

0075278

From: [Mike Murray](#)  
To: [Robert Fisher](#)  
Subject: Fee-revised Permits, Fees and Passes options  
Date: 08/31/2008 10:59 AM  
Importance: High  
Attachments: [Permits/Passes/Fees options.REV DRAFT.083108.doc](#)

Robert,

I forgot to include a section on commercial fishing in the draft Permit proposal I sent you yesterday. Please use the attached revised draft dated August 31, 2008, to distribute to the subcommittee for consideration. Background: In discussing the existing commercial fishing reg (36 CFR 7.58b) with the Solicitors, the advice was that changing that section is outside the purview of the committee; however, since that section does NOT address ORV use by commercial fishermen, we could address that through the ORV special reg. Rather than try to figure out all the possible nuanced details of which ORV regs would apply to commercial fishermen or not, my suggestion is simply to require that commercial fishermen have an ORV permit (which could be a single combination fishing/ORV permit), give the Superintendent the authority to exempt commercial fishermen who are actively engaged in authorized fishing from (some of) the regs applicable to recreational ORV use as long as it does not jeopardize public safety or resource protection and as long as those exemptions are subject to the terms and conditions of the permit. (The permit authority allows us to authorize activities that may not otherwise be permissible in the absence of a permit.) We could also say that the Superintendent shall waive ORV permit fees for commercial fishermen. This overall approach would give the Superintendent the authority to establish administrative criteria to distinguish between the hundreds of people that are eligible for a commercial fishing permit under 7.58b and the handful of commercial fishermen who are clearly doing it to make a living, and to exempt the latter from some requirements (e.g., if there are night driving restrictions on ORV use, we could treat commercial fishermen differently under certain circumstances). In any case, it is an approach that could work and a starting point for further discussion.

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-----Forwarded by Mike Murray/CAHA/NPS on 08/31/2008 10:38AM -----

To: Robert Fisher <rcf@fisherms.com>  
From: Mike Murray/CAHA/NPS  
Date: 08/30/2008 01:46PM  
Subject: revised Permits, Fees and Passes options

Robert,

Please provide this information to the Permits, Passes, and Fees subcommittee. As a reminder to all who were on the last call and to Carla who was not: NPS was asked to edit and consolidate the multiple options and variables identified in the previous draft in order to condense it to no more than 3 specific options for further subcommittee review and/or referral to the full committee. The attached document reflects what is feasible under current NPS fee authorities and policies.

As background, I contacted the national NPS Fee Program Manager in Washington to get feedback on the various options the subcommittee had identified. In brief, there is no authorization under either of the two applicable fee authorities and related policies to charge a general "beach use permit, pass, or fee;" and NPS would not be able to approve such a fee. FLREA is currently under Congressional review, in part, due to concerns about using it to charge "general use fees" (primarily by the U.S. Forest Service). Entrance fees are authorized under FLREA, but NPS has temporarily imposed a moratorium on new recreation fees or fee increases through 2009. (Obviously, our proposed fee program would not likely begin until 2011, so it remains to be seen what might happen to the law or related policies.) The special use permit (SUP) authority cannot be used to manage or charge a fee for a general use such as "beach use." NPS typically manages specialized uses, such as backcountry camping and ORV use, under SUPs.

The direction I received was that we should stick to either an entrance fee and/or a special use permit for ORV use, so I have revised the draft options to reflect this. I'm sure I have not thought of everything so there may be a few details I have overlooked. I have also added some NPS policy references to provide guidance on fees, passes, and permits that may help the reader in understanding the options that follow the reference material. Note that under NPS policy the term "pass" refers specifically to an annual park-specific pass and to the Interagency America the Beautiful pass, which cover among other things the entrance fee for a year. A "single-visit entrance fee" can cover up to 7 days. The options reflected in the revised document could be approved under existing law and policy. (Note: there are some practical operational issues mentioned in the document that relate to collecting an entrance fee at CAHA.)

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**v8/31/08**

**PERMITS, PASSES, and FEE OPTIONS**

**AUTHORITIES & POLICIES**

**Recreation Fees**

- Federal Lands Recreation Enhancement Act (FLREA) – (16 USC 6801-6814; PL108-447, Division J, Title VIII)
- *NPS Management Policies 2006* § 8.2.6
- NPS Director's Order 22 (DO-22) and Reference Manual 22 (RM-22): Recreation Fees
  - **DO-22 Section 6: Entrances Fees and Passes**

**6.1 Entrance Fees.** An entrance fee is the recreation fee that authorizes entry onto lands managed by the NPS. The entrance fee can be collected upon arrival, or a variety of passes can be accepted in lieu of the fee. Entrance fees are valid for national park visits of one to seven (1 to 7) consecutive days; the duration of the standard length of stay is determined by the park superintendent. A consistent pricing structure for entrance fees has been developed. This pricing structure is explained each year in the Annual Fee Rate Change Request. Parks must align their fees with the pricing structure. Exceptions to the pricing structure must be justified in writing by the Regional Director and authorized by the Assistant Director, Business Services.

**6.2 Entrances Passes.** Entrance passes must be issued, honored, and validated as stated on the pass in a manner that appears logical and consistent to visitors. Parks will ensure that passes cover the entrance fee in a manner consistent with the standard definitions and the criteria set out in FLREAA and in RM-22. Passes are valid for entrance fees only. The pass is not valid for expanded amenity fees except in limited circumstances that may improve customer service or meet other needs. Such limited circumstances shall be approved by WASO via the regions to ensure consistency and reduce visitor confusion. (*Note: "Passes" include a park-specific annual pass and the America the Beautiful Pass, an interagency pass.*)

**8.1 General Exceptions to Paying Established (Entrance) Fees.** Those who lawfully enter or use a park for activities not related to recreation will not be charged an entrance fee. Examples of non-recreation exemptions include persons entering parks for:

- First Amendment activities, which are exempt from all fees;
- Special park uses such as agricultural, grazing, and commercial filming activities (all of which are subject to special use fees);
- NPS-authorized research activities;
- Federal, state, tribal, and local government business;
- Hospital in-patients involved in medical treatment or therapy;
- A leaseholder or property owner accessing their property;
- Outings conducted for noncommercial educational purposes by schools and other bona fide academic institutions.

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**Permits/Passes/Fees Subcommittee**  
**v8/31/08**

**Special Use Permits**

- 16 USC 3a - (PL 103-1138, Title I, November 11, 1993, 107 Stat. 1387)
- *NPS Management Policies 2006* Section 8.6
  - 8.6.1 General - A special park use is defined as an activity that takes place in a park area, and that
    - provides a benefit to an individual, group, or organization rather than the public at large;
    - requires written authorization and some degree of management control from the Service in order to protect park resources and the public interest;
    - is not prohibited by law or regulation;
    - is not initiated, sponsored, or conducted by the Service;
    - is not managed under a concession contract, a recreation activity for which the NPS charges a fee, or a lease.
  - 8.6.1.2 Fees - All costs incurred by the Service in receiving, writing and issuing the permit(s), monitoring the permitted use, restoring park areas, or otherwise supporting a special park use may be paid by the permittee(s). The money will be retained by the park as reimbursement. Special use permits are managed as a ‘cost recovery’ program. When appropriate, the Service will also collect a fee for the use of the land or facility based on a market evaluation. Fees collected for use of the land or facility will be deposited into the U.S. Treasury.
- NPS Director’s Order 53 (DO-53) and Reference Manual 53 (RM-53): Special Park Uses

**OVERARCHING POINTS****The subcommittee notes the following agreed upon general points to forward to the full Committee.**

- Entrance fees and “passes” would necessarily be administered in accordance with the Federal Lands Recreational Enhancement Act (FLREA), or whatever entrance fee collection authority may replace it in the future, and NPS Management Policies and Director’s Order # 22. FLREA currently allows the park to retain up to 80% of the revenues (the other 20% remains in the NPS system) and places constraints on what the funds may be used for, which includes funding: the cost of collecting the fees; and various “projects” such as infrastructure construction or repairs, hiring temporary employees for certain activities, publications, research, and some other activities. Currently, entrance fee revenues cannot be used to support permanent staff salaries or staffing for ongoing operations. All use of entrance fee
- “Permits” would necessarily be administered under the Special Park Uses authority (16 USC 3a), NPS Management Policies, and Director’s Order # 53. If possible, revenues should be directed specifically at the management of the system and not for any unrelated activities. Direct costs might include physical structures (ramps), personnel, educational materials, and so forth. ORV permit revenues should be deposited in and managed under a separate account and not merged with other kinds of permit revenues unrelated to ORV use.
- There would be no limit on number of permits. Carrying capacity and overcrowding at specific locales would be handled through different means.

**DRAFT Deliberative Document  
Permits/Passes/Fees Subcommittee  
v8/31/08**

- An intensive geographic based permit system would not be administratively feasible.
- The potential range of options and variables previously discussed by the subcommittee has been consolidated into two options based on currently authorized approaches for fee collection and permitting.
- Development of the options is in *no way considered consent or agreement* to any or all of the options. The subcommittee notes that this issue (and its options and variations) are all items that must be considered in a light of an overall management approach and will have to be balanced against numerous other issues, including, but not limited to, designating routes and areas, natural resources, and others.

**CRITERIA TO CONSIDER IN EVALUATING OPTIONS**

**The Subcommittee noted a number of criteria/categories that should be detailed and considered when evaluation options under Permits/Passes/Fees. The Subcommittee did not have the time to develop a detailed evaluation matrix of options and analysis under the criteria below, but could do so at a later point, if helpful.**

- Ease of administration
- Convenience of access to the permit or pass or sticker
- Cost to user
- Fees generated, how much accrues to Park
- Non-burdensome to users
- Educational value
- Enforcement – High
- Data collection value
- Linkage to other issues – Moderate
- Preservation of Access – Moderate

**Option 1: Park Entrance Fees and Passes**

- An entrance fee would be charged to all visitors entering the Park. Certain passes would be accepted in lieu of the entrance fee as defined by NPS policy.
- Entrance fees could be waived for non-recreational visits (e.g., people traveling to conduct business within the villages, delivery vehicles, etc.) and for leaseholders and property owners accessing their property “through the park.” There might be a need for a non-fee “resident pass” or vehicle sticker to facilitate resident passage through the entrance station.
- There could be entrance stations north of Oregon Inlet and in conjunction with the Ferry to Ocracoke. Operation of an entrance station on Highway 12 would be problematic and many operational issues would need to be worked out.
- Fee and Pass options could include: fee per person or per vehicle (*per vehicle is the most efficient to collect*); short-term - 1 to 7 days (*local NPS prefers it be 7 days, i.e., weekly*), an annual CAHA pass, and the America the Beautiful Pass, which is valid at all national parks as well as at some other federal recreational fee collection sites.
- NPS entrance fees are established in accordance with national NPS policy, which provides for consistency in entrance fees between similar categories of parks. The Seashore would propose the fee amount for the weekly and annual local pass and need Washington approval of the proposed fee.

**DRAFT Deliberative Document**  
**Permits/Passes/Fees Subcommittee**  
**v8/31/08**

- Upon entering the park, all visitors would receive information about the Seashore, including beach use regulations, which visitors could be required to sign.
- Under the current entrance fee collection authority (FLREA), the Seashore could retain up to 80% of the fee revenue generated; however, under current policy the revenue can only be used to cover the cost of collection or approved one time or short-term “projects” such as construction, deferred maintenance, temporarily enhanced visitor services, special emphasis programs, or research; and cannot be used to cover ongoing operational costs (such as for staffing or routine maintenance).
- Operationally, it would require further planning and coordination to develop an efficient fee collection system that would not significantly hinder traffic flow or safety at an entrance station (e.g., could develop a “speedy pass” and provide a dedicated pass-through lane for annual pass holders).
- NOTE: At one time OMB did consider a general entrance fee at CAHA, but decided against it due to the number of residences within the Park, the primary access route being a State rather than Federal highway, and the volume of traffic. This approach would require coordination with the State and might require new NPS regulations and authorities to be enacted.

**Option 2a: ORV and Driver Permit System with Fee**

- An ORV Special Use Permit (SUP) would be required for all off-road vehicle operators and vehicles using the beach regardless of time of day or time of year or location of use. In this option, the vehicle itself and any driver are both identifiable as being “permitted.” The vehicle would require some kind of sticker and the driver would also be required to carry some kind of permit.

**Option 2b: Vehicle Only Permit with Fee**

- An ORV Special Use Permit (SUP) is required for all off-road vehicles (vehicle only) using the beach regardless of time of day or time of year or location of use. In this option, the permit would be assigned to the registered owner of the vehicle and the permitted vehicle would be identified by some kind of sticker affixed to the vehicle. The permittee could allow others to operate the permitted vehicle (similar to the registered owner of a boat allowing others to operate his/her boat); however, anyone operating the vehicle would be held responsible for compliance with the regulations, so it puts some burden of responsibility on the registered owner to ensure that any other operators who are allowed to use the vehicle are aware of the regulations.

**Variations and Details for Option 2a or Option 2b**

The variations and details below might be applied in any number of combinations.

*Who or What is Permitted*

- Permit should be assigned to the owner or operator, not to the vehicle. This is the only way to ensure the operator of the vehicle has met the requirements and education attached to the particular permit.
- Every vehicle on the beach must have an authorized NPS sticker, displayed on the vehicle at all times

**DRAFT Deliberative Document**  
**Permits/Passes/Fees Subcommittee**  
**v8/31/08**

- Every driver must have driver's pass on their person since any vehicle could have more than one driver, each driver must also have a pass or card. AND, every vehicle must also have a visible permit. Collectively, the permitted vehicle and driver comprises the "permit."

*Duration*

- Weekly, Monthly and Annual permits (or Weekly and Annual) could be issued. Permits would be valid for the availability time period (i.e., one week, one month, or 12 months) from date of purchase.
- Annual permits only. Valid for calendar year.

*Seasonality*

- Year round
- Seasonal: Mid to peak season with no permits for the winter (as an example, say 11/15 to 3/15 no permit would be required – dates might coincide with village closures or other established time period for consistency and understanding of the public).

*Education Required*

- Obtain, read, and sign a brochure.
- To obtain the permit, permittee(s) could be required to read information and/or watch an educational video that provide education on park regulations, vehicle characteristics, vehicle operation, natural resource protection, and instruction on how to access information on the current status of beach access. Education should include significant information focused on natural resource protection/mitigation.
- Some kind of basic written test could be administered in person or on-line to determine understanding.

*Equipment Required (details being worked on in other Subcommittee)*

- Every vehicle on the beach must carry the required minimum equipment.
- Vehicle inspection required every three years. Vehicle inspection sticker to be affixed to the vehicle in manner approved by NPS, so sticker is readily visible to law enforcement personnel.

*Availability*

- Permits should be available by Internet. This would make them available at home, at work, at hotels, tackle shops, visitor centers, etc.
- Permits could be available in-person at a limited number of stations, and/or at special computer kiosks that could be established at various locations throughout the Outer Banks. For instance, local in-person permit distribution locations could include: the Whalebone Junction Welcome Center, NPS Buxton Ranger Station or Lighthouse Visitor Center, and the NPS Ocracoke Ranger Station or Visitor Center. Local government, welcome centers, and/or interested businesses could provide a computer terminal with printer by which the public could acquire permits on-line. *(If there is interest in this latter idea, perhaps we could collectively explore grant options for setting up a system of dedicated electronic permit issuing stations, similar to ATMs. NPS could possibly fund maintaining the electronic kiosk*

**DRAFT Deliberative Document**  
**Permits/Passes/Fees Subcommittee**  
**v8/31/08**

*system with fee revenues.)*

*Form*

- The Permit itself could be a “hang-tag” for the rear view mirror (similar to handicapped parking cards) that can be formed from a printed paper off a computer. An Internet system could provide a number or bar code. The permit should be signed by the driver after a statement of awareness.
- Have a bar-code or windshield chip with scanners at ramps for easy documentation and identification.
- Hang-tags or vehicle stickers could be dated and/or color-coded to indicate the term and expiration date of the permit, so that rangers can easily distinguish between permitted and unpermitted vehicles or operators. Permits could also possibly be color-coded or otherwise differentiated to identify first-time permittees so that rangers can focus their attention on first time users, who may need more information/education.
- Permits assigned to the permittee could be a card or form carried by the person and must be presented upon request to NPS law enforcement personnel.
- Permittee must sign the permit to acknowledge that s/he understands and will abide by the rules and regulations governing ORV use at the seashore, including beach driving safety, and resource protection requirements.

*Numbers/Limits*

- There should be no limit or cap on the number of permits available. “Carrying capacity” should be dealt with by a site-specific management measure (such as a limit on the number of vehicles allowed at any one time), rather than limiting the total number permits. Part of the permit education system could address carrying capacity awareness amongst other items.

*Cost*

- There would be a permit fee subject to cost recovery, price to be determined.
- Because we have no numbers on which to initially establish permit fees, suggest fees start at low cost. There should be a discount or Free Permit for any FULL TIME PERMANENT RESIDENT that lives between Whalebone and Ocracoke (*Note: Local discounts are not authorized under the Special Use Permit program*).
- Could issue only a low cost annual permit.
- Permit fees should cost not less than \$20/day, \$40/week; \$100/month; and \$150/year, including a resident permit.
- Permits and Cards could be issued in three versions – weekly, monthly, and annual, at an appropriate range of prices, such as \$10/week; \$30/month; and \$50 annual (no daily permits – too burdensome).

*Enforcement*

- Permit revoked for a “major violation” (needs to be defined) and/or for 2-3 “minor “ violations. Violations that endanger people or damage wildlife may result in loss of permit/card.
- A standard system of fines and penalties is approved by the U.S. District Court, announced by NPS, and listed in required educational information.



**DRAFT Deliberative Document**  
**Permits/Passes/Fees Subcommittee**  
**v8/31/08**

*Record Keeping*

- The park should keep accurate records of the number and types of permits issued each time period, and keep cumulative totals as the year progresses, by week, month, season, and annually. I assume such data will be useful to park management.
- NPS retains program registration data on each permittee when they apply the first time, and annually adds any record of violations. In the second year of the program, every driver with an unblemished, violation free record may apply for permit renewal through the mail, with no additional administrative process required. If there are new educational materials, this can be sent to each applicant with the renewal sticker(s) and card(s).
- The park should prepare and distribute an annual report to document the number and type(s) of permits issued, the amount of fee revenue received, a summary of how the fee revenue was expended, any significant issues or changes that were implemented in the permit program, and the number and types of violations committed by (or the number of violation notices issued to) both permitted and unpermitted ORV users.

**GENERAL (applies to both entrance passes and permits)**

- The language in the regulations and in the educational materials distributed to both ORV and, if applicable, to non-ORV users should make it explicitly clear that the Superintendent shall have authority to close ad hoc any part of the beach for safety, resource purposes (chiefly birds, turtles, and certain endangered grasses), and when conditions of crowding or undue stress on the resource show that reasonable limits have been reached. Perhaps that explanation should somewhere use the words "carrying capacity," so it is not a strange and never-heard-before concept when it will inevitably occur--even if that is some years down the road.

**COMMERCIAL FISHING**

- Commercial fishing activity within Cape Hatteras National Seashore is regulated by 36 CFR 7.58 (b); however, that section does not address ORV use by commercial fishermen. In the new ORV regulation, ORV use by commercial fishermen could be addressed as follows:
  - Commercial fishing vehicles/operators must obtain an ORV permit to drive on the beach (*Comment: As a practical matter, NPS could issue single, combination fishing/ORV permit to commercial fishermen.*)
  - The Superintendent shall waive permit fees for commercial fishermen.
  - The Superintendent may exempt commercial fishermen, who are actively engaged in authorized commercial fishing activity, from restrictions or requirements applicable to recreational ORV use, provided such exemptions do not jeopardize public safety or resource protection and as long as such exemptions are authorized subject to the terms and conditions of a permit.



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**v8/31/08**