

0075213

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Reply To: fff1@mindspring.com
To: jkeene@franklineq.com; smaddock@audubon.org; destryjarvis@earthlink.net; 'Burnham Gould, Jr.':
Paul_Stevens@nps.gov; [Robert Fisher](mailto:Robert_Fisher)
Cc: [Frank Folb](mailto:Frank_Folb); [David Goodwin](mailto:David_Goodwin); Sandra_Hamilton@nps.gov; mike_murray@nps.gov
Subject: Re: Routes & Areas subcommittee list of principles & criteria
Date: 08/25/2008 07:39 AM

To: Routes and Areas Committee

From: Frank Folb

Preliminary statement of "Principles & Criteria" for designation of "Routes and Areas"

I would like to thank Jim Keene and Sidney Maddock for compiling and distributing the written views of the areas. As we can all see these two documents are far apart from any consensus required for approval by Neg, Reg.

I must ask the DFO, Mike Murray for direction from NPS as to what amount if any of the requested year round resource closures listed in the Environmental document NPS, NEPA or DOI is considering. I, in no way will negotiate from my present position as written in the document presented for our first subcommittee conference call meeting with any year round resource closures on the table. These are nothing more than added refuges within the seashore and of the 73 miles from South Nags Head to Ocracoke Inlet we have the 13 mile Pea Island Refuge which is 18 percent of the total millage. This is enough resource closure as it is and more than enough pedestrian only year round area as well.

Frank Folb

-----Original Message-----

From: keene9558

Sent: Aug 24, 2008 9:01 PM

To: smaddock@audubon.org, destryjarvis@earthlink.net, "Burnham Gould, Jr." ,
Paul_Stevens@nps.gov, 'Robert Fisher'

Cc: 'Frank Folb' , 'David Goodwin' , Sandra_Hamilton@nps.gov, mike_murray@nps.gov

Subject: Routes & Areas subcommittee list of principles & criteria

Following is the list of principles & criteria as applied during the ongoing subcommittee negotiations. These principles and criteria were and are applied during the formulation of the 15 page routes & areas proposal distributed prior to our telephone conference on August 15 and shared in a smaller meeting (july 23) with Sidney Maddock, Destry Jarvis, Frank Folb, David Godwin and me.

To: Routes & Areas Subcommittee

**Preliminary statement of "Principles & Criteria" for designations of
"Routes & Areas"**

The following statement is preliminary (neither complete nor limited), current and the most referenced basis for the positions of the Routes & Areas subcommittee group consisting of Frank Folb, David Goodwin and Jim Keene. While we request confidentiality we recognize your need to discuss its content with fellow members of the full REG-NEG committee and your advisors. Any publication beyond this would be considered a breach of our good faith agreements.

Enabling Legislation: The topic of recreation is found throughout the earliest development, current regulations and recognized in the foundation of the current FACA. As written, the 1937 law separated this, the first national seashore (Cape Hatteras National Seashore Recreational Area, the park) into two primary areas.

1. Areas adaptable for recreational uses: e.g. swimming, boating, sailing, fishing and other.

Such areas shall be developed as needed for those purposes.

2. Primitive wilderness wherein no development shall be undertaken which would be incompatible with the preservation of the unique flora & fauna or physiographic conditions now (1937) prevailing in the area.

There was to be no competition or conflict between wildlife & recreation since they would be managed in separate areas. As constituted (1953) it is clear that the beaches should be reserved for the type(s) of recreation so defined.

Traditional and Historic Uses: In 1917, the first vehicles, not ORV's, were driven on the outer beaches of North Carolina (the outerbanks). The term ORV was not widely accepted until the 1950/60's. Vehicles were used for transportation, commerce and access both before and since paved roads existed on the outer banks. In 1951 a road was built but the beaches continued as a primary venue. In 1953 Conrad Worth wrote of the opportunities available with the creation of the park and the promise of accessibility. Ferries brought early vehicles until 1962 when with the completion of the Bonner Bridge major changes began to take place.

The routes continue as the means of access to these beaches set aside for recreational use. Routes (vehicle ramps/roads) to closed beaches are unacceptable. Of the many visitors I and others have encountered, I can only count a few who have complained of having to share the beaches with vehicles. The vast majority of those on the beaches arrived by vehicle. We hear of multiple complaints but have never been shown evidence. Most who request closed areas are property owners wishing for exclusive use of nearby areas. These are federal lands and the visitor from mid-America or elsewhere and staying in a campground or motel has the same rights of access as the visitor/property owner on the oceanfront. Those who require a wilderness experience are looking for something that Cape Hatteras cannot supply. For someone to drive to a parking lot, walk 200 ft and expect to visit a virgin wilderness it is impractical.

General Authorities Act of 1970: Each area within the National Park System shall be administered in accordance with the provisions of any statute made specifically applicable to that area.

Wilderness Act of 1964: Recognizing that this act, signed by President Johnson, was designed to protect areas from development, it carried with it many restrictions, including;

1. Must have at least 5,000 acres of land.....
2. Must be recommended by the President to congress...approved by an Act of Congress.
3. "Nothing in this Act shall modify the statutory authority under which units of the National Park system are created.

Introduction of "wilderness study areas" with limited or no public access is not acceptable.

Executive Order 11644/11989: Clearly recognizes the legitimacy of Off Road Vehicle use on federal land (Sec 1). Section 3 of the order identifies the National Park System and National Wildlife refuges as potential ORV use areas. Section 3 also outlines specific policies related to ORV use, policies in place at the park consistent with the policies outlined in Section 3. Section 9 provides that agency heads can unilaterally close ORV areas but only if it is determined that ORV use is causing or will cause "considerable adverse effects". To date those "considerable adverse effects" have never been proven.

EO 1117: Clearly states "Within National Recreation Areas (which by legislation this park is), outdoor recreation shall be recognized as the dominant or primary resource management purpose. If additional natural resource utilization is carried on, such additional use shall be compatible with fulfilling the recreation mission, and none will be carried on that is significantly detrimental to it."

ADA, Rehabilitation Act of 1973 Section 504, EO 12250, Proposed EO (posted Fed Reg 6/17/08), 28 CFR .35, etc : While non-compliance will have to be determined outside of this committee, acceptance of any proposals for "pedestrian only" and/or any "permanent" closures" will obviously be non-compliant. Both Section 504 and the ADA prohibit covered entities from discriminating against persons with disabilities in the provision of benefits or services or the conduct of programs or activities on the basis of their disability. Any action to exclude the growing population of Americans with disabilities is not acceptable. What has been proposed is the revocation of irreplaceable privileges guaranteed under these statutes. Thousands of disabled Americans, including veterans, be they from WWII thru the current conflicts in Iraq, will be denied the access made available in 1917, continually and currently in use.

Conclusion: We are in total agreement that this unit of the National Park system needs an enforceable set of rules to govern the use of ORVs as is evidenced by our commitment to this process. We are adamant that the NPS needs the resolve, commitment and financial support to enforce the existing and future rules in their efforts to maintain the peaceful co-usage of these facilities by the divergent personalities who chose to visit. Coexistence has been a by-word for 55 years in this Recreational Area and will continue to provide for enjoyable visitation if local management is allowed to maintain control with a mandate of providing for the best

Recreational Area possible.

We further recommend that an advisory panel (FACA if necessary) be established to meet regularly and advise the Superintendent on needed changes to established Routes & Areas. This same panel should advise on all and any management practices and also respond to requests from the Superintendent for advice.

When requests for assistance have been made by the NPS, the local citizenry have been quick to respond. The partnerships established have flourished and through cooperative efforts the Cape Hatteras National Seashore Recreational Area has flourished. This is neither the time nor place nor never will it ever be appropriate to divide this area to satisfy a few at the expense of many.