

NEGOTIATED RULEMAKING COMMITTEE
6th Regulatory Negotiation Meeting
Avon Fire Hall, Avon, NC
September 8-9, 2008

Revised Draft Final Agenda

GOALS

- Updates
- Review results of CADR evaluation of Reg Neg process
- Understand and refine Subcommittee proposals
- Get options on the table, identify linkages, and identify potential packaging opportunities
- Determine additional Subcommittee work on proposals
- Plan Fall meetings

Monday, September 8th

- 8:00 Gathering
- 8:30 Welcome to All and Opening of the Meeting, *Mike Murray, NPS, Designated Federal Official (DFO)*
- 8:40 Review meeting objectives and agenda
Facilitators and Agenda Planning Committee
- 8:55 Reg Neg Evaluation by DOI Office of Collaborative Action and Dispute Resolution
 - Evaluation results
 - Commitment to continuing the Reg Neg process
- 9:15 Updates Since the Last Meeting
 - Release of Subcommittee working documents
 - NEPA process
 - Socio-Economic Study
 - Alternatives for the Draft EIS
 - Schedule – request to extend schedule
 - Other?
- 10:15 Break
- 10:30 Subcommittee Reports and Proposals
 - Vehicle Characteristics
 - Permits, Fees, and Passes
 - Village Closures
 - Natural Resources
 - Routes and Areas

For each Subcommittee (see below for time estimates):

- Present options (or work to date)
- Understand and explore Committee views about the proposed options or work to date (*round robin*)

- Identify any linkages with other Subcommittees (*if appropriate*)
- Identify agreements and disagreements about options (*if appropriate*)
 - Where there is subcommittee agreement on recommendations - does the Committee agree/consensus?
 - Where subcommittee disagreed - should the topic go back to the subcommittee or be handled by the full Committee?
- Determine what's next
 - Is the Subcommittee done or should they keep working?
 - Timeline
- Other?

12:00	<p>Public Comment Session (up to 4 minutes per person, with 5 minutes total at the end of the public session for any a brief response from Committee members to the public comments)</p> <p><i>Specific comments are requested on the following --</i></p> <ul style="list-style-type: none"> • Options presented by Subcommittees - - are they promising, ideas for making them better, etc.? • Are there big issues the Committee is not addressing?
12:45	<p>Lunch (<i>on your own</i>)</p> <p><i>Note: to minimize the time needed for lunch we're looking at brining in pizza or sandwiches and collecting a participant contribution</i></p>
1:45	Continue Subcommittee Reports and Discussion
3:15	Break
3:30	Continue Subcommittee Reports and Discussion
5:20	Summary of Day and Closing Remarks
5:30	<p>Additional Public Comment Session (<i>if not completed before lunch</i>) (up to 4 minutes per person, with a brief response from Committee members in the last 5 minutes of the session following the public speakers)</p> <p><i>Specific comments are requested on the following --</i></p> <ul style="list-style-type: none"> • Options presented by Subcommittees - - are they promising, ideas for making them better, etc.? • Are there big issues the Committee is not addressing?
Following Public Comment	Adjourn for the Day
Evening	Informal Caucus Meetings

Tuesday, September 9th

- 8:00 Gathering
- 8:30 Reflections on Day I and agenda review
- 8:45 Continue Subcommittee Reports and Discussion
- 10:30 Break
- 10:45 Complete Subcommittee Reports and Discussion
- Review progress and next steps
 - Discuss implications
 - Other?
- 12:00 Public Comment
(up to 4 minutes per person, with 5 minutes total at the end of the public session for any a brief response from Committee members to the public comments)
- Specific comments are requested on the following --*
- Options presented by Subcommittees - - are they promising, ideas for making them better, etc.?
 - Are there big issues the Committee is not addressing?
- 12:45 Working Lunch - Caucus Meetings (*on your own*)
- 2:30 Committee Business and Planning for Future Meetings
- Video taping Committee meetings
 - Subcommittee deliberations and working documents
 - Agenda topics for October meeting (e.g. Sea Turtle presentation, night driving, NPS alternatives for the Draft EIS, NPS proposed approach to safety closures, etc.)
 - Subcommittee work?
 - Other?
- 3:35 Approve June meeting Summary (*if not completed in advance of the meeting*)
- 3:50 Summary and Closing Remarks
- 4:00 Adjourn

Time Estimate for Subcommittee Presentation and Discussion:

- Vehicle Characteristics 1 hour
- Permits, Fees, and Passes 1 hour, 30 minutes
- Village Closures 1 hour, 15 minutes
- Natural Resources 1 hour, 30 minutes
- Routes and Areas 2 hours

NOTE: if the Committee completes the Subcommittee reports and discussion earlier than as scheduled above, the Agenda Planning Subcommittee proposes breaking into Subcommittee meetings (for those continuing) with a brief report of activities to the full Committee.

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Vehicle Characteristics, Equipment and Operations Subcommittee
Working Document DRAFT 9/4/08

Please note that these are options and ideas developed by the Subcommittee. The written document is to be understood in the context of the detailed deliberations had by the subcommittee. Because both the writer and written word are imperfect, there may be points below that are unclear or confusing. We ask the Committee reader's to consider this document in that light, and to ask questions for clarification and understanding before moving to assumptions or conclusions that may not be intended by this Subcommittee.

This document was developed through conference calls and emails. Conference calls were held on July 22, August 1, August 11 and August 28.

I. GENERAL

ENFORCEMENT: Such regulation shall be enforced by the NPS according to graduated law enforcement principles.

STAKEHOLDER INPUT: The Park shall establish and maintain a standing ORV [FACA] committee with representatives from various sections/geographies of the Park representing diverse and balanced interests to provide input to the Park [Superintendent?] on, among other things, vehicle characteristics. [NOTE: NPS notes that this may function best as a standing ORV subcommittee of a general park management FACA advisory committee.]

EXEMPT VEHICLES: All emergency vehicles (vehicles used for EMS, rescue, or fire) are exempt from these vehicle operations regulations. Any operators of essential vehicles (vehicles used by NPS or with NPS permission), excluding emergency vehicles as identified above, must be trained and authorized to drive on the beach by NPS prior to operating in any way beyond normal public use.

II. VEHICLE CHARACTERISTICS

PURPOSE: Manage and regulate the type of vehicle allowed to drive on CAHA beaches.

SCOPE: Applied for all driving on all routes, trails, and areas designated for ORV driving.

VEHICLE CHARACTERISTICS: All vehicles must exhibit the following characteristics to drive on the Park's beaches. Drivers are responsible for ensuring their vehicles meet these characteristics.

1. All vehicles must be registered, licensed, and insured and comply with inspection regulations within the state, country or province where the vehicle is registered.

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2. Four-wheel drive vehicles are allowed.
3. Two wheel drive vehicles are allowed after the operator obtains a special use permit.
4. Motorcycles are prohibited on the ocean beachfront.
5. ATVs are prohibited.
6. There is a three axle maximum for vehicles (this is the axle maximum for the powered vehicle only and does not include the additional number of axles on towed trailers).
7. Any trailers are limited to no more than two axles.
8. The maximum vehicle length is thirty (30') feet (this is the maximum length for the powered vehicle and does not include the additional length of a towed trailer).
9. Tires must be U.S. Department of Transportation listed and/or approved tires only.

III. REQUIRED AND RECOMMENDED EQUIPMENT

PURPOSE: To identify special equipment required and recommended to safely operate a vehicle on the beach

REQUIRED EQUIPMENT: All vehicles operated on the beach shall contain the following required equipment.

1. A low-pressure tire gauge effective down to 5 psi.
2. A shovel
3. A jack
4. A jack support
5. Trash bag or container
6. Flashlight for any driving between dusk and dawn.
7. Copy of the current ORV regulations and map.

HIGHLY RECOMMENDED EQUIPMENT: The following equipment is recommended but not required.

1. A full size spare tire
2. First aid kit
3. Fire extinguisher
4. Tow strap with loop ends, no hooks, with a rating capacity at or above the GVW of item being recovered or moved unless vehicle is equipped with an operable electric or hand winch

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IV. VEHICLE OPERATIONS

PURPOSE: Ensuring the safety of all public users of the Park and protection of Park resources.

SCOPE: Applied for all driving on all routes, trails, and areas designated for ORV driving.

DRIVER'S LICENSE: All drivers must carry a valid driver's license.

SPEED LIMITS: The following are speed limits for driving on the beach within CAHA. Speed limit on park beaches is 15 mph May 15-September 15, unless otherwise posted and 25 mph September 16-May 14, unless otherwise posted. [NOTE: This item may overlap with work done by the Village Closures Subcommittee.]

TIRE PRESSURE: Lower the pressure on all tires. The softer the sand the lower the pressure needed. Generally drive with 20-25 lbs. pressure in the tires. When you return to paved roads, inflate the tires to normal as soon as possible.

RIGHT OF WAY: Right of way shall be as follows:

1. A vehicle exiting the beach via a Ramp or Interdunal Road has the right of way until reaching state-regulated roads.
2. When traveling parallel to the ocean or sound, the vehicle with the water to its right side has the right of way.

SELF-CONTAINED VEHICLE CAMPING: Camping in designated areas (campsites or other) is allowed in self-contained vehicles and available at sites year-round including at least Cape Point Campground, Ocracoke Campground, and the Oregon Inlet Campground with applicable fees as appropriate. [NOTE: There may be resource constraints that make this difficult. Committee members should discuss implementation issues with NPS.]

TENT CAMPING: Tent camping in designated areas (campsites or other) is allowed and available at sites year-round including at least Cape Point Campground, Ocracoke Campground, and the Oregon Inlet Campground with applicable fees as appropriate. [NOTE: There may be resource constraints that make this difficult. Committee members should discuss implementation issues with NPS.]

OTHER RELEVANT REGULATIONS: Other pertinent and relevant federal or state regulations include:

- Camping is only allowed at designated areas. (36 CFR 2.10)
- Obstructing traffic on park roads is prohibited. (36 CFR 4.13)
- Driving under the influence of alcohol or drugs is prohibited. (36 CFR

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- 4.23)
 - All drivers and passengers are required to wear seatbelts. (36 CFR 4.15)
 - A valid state driver's license is required for all operators of motor vehicles on park roads. (36 CFR 4.2)
 - Operating a motor vehicle without due care or at a speed greater than which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character is prohibited. (36 CFR 4.22)
 - Operators of motor vehicles involved in accidents resulting in property damage, personal injury, or death shall immediately report the accident to park rangers. (36 CFR 4.4)
 - The operators of authorized emergency vehicles, when responding to an emergency or when pursuing or apprehending an actual or suspected violator of the law may disregard traffic control divides, exceed the speed limit, and obstruct traffic. (36 CFR 4.3)
-

OUTSTANDING TOPIC

As the topic of *napping and short-term sleeping on the beach* remains under discussion by the subcommittee, it is not included in the document above. Due to enforcement challenges, this topic is closely linked to the topic of camping on the beach.

Related issues and concerns raised include:

- Equity: those on the beach without vehicles are permitted to nap, so those with vehicles should also be allowed to do so.
- Brief Interludes: desire for those who drive to the beach for a long day of fishing to be allowed to nap while awaiting the tide or other conditions.
- Enforcement: Want regulations that are enforceable. Assuming that camping anywhere on the beach is not allowed for a variety of reasons, because it is difficult for rangers to make a distinction at night between those who are truly camping and those napping, allowing napping at all makes the no camping regulation difficult to enforce.

SUBCOMMITTEE DOCUMENT

DRAFT

FOR DISCUSSION PURPOSES ONLY

rev 7/30/08

IIIA. ORV SAFETY CLOSURE

PURPOSE: Ensuring the safety of the driving public when natural conditions within CAHA or in a specific area present a clear and imminent threat of (a) significant bodily injury or death to the driving public or other CAHA users or (b) significant damage to personal property, primarily vehicles and their contents.

SCOPE: May be applied within any routes, trails, and areas designated for ORV driving.

TRIGGERS FOR CLOSURE: Conditions listed below may trigger a ORV Safety Closure in the event of a clear and imminent threat of significant bodily injury or death; and/or damage to personal property, primarily vehicles and their contents. Examples of hazards that could justify a closure include, but are not limited to:

- deep beach cuts which block the beach from dune to surf with no obvious way around;
- obstacles, such as exposed stumps, shipwrecks, or debris that cannot be safely bypassed or that block the entire width of the beach and cannot be easily removed;
- severe beach slope that puts vehicles in an unsafe gradient position that increases the chances of the loss of vehicular control.

Triggers do not include:

- a narrow beach, by itself;
- tides which block access through portions of beaches occur periodically and predictably and are an obvious, easily avoidable hazard;
- hazards blocking only a portion of the beach, where safe passage is available around the hazard.

(If beaches are open to ORV use in front of the villages during the winter...)

SAFETY CLOSURES IN FRONT OF VILLAGES DURING THE WINTER: In addition to ORV safety closure triggers listed above, additional conditions listed below may trigger an ORV safety closure in front of villages during the winter when seasonal closures are removed:

- When a minimum 60 ft (18 m) width of beach is not present between the mean high tide line and the toe of the dune. This will allow for pedestrian safety and the free movement of two-way traffic.

When seasonal closures are removed in front of villages during the winter, an automatic 10 mph speed limit will be implemented, unless otherwise posted. This will assist in providing for visitor safety on narrow beach areas in front of villages where pedestrian activity occurs.

CAHA PERSONNEL ACTION: Providing for the public safety is the responsibility of all CAHA employees. The following is expected of CAHA personnel.

- Law enforcement (LE) rangers should have the authority to enact closures consistent with the triggers noted above.
- Non-emergency service staff, when encountering safety hazards, should establish initial safety precautions and contact the LE ranger staff to evaluate the situation and establish any necessary ORV Safety Closures.
- Where hazards block only a portion of the beach, staff will mark and post the hazard to direct ORV traffic safely around the hazard.

SUBCOMMITTEE DOCUMENT

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rev 7/30/08

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MONITORING: ORV Safety Closures shall be monitored on a weekly basis.

MARKATION: ORV Safety Closures shall be clearly marked by carsonite posts and signs indicating the area is closed to ORV use.

ORV SAFETY CLOSURE NOTIFICATION AND CONTINUANCE: Any employee initiating an emergency ORV safety closure will notify their supervisor immediately. The Superintendent and Division Chief will be notified as soon as possible of any such emergency ORV safety closure. As soon as possible after the initial closure has been established, but no later than one week, the employee will complete a "Closure Request Form" and submit the form for final approval through the chain of command. Such form should include the coordinates of the closure, the specific reasons for the closure, the dates of action, and the employee taking action. Completion of a "Closure Request Form" will only be required when a complete beach closure is established and does not apply to any modification of the ORV corridor width that does not preclude access. As long as the area is closed, the form shall be regularly updated to include a brief description of the condition of the area based on the weekly monitoring.

TRIGGERS FOR RE-OPENING: Sufficient diminishment, reduction or elimination of the conditions and hazards described under *TRIGGERS FOR CLOSURE* would constitute the trigger for re-opening a closure. ORV safety closures are intended to be in effect only as long as visitor safety or personal property is clearly and imminently threatened.

STAKEHOLDER INPUT: The Park shall establish and maintain a standing ORV committee with representatives from various sections/geographies of the Park representing diverse interests to provide advice to the Park on policy related to safety closures and openings.

ORV ROUTES AND AREAS, PEDESTRIAN AREAS, AND RESOURCE AREAS
PRINCIPLES AND CRITERIA

Working Draft Document September 4, 2008

Submitted by: Sidney Maddock, Burnham Gould, Jr. and Destry Jarvis

I. Framework

A. The ORV Management Plan shall establish ORV Routes and Areas, Pedestrian Areas, and Resource Areas.

B. Pedestrian areas under section III can overlap with resource areas under section V. However, for an area to qualify as both a pedestrian area and a resource area, the principles and criteria for both areas must be met. For example, while a ½ mile area may meet the principles and criteria for designation as a resource area under sections V and VI, it cannot, standing alone, also be counted as a pedestrian area under sections III and IV, as it is not two miles in length. However, if a ½ mile resource area were next to a 1.5 mile pedestrian area, the area could be counted as both a pedestrian area and a resource area.

II. ORV Routes and Areas

A. There will be routes and areas of the Seashore that are designated in the Plan for ORV use where appropriate on Bodie Island, Hatteras Island, and Ocracoke Island.

B. Each ORV route and area shall have at least one designated beach dune crossing ramp. The ramp shall be the only area for entering the beach in an ORV.

C. Each beach dune crossing ramp should be designed with universal access principles, and should provide parking, directional/educational/rules signage, and a pedestrian walkover. At the discretion of the NPS, ramps may also have restroom facilities, water, and an air pump, but at least one ramp on Bodie Island, Hatteras Island, and Ocracoke Island shall have these facilities.

D. Sound-side ramps will have varying levels of development. Some ramps on the sound shall remain undeveloped, with only the ORV route leading to the sound.

III. Pedestrian Areas Principles

A. There will be year-round pedestrian only areas (no ORV route) where appropriate on Bodie Island, Hatteras Island, and Ocracoke Island.

B. A diverse range of pedestrian recreational opportunities will be available. Beaches in front of villages will typically be expected to have higher pedestrian densities, while no-route beaches away from villages will provide a recreational experience that may have lower pedestrian densities.

C. There will be six or more areas of ocean beach at least two miles long that are outside of the villages that are pedestrian only areas year-round.

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D. In addition to the six areas in III(C), the NPS can establish additional pedestrian only areas less than two miles in length where appropriate.

E. There will be at least one wilderness study area in the Seashore; this area may overlap with one of the pedestrian only areas mentioned in III(C). We encourage the National Park Service to have additional wilderness study areas, consistent with the enabling legislation that areas of the Seashore be managed as a “primitive wilderness.”

F. Pedestrian areas shall not be reduced in size as “mitigation” for a temporary seasonal, safety, or resource management closures of an ORV route.

IV. Pedestrian Areas Criteria

Each of the pedestrian-only areas outside of the villages shall:

A. begin at either a parking area or a designated beach ramp and extend in one direction from it, with ORV use provided in the other direction, unless the area is selected as a pedestrian area under sections V and VII, in which case the area may be located away from a ramp if appropriate;

B. be a beach that is at least 100 feet wide between the toe of the dune and the high tide line for most of beach length, as wide, flat beaches are easier for pedestrians to walk on than steep, narrow beaches;

C. be, for the wilderness study area, an area where people can have a wilderness type recreational experience. It should be an area that is representative of a natural, unstabilized barrier island beach and should not be located where pedestrians can hear noise from vehicle traffic on a paved road.

V. Resource Areas Principles

A. Areas may be designated as pedestrian only areas (no ORV route) because of their particular ecological value and the adverse impacts that ORV use may pose to those values.

B. There are seven areas of particularly high ecological value in the Seashore: Bodie Island Spit (Ramp 4 to Oregon Inlet); Ramp 27- Ramp 30; Cape Point (Ramp 43 to Ramp 45); South Beach (Ramp 45 – 1/10 mile east of Ramp 49); Hatteras Inlet Spit on Hatteras (Ramp 55 to Hatteras Inlet); the inlet spit on the east end of Ocracoke (Ramp 59 to Hatteras Inlet), and Ocracoke Inlet Spit (Ramp 72 to Ocracoke Inlet). Four or more of these seven areas shall be pedestrian only year-round and one of these seven areas may be an ORV route for part of the area and a pedestrian only area for at least the ½ mile of ocean beach closest to the inlet.

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C. Because of the high ecological values associated with dynamic inlet spit areas, in the event a new inlet opens up, at least one side of the inlet shall be a pedestrian only area.

VI. Resource Areas Criteria

A. High numbers of breeding, migrating, or wintering birds; areas with high numbers are favored over areas with lower numbers;

B. An evaluation of the functions and values of habitats including ocean and sound intertidal areas, ocean backshore, sand flats, washover fans, and natural (unstabilized) dunes; areas of high habitat quality are favored over areas with lower quality habitats;

C. The spatial relationship of ORV routes and areas and areas that are pedestrian only areas, so that there is a mosaic of pedestrian only areas throughout the Seashore.

D. If a new inlet opens up, the side of the inlet with the higher habitat quality shall be pedestrian only.

VII. General Principles for ORV Routes and Areas, Resource Areas, and Pedestrian Areas

A. All ORV routes and areas, pedestrian areas, and resource areas are subject to closure to protect breeding and non-breeding birds, sea turtles, seabeach amaranth and other sensitive resources or to protect safety of ORV users or pedestrians (standards to be developed by appropriate subcommittee or NPS).

B. All ORV routes and areas, pedestrian areas, and resource areas are open to essential vehicles.

C. On an annual basis, based on on-the-ground conditions, NPS may adjust the boundaries of ORV routes and areas, pedestrian areas, and resource areas, so long as NPS complies with all the principles and criteria above. In making the adjustments, NPS may not reduce the overall size of the pedestrian areas and resource areas on Bodie Island, Hatteras Island, and Ocracoke Island.

D. Aside from resource or safety closures, which can arise at any time depending on conditions, or seasonal closures (dates to be determined by appropriate subcommittee or NPS), the NPS must make any other annual adjustments under VII(C) prior to March 15 of each year. This deadline for modifications ensures that changes will occur prior to the breeding season, and the NPS will have adequate time to properly disseminate public information.

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PRINCIPLES AND CRITERIA

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VIII. Application of Principles and Criteria

A. RAMP 1 TO OREGON INLET

Ramp 1 to ¼ mile east of Coquina Beach

- Open to pedestrians
- Open to ORVs
- Open Ramp 1 to ORVs

Coquina Beach to south ¾ mile

- Open to pedestrians (no ORV route)
- Move Ramp 2 to south end of pedestrian area

Ramp 2 to Ramp 4

- Open to pedestrians
- Open to ORVs

Ramp 4 to Oregon Inlet

- Open to Pedestrians (no ORV route)
- If consistent with existing environmental laws and NPS policies, add parking lot at Ramp 4 east of Highway 12

Bodie Island, Sound:

- No change from existing status

B. OREGON INLET TO SOUTH BOUNDARY, AVON

Pea Island National Wildlife Refuge: FWS Jurisdiction

Rodanthe, Waves, and Salvo to Ramp 23

- Open to pedestrians
- Open to ORVs in the off-season (dates to be decided by Villages Subcommittee or NPS)
- Expand parking lot at Ramp 23
- Construct pedestrian boardwalk just north of Ramp 23 so that pedestrians do not have to walk out ORV ramp to get to the beach

Ramp 23 – Ramp 27

- Open to pedestrians
- Open to ORVs

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Ramp 27 – Ramp 30

- Open to pedestrians (no ORV route)
- Construct pedestrian boardwalk at Ramp 30 north of ORV Ramp so that pedestrians do not have to walk out ORV ramp to get to the beach

Ramp 30 – Ramp 34

- Open to pedestrians
- Open to ORVs

Ramp 34 to Avon Pier

- Open to pedestrians (no ORV route)

Avon Pier to South Boundary, Avon

- Open to pedestrians
- Open to ORVs in the off-season (dates to be decided by Villages Subcommittee or NPS)

Sound, South end of Salvo to North end of Avon

- Status quo between Salvo Day Use Area and first ramp north of Avon (no increase in intensity, no new spaces or shell/clay, etc.) to protect traditional waterfowl hunting area and cultural values

C. SOUND BOUNDARY, AVON, TO NORTH BOUNDARY, BUXTON

South Boundary, Avon to Ramp 38

- Open to pedestrians
- Open to ORVs in the off-season (dates to be decided by Villages Subcommittee or NPS)
- Add additional parking to existing lot
- Construct a boardwalk parallel to HWY 12 from the parking lot to existing pedestrian boardwalk just south of Avon boundary

Ramp 38 to ½ mile north of Haulover Day Use Area

- Open to pedestrians
- Open to ORVs

½ mile north of Haulover Day Use Area to ½ mile south

- Open to pedestrians (no ORV route)

½ mile south of Haulover Day Use Area to north boundary, Buxton

- Open to pedestrians
- Open to ORVs

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- Construct ramp south of Haulover Day Use Area to allow for ORV use south of Haulover

D. NORTH BOUNDARY, BUXTON, TO EAST (NORTH) BOUNDARY, FRISCO

North Boundary, Buxton, to north groin, Buxton

- Open to pedestrians
- Open to ORVs

North groin, Buxton to Ramp 43

- Open to pedestrians (no ORV route)

Ramp 43 to Ramp 45, including Cape Point

- Open to pedestrians
- Open to ORVs

Ramp 45 to 1/10 mile east of Ramp 49

- Open to pedestrians (no ORV route)
- Increase existing parking at Ramp 45
- Increase parking at Ramp 49

1/10 mile east of Ramp 49 to 200 yards east of Frisco Village

- Open to pedestrians
- Open to ORVs

200 yards east of Frisco Village to East Boundary, Frisco Village

- Open to pedestrians (no ORV route)

E. EAST (NORTH) BOUNDARY, FRISCO, TO HATTERAS INLET

East boundary, Frisco Village to west boundary, Frisco

- Open to pedestrians (no ORV route)

Frisco Village, west boundary, to Hatteras Village, east boundary

- Open to pedestrians
- Open to ORVs in off-season (dates to be decided by Villages Subcommittee or NPS)
- Construct new ramp to allow ORV use between Frisco Village and Hatteras Village

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Hatteras Village, east boundary to Ramp 55

- Open to pedestrians (no ORV route)

Ramp 55 to Hatteras Inlet

- Open to pedestrians
- Open to ORVs from Ramp 55 to ½ mile east of inlet
- Expand existing parking lot at Ramp 55

F. OCRACOKE ISLAND

Hatteras Inlet to Ramp 59

- Open to pedestrians
- Open to ORVs
- Move ramp west to east end of existing parking area
- Expand existing parking area

Ramp 59 to 1.3 miles east of Ramp 67

- Open to pedestrians (no ORV route)
- Add additional parking to existing lot on ocean side at Pony Pens

1.3 miles east of Ramp 67 to .75 miles west of Ramp 67

- Open to pedestrians
- Open to ORVs

.75 miles west of Ramp 67 to 1/10 mile west of Ocracoke Day Use Area

- Open to pedestrians (no ORV route)
- Add parking on west side of Ocracoke Campground for public (people not camping)

1/10 mile west of Ocracoke Day Use Area to Ramp 72

- Open to pedestrians
- Open to ORVs

Ramp 72 to Ocracoke Inlet

- Open to pedestrians (no ORV route)
- Wilderness Study Area

Ocracoke Island, Sound

- Status quo.

IX. ADDITIONAL NOTES

0075350

ORV ROUTES AND AREAS, PEDESTRIAN AREAS, AND RESOURCE AREAS
PRINCIPLES AND CRITERIA

Working Draft Document September 4, 2008

Submitted by: Sidney Maddock, Burnham Gould, Jr. and Destry Jarvis

A. In VII(C) above, a procedure is established to modify the boundaries of ORV routes and areas, pedestrian areas, and resource areas. One possible procedure for this modification process would be a standing committee of diverse interests that periodically evaluates the existing ORV regulation. In order to have “diverse interests,” the committee should include regional and national environmental groups and groups that focus on pedestrian access issues.

B. We encourage NPS to work with Dare County, and state and federal agencies to create convenient beach access locations with parking in each of Hatteras Island’s villages.

0075351
ORV ROUTES AND AREAS
PRINCIPLES AND CRITERIA
Working Draft Document September 4, 2008

Submitted by: Frank Folb, David Goodwin & Jim Keene

I. Framework

A. The ORV Management Plan shall establish ORV Routes and Areas, Pedestrian Areas, and Resource Areas, per Executive Order 11644.

B. Pedestrian areas have existed in the past and can be incorporated as a part of a multi use of areas with ORV access. Pedestrian areas can be areas of resource protection as presently used in Pea Island Refuge.

II. ORV Routes and Areas

A. There will be routes and areas of the Seashore that are designated in the Plan for ORV use where appropriate on Bodie Island, Hatteras Island, and Ocracoke Island.

B. Each ORV route and area shall have at least one designated beach dune crossing ramp. The ramp shall be the only area for entering the beach in an ORV. The number of ramps should be no fewer than currently exist and ramps can interconnect. More ramps should be considered to allow better access for ORV use when temporary safety or temporary resource closure exist.

C. Ramps/routes accessing both the oceanfront and the soundside beaches have always been essential to access within this seashore. All routes should be two (2) lanes (for operator and pedestrian safety) and well maintained for use by emergency vehicles as necessary.

D. Access routes are an essential component of this seashore as defined in founding documents, legislation, etc. It is imperative that these access routes remain and are maintained not only to provide access to fishing, surfing, birding, swimming, etc, but must also be maintained to provide continuing safe access for the disabled and infirm.

E. Each beach dune crossing ramp should be designed with universal access principles, and should provide parking, directional/educational/rules signage, and a pedestrian walkover. At the discretion of the NPS, ramps may also have restroom facilities, water, fish cleaning facilities and an air pump, but at least one ramp on Bodie Island, Hatteras Island, and Ocracoke Island shall have these facilities.

F. Sound-side ramps/routes will have varying levels of development. Some ramps on the sound shall remain undeveloped, with only the ORV route leading to the sound with sufficient area at the terminus for vehicle turn-around.

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ORV ROUTES AND AREAS
PRINCIPLES AND CRITERIA
Working Draft Document September 4, 2008

Submitted by: Frank Folb, David Goodwin & Jim Keene

G. ORV Routes and Areas will have minimum impact as outlined on soil, watershed, vegetation or other resources, including wildlife. Conflicts between ORV use and other existing recreation will also be minimized.

III. Pedestrian Areas Principles

A. There will be few or no year-round pedestrian only areas (no ORV route) on Bodie Island, Hatteras Island, and Ocracoke Island due to lack of use and few to no existing conflicts.

B. Pedestrian areas include all ORV and resource closures except when restricted by nesting activity

C. Village fronts will have seasonal closures from May 15 to Sept. 15 due to high density use. (Seasonal dates as agreed by full committee.)

D. There is currently no specific requirement from either Federal law or NPS Management Policy that states that there must be areas set aside only for pedestrian use.

E. Areas are already available for pedestrian use only: Trails near the Cape Hatteras Lighthouse, areas between Highway 12 and the sound, areas near Bodie Island lighthouse, etc.

F. It is recommended that NPS post signage at the end of any pedestrian walkover to advise that there are ORVs operating in that area. Additionally, signage should be posted on existing speed limit signage indicating that there are pedestrians, children, etc. in the area. This is for both pedestrian and vehicle safety.

G. Pea Island National Wildlife Refuge must also be considered a pedestrian-only area when designating non-ORV areas.

IV. Resource Areas Principles

A. There is currently one Refuge area consuming 18 percent of the 73 mile seashore total from Bodie Island to Ocracoke Inlet; no additional year-round resource areas on the seashore edges are needed. Present wintering closures for resource reasons should be abolished as ORV use enhances bird habitat. ORV use of these areas should be encouraged during the winter months to assist in the minimization of vegetation.

B. Spring resource closures for pre-nesting will be no greater than current winter closures until birds nest and only then will increased closures be instituted.

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V. General Principles for ORV Routes and Areas, Resource Areas, and Pedestrian Areas

- A. All ORV routes and areas, pedestrian areas, and resource areas are subject to closures as specified by proven and accepted protocols and/or ESA requirements.
- B. All ORV routes and areas, pedestrian areas, and resource areas are open to essential vehicles.
- C. On an annual basis, based on on-the-ground conditions, NPS will not adjust the boundaries of ORV routes and areas, pedestrian areas, and resource areas, so long as NPS complies with all the principles and criteria above. In making the adjustments, NPS may reduce the size of the pedestrian areas and resource areas on Bodie Island, Hatteras Island, and Ocracoke Island temporarily for safety or nesting ESA birds and turtles until safety reasons are no longer needed or birds fledge or turtle eggs hatch.
- D. The NPS will have adequate time to properly disseminate any closure changes as public information before temporarily closing any ORV route.
- E. Recognizing that NPS is required to study areas within their jurisdiction for possible inclusion as a "Wilderness Area", the limitations on area size and other requirements for designation generally prevent areas of the seashore from inclusion as a "Wilderness Study". The existence of Pea Island NWR within the seashore precludes any additional requirements.

VI. Application of Principles and Criteria

- 1. See attached document (Routes & Areas 8-1-08) distributed for comment July 22 to the attendees of an informal subcommittee meeting (Frank Folb, David Goodwin, Sidney Maddock, Bernie Gould and Jim Keene) and distributed again 8-8-08 to the full subcommittee.

CONCLUSION

All ORV routes are subject to closure to protect nesting endangered/threatened birds, sea turtles and seabeach amaranth, but will be done with the knowledge that Cape Hatteras National Seashore Recreational Area by enabling legislation is a Recreational Area. Bird species of concern will be given protection equivalent to that provided by the state of North Carolina. Birds that do not meet the criteria of the ESA for special protection as endangered/threatened species will be protected as established in recommended government peer-reviewed scientific standards and those in use in other recreational areas and not by any opinions and speculations currently in use.

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The NPS shall have the authority to initiate rulemaking efforts in the future to modify any designated routes and areas in the event there are major changes in habitat or landscape due to hurricanes, nor'easters, or other natural events. One possible procedure for this evaluation process would be a standing advisory committee of diverse interests that periodically evaluates the existing ORV regulation. This evaluation should be performed at least on an annual basis.

While NPS should work with Dare County and state and federal agencies to create convenient beach access locations with parking in the entire recreational area, to create an ORV prohibited area year-round in villages is essentially privatizing the beaches in front of the beach front houses in those villages. When the villages were laid out there was no thought given to visitation of the beach fronts by any means other than by vehicle and no parking areas were established. The ORV community understands and agrees that during the summer months when children visitation is the greatest that these areas need to be closed for public safety, but history shows that conflict in off-season months has been less than minimal and almost none.

This proposal integrates the recreational, cultural and economic values the seashore has provided for over half a century.

- 1) The islanders were promised this access when the seashore was established.
- 2) This year the beach was designated as one of the Top Ten beaches to visit in the nation and the reason it fits this description has been its free and open access to the seashore for ORV users as well as pedestrian users. To cut the seashore up and eliminate ORV use in major areas because NPS policy states that it does not meet the diverse use of NPS parks is unsuitable.
- 3) For this area to continue to be a cultural and economic success, subdivision of uses should not be attempted. NPS policy or EO does not specify total and complete division of uses.
- 4) While we will always protect the wildlife and fauna/flora of the seashore, the ORV community as well as the environment sector realizes that the dunes along most of the beaches that protect our roads and villages makes those areas unsuitable for resource use success.
- 5) The areas that may have some potential as resource areas are also the heart of the visitor expectations to the islands. These areas must be shared, year round, with the ORV users as they are in fact the furthest areas from the road and parking areas. The areas also are prone to dynamic changes and over wash that do not reduce the recreational usage but reduces their production of any wildlife.

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6) Throughout this ORV process we have been bound by restrictions on thinking outside of the box. We have not been allowed to think outside of the box. To suggest that money and effort now spent within this Recreational Seashore would not be better spent in helping the wildlife recover by better use of the surrounding uninhabited dredge islands in the sound and establishing more and bigger ones cannot be considered. To expound on the idea that to make use of NPS and environmental group assets in less used areas and near-by island where visitation is much lower and dunes do not hamper resource development must be brought to the committee for consideration.

7) It is and has been our position, that had the NPS funded and maintained a full compliment of law enforcement rangers with instructions concerning full, proper and equitable enforcement of the standing laws, rules and regulations few problems would exist within the seashore. It is our recommendation the NPS and the local staff allot the necessary funds to staff sufficient LE rangers to maintain a 24/7 patrol with a continuous beach presence (expanded on holidays and days of known high visitation.)

8) Throughout this process we have tried to detail a plan that satisfies the requirements of Executive Order 11644, Section 3, and believe that we have done so with our first document submitted on 6/30/08. From the expansive restrictions demanded by the environmental side it can only be seen as the first attempt in what is a desire by a few to eliminate ORV use in this and other NPS facilities.

In the event the subcommittee members disagree with the specific route and no-route areas listed in the attachment, we hope they will come to the subcommittee meeting with a specific counter-proposal that addresses these concerns.

SUBCOMMITTEE DOCUMENT

Revised 08/01/08		ROUTES AREAS
		Working Draft Document
		Submitted by: Frank Folb, David Goodwin Jim Keene
		Increased frequency of ocean and sound side ramps and routes will provide:
		A by-pass system for getting around closures (safety or resource)
		Speed ocean rescue and EMT response time.
		All new and existing Ramps and routes (ocean or sound side) are to be two lanes
		wide and have a clay and shell surface.
		New ramps enter beach at an angle.

SUBCOMMITTEE DOCUMENT

Revised 08/01/08			ROUTES AREAS
			Working Draft Document
			Submitted by: Frank Folb, David Goodwin Jim Keene
OCEANSIDE		Current	Proposed Use
Bodie Island	Distance		
Ramp 1		Closed	Open year around Repair ramp (clay & shell) Widen to 2 lane Install air station & Dumpster
Beach to Coquina	1.3	Safety closure	Open to ORV use to Coquina year around
Coquina Beach		Closed year round to ORV	Variation of closure should ORVs be denied access due to resource closures at spit. Open in off season to ORV use Enlarge Parking lot to north & re-open access from Hwy 12 Seasonal Ped only area for 1 mile north of relocated Ramp 2
Ramp 2		Seasonal Closed to ORV	Year round open to ORV (clay & shell) Relocate Ramp south 1/4 to 1/2 mile Relocated ramp should enter from Coquina entrance and angle to beach Install air pumps and Dumpsters
Beach 2 - 4	2.3	Open to ORV ??	Status Quo
Ramp 4		Open year around	Keep open but clay & shell ramp Install air station, bathrooms & dumpsters Large Paved parking in dumpster & air station area Install fish cleaning station
Oregon Inlet Beach	1.7	Open to ORV	Permanent resource closure in interior area with 300 ft (from high tide line) ORV/pedestrian area. ORV-PED. area fluctuates with change of shoreline. Access area transverses from Ramp 4 along ocean & inlet shoreline to southwest edge of bait pond. Interdunal corridor (2 lane) from Ramp 4 to north side of bait pond. Interior ORV closed area maintained for ecology for birds of interest and vegetation removed.
Subtotal	5.3		

SUBCOMMITTEE DOCUMENT

Revised 08/01/08			ROUTES AREAS
			Working Draft Document
			Submitted by: Frank Folb, David Goodwin Jim Keene
OCEANSIDE		Current	Proposed Use
	Distance		
Pea Island *	12	Closed to ORV Pedestrian only	Green Island vegetation remove yearly
			If NPS continues to provide recreation facilities at Pea Island old parking lots should be replaced and walkways built. This should reduce paths cut in dunes by pedestrians which is where storms break thru dunes.
			If USF&W takes over this function they should request funding for these parking lots and walkovers in Highway bill.
Subtotal	12		

SUBCOMMITTEE DOCUMENT

Revised 08/01/08		ROUTES AREAS	
			Working Draft Document
		Submitted by: Frank Folb, David Goodwin Jim Keene	
OCEANSIDE		Current	Proposed Use
	Distance		
Hatteras Island			
Rodanthe		Seasonal Closed to ORV	Status Quo
Rodanthe Pier			Re-establish Ramp 20 at/near Pier
Waves	5	Seasonal Closed to ORV	Status Quo
Salvo to village line		Seasonal Closed to ORV	Status Quo
Salvo line to Ramp 23	0.3	Open to ORV	Status Quo
Ramp 23		Open year around	Keep open but clay & shell ramp Add bathhouse at Ramp 23
Beach 23-27	4.3	Open to ORV	Add three new clay & shell 2 lane ramps (24, 25, 26) At each new ramp add parking, dumpster, air station & walkover
Ramp 27		Open year around	Keep open but clay & shell ramp Add air station, dumpster, walkover & portajohn
Beach 27-30	2.2	Open to ORV	Status Quo Resource closures when birds nest like Pea Island & Interim Plan Add two clay & shell 2 lane Ramps (28 & 29) Add parking, air station, dumpster, walkover & portajohns at each ramp
Ramp 30		Open year around	Make 2 lanes, clay & shell ramp Add air station, dumpster, walkover & portajohn

SUBCOMMITTEE DOCUMENT

Revised 08/01/08		ROUTES AREAS	
			Working Draft Document
			Submitted by: Frank Folb, David Goodwin Jim Keene
OCEANSIDE	Distance	Current	Proposed Use
Beach 30-34	4.3	Open to ORV	Status Quo Add 3 two lane clay & shell ramps (31, 32, 33) with parking, air station, dumpster, portajohn & walkovers
Ramp 34		Open year around	Keep open but clay & shell ramp Increase parking at Ramp 34
Beach 34 to Avon line	0.3	Open to ORV	Open to ORV year around
Avon	4	Seasonal Closed to ORV	Status Quo
Avon line to Ramp 38	0.1	Open to ORV	Status Quo
Ramp 38		Open year around	Keep open but clay & shell ramp Increase Parking Install air station, dumpster, portajohn & walkover
Beach 38 to Buxton Line	6	Open to ORV for 2 miles	Open to ORV year around
One Way Road		Open to ORV partly paved	Expand parking area (50), pave road to parking area at base of dune, add walkover at each end, portajohn, dumpster, air station and new 2 lane Ramp (37) clay & shell
Kite Point		Nothing	Add two Ramps (40 & 41) one mile apart 1 mile closure seasonally for ped. use only with ramps on both sides Install parking soundside - Dumpster, air station, portajohn & walkovers at parking lots

SUBCOMMITTEE DOCUMENT

Revised 08/01/08		ROUTES AREAS	
			Working Draft Document
		Submitted by: Frank Folb, David Goodwin Jim Keene	
OCEANSIDE	Distance	Current	Proposed Use
Buxton line to southern Groin	0.3	Seasonal Closed to ORV	Seasonal Closed to ORV
Southern Groin to Ramp 43	1.4	1.0 closed to ORV all yr 0.4 closed to ORV in summer	Close year round to ORV from groins south for 0.4 miles Open year round to ORV use for one mile north of Ramp 43
Ramp 43		Open year around	Keep open but clay & shell ramp
Beach Ramp 43 to 44	0.3	Open year around	Status Quo
Ramp 44		Open year around	Keep open but clay & shell ramp Install air station. Keep dumpsters, portajohns & fish cleaning station
Interdunal Road		Yr round open to ORV (See below for road going to Frisco)	Year round open to ORV (address flooding?) Widen to two lanes and raise low areas with culverts Clay & shell entire road
Beach Ramp 44 to Cape Point East beach	2.4	Open year around	Year around open to ORV, maintain a 300 ft. (from high tide line) corridor floating with shoreline. Interior closed for birds only as long as vegetation removed and maintained in a barren nesting and resting area for birds, Interior ponds to be created to satisfy birds need for foraging in lieu of Ocean side closures. If 300 ft. corridor lost must be an alternative access to Point.
Cape Point Itself		Open year around to ORV	Year round open in a 1000 meter radius from point instead of the 300 ft. corridor
Cape Point Interior & Dredge Ponds		Vegetated - not bird habitat, is currently predator habitat	Remove vegetation and keep it out to provide historical resting ,nesting and foraging for birds.

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Revised 08/01/08		ROUTES AREAS	
			Working Draft Document
		Submitted by: Frank Folb, David Goodwin Jim Keene	
OCEANSIDE	Distance	Current	Proposed Use
Cape Point	?	Open to ORV	Year around open to ORV, maintain a 300 ft. (from high tide line) corridor floating with shoreline. Interior closed for birds only as long as vegetation removed and maintained in a barren nesting and resting area for birds, Interior ponds to be created to satisfy birds need for foraging in lieu of Ocean side closures. If 300 ft. corridor lost must have alternative access route to point
West beach to Ramp 45			
Interdunal Road		Open from Ramp 44 to Ramp 45	Lengthen to west as two lane road to Ramp 49 behind dune with 5 crossovers to beach (Salt Pond, Ramp 45, at terminus and two more) Resolve flooding problem in area (clay & shell entire road) Extent to east to east beach
Cape Point Campground		Open Seasonally	Close Campground and run Ramp 45 corridor on campground road, use campground as "bull pen" (self contained campers only) ADDRESS FLOODING
Salt Pond Rd		Open year around	Keep open but clay & shell road
Ramp 45		Locked	Open Year Round to ORV (clay & shell)
Beach 45-49	3.4	Open year around	Status Quo
Ramp 49		Open year around	Keep open but clay & shell ramp Add air station, dumpster & portajohn Straighten & raise level of Ramp 49 adding culverts
Ramp 49 to Frisco village	1	Open to ORV	Open to ORV year around

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Revised 08/01/08		ROUTES AREAS	
			Working Draft Document
		Submitted by: Frank Folb, David Goodwin Jim Keene	
OCEANSIDE		Current	Proposed Use
	Distance		
Frisco	1	Seasonal Closed to ORV	Status Quo
Beach between Frisco & Hatteras	2	Safety Closed to ORV	Open Year Round to ORV Install new ramp west of Frisco bathhouse/parking Install new ramp east of Hatteras with parking Install air station, dumpster ,portajohn & walkover at both new ramps
Hatteras	2	Seasonal Closed to ORV	Status Quo
Beach Hatteras to Ramp 55	0.2	Open to ORV	Open Year Round to ORV
Ramp 55		Open year around	Keep open but clay & shell ramp Install air station, dumpsters, portajohn & fish cleaning station
Beach - 55 to Hatteras Inlet	2.7	Open to ORV	Year Round open ORV (with 200 ft. floating corridor)
Hatteras Inlet	1.1	Yr. Round Open to ORV	Year around open to ORV, maintain a 300 ft. (from high tide line) corridor floating with shoreline. Interior closed for birds only as long as vegetation removed and maintained in a barren nesting and resting area for birds, Interior ponds to be created to satisfy birds need for foraging in lieu of soundside closures.
Subtotal	44.3		

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Revised 08/01/08			ROUTES AREAS
			Working Draft Document
			Submitted by: Frank Folb, David Goodwin Jim Keene
OCEANSIDE		Current	Proposed Use
	Distance		
Ocracoke Island			
Hatteras Inlet	1.1	Open to ORV	Year around open to ORV, maintain a 300 ft. (from high tide line) corridor floating with shoreline. Interior closed for birds only as long as vegetation removed and maintained in a barren nesting and resting area for birds.
Ramp 59		Open year around	Status Quo - make two lane clay & shell Widen to 2 lanes. Install air station, dumpster & fish cleaning station
Beach 59 - 67	6.9	Safety Closed to ORV	Open to ORV year around
Parking Lot west of 59		20 spaces	Increase size and add portajohn & walkover
Add Ramps 60, 61, 62, 63, 64		Safety Closed to ORV	Open year around to ORV Clay & shell two lane the ramps Parking, walkover, air station, dumpster & portajohn
Pony Pens		Parking only	Install new Ramp 65 two lane clay & shell Open year around to ORV Parking, walkover, air station, dumpster & portajohn
Ramp 67		Seasonal open to ORV	Status Quo - make two lane clay & shell Install air station, dumpsters & portajohns
Beach 67-68	1	Seasonal open to ORV	Status Quo

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OCEANSIDE	Distance	Current	Proposed Use
Ramp 68 (campground)		Seasonal open to ORV	Status Quo - make two lane clay & shell Install air station, dumpsters & walkover
Lifeguard Beach	2.8	Seasonal open to ORV	Status Quo Expand Parking
Ramp 70 (airport)		Open year around	Status Quo - make two lane clay & shell Install air station, dumpsters, portajohns & walkover
Beach 70-72	2.1	Open to ORV	Status Quo
Ramp 72		Open year around	Status Quo - make two lane clay & shell Install air station, dumpsters, portajohns & fish cleaning station
		Intradunal Road Closed	Re-open Intradunal Road on old ramp roadbed of 72 with crossover to beach midway
Ocracoke Inlet	4.4	Open to ORV	Year around open to ORV, maintain a 300 ft. (from high tide line) corridor floating with shoreline. Interior closed for birds only as long as vegetation removed and maintained in a barren nesting and resting area for birds. Maintain vegetation free area back where historic nesting has been.
Subtotal	18.3		

SUBCOMMITTEE DOCUMENT

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			Submitted by: Frank Folb, David Goodwin Jim Keene
SOUNDSIDE		Current	Proposed Use
Bodie Island			
	FIRST SOUND SIDE ACCESS IS CURRENTLY SALVO DAY USE		
			In total need two sound side roads from list of three below
Road off Rt 12 south of NPS Maint. Buildings		Closed to ORV use	Open to ORV use year around to sound
Bodie Light Road		Closed to ORV use	Open to ORV use year around one of two sound side roads that come off of Bodie Island Lighthouse Road (Off Island Road and one of other two)

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SOUNDSIDE	Current	Proposed Use
Hatteras Island		
Salvo Day Use	Open to ORV	Status Quo
# 46	Open to ORV	Status Quo Raise roadbed with clay & shell & make 2 lanes wide with parking at Hwy 12 (50spaces) and loop at sound
# 48	Open to ORV	Status Quo Raise roadbed with clay & shell & make 2 lanes wide with loop at sound. Increase parking at sound
Little Kinnakeet # 1	Open to ORV	Status Quo Raise roadbed with clay & shell & make 2 lanes wide with parking for 50 at sound with loop
Little Kinnakeet # 2	Closed to ORV	Open to ORV use year around Raise roadbed with clay & shell & make 2 lanes wide with parking for 50 at sound with loop
Little Kinnakeet # 3	Closed to ORV	Open to ORV use year around Raise roadbed with clay & shell & make 2 lanes wide with parking for 50 at sound with loop
# 52	Open to ORV	Status Quo Raise roadbed with clay & shell & make 2 lanes wide with parking for 50 at sound with loop

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SOUNDSIDE	Current	Proposed Use
Hatteras Island		
# 53	Open to ORV	Status Quo Raise roadbed with clay & shell & make 2 lanes wide with parking for 50 at sound with loop
# 54 just N of Avon	Open to ORV	Status Quo Raise roadbed with clay & shell & make 2 lanes wide with parking for 50 at sound with loop
# 57 just S of Avon	Open to ORV	Status Quo Raise roadbed with clay & shell & make 2 lanes wide with parking for 50 at sound with loop
# 58	Open to ORV	Status Quo Raise roadbed with clay & shell & make 2 lanes wide with parking for 50 at sound with loop
Haulover	Open to ORV	Status Quo
Intraunal Rd Haulover to 60	Closed	Open to ORV use year around Raise roadbed with clay & shell & make 2 lanes wide
# 59 (Kite Point)	Open to ORV	Status Quo Raise roadbed with clay & shell Increase parking at sound, dumpster & portajohn
# 60 just N of Buxton	Open to ORV	Status Quo Raise roadbed with clay & shell & make 2 lanes wide Install Parking Lot at road

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SOUNDSIDE	Current	Proposed Use
Hatteras Island		
Sandy Bay	Closed to ORV	Install soundside access road at west end of current parking lot
Coast Guard Station	Open to ORV	Status Quo Raise roadbed with clay & shell & make 2 lanes wide with parking for 50 at sound with loop
Goose Creek	Washed out	Re-open to sound 2 lane clay & shell with sound side parking
Pole Road	Open to ORV	Status Quo Raise roadbed with clay & shell Make two lane full length
Cable Crossing	Open to ORV	Status Quo Raise roadbed with clay & shell & make 2 lanes wide Install portajohn & fish cleaning station at Lookout Tower
Spur Road	Open to ORV	Status Quo Raise roadbed with clay & shell & make 2 lanes wide Increase sound side parking

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SOUNDSIDE	Current	Proposed Use
Ocracoke Island		
Barrow Pit Road	Open to ORV	Open to ORV use year around Raise roadbed with clay & shell & make 2 lanes wide with loop at sound. Increase parking at sound
Cockrel Creek	Open to ORV	Open to ORV use year around Raise roadbed with clay & shell
Quork Hammock	Commercial only	Status Quo Raise roadbed with clay & shell & make 2 lanes wide with loop at sound. Increase parking at sound
Scrag Cedar Rd	Open to ORV	Open to ORV use year around Raise roadbed with clay & shell & make 2 lanes wide with loop at sound. Increase parking at sound
Pony Pens		Status Quo
Hammock Hills aka: Dump Station Road	Open to ORV	Open to ORV use year around Raise roadbed with clay & shell & make 2 lanes wide Maintain fish cleaning station
Sound Rd off Ramp 72		Open to ORV use year around Raise roadbed with clay & shell & make 2 lanes wide Re-open to sound
		Add second sound side road off of intradunal road opposite new crossover road to beach Clay & shell two lane open year around

**CAHA Off-Road Driving Regulatory Negotiation
Natural Resources and Cape Point
Working Document draft 9/4/08**

What you are about to read is the approach that this subcommittee has taken to the challenging issue of natural resources. Final changes were made by the mediator from comments received, so any errors and omissions are the responsibility of the mediator.

The written document is to be understood in the context of the detailed deliberations had by the subcommittee. Because both the writer and written word are imperfect, there may be points below that are unclear or confusing. We ask the Committee reader's to consider this document in that light, and to ask questions for clarification and understanding before moving to assumptions or conclusions that may not be intended by this Subcommittee. This is not an attempt in any way to reach consensus on specific options. Please note that 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. **Furthermore, please note, not all ideas and detailed suggestions put forward by participants are captured in this document.** In addition, each idea has not been fully discussed by the subcommittee due to time constraints.

This document was developed through conference calls, one-in person meeting, and emails. Conference calls/meetings were held on: 7/23, 8/5, 8/25, and 9/3.

OVERARCHING GOAL

- **Protect natural resources and maintain access to Cape Point, to the greatest extent possible, year-round.**

CAVEAT

- This proposal reflects ideas for discussion purposes only that are based on the specific shoreline configuration and nesting history for Cape Point. This draft does not set a precedent for management measures or techniques that would necessarily be transferable to other locations.
- Subcommittee members do not necessarily agree with any or all of the specific options, buffers, and approaches listed below. This document is a work in progress.
- In general, buffer distances, when mentioned, are referenced in general and not specific terms.

DEFINITION OF AREAS

- Cape Point is defined as ocean beach from Ramp 44 to Salt Pond Road.
- South Beach is defined as ocean beach from Salt Pond Road to Ramp 49.

(Note: This conforms to the distinction between Cape Point and South Beach used by NPS in all past recordkeeping of nest locations.)

OPTIONS AND IDEAS

Pre-Nesting Closures

- Follow the configuration of the 2008 pre-nesting closures for Cape Point and South Beach, except increase the width of the Cape Point access corridor (on the east facing beach) to a greater distance (the distance is currently some 33 m – suggestions for increase include 100 m or other distances to be determined), from Ramp 44 south to the Point. This would expand the initial width of the Cape Point access corridor, seek to only marginally decrease pre-nesting habitat, and reduce the likelihood of subsequent full closure of the access corridor due to CWBs as the breeding season progresses.
- OR, because of dynamic changes on the beach over time, rather than fixing the pre-nesting closures to a particular year, consider an annual habitat assessment guide by clear, specific criteria for predictability and certainty of administration to identify each year suitable, sufficient, and appropriate pre-nesting closures

Buffer Distances during Nesting and Breeding Behavior

- Provide recommended buffer distances for observed piping plover breeding behavior and related foraging and nesting at all locations. This buffer should be increased if birds are shown to flush at this distance.
- Provide recommended buffer distances (TBD) for observed AMOY, CWB (and other species possibly found at CAHA such as Wilson's Plover) breeding behavior and related foraging and nesting at all locations, except:
 - Provide reduced buffer distances (TBD) along the Cape Point access corridor from Ramp 44 to Cape Point for observed non-listed species (all but Piping Plover) breeding or prenesting behavior up until scrapes/nests are on the ground. Some impacts are allowable under the NPS non-impairment rule. If AMOY or CWB (and other species possibly found at CAHA such as Wilson's Plover) nests are established or chicks are present, follow recommended buffers (TBD), except as described in sections that follow below.
- Allow a pass-through corridor up to some distance (one suggestion was 40 meters), for example (even if non-listed birds nest in the area) for driving only along the east beach (no parking or getting out) if, and only if NPS observations indicate driving through the corridor will not disturb nesting birds. This will require NPS to have monitors to watch birds to make sure they do not flush when vehicles are allowed to pass. Pedestrians would not be allowed in this corridor. If nesting birds are disturbed, the distance should be carefully noted for adaptive management and the corridor will need to contract or shut down. Disturbance should be defined in detail. Monitoring

might be once or twice daily, dawn to dusk, or some other frequency. The intensity of monitoring is dependent in part on the resources of the Park and commitments for the Park as a whole to monitoring across geographies.

Active Management Tools to Enhance CWB Nesting (with the intent of encouraging nesting further away from the Access Corridor to preserve access on the east beach)

- Explore opportunities to enhance CWB nesting habitat at a sufficient distance away from the Cape Point access corridor.
- Conduct annual habitat assessment of Cape Point interior (i.e., west of the access corridor) to determine best available site for targeted CWB nesting habitat enhancement prior to the breeding season, which may include:
 - Improvement of CWB nesting substrate (shell, cobble, etc.), if feasible.
 - Use of CWB decoys (with a sound system possibly) to help establish colony at targeted site away from access corridor. CWB decoys have been successfully used elsewhere for common and least terns and black skimmers. One caution is to select areas carefully to avoid predators, natural hazards, etc.
 - Use of avian predator decoys (e.g., owls, gulls, or crows) outside of resource closure near edge of Cape Point access corridor (NOTE: some express concern about this “predator” decoy approach is not in keeping with general Park approach in terms of encouraging rather than discouraging natural resources).
- If CWB nests or chicks occur within less than the recommended buffer distance (TBD) from the Cape Point access corridor, use temporary “chick fencing” and/or temporary barriers for some CWB species (e.g., least terns) to reduce chances of nest disturbance or chicks being harmed. Chick fencing would only be used when no unfledged piping plover or AMOY chicks (or other species possibly found at CAHA such as Wilson’s Plover) are present within a prescribed distance (TBD). Fencing would only be installed at a prescribed minimum distance (TBD) or more above the high tide line in order to minimize the risk of conflict between the fencing and nesting sea turtles. Chick fencing has successfully been used elsewhere in the United States (e.g., California least terns) (NOTE: some express concern because these fences can cause entanglement issues for birds and sea turtles. They may get quickly buried by blowing sand, and they can become dislodged from the ground and blow across the nesting area. They might also block access to the beach by nesting sea turtles. The habitat these fences were used in in California was very different from the high-energy beach of Cape Point).
- Develop adaptive management objectives and conduct monitoring/research to determine success of habitat enhancement, chick fencing measures, or other means described above. After analysis, modify measures if needed, to meet objectives and improve results. Some prefer quantifiable goals while others prefer more qualitative goals.
- Active management only if the area selected will not be likely to close access further because of some buffer.
- Some of these actions may be mitigation in some cases and in other cases to reduce

conflict among users/needs.

Vegetation Management in Select Areas

- NPS could conduct hand treatment or disking of vegetation in selective areas where vegetation is beginning to encroach on nesting habitat.
- During non-breeding season, selected interior areas of Cape Point could be opened to vehicle traffic from X to Y date (one suggestion is 16 November to 14 March). If traffic is sufficiently concentrated in an area or along a route, such action could help reduce vegetation density and possibly make the interior areas of Cape Point more attractive to nesting birds. Some areas may not be included in this winter opening because they are suitable as foraging, resting, and roosting habitat for non-breeding shorebirds, such as ephemeral pools/ponds, all moist soil habitats, and a buffer around such habitats.
- Vegetation should be removed from areas only if the area selected will not be likely to close access because of some buffer.

Access When Piping Plover (PIPL) Chicks on the Ground near Access Corridor

- Provide recommended pedestrian and ORV buffers for piping plover chicks for X weeks or days after chicks have hatched. After X weeks or days, during daylight hours pedestrian and/or ORV access to the Point could be allowed with a reduced buffer distance (TBD) as long as NPS provides sufficient on-site monitoring of chicks. The level of on-site monitoring is dependent upon the total number of resources management staff available and the number of piping plover broods on the ground at any one time. This should be in clear compliance with the Piping Plover Recovery Plan.
- Prohibit pets in Cape Point access corridor during breeding season (NOTE: some do not agree with this point).

Access When Non-listed Species' Chicks on the Ground near Access Corridor

- Maintain recommended ORV buffer for AMOY and CWB chicks (and other species possibly found at CAHA such as Wilson's Plover) unless chick fencing is in use for CWB and no AMOY chicks are present within X m. Without fencing, during daylight hours pedestrian access to the Point could be allowed with a reduced buffer distance, as long as NPS provides sufficient on-site monitoring of chicks. The level of on-site monitoring is dependent upon the total number of resources management staff available and the number of piping plover broods on the ground at any one time.
- Prohibit pets in Cape Point access corridor during breeding season (NOTE: some do not agree with this point).

Areas Non-Accessible to Birds during Nesting and Unfledged Chicks

- Vehicles may be allowed to pass through portions of the protected area where the protected area is considered by NPS natural resource management staff to be inaccessible to chicks because of steep topography, dense vegetation, other naturally

occurring obstacles, or pre-existing manmade obstacles (such as water, pools, etc). The ocean beach would not likely be included in this exception due to typical, wide-ranging PIPL chick behavior.

Interdunal Road

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

Management of Bird Disturbances

- Within the ORV corridor and any pedestrian access areas, establish clear rules and violations for such possible bird disturbances as pets, kites, loud noises, large objects attached to vehicles (i.e., banners, flags, etc.), and so forth (NOTE: some state that more data should be gathered on which, if any, of these activities cause more disturbance than pedestrians and ORVs).

ADAPTIVE MANAGEMENT

- The Committee needs to better understand adaptive management and its practical application in the Park via dialogue with an expert acceptable to all. Adaptive management has come to mean a specific approach, with specific protocols, measures, methodologies, etc.
- The Committee and/or a subcommittee could develop a specific set of adaptive management questions to answer over the coming years, which in turn, would require NPS to develop appropriate technical/scientific protocols for testing, monitoring, analyzing, and learning from data.

ADDITIONAL OPTIONS FOR ACCESSIBILITY

- The parking area at Ramp 45 should be open during duck hunting season (might also be open for additional times for birders).
- Develop a pedestrian access route to the dredge pond with suitable nearby parking should be developed for bird watching enthusiasts.
- Develop more parking Ramp 43 and toilets in an appropriate site nearby. (*The Ramp 43 parking area is subject to overwash and flooding and may not be an appropriate site for toilets.*)
- Increase the width of pavement in the approach to Ramp 44 for airing down.
- Improve the design/construction of Ramp 44 (west of the dune crossing) to increase usability and reliability of the access route during wet or flooded conditions.

VIOLATIONS

- Penalties for violations should be “neutral” regardless of the interest of the person(s) violating enclosures on foot, vehicle, or other means. Penalties should not benefit any particular interest group, but rather, be geared toward the specific, individual offender.
- Options include:
 - Better education through some kind of pass/permit system

- Ion resource closure signs include clear notice of penalties for violations
- Higher dollar fines for violations (*is a decision of the Court*).
- Expanding buffers when repeated violations occur
- Expanding buffers when a single violation occurs

AREAS FOR FURTHER CLARIFICATION

- What are the specific requirements under the Piping Plover Recovery Plan for unfledged chick buffers, weeks after chicks on the ground, and so forth.

TURTLES

- Establish work group within Subcommittee to help prepare for sea turtle and light management discussions at October Committee meeting.

ISSUES STILL IN DISCUSSION

- Date of establishing pre-nesting closures (March 15 or later)
- Use of South Beach
- Buffer distances
- Details of how ideas fit together and sufficient detail on a variety of issues so that overall approach is implementable, operational, clear, specific, and scientifically and legally defensible.
- Desired conditions for species will have to be determined by NPS (i.e self-sustaining populations, specific numbers of breeding pairs, or other metrics)

OTHER

- After subcommittee review, vet proposal for both birds and turtles with resource experts (e.g., Erwin, Hecht, Simons, or others) for feedback and fine-tuning.

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Please note that these are options and ideas developed by the Subcommittee. The written document is to be understood in the context of the detailed deliberations had by the subcommittee. Because both the writer and written word are imperfect, there may be points below that are unclear or confusion. We ask the Committee reader's to consider this document in that light, and to ask questions for clarification and understanding before moving to assumptions or conclusions that may not be intended by this Subcommittee.

This document was developed through conference calls and emails. Conference calls were held on: July 15, July 31, and August 8, August 25, and September 2.

PERMITS, PASSES, and FEE OPTIONS

AUTHORITIES & POLICIES THAT GUIDE THE NPS

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 fee 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 FLREA and in RM-22. Passes are valid for entrance fees only. The pass is not valid for

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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.

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.

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- 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. For instance, ORV permit fees would not be used to develop pedestrian area-only facilities/improvements.
- There would be no limit on number of permits. Carrying capacity and overcrowding at specific locales would be handled through different means.
- 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.

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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

PERMIT/PASS/FEE OPTIONS

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. An “easy pass” system might be possible for this approach.
- 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

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Seashore would propose the fee amount for the weekly and annual local pass and need Washington approval of the proposed fee.

- 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).
- One might also charge a fee for parking in NPS lots, either through “self-pay” via a tube collection system or at larger lots, via a pay station.
- Either as a pass or possibly permit, one might have a “self-regulation” system where an user has to sign a brochure, keep it with them or hang it as a hanger off the rearview mirror, and leave a fee in a collection tube.
- 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: Driver Permit System with Fee

- An ORV Special Use Permit (SUP) would be required for all off-road vehicle operators regardless of time of day or time of year or location of use. The driver would be required to carry some kind of permit (i.e., a hang tag). This is the best way to ensure the operator of the vehicle has met the requirements and education attached to the particular permit.

Option 2b: Vehicle 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,

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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.

Beach Use generally versus ORV use only

- It may be possible that the special use permit could be required for vehicle/operator use whether it be to park and then walk on to the beach or whether the vehicle/operator drives onto the beach (i.e., the control point is off-highway). Thus, the permit would be required for both parking on NPS property as well as driving on the beach. This would provide for education on natural resources and other issues for many types of users, would be fairer across user groups, could be a compliance/enforcement mechanism for beach users regardless of whether they park and walk and/or drive, and the monies collected could be used for development of facilities in these areas for different kinds of users (pedestrians and beach drivers).

Permitting both Vehicle and Driver

- 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 would comprise 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

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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 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.

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- 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.

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).

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- 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.

Public Comment
Reg Neg Sept 9th
2008

TO: Negotiated Rule Making Committee

SEP - 9 2008

Outer Banks Group

My name is Earl Younce Jr. I am a second generation owner of the Avon Motel and Cottages located on the oceanfront in Avon. My family has operated these businesses for over 50 years; and we are an integral part of the community with deep roots here.

Some of our customers have been patronizing our facilities since they were established those many years ago. The overwhelming reason many of our patrons return year after year is for the peaceful tranquility and for the sheer beauty of nature in all its splendor. Most of the people who stay with us are also ORV enthusiasts who enjoy fishing, kite boarding, surfing, wind sailing, boating, shelling and other beach related activities.

This year with the emergence of uncertainty over whether or not these time-honored traditions will be allowed to continue in the future, we are experiencing unprecedented cancellations and loss of business. Our reservations and total business decline is in the 30-40% range. These losses are directly related to the numerous and unpredictable fluctuating beach closures that have occurred since the control of the national seashore has been taken over by special interest groups. This trend of lost business is not unique to my own. Other tourist dependent businesses such as souvenir/gift shops, tackle shops, restaurants, realty offices, who I have talked to, have experienced similar or even greater loss of revenue.

In addition to my personal losses because of this situation, not only does my family suffer in many ways, I have sixteen employees who depend on our being a success to survive. For example, the manager of our motel, for the past 12 years, a single mother of 5, depends on this business, as well as my maintenance man and his wife who cleans, and have 4 small children, all under the age of 11 depend on our survival. This is just one example of how important this is to everyone. When business is in a decline such as it has been, I have to make hard decisions sometimes on who I can afford to keep on. This hurts families and our economy in general.

My guests tell me its not the economy in general or high gas prices that is their main concern. Beach access is their sole reason for coming. Some of my guests, due to beach access closures, have told me that they will never return. Just to name a few, an 86 year old man who has been staying at our establishment for 48 years has now decided he will not return due to the closings. It is under the interim plan (the park service was responsible for administering) there was plenty of compromise allowing plenty of reserved space for wildlife while allowing plenty of access for beach enthusiasts. I feel park service, not special interests groups, should decide, with public involvement, how the beach should be managed. I believe in co-existing along with respecting all of nature's creatures (even if they are not "endangered"). But after all is said and done, this is supposed to be a national seashore for the enjoyment and use of the citizens, as well as myself, my family, and all the local people of the island who have provided and want to

provide the type of place people love to come to and also the jobs for those who choose to love this wonderful place as we do in a way that we can all enjoy the beach together. I am sure there can be a compromise with the park service and the people of this great island without special interest groups who's only interest is to save a bird and kill an island!

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Without question the two most important actions required to establish a Cape Hatteras National Seashore ORV Management plan are

- The establishment of specific resource management measures, and
- The establishment of ORV routes

Yesterday afternoon we learned we are not close to finalizing either of these two actions. SEP - 9 2008

This is what I heard yesterday

Outer Banks Group

With regard to the Resource Management plan I heard that

- Resource management is the application or interpretation of the science and is the responsibility of the NPS, not the committee
- The NPS must articulate the specific resource protection measures
- Specific buffer distances are not a committee issue but an NPS issue
- The guidelines provided in yesterday's document were for discussion only and apply only to Cape Point.
- The NPS is not able to provide specific actions for Cape Point to vet against the guidelines, and
- Neither guidelines or specifics are available for other areas of the seashore

With regard to the establishment of ORV routes I heard that

- Two groups have very specific, but significantly conflicting recommendations
- The Park Service expects to implement additional permanent closures in the final plan

I also heard yesterday that short of approval by the Secretary of the Department of the Interior, the work of this committee must be completed by January to be considered in the parallel NEPA process, and that the NPS expects that court involvement is likely in the future.

Given the significant work remaining, the tight timeline, and the expectation of future litigation, I have to assume the Park Service already, in fact, has a very thorough idea of what specifics will be in the NEPA recommendation for both the Resource Management Plan and specific ORV routes. While they may still be in the document preparation stage, they cannot afford to wait until this committee finishes its work. I think resolution is unlikely before the coming elections, successful conclusion of the pending congressional action is the best scenario that would allow the timeframe to be extended and this committee to contribute.

Since I doubt this committee will be able to finish its tasks, I direct my remaining comments to the park service as they complete their plan.

- Look earnestly and explicitly for opportunities to preserve ORV access and provide resource protection simultaneously. Do not assume they must be mutually exclusive.
- Do not dismiss ideas such as vegetation control, ephemeral pond creation, chick fencing, selective turtle nest relocation, drive only corridors, and additional ramps
- Do not dismiss the significance of non-ORV activities provided by the Pea Island refuge in the fulfillment of the seashore's directives, nor its relative lack of use.
- Do not dismiss the call to use peer reviewed science
- Do respond more effectively to the call for more timely, specific information to the committee and transparency to the public
- Do recognize that many of the unique qualities of the seashore can be appreciated or enjoyed by the visiting public only by ORV access.

David Scarborough
3200 Gardner Park Drive
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Avon Property Owner

my my Sep 5-7, 2008
 Distributed Sept 8, 2008
 to the Committee
 from Barbara Ackley

SEP - 8 2008

Outer Banks Group

Methods of Increasing Piping Plover Survival on our Beaches.

While this committee is charged with developing an ORV plan for Cape Hatteras National Seashore Recreational Area, much attention has been given to the preservation of certain species in relation to the use of the beach. Today I will address the Piping Plover. In my view after research of CAHA data and observation, there are three main problem areas affecting the decline of this bird: the storms, predators, and foraging area. Over the past 20 years various management emphases have changed.

Piping Plovers need special safe places to brood and raise chicks. Recently it has been attempted to encourage them to the open beach because the pond areas where they used to locate are densely vegetated.

Vegetation overgrowth began approximately 1989 due to lack of storm overwash. Nesting and feeding at the pond area was blocked. A vegetation control program, mowing and lightly disking, was begun in 1993 and continued through 1996. In 1995 the treated area was 90 acres at Cape Point and 20 acres at Hatteras Spit.

In the years after vegetation control was stopped, the number of Piping Plovers on the Seashore dropped. Beginning in 2005 increasingly large, extensive areas of the beach were set aside for nesting. In 2006, finding these attractive places for nests on the beach, more pairs began nesting at Cape Hatteras, staying here instead of flying farther north. However, the birds weren't weatherpersons. Storms claimed nests and eggs. Predators inhabited the vegetated areas and beaches and claimed eggs and fledglings. There are this year nearly as many pairs and surviving fledglings as the earlier years.

In the past 20 years, the highest number of pairs was 15 in 1989; the fewest, 2 in 2002 and 2003. The statistic of greatest value is the number of fledglings. That occurred in 1998 when 12 pair produced 9 chicks. It was a year of no damaging spring storms. In the last 15 years there have been 11 storm events in the late spring-early summer months. Our fledge rate this year was 0.64. Last year it was slightly better, 0.67. Last year the first five nests were lost to storms. This year 2 were lost to storms, 6 nests to predation. Only 3 of the thirteen nests fledged chicks.

In the past 12 years vegetation has been growing around the ponds and on the upper beach. This has forced the nesting onto the front beach where the storm action is greatest. However, the fledglings forage primarily on the ephemeral ponds, not the ocean front.

What can we do to have greater Piping Plover production on the Outer Banks? What do our CAHA Resource Reports and the observation of those on the beach tell us? Storms and predators are our greatest enemies. The native animals have always been here. The number of animals removed in 2007 totaled 385. Totals are expected to be higher this year because there has been a full time predator control person. These animals thrive in the thick vegetation.

Suggestion: resume the management of the vegetated land on the interior sections of the beaches. Conduct an active program of restoration of the pond areas, even create ponds. This will provide a safer place for nesting and foraging. This will remove an attractive area for predators.

Again I ask you to study the reports of this particular habitat, use your funds productively. Manage this bird population while still providing full public recreation.

Sources: *CAHA Piping Plover Management Program Summary*, unpublished report of Ries Collier and Marcia Lyons given at the November 1995 Atlantic Coast Piping Plover Conference.

CAHA 2007 Annual Piping Plover Report

CAHA 2008 Resource Management Reports

Barbara Ackley

September 7, 2008

**Cape Hatteras National Seashore
Resource Management Weekly Field Summary; July 17 to July 23, 2008
(Bodie Island, Hatteras, and Ocracoke Districts)**

Nests/Brood data:

- PIPL Nest 1 (Cape Point) was lost due to storm.
- PIPL Nest/Brood 2 (Ocracoke) fledged three chicks on 7/4.
- PIPL Nest/Brood 3 (Ocracoke) chick was determined lost on 6/20.
- PIPL Nest/Brood 4 (Cape Point), fledged two chicks on 7/2.
- PIPL Nest/Brood 5 (Cape Point) fledged two chicks 7/15.
- PIPL Nest 6 (Bodie Island) failed 7/20.
- PIPL Nest 7 (Ocracoke) was lost due to a storm.
- PIPL Nest 8 (Ocracoke) was abandoned after two eggs were predated.
- PIPL Nest/Brood 9 (Cape Point) chicks lost to predation.
- PIPL Nest/Brood 10 (South Beach) chicks lost to predation.
- PIPL Nest/Brood 11 (Ocracoke) chicks lost to predation.
- PIPL Nest/Brood 12 (Cape Point) chicks lost to predation.
- Nest 13 (Cape Point) was lost to ghost crab predation.

Eleven breeding pair (one on Bodie, six on Hatteras and four on Ocracoke) of PIPLs were confirmed on the Seashore for 2008. A total of seven chicks fledged, for a productivity of .64 chicks/pair.

PROPOSED VEGETATION CONTROL

I have reviewed the information provided by David Allen and found that there are a few suggestions that may increase the effectiveness of a herbicide program to control vegetation in the waterbird nesting areas. While I am more than happy to provide my suggestions I am not a wetlands specialist, my expertise is in field crops. A very good contact for further information is Dr. Allen York at the North Carolina State University, he is the extension weed scientist. I don't believe that glyphosate is the complete answer for this issue, but amended use of the product may lend itself to more positive results.

The first issue with glyphosate is that it has no soil activity, which means it controls what is up but will have no effect on subsequent germination. There are other herbicides that may be used in these situations that would provide control of vegetation for numerous years. A few examples are diuron, sulfometuron, imazepic, and imazapyr. I have experience with imazapyr and diuron and both are very safe to vertebrates and invertebrates. They have soil activity for up to 5 years in some areas but I anticipate this to be much less in a beach sand environment as clay content and organic matter tend to provide for a more favorable condition for longevity of control. One area for further investigation would be the use of multiple herbicides and their effectiveness. I feel that a contact non-selective herbicide such as glyphosate combined with a long lasting herbicide such as those mentioned above may be the best approach. The use of mechanical control of these weeds would be less than that obtained with herbicides as in a beach environment we would expect a certain percentage of these weeds to regrow through the loose sand that would be piled on top of them. Burning would have a better effect than mechanical control but in the case of sedges, rushes and woody plants the effect would be less than that which can be obtained with glyphosate when used appropriately. Finally, rates of glyphosate have to be increased dramatically to control woody species. This may be up to 4 times the rate to control annual herbaceous weeds.

Control of woody species, biennials or perennial weedy species is best achieved in mid summer to early to mid fall. The reason for this is that these types of weeds have underground reproductive structures and can regrow if the top of the plant is removed from either mechanical methods, burning or herbicide application. The key is to apply herbicides when the photosynthate is moving to the roots of the plant and can carry the herbicide to those structures and control them as well. Early in the season the mass flow in a plant is primarily to the top portions of the plant as starches stored in the roots are converted into sugars and transported to the actively growing portions of the plant which is the above ground portions. Application of herbicides at this time will simply remove the top of the plant and the plant will likely regrow. We can often see this with young annual grasses early in the season when the growing point is still underground. The top of the plant is controlled but the grass regrows from the growing point. However, when glyphosate is applied in mid summer to mid fall the herbicide moves into the roots and can effectively control the plant, this is especially true with woody species. In summary, a fall application for control of sedges and more perennial weeds combined with a late spring application to control annuals for the annual weeds may be the best approach. Burning or mechanical control methods employed before glyphosate application will reduce its effectiveness. Glyphosate will only control green tissue, so any prior method of control employed before herbicide application to remove green tissue will negate and effect from glyphosate.

While adding dredge material may be effective I would suppose that it would be rather costly and is itself a temporary fix for the problem. Once the seeds get deposited they will again grow in the new dredge material. This brings us back to the same place we are presently a few years in the future. I feel that properly applied glyphosate at the most appropriate timing and rate will provide much better control of the species that were mentioned. The addition of other longer lasting herbicides will provide control of these weeds for more than one season. I believe that further investigation of these weed control measures is warranted and would be happy to provide any information that may be needed. I appreciate the opportunity to discuss this information with those parties interested in improving bird nesting habitat on the CHNS.

Respectfully;

J. Andy Ackley Ph.D.

Public Comment
Reg Neg Sept 8¹/₉₊₁
2008

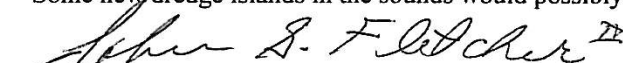
September 3, 2008

SEP - 8 2008
Outer Banks Group

Re: *Beaches National Seashore*

I am 70 years old. For the past 60 years my summers have been spent on Nags Head or Ocracoke Island. If I remember correctly, the National Seashore was purchased, in a large part, with private funds from Paul Mellon and others for the people to enjoy. No mention was made of birds or turtles. We can share, but in this area people should come first.

The birds, turtles, and other wildlife should come first at Bell Island, Pea Island, Lake Mattamuskeet, Alligator River, Swan Quarter, Pungo, and other wildlife refuges in the area. Some new dredge islands in the sounds would possibly provide excellent bird nesting areas.



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