

0075235

**From:** [MIKE P. STEVENS](#)  
**To:** [JASON WAANDERS](#)  
**Cc:** [Mike Murray](#)  
**Subject:** Re: Fw: Question on E.O. 11017  
**Date:** 08/26/2008 11:21 AM

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Michael Stevens  
Attorney-Adviser  
Office of the Regional Solicitor, Southeast Region

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▼ [JASON WAANDERS/HQ/SOL/DOI](#)

**JASON  
WAANDERS/HQ/SOL/DOI**

08/26/2008 10:08 AM

To: MIKE P STEVENS/ATL/SOL/DOI@SOL  
cc: Mike Murray/CAHA/NPS@NPS  
Subject: Re: Fw: Question on E.O. 11017 

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Jason Waanders  
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0075236

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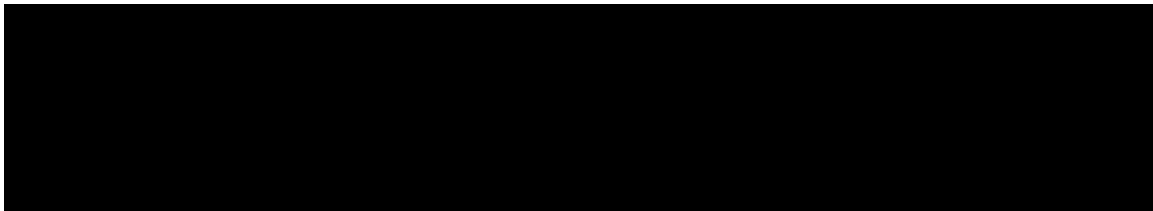
▼ MIKE P STEVENS/ATL/SOL/DOI

**MIKE P  
STEVENS/ATL/SOL/DOI**

To JASON WAANDERS/HQ/SOL/DOI@SOL  
cc

08/26/2008 07:37 AM

Subject Fw: Question on E.O. 11017



Michael Stevens  
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Office of the Regional Solicitor, Southeast Region

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----- Forwarded by MIKE P STEVENS/ATL/SOL/DOI on 08/26/2008 07:36 AM -----

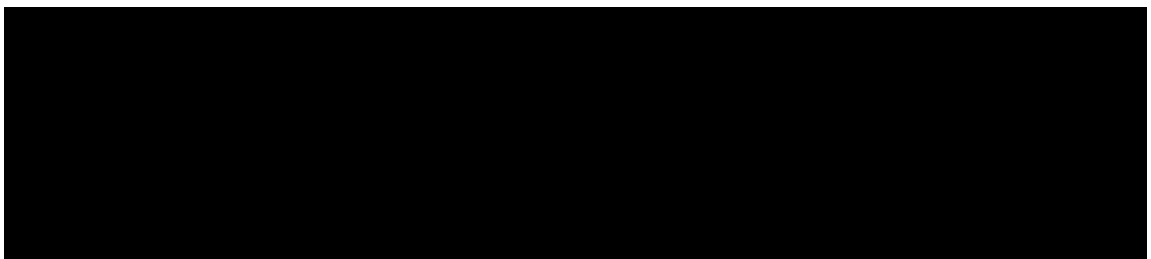
**Mike\_Murray@nps.gov**

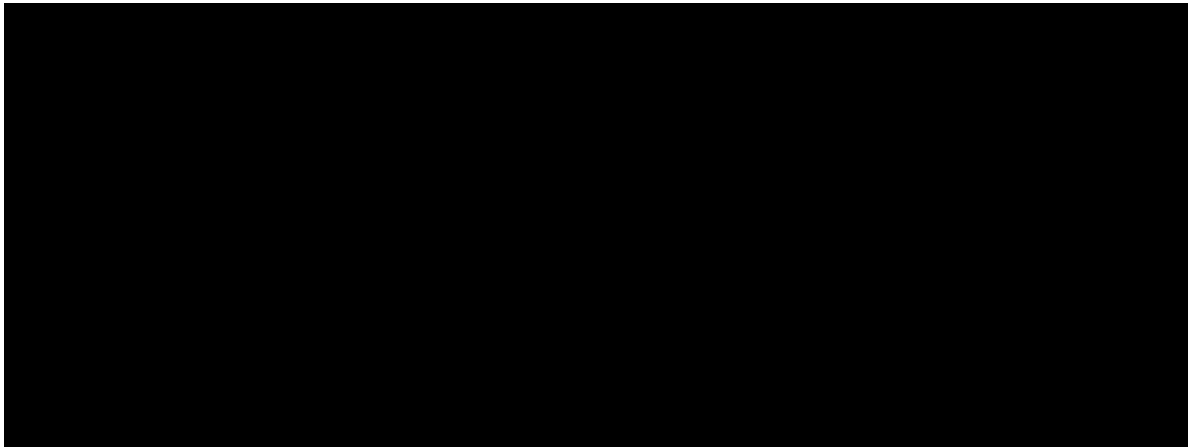
To MIKE P STEVENS/ATL/SOL/DOI@SOL, JASON  
WAANDERS/HQ/SOL/DOI@SOL

08/25/2008 04:45 PM

cc

Subject Question on E.O. 11017





Mike Murray  
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----- Forwarded by Mike Murray/CAHA/NPS on 08/25/2008 03:35 PM -----

"Bob Eakes"  
<bobeakes@aginet.com>  
To  
"Patrick Field"  
08/22/2008 10:00 AM

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cc

Subject  
Re: NR Subcommittee call Monday,  
8/25 1 PM ET

Hello Everybody,

These are my thoughts only. Having only a couple of days to work on this paper, you will find it a little rough on the edges.

0075238

Have a great weekend,

Bob Eakes

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

From: "Patrick Field" <pfield@cbuilding.org>  
To: <allend@coastalnet.com>; <bobeakes@aginet.com>;  
<cahabusinessallies@embarqmail.com>; <camerons@coastalnet.com>;  
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<Darrell\_Echols@nps.gov>; <david\_rabon@fws.gov>;  
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<jrylander@defenders.org>; <Mike\_Murray@nps.gov>; "Ona Ferguson"  
<oferguson@cbuilding.org>; "Patrick Field" <pfield@cbuilding.org>;  
<rcmheritage@mac.com>; "Robert Fisher" <rcf@fisherics.com>;  
<Sandra\_Hamilton@nps.gov>; <Thayer\_Broili@nps.gov>; <wgolder@audubon.org>  
Sent: Thursday, August 21, 2008 10:07 AM  
Subject: NR Subcommittee call Monday, 8/25 1 PM ET

ALL

A reminder that the next Natural Resources call is MONDAY, August 25th 1  
PM  
(afternoon) ET. The call in number is:

866-834-8757 and the code is: 105-210-1042#.

The three primary topics will be:

- Ideas for Cape Point as generated by Bob and Walker. A draft is circulating among them this week and they will forward it to this email list as soon as they can.
- Further topics for this subcommittee. I have drafted a very short Word document with some ideas. Please note that some of these topics may not fall within the current charter of the subcommittee. This can be brought back to the full Committee in September as needed. I can also verbally explain them in case the description is vague or unclear.
- Any further thoughts at this point from NPS on the schedule question raised at our last meeting.
- Other?

Just a reminder. The attached document (and Walker's and Bob's) is for Subcommittee use only, please keep it confidential. We will discuss the confidentiality of working documents during the call. Also, please note the Committee's ground rules provide that Committee members may discuss ideas with non-Committee members. In doing so, Committee members will not attribute statements to others involved in the negotiated rulemaking or seek to present or represent the views or position of other Committee members.

I'll be back on-line and at my desk Monday morning.

PAT FIELD

(See attached file: Preliminary Access Point of View for Cape Point.doc II.doc)

[attachment "Preliminary Access Point of View for Cape Point.doc II.doc" deleted by MIKE P STEVENS/ATL/SOL/DOI]

**Preliminary Access Point of View for Cape Point - August 22, 2008**

A complete discussion of laws relevant to CHNSRA is incomplete without Executive Order 11017, dated April 27, 1962 giving Federal Executive Branch Policy for the National Recreation Areas.

Basically this order created a “Recreational Advisory Council” which covers recreational areas including National Seashores, National Lakeshores, and so on. Bullet 6 of the seven primary criteria is of interest.

6. “Within National Recreation Areas, outdoor recreation shall be recognized as the dominant or primary 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.”

There is no question that the main purpose for CHNSRA is for recreation and that this again trumps the Organic Act.

**Science** seems to be a major sticking point. There is very little peer reviewed, published science being applied to the management of resource issues in CHNSRA. While the so called best available science is simply what anyone states and so on, there just is not a great deal of peer reviewed science dealing with CHNSRA. The so called protocols were nothing more than a failure of a resource manager trying to with stand a very biased NPS hierarchy which was saying that he had failed in taking care of the resource. The protocols were not peer reviewed as specified by USGS Peer Review Policy, had no FONSI attached, and were not NEPA approved. They do not have a USGS publication number, they are undated, and there is no evidence they were even published in the Federal Register. In fact, some authors and reviewers of the Protocols were members of Audubon, DOW, or SELC, a fact never disclosed and not in compliance with USGS Peer Review Policy(<http://www.usgs.gov/usgs-manual/500/502-3.html>).

Best available science as touted by the anti-access groups is yet again not peer reviewed and mainly “opinions” disguised as science which is biased and easily swayed by groups like Audubon, DOW, and SELC.

Simply forming an AMOY group and hosting same is exactly the corrupt science which has hindered the Negotiated Rule Making process. Host a group of people who do not care about access, who are members of the Neg Reg committee, and the sway them to declare AMOY as a species of concern when there never was a reason related to CHNSRA is just wrong. Best possible peer reviewed science is not a great concern to the anti access groups. Best possible science has to be openly peer reviewed and any scientist having any kind of conflict of interest association whether through funding, grants, etc. with the plaintiffs simply will not be considered(See USGS Peer Review Policy).

**Cape Point**

From the southern groin to Cape Point to ramp 49 will be open year round. There will not be a closure unless there is a safety reason. Safety is defined as any high tide situation which is impassable.

**Pre Nesting Closures** will occur May 1 and not later than May 15 depending upon the birds. Realizing the dynamics of CHNSRA and understanding that what occurred last year may not be occurring this year, prenesting closures should be based upon only areas which were studied for the past 15 years and if no birds are in the area by May 15 then the area opens.

Realizing the CHNSRA does not have either the assets or the ability to monitor the entire 70 plus miles of seashore, pre breeding behavior will not cause a closure. PINWR, located within CHNSRA, has no closures based upon prebreeding behavior.

Cape Point already takes care of winter critical habitat. Large areas are presently closed while there is no justification for these closures.

**Buffer Distance** would be based upon logic, management and field experience judgement and not biased, self appreciating, and unjustified observations by grant heavy so called scientist. Drive by the bird, when it shows concern then note the distance. Walk by a bird and when it shows concern the note the distance. Buffer distances should not be based upon what members of Audubon say but rather on objective scientific study. Needless to say, if the science is paid for through grants or funding by Audubon or other non governmental environmental organizations, then without rigorous open peer review the science can be questioned as being self-serving and biased.

Fencing and barriers should be placed between the nest and or chicks to stop any chance of a bird being harmed. Fencing has been used through out the United States for a great many birds including Piping Plovers. There are a great many other means to separate the resource from recreation.

**Violations of closures** will be dealt with through the judicial system and law enforcement system. Closure violations with penalties presume that there are not environmentalist who would not break the law to increase closures.

**Sea Turtle** management will remain as it was before the consent decree. There is no documentation or science supporting the premise that irreparable harm is occurring in CHNSRA.

Night driving will be studied with previous charts of closure(bird) and conclusions can be drawn. Tire ruts have not played a part in turtle hatching for a long time in CHNSRA.

### **Other Thoughts**

The parking area at Ramp 45 should be open during duck hunting season.

The interdunal road should be maintained and open for two way traffic.

An access route to the dredge pond with suitable parking should be developed for the bird watching enthusiast.

Vegetation should be removed from areas only if the area selected will not close access because of some buffer.

More parking and toilets at ramp 43.

Increase the width of pavement in the approach to ramp 44 for airing down.