

**From:** [Mike Murray](#)  
**To:** [jason.waanders@sol.doi.gov](mailto:jason.waanders@sol.doi.gov); [mike.stevens@sol.doi.gov](mailto:mike.stevens@sol.doi.gov)  
**Cc:** [Jerry Case](#)  
**Subject:** another RegNeg questions  
**Date:** 08/26/2008 05:29 PM  
**Attachments:** [36 CFR7.58\(b\). CAHA fishing reg.doc](#)

---

An issue came up in Permits Subcommittee discussion and I committed to follow-up. Question came up as to whether it was within the purview of the negotiated rulemaking committee to recommend any changes in the existing Commercial Fishing regulation for CAHA. In essence, Paul Stevens and I indicated that commercial fishing vehicles are already regulated under 36 CFR 7.58(b) - see attached, and we thought that those vehicles could/should be excluded from a new (presumably "recreational") ORV permit requirement since they are already regulated. The focus of interest was the perception that the current reg allows too many residents the opportunity to obtain a commercial fishing permit who were not legitimate commercial fishermen and it needs to be tightened and limited to "legitimate commercial fishermen" (there are supposedly currently about 1,000 Dare County residents with NC commercial fishing licenses, which qualifies them to get the park commercial fishing permit). How this issues relates to ORV management is that if we were to allow some exemptions or increased flexibility for commercial fishermen (such as giving them a little more latitude if there is a night driving restriction; i.e., let them be on the beach earlier or later than the recreational public -which has bipartisan support in the committee), it makes a difference to NPS whether we are making an exception for a half dozen permittees who truly are making a living from net fishing off the beach, or up to a thousand permittees who happen to be able to obtain a commercial permit with (perhaps) the intent of taking advantage of the better access allowed to commercial fishermen. Under the current reg, we do not have the ability to make this distinction and as a result may not be able to be as flexible as we would like because of the potential numbers of people who would be excluded from the requirement. A half dozen people coming into an area an hour early in the morning to pull-in their nets before it gets too warm is a much different impact than inadvertently allowing 100 people get an early start to the Point ahead of the crowd.



36 CFR7.58(b). CAHA fishing reg.doc

QUESTION: Is it under the purview of this committee to make recommendations about the existing commercial fishing regulation? Or, if the committee makes a recommendation that we do something about , can we revise the existing special reg under the same plan/EIS and rulemaking process or would that require an additional separate rulemaking process?

Just need some general advice about whether should allow further discussion or should we stay clear of attempting to revise 7.58(b) as part of this process because it would overly complicate an already complicated process.

Mike Murray  
Superintendent  
Cape Hatteras NS/ Wright Brothers NMem/ Ft. Raleigh NHS  
(w) 252-473-2111, ext. 148  
(c) 252-216-5520

0075232

fax 252-473-2595

**CONFIDENTIALITY NOTICE**

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure.

TITLE 36--PARKS, FORESTS, AND PUBLIC PROPERTY  
CHAPTER I--NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR  
PART 7 -- SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

**Sec. 7.58 Cape Hatteras National Seashore.**

*(Sub-section "A" relates to Hunting)*

(b) **Fishing**--(1) Definitions. As used in this part:

(i) Seashore. Cape Hatteras National Seashore.

(ii) Permittee. A person authorized to engage in commercial fishing from seashore beaches.

(iii) Legal resident of an established village. An individual (excluding a corporation, partnership, or other artificial person) having domicile in one of the following Outer Banks villages referred to in section 1 of the Act of August 17, 1937 (50 Stat. 669): Corolla, Duck, Kitty Hawk, Kill Devil Hills, Collington, Nags Head, Manteo, Wanchese, Rodanthe, Waves, Salvo, Avon, Buxton, Frisco, Hatteras, Ocracoke.

(iv) Commercial fishing. All operations preparatory to, during, and subsequent to the taking of fish by any means if a primary purpose of the taking is to sell fish.

(v) Commercial fishing permit. Written revocable authorization, issued by the Superintendent to an eligible individual, to engage in commercial fishing from the Seashore beaches. The permit will be issued on an annual basis commencing on October 1st of each year.

(2) Commercial fishing permit required. A commercial fishing permit is required before engaging in commercial fishing from the seashore beaches.

(3) Permits. Commercial fishing permits may be issued by the Superintendent or his authorized representative limited to individuals meeting the following criteria of eligibility:

(i) A legal resident of an established village.

(ii) Possession of a valid North Carolina commercial fishing license or engagement in a joint commercial fishing venture with a North Carolina commercial fishing licensee.

The permit shall be carried at all times while engaged in commercial fishing and shall be displayed upon request by the Superintendent or his representative. When two or more individuals engage in a joint commercial fishing venture involving a splitting of profits or any other assumption of proprietary interests, each individual must qualify for and have a commercial fishing permit. An employee hired by a permittee for a specific wage with no financial interest in the activity need not have a permit.

(4) Revocation of permit. The Superintendent may revoke the

commercial fishing permit of any permittee who ceases to meet the criteria of eligibility set forth in paragraph (c)(3) of this section or who violates any General, Special, or other related regulation governing activities at the Seashore.

(5) Beach sanitation and conservation of aquatic life.

Notwithstanding any General Regulation of the National Park Service to the contrary, all fishermen, commercial and sport, landing fish on the Seashore by any method and not using such fish because of size, edible quality, or other reason, shall immediately release and return such fish alive in the waters from which taken. No dead fish or part thereof may be left on any shore, beach, dock, pier, fish cleaning table or thrown back into the waters, but must be disposed of only at points or places designated for the disposal thereof or removed from the seashore area.

(6) Sport-fishing Zone. A zone is established for the protection and enhancement of recreational sport-fishing commencing at Beach Access Ramp No. 22 and continuing south and west along the ocean shore, including Cape Point (Cape Hatteras), to Beach Access Ramp No. 30. Within this zone commercial fishing, as specified in the Act of August 17, 1937 (50 Stat. 669), is permitted, except between the hours of 12:01 a.m. on Saturday to 11:59 p.m. on Sunday from October 1 through April 30, commercial fishermen are not permitted to haul seines or nets onto the beach within the Zone.

[24 FR 11052, Dec. 30, 1959, as amended at 38 FR 33081, Nov. 30, 1973; 40 FR 4135, Jan. 28, 1975; 40 FR 56888, Dec. 5, 1975; 48 FR 30295, June 30, 1983; 52 FR 10686, Apr. 2, 1987]