to determine if the process is meeting their needs and the interests of the participants.
- G. The Committee, NPS and the facilitators will enforce these groundrules.
  - i. Personal attacks, name calling, retaliation, and other such negative behaviors will be addressed immediately, either privately or publicly, by Committee members and the facilitators.

## DRAFT

- ii. The Committee may recommend to the DFO sanctions for violations of these groundrules.
- iii. Poor attendance, lack of participation, not participating in good faith, or other significant violations of these ground rules are grounds for a decision by the DFO to recommend to the Secretary of the Interior that a member be removed from the Committee. If the principal is removed, that seat will be filled by the alternate. In the case that no alternate exists or that both the principal and alternate have been removed, the NPS will make every effort to fill the seat to represent that interest within the FACA approval process for membership.
- iv. If a member does not abide by the provisions of
  - (a) Section VI.E. (not commenting negatively on areas of final consensus),
  - (b) Section VIII.D. (not attributing statements to others, etc.),
  - (c) Section IX.B, third bullet (personal attacks), or
  - (d) Section IX.B, last bullet (not sharing relevant information)

NPS, after consultation with the facilitators, will record this “breach” of these groundrules in writing, post it on the project website, include it in the administrative record, distribute it to all Committee members and alternates for their use as they see fit, including use in any formal submittals to a court

## **IX. Additional Roles and Responsibilities of Representatives consistent with the Committee Charter**

- A. Members on the Committee agree to the following.
  - Keep their constituencies informed about the Committee’s deliberations and to actively seek their input.
  - Represent the interests and concerns of their organizations, and constituents as accurately and thoroughly as possible, and work to ensure that any agreement developed by the Committee is acceptable to their organization.
  - Arrive at the meetings prepared to discuss the issues on the agenda, having reviewed the documents distributed in advance.



## DRAFT

- Strive throughout the process to bridge gaps in understanding, to seek resolution of differences, and to pursue the goal of achieving consensus on the content of the regulations under discussion.
  - Make a good faith effort to participate in all scheduled meetings or activities. If a member is not able to attend a given meeting, his or her designated alternate shall participate in the member's absence. Poor attendance may lead to a recommendation by the NPS to the Secretary of the Interior that a member be dismissed from the Committee.
- B. In order to facilitate an open and collaborative discussion, the participants in this negotiated rulemaking also agree to abide by the following rules (these expectations also apply to attendees of Committee meetings, subcommittees, and workgroups).
- Only one person will speak at a time and no one will interrupt when another person is speaking.
  - Each person will express his or her own views his or her organization's and constituents' views, rather than speaking for other Committee participants.
  - Each person will refrain from making personal attacks, name calling, distributing personal or inaccurate information about other participants, and other such negative behaviors.
  - Each person will make every effort to stay on track with the agenda, and avoid grandstanding and digressions in order to move the negotiations forward.
  - Committee members will share all relevant information with other Committee members in a timely manner. Members and alternates understand that a decision to withhold or not share key information in a timely manner may seriously compromise negotiations.

**X. Role of the Facilitators**

- A. The facilitators will serve at the discretion of the full Committee. The facilitators will be responsible for helping to ensure that the process runs smoothly, developing meeting agendas, preparing and distributing draft and final summaries, generating draft agreements, and helping the parties resolve their differences and achieve consensus on the issues to be addressed by the Committee.

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- B. The facilitators will be available, to the extent schedule and budget allow, to facilitate Committee sessions, caucuses, subcommittees and work groups.
- C. The facilitators will be available to consult confidentially with Committee participants during or between meetings. Facilitators, if asked, are required to hold confidences even if that means withholding information that the facilitators prefer would be made available to the full group. Confidentiality protections do not extend to threats or reports of criminal action.
- D. The facilitators may engage in shuttle diplomacy among various parties during the negotiation. Within the bounds of the Negotiated Rulemaking Act and the FACA, these deliberations may be conducted in confidence.
- E. The facilitators have no decisionmaking authority and cannot impose any solution, settlement, or agreement among any or all of the parties.
- F. The facilitators will abide by the Ethical Standards of the Association of Conflict Resolution. In part, these standards require that: “The neutral must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action and a commitment to serve all parties as opposed to a single party.”
- G. Parties will express any concerns about the facilitator’ role or action: first, to the facilitators directly; or, as needed to: 1) the U.S. Institute for Environmental Conflict Resolution; and/or, 2) the NPS.

**XI. Consistency**

These groundrules are intended to be consistent with the Committee Charter and all applicable laws and regulations. In the event of any inconsistency or conflict, the statute, regulation, or Charter shall govern.

Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management  
at Cape Hatteras National Seashore  
First Meeting: January 3-4, 2007

TO: Committee Members

FROM: NPS

DATE: Dec. 26, 2007

NPS is providing the following short description of “here’s what we did and why it works” in response to a request through the mediation team for such a description:

**Notice of First Meeting** -- GSA FACA regulations provide authority for an agency to give less than 15 calendar days notice of a committee meeting provided that the reasons for doing so are included in the advisory committee meeting notice published in the Federal Register. (41 CFR § 102-3.150(b)). Due to logistical difficulties with document transfer between the NPS and the Office of the Federal Register, the Department of the Interior requested that the GSA Committee Secretariat approve for good cause less than the required 15 days advance notice by publication in the Federal Register for FACA committee meetings. GSA approved this request, which was reflected in the notice of establishment of the committee / notice of the first two meetings that was published in the Federal Register on December 20, 2007. (FR Vol. 72 No. 244 p. 72316-2318. Dec. 20, 2007).

**Filing of the Committee Charter** – GSA FACA regulations provide authority for GSA to approve less than 15 calendar days between publication of the Notice of Establishment and filing of the charter when requested by the agency for good cause (41 CFR § 102-3.65(b)). The Department of the Interior requested that the GSA Committee Secretariat approve a period of less than 15 days between the Notice of Establishment of the Committee and the filing of the charter with the NPS Congressional authorizing committees, GSA and the Library of Congress. GSA approved this request. NPS filed the charter by letter dated January 2, 2008 with the authorizing committees, GSA and the Library of Congress. The Departmental Manual for the Department of the Interior in 308 DM 2.8 D. (3) states “The date of the letter transmitting the charter will be considered the “Filing Date” of the charter and the establishment date of the committee.” Thus January 2, 2008 is the establishment date of the Negotiated Rulemaking Advisory Committee and the first day it is officially in business.

NEPA Planning Schedule (2008 – 2010)

January 14 – 17, 2008 – public alternatives meetings, to be most useful workbooks should be received by January 31, 2008

February 2008 – analyze public input on alternatives options [completed to the point that a verbal summary can be presented at the Feb 26-27 reg-neg committee meeting]

March 12-13, 2008 – NPS interdisciplinary team meeting to review public input on alternatives options, start work on packaging alternatives [saving a place for the reg-neg committee consensus alternative], work on thresholds for impact analysis, work on developing the cumulative action scenario

Winter – Spring 2008 work continues on packaging and detailed description of alternatives [saving a place for the reg-neg committee consensus alternative], threshold development continues

Spring 2008 – first draft description of the affected environment, Chapter 3 of the draft environmental impact statement (DEIS), first draft impacts of the no-action alternative, economic/regulatory impact analyses study/survey design development including RTI (Resource Triangle Institute) trips to discuss with the reg-neg committee (Fall 2007 – Winter 2008)

Fall 2008 – Winter 2009 – preliminary impact analysis for all alternatives including reg-neg committee preliminary consensus alternative (may be several rounds of preliminary impact analysis on pieces of reg-neg committee consensus agreement as well as on a whole preliminary consensus alternative)

Winter 2009 – Reg-neg committee send to NPS the committee's recommended consensus alternative – (January)

Winter 2009 -- First internal review DEIS – (February)

Winter 2009 -- NPS interdisciplinary team roundtable on first internal review DEIS -- (March)

Spring 2009 -- Second internal review DEIS

Spring – Summer 2009 -- Camera Ready DEIS prepared

Spring – Summer 2009 -- Notice of Availability (NOA) for DEIS prepared and NPS / Dept. of the Interior approval process begun

Spring 2009 -- Draft and final Biological Assessment prepared [no decision yet on whether BA will be a separate document or whether enough detail in the right format will

be included in the DEIS (Chapters 3 and 4) on threatened and endangered species so that the DEIS can serve as the BA.

Spring – Summer 2009 – Draft and final Coastal Zone Management Act consistency determination prepared

Summer 2009 – Draft proposed rule prepared

Summer – Fall 2009 – Print DEIS (must await approval of the NOA), takes 3-6 weeks at the Govt. Printing Office, and distribute, publish proposed rule in the Federal Register concurrently with distribution of the DEIS

Winter 2009 – 2010 – Public meetings on the DEIS and the proposed rule

Winter 2010 – Spring 2010 – Public comment analysis on the DEIS and the proposed rule

Spring – Summer 2010 – Prepare the final environmental impact statement (FEIS) and response to comments on the DEIS and on the proposed rule

NOA for the FEIS prepared and sent through NPS / Dept of the Interior for approval

Summer – Fall 2010 – Publish / Distribute the FEIS

Fall- Winter 2010 – Regional Director signs Record of Decision (ROD) and a summary of it is published in the Federal Register

Winter – 2010 Final rule is published in the Federal Register

CAHA Negotiated Rulemaking  
Proposed Meeting Work Plan\*  
January 2008

MEETING #1 (JANUARY 2008)

- Review and discuss charter and charge, as needed
- Finalize Groundrules
- Review and discuss economic analysis, with the contractor, as needed
- Negotiate principles to frame/shape the ultimate regulations
- Review preliminary alternatives options developed by NPS for public meetings
- Form subcommittees, as appropriate, to develop options for committee consideration, for example ---
  - Managing ORV Use
  - Managing Driving
  - Managing Closures
  - Managing User Conflicts
  - Managing Compliance and Enforcement
  - Economic Analysis and Other Studies

MEETING #2 (FEBRUARY 2008)

- Review and discuss action items and meeting summary from previous meeting
- Update on NEPA process, including public comments from scoping and options meetings
- Review principles to frame/shape future regulations
- Review NPS' process for identifying preferred alternative, environmentally preferred alternative, and evaluating NEPA 101(b) criteria, and discuss implications for committee
- Review and discuss economic impacts study, with the contractor, as needed
- Report back from Subcommittees

MEETING #3 (MAY 2008)

- Review and discuss action items and meeting summary from previous meeting
- Update on NEPA process
- Review impacts analysis, to extent completed, on "no action" alternative
- Review and discuss economic/regulatory impacts analysis, with the contractor, as needed
- Consider, weigh, and compare alternatives
- Narrow alternatives focus, if possible
- Report back from Subcommittees

MEETING #4 (FALL 2008)

- Review and discuss action items and meeting summary from previous meeting
- Update on NEPA process

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\* Please note: this work plan is intended to coordinate with the NEPA process. All activities and dates are tentative, depending on the committee's progress and the NEPA schedule.

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12/31/07

- Review 1 to 2 alternatives (or narrow to 1 to 2 if not accomplished at meeting #3)
- Review and discuss preliminary impacts analysis of alternatives
- Identify and begin discussing detailed issues related to regulations that would flow from the alternatives and develop options
- Further report back from subcommittees, as needed
- Begin to identify mitigation for adverse effects
- Seek to reach agreement on a preferred solution (consensus preferred alternative)
- Breakout into new subgroups or committees, as needed

**MEETING #5 (NOVEMBER/DECEMBER 2008)**

- Review and discuss action items and meeting summary from previous meeting
- Update on NEPA process
- Review and discuss preliminary impacts analysis of alternatives
- Further discuss detailed regulatory issues and options
- Seek to prioritize and narrow options for consensus alternative
- Discuss mitigation package for adverse effects
- Identify final outstanding items for further subcommittee work as needed

**MEETING #6 (WINTER 2009)**

- Review and discuss action items and meeting summary from previous meeting
- Update on NEPA process
- Seek agreement on consensus alternative
- Discuss mitigation package for adverse effects
- Discuss what, if anything, to report as a committee to NPS if no consensus

**MEETING #7 (WINTER/SPRING 2009) (regulatory writer present)**

- Review and discuss action items and meeting summary from previous meeting
- Update on NEPA process
- Seek agreement on consensus alternative
- Review, revise, and seek to finalize draft proposed regulation
- Determine what, if anything, to report as a committee to NPS if no consensus
- Post meeting, draft proposed regs with assistance from neutrals

**MEETING #8 (SPRING 2009, if needed) (regulatory writer present)**

- Review and discuss action items and meeting summary from previous meeting
- Update on NEPA process
- Review, revise, and finalize draft proposed regulation
- Further consideration of what to report as a committee to NPS if no consensus, as needed

**MEETING #9 (DECEMBER 2009/EARLY 2010, following publication of DEIS)**

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- Review and discuss action items and meeting summary from previous meeting
- Update on NEPA process
- Review public comments on preferred alternative and DEIS
- Review, revise, and finalize consensus alternative
- Review, revise, and finalize draft proposed regulation
- Discuss report to NPS if consensus is reached
- Further consideration of what to report as a committee to NPS if no consensus, as needed



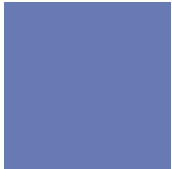
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**Basic Principles for Agency Engagement in  
Environmental Conflict Resolution and Collaborative Problem Solving**

<b>Informed Commitment</b>	Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement; ensure commitment to participate in good faith with open mindset to new perspectives
<b>Balanced, Voluntary Representation</b>	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
<b>Group Autonomy</b>	Engage with all participants in developing and governing process; including choice of consensus-based decision rules; seek assistance as needed from impartial facilitator/mediator selected by and accountable to all parties
<b>Informed Process</b>	Seek agreement on how to share, test and apply relevant information (scientific, cultural, technical, etc.) among participants; ensure relevant information is accessible and understandable by all participants
<b>Accountability</b>	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
<b>Openness</b>	Ensure all participants and public are fully informed in a timely manner of the purpose and objectives of process; communicate agency authorities, requirements and constraints; uphold confidentiality rules and agreements as required for particular proceedings
<b>Timeliness</b>	Ensure timely decisions and outcomes
<b>Implementation</b>	Ensure decisions are implementable consistent with federal law and policy; parties should commit to identify roles and responsibilities necessary to implement agreement; parties should agree in advance on the consequences of a party being unable to provide necessary resources or implement agreement; ensure parties will take steps to implement and obtain resources necessary to agreement

\* Attachment to a **Memorandum on Environmental Conflict Resolution** issued jointly by the Office of Management and Budget and the Council on Environmental Quality on 11/28/05.

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# Update on Economic Analysis for Cape Hatteras National Seashore

Carol Mansfield, Christine Poulos and Laurel Clayton

January 3, 2008



P.O. Box 12194 · 3040 Cornwallis Road · Research Triangle Park, NC 27709  
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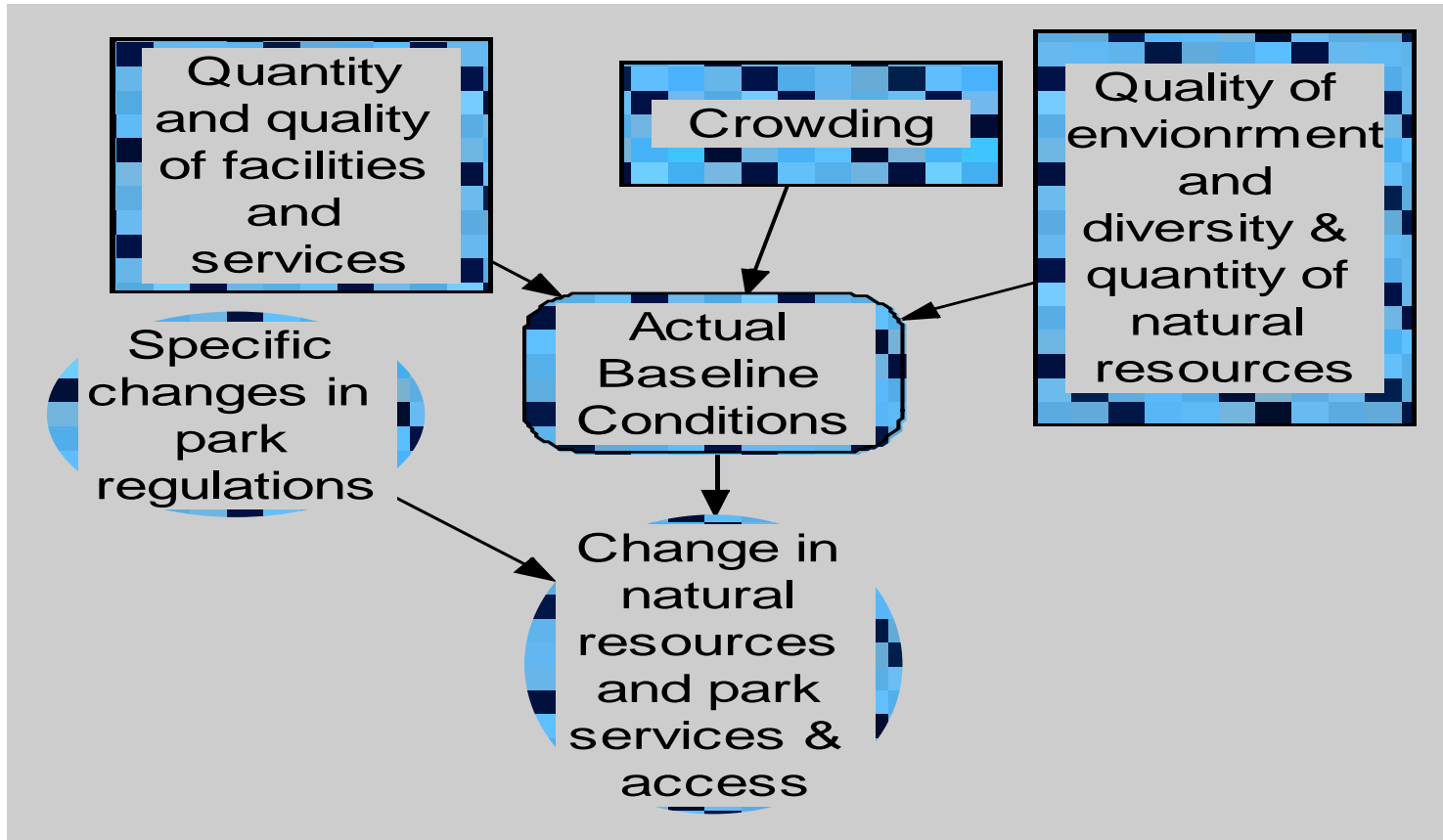


# Plan for economic analysis

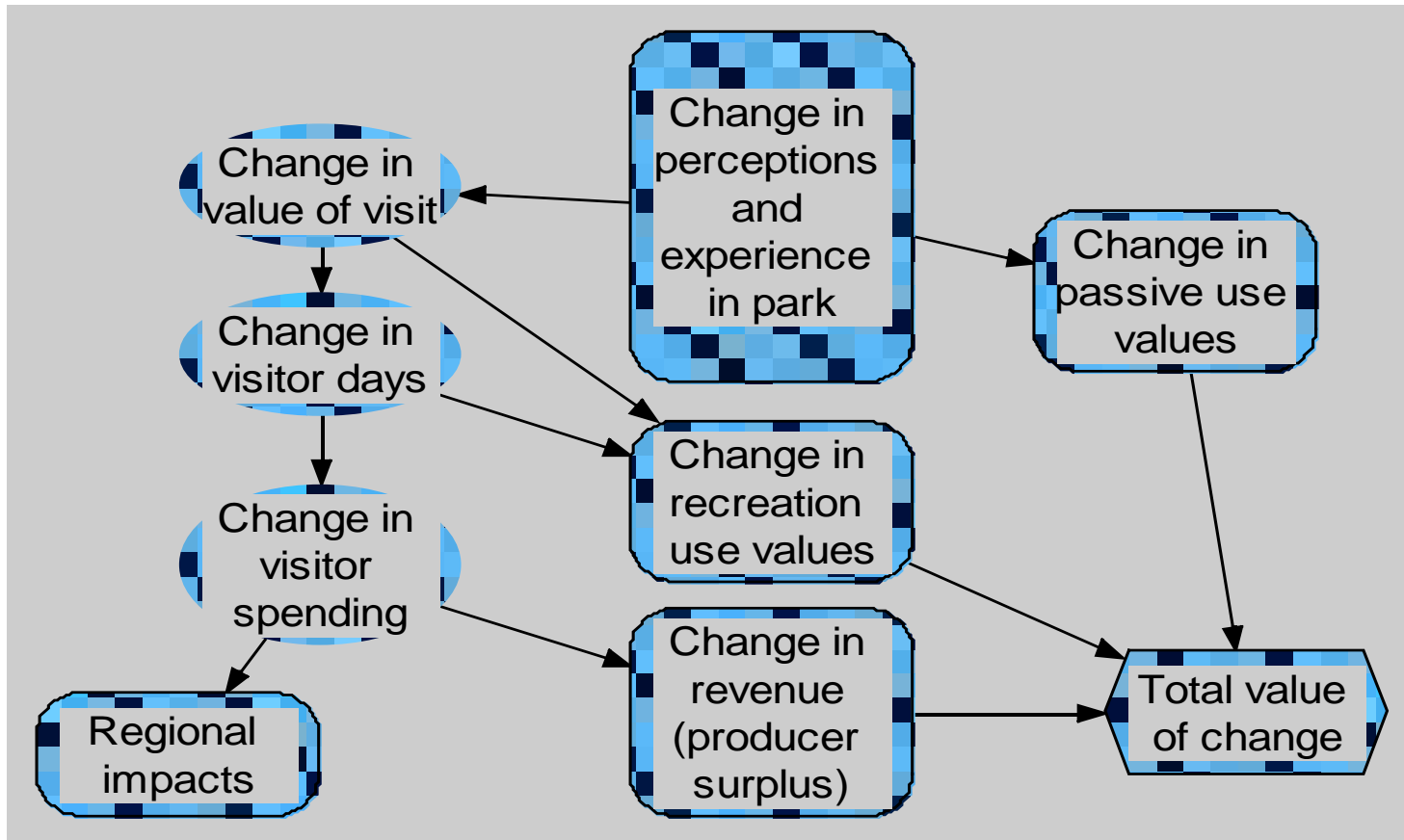
Plan includes:

- n Primary, secondary and ripple-effect (regional) impacts considered in the economic analysis
- n Specific information needed for the economic analysis model
- n Data available and data collection

# Valuing Park Management Changes



# Valuing Park Management Changes, con't





# Describing Impacts

- n Describe baseline (i.e., no action alternative) qualitatively and quantitatively
- n Describe qualitative changes, relative to baseline, due to proposed alternative
- n Estimate quantitative changes where possible
- n Monetize quantitative changes where possible
- n Calculate net benefits, impacts on small businesses, ripple effects (regional economic impact)

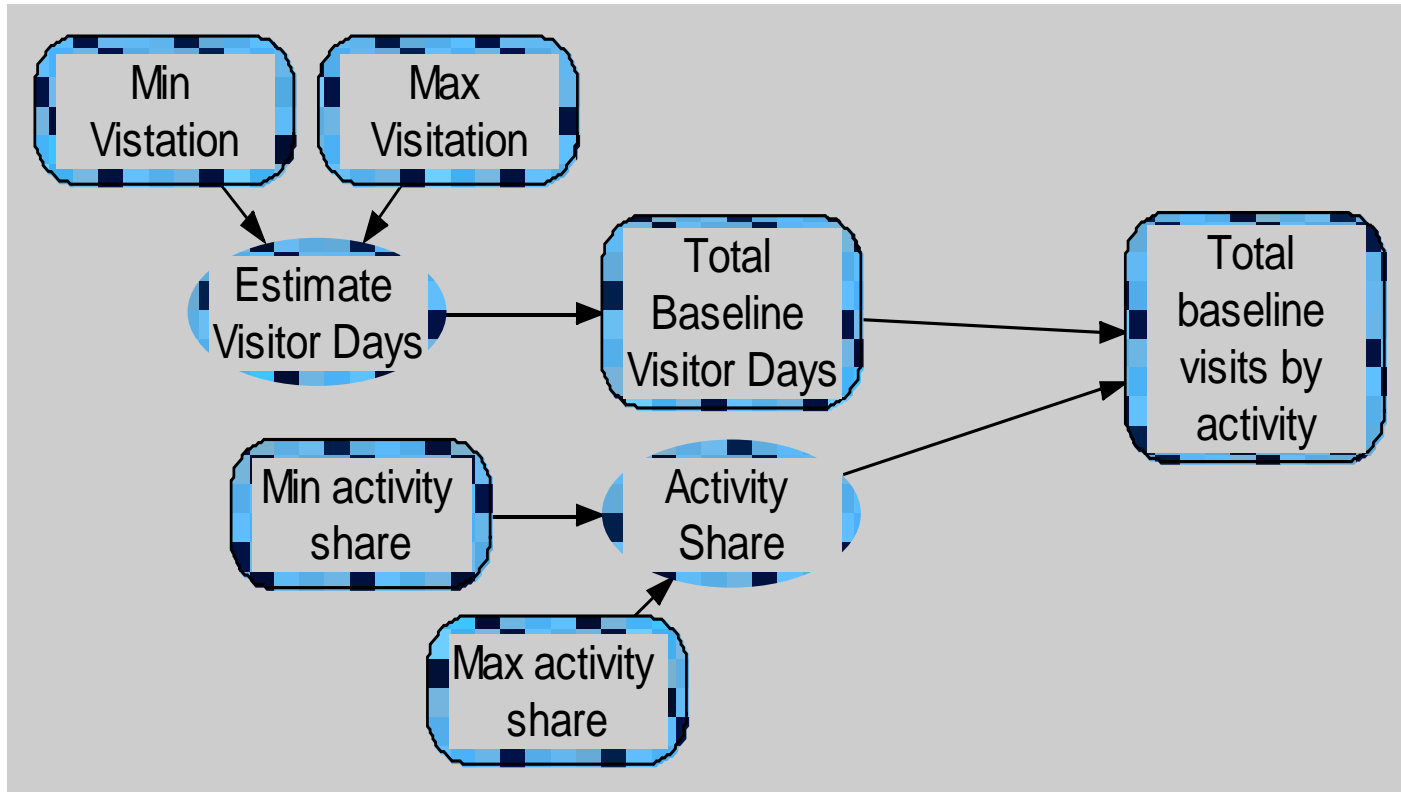


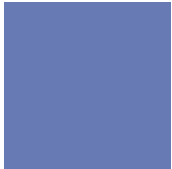
# Baseline/No Action Alt.

- n **Baseline defined as: Current management**
- n In the park
  - | Baseline park visitation by area, season, activity (visitor days)
  - | Baseline conditions in park for visitors
  - | Baseline conditions in park of natural resources, diversity and abundance, status
- n In the region
  - | Baseline resident population by area, season, activity
  - | Baseline visitation to region by area, season, activity, type of trip (day trip, overnight trip, group size)
  - | Baseline economic activity by area, season, type of business
  - | Baseline substitute areas by activity, season



# Calculating Baseline Visitor Days by Activity





# Baseline (Current) Visitation – Visitor Days

## n NPS statistics

- | Traffic counters, ferries, airports, building counts (visitor center, lighthouse)
- | Multipliers to account for group size

## n Other data

- | Fly over counts
- | Visitor counts as part of surveys in CAHA
- | Parcel maps, building use and occupancy data for housing/rental/hotel units, local population
- | Fishing permit data

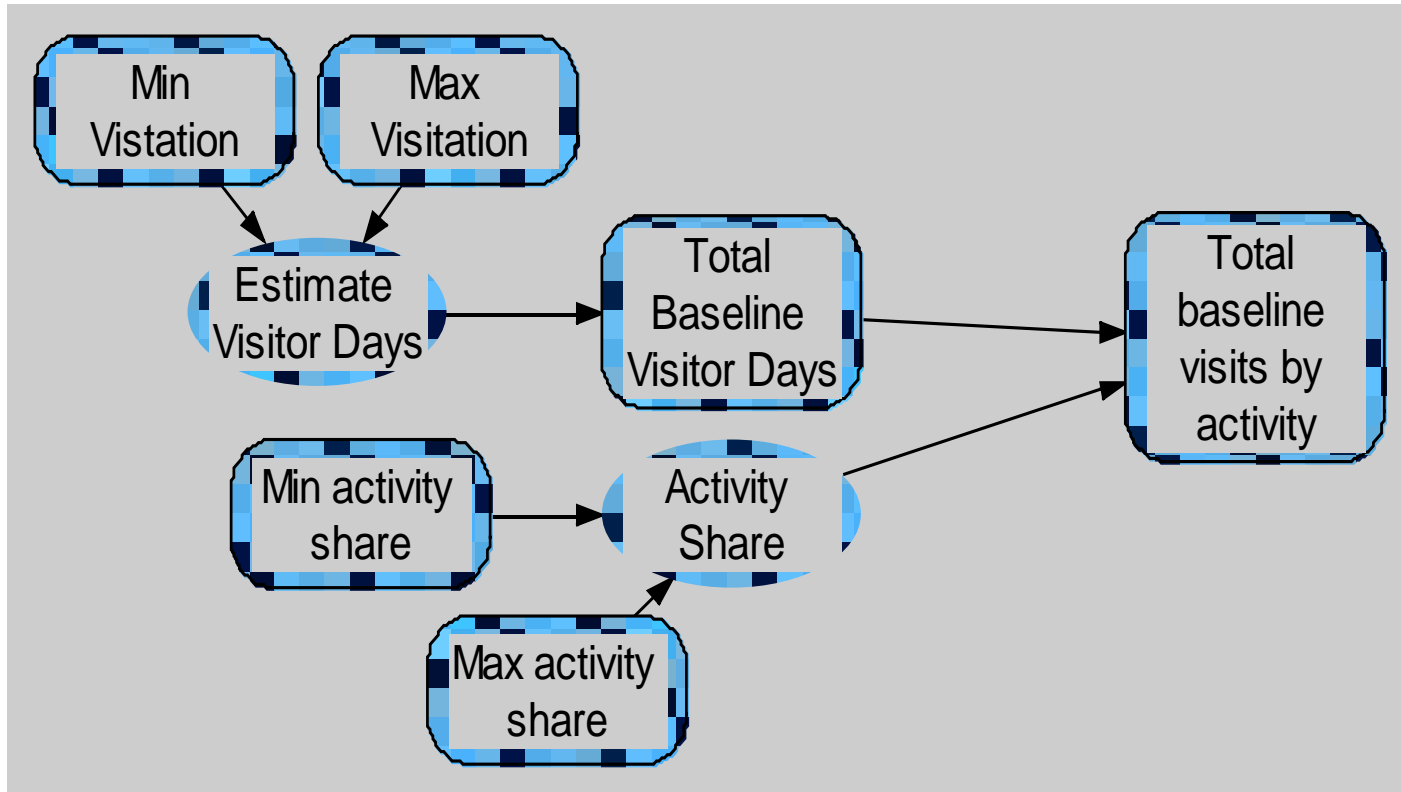


# Baseline Visitation Distribution

n Distribution of visitation estimates



# Calculating Baseline Visitor Days by Activity





# Baseline visitation by activity

\*Multiply person days by percent engaged in different activities

Activity	Max %	Mean %	Min %
ORV to fish			
ORV for other beach visit			
ORV to surf/kiteboard			
Fish from shore, no ORV			
Fish from boat			
Surf/kiteboard			
Other beach visit			
Bird watch			
Other activity (will be specified)			



# Baseline visitor characteristics

## n Characteristics

- | Activity
- | Group size
- | Trip length
- | Spending patterns

## n Sources

- | Traffic counters at specific access ramps
- | Park visitation data
- | CAHA Visitor surveys (Vogelsong, SDR Consulting, NPS Visitor Survey Project 2002)
- | National surveys (Nat. Survey Hunting, Fishing, Wildlife Recreation, National Survey of Recreation and the Environment, NOAA survey, NMFS)



# Baseline conditions

- n Conditions in the park
  - l By area/season: Crowding, facilities available, mix of activities, weather
  - l By area/season: Natural resource diversity and abundance
- n Region
  - l Population of communities
  - l Number of businesses by area, type, season
    - u Percent of customers who visit park by area, type, season
    - u Size (revenue, employees)
- 13 n Substitute areas by activity, season



# ORV Management Plan

- n **ORV management plan may change**
  - | season/time activities permitted
  - | location activities permitted
  - | access points for pedestrians and ORVs
  
- n **Primary impacts: changes in**
  - | Quantity and quality of facilities and services in the park
  - | Quality of environment for visitors in the park
  - | Abundance and diversity of natural resources in the park

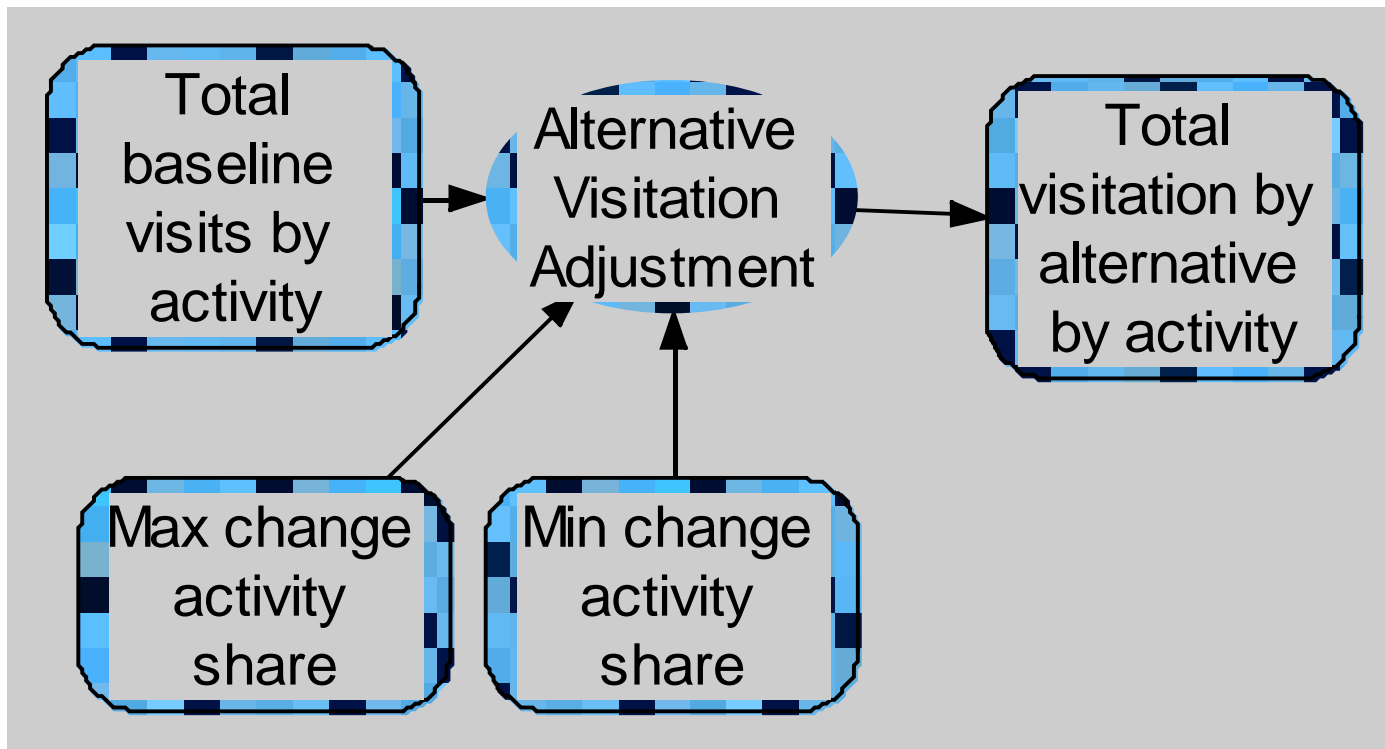




# ORV Management Plan, con't

- n Primary impacts, continued:
  - | Changes in perceptions of visitor experience
  - | Change in visitation patterns -- depends on
    - u preferences for activities
    - u conditions in the park
    - u substitute sites for activities
    - u seasonal demand for lodging

# Calculating Change in Visitation for an Alternative



# Change in Visitation Share

Activity	ORV to fish	Fish from boat	Other beach visit	Not visit
ORV to fish	% range			
ORV to surf/kiteboard				
Fish from shore, no ORV				
Fish from boat				
Surf/kiteboard				
Other beach visit				
Bird watch				
Other activity				
Not visit				



# Change in Visitation, con't

## n Sources

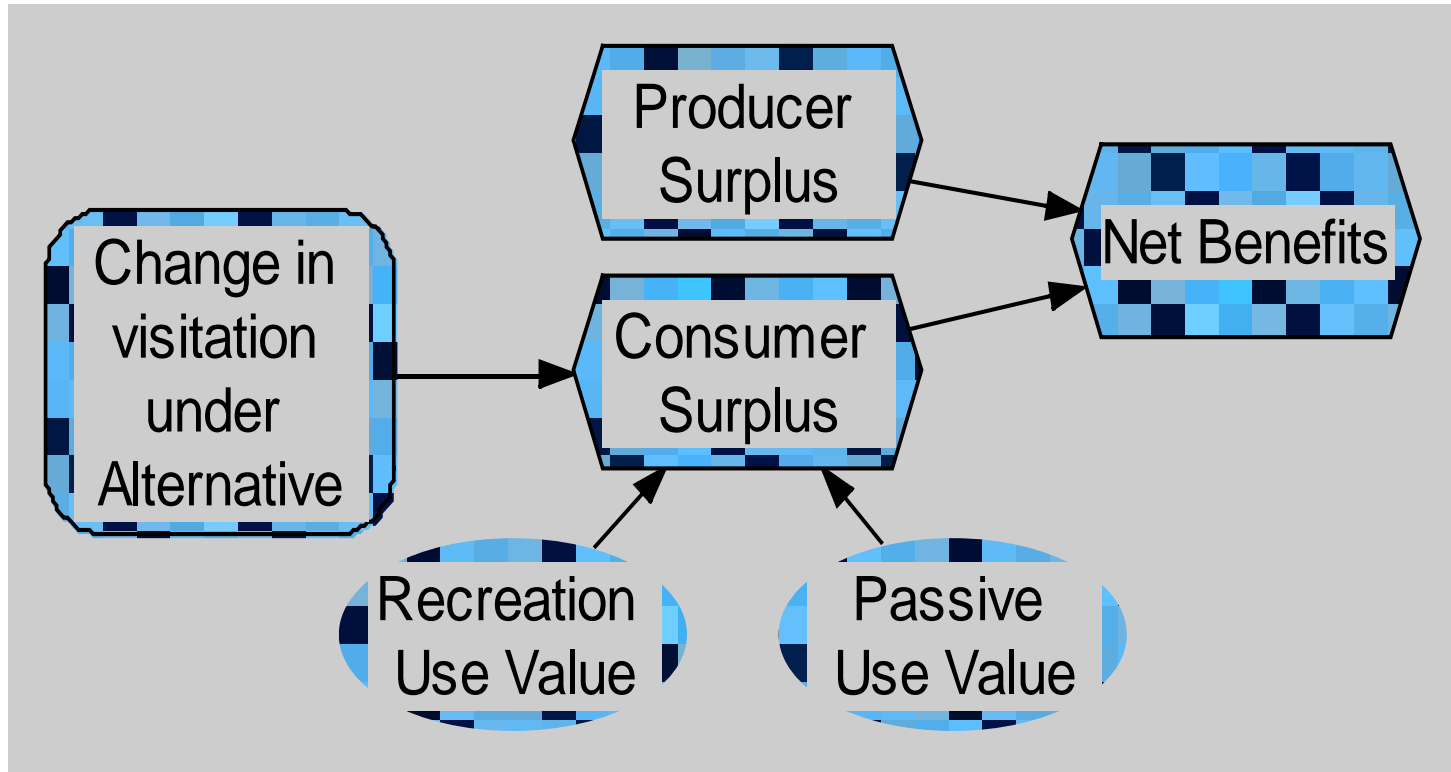
- | Visitor surveys (Vogelsong, SDR Consulting)
- | Interviews with businesses, park staff
- | Fishing permit data
- | Lodging occupancy data



# Change in Consumer Surplus for Visitors

- n Consumer surplus is a measure of enjoyment
- n Changes can be positive or negative
- n Change in consumer surplus depends on
  - | activity/location choice
  - | preferences for activities
  - | old/new conditions in the park
  - | substitute sites for activities
- n Recreational use and passive use values

# Calculating Change in Consumer Surplus

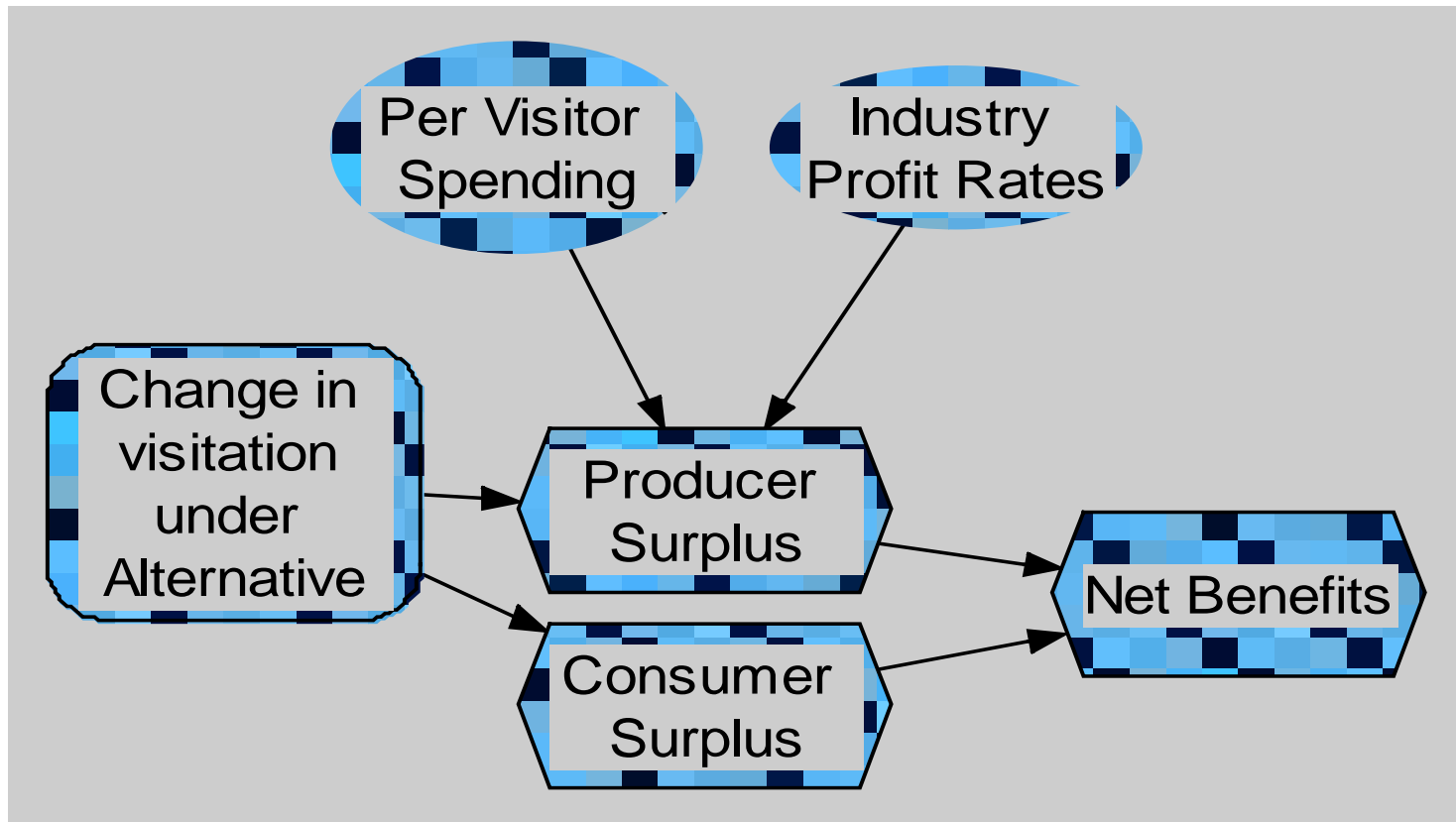




# Change in Consumer Surplus for Visitors

- n Use existing studies to estimate change in consumer surplus in monetary terms
- n **Loomis, John. 2005.** Updated outdoor recreation use values on national forests and other public lands. Gen. Tech. Rep. PNW-GTR-658. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 26 p.
- n Other published studies on relevant activities

# Calculating Change in Producer Surplus







# Secondary Impacts

- n Change in spending patterns multiplied by change in visitation by type of visitor (trip length and activity)
- n Estimate change in producer surplus
  - l Estimate revenue change for industry categories based on spending changes
  - l Multiply by profit rates
- n Changes can be positive or negative



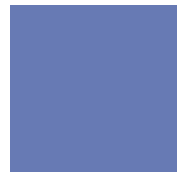
# Spending Categories

- n Lodging
- n Food (grocery and restaurant)
- n Recreational equipment (fishing, boating, beach stuff, surfing)
- n Gas
- n Gifts/incidentals
- n Access fees



# Net Benefits of Alternative Relative to Baseline

- n Total Benefits = Change in consumer surplus + change in producer surplus
- n Total Costs = Change in consumer surplus + change in producer surplus
- n Net Benefits = Benefits – Costs
- n Discount rate: 3% and 7%



# Ripple Effects on Regional Economy

- n Use change in revenue for industry categories
- n Estimate changes in
  - | income
  - | employment
- n Use IMPLAN software
- n Compare impacts for zip codes of most affected areas, Dare/Hyde counties and for state of North Carolina

# Availability of CS Estimates

Recreational	Not Available	Available
Fishing (shore, boat)		CAHA/NC
Boating		CAHA/NC
Swimming		CAHA/NC
ORV Use		SE Region (in Nat'l Forest, not on beach)
Surf/Kiteboarding		SE Region (TX)
Beach use (CS for beach access, beach quality, water quality)		CAHA/NC/SE Region
Birding		SE Region (TX)
Wildlife Watching		CAHA/NC/SE Region
Sightseeing		NC/SE Region
Spiritual/Inspirational/ Aesthetic/Educational	X	



# Planned Primary Data Collection

- n Data on impacts of alternatives and data for small business impact analysis
- n Survey of businesses in CAHA area
  - l Lodging (hotels/motels, rental companies, home owners?)
  - l Recreational equipment (fishing, boating, beach stuff, surfing, etc.)
- n Short survey conducted by telephone, needs OMB approval unless we survey 9 or fewer businesses



# Additional Data Collection Possibilities

- n Counts of visitors on random days (without interviews)
  - | Data on baseline visitation (compare with other counts), snapshot of observed activity patterns
  - | Does not need OMB approval
- n Survey of beach house renters/users, hotel guests, county residents
  - | Current visitation levels – number of visitors, activities, length of stay
  - | Expenditures by category
  - | Reported behavior if management changes
  - | Value of beach activity day under management changes



# Additional Data Collection Possibilities, con't

- n Survey of visitors (intercept)
  - l Concentrate on off seasons
- n Surveys need OMB approval (may take up to 90 days or more)





# Next Steps

- n Review and collect additional information on:
  - | visitation stats
  - | surveys of visitors
  - | literature on consumer surplus for specific activities
- n Draft survey of businesses
- n Finalize the analysis plan