

**-PERMIT/PASS/FEE CONCEPTUAL FRAMEWORK**Draft ~~11/12/14~~/08**Conceptual Approach**

The Cape Hatteras National Seashore (CAHA) Beach Permit ~~/and/or~~ Pass system will be established under the following principles:

- Share responsibility across users for natural resource protection;
- Equitable and reasonable fees across ~~motor users~~ vehicles users who access the beach via the vehicle via driving and/or parking;
- ~~Equitable, single~~ Multi-point, point, broad, effective education;
- Equitable and easy access to the system;
- A tailored solution to CAHA meeting all legal requirements.

The goals of the CAHA Beach Permit/Pass system will be to:

- Encourage and support appropriate beach behavior;
- Provide education to as many users of the beach as possible;
- Collect fees for compliance and enforcement, operations, maintenance and improvements, related to ORV and pedestrian use of beaches and associated facilities; ~~(cost recovery)~~;
- Provide an enforcement mechanism for individual acts and behavior that threatens people, resources, and general enjoyment of the beach by all.

**Summary**

**Any vehicle utilized for beach access via a National Park Service parking lot or ramp shall be required to have a permit/pass.**

**Key Characteristics**

Permits/passes would be available on a *daily, weekly or annual* basis. There would be no numerical limit on the number of permits/passes issued.

**OPTION #1:** The intent is to permit/pass those *individuals* with a valid drivers license and vehicle registration who access the beach via federal parking lots and/or ramps. The permit/pass will be issued to individuals because the purpose of the system is to encourage education and appropriate action and behavior. The point of control will be the vehicle (the permit/pass will be displayed on or in the vehicle). ~~Anyone operating (drivers) or using the vehicle (passengers) would be held responsible for compliance with the regulations.~~

~~Education is required in order to obtain a permit. The applicant is required to read information and/or watch an educational video that provides education on park regulations, natural resource protection, vehicle characteristics, vehicle operation and instruction on how to access information on the current status of beach access. Education will include significant information focused on natural resource protection/mitigation. Educational materials will make 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. The applicant is required to sign the brochure or a form noting they had watched the video. The brochure shall include the terms and conditions of the permit/pass.~~

OPTION #2: The intent is to permit/pass all adults (“individuals”), on behalf of themselves and their minor children, if any, only when such individuals access the beach (1) via federal developed parking lots; and/or (2) via ramps for the purpose of driving onto the beach. The permit/pass will be issued to individuals because the purpose of the system is to encourage education and appropriate action and behavior. Each individual will be required to obtain a permit/pass. Individuals on the beach need not carry the permit on their person, however they must have easy and quick access to their permit within their personal belongings located on the beach. For example, users entering the beach on foot after parking in a developed parking lot must leave the permit/pass page marked “vehicle” clearly displayed on or near the dashboard of the parked vehicle and must carry the permit/pass page marked “individual” amongst or within their personal belongings on the beach. Users that are, or have, operated the off-road vehicle onto the beach must leave the permit/pass page marked “vehicle” clearly displayed on or near the dashboard of the off-road vehicle. Users entering onto the beach via an off-road vehicle must carry the permit/pass page marked “individual” amongst or within their personal belongings on the beach. [NOTE: consider language on the circumstances under which law enforcement may check for a permit on a person; as a first offense, only with probable cause, etc.]. Permits/passes for vehicles and individuals are obtained as a part of a multiple page printout via the Internet or as part of a multiple part system obtained at NPS distribution stations, as discussed below.

For vehicles driving onto the beach, they will be required to carry the *required minimum equipment* detailed elsewhere.

There will be a fee charged for the permit/pass, differentiated only by day, week, or annual pass. No fee differentiation will be made for the purposes of whether the vehicle is used for parking and walking to and/or driving on the beach. The fee will be set to ensure reasonable access for both residents and non-residents and across diverse socio-economic users.

Permits/passes would be *available* via the Internet. They would also be available and in-person at a limited number of NPS distribution stations that could be established at various locations throughout the Outer Banks. Local in-person NPS distribution locations could

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include: the Whalebone Junction Welcome Center, NPS Buxton Ranger Station or Lighthouse Visitor Center, and the NPS Ocracoke Ranger Station or Visitor Center. In any case, they should be available in at least one physical location each on Bodie, Hatteras, and Ocracoke Islands.

-Permits/passes will be obtained via a “single access portal” so that regardless of whether just parking or parking and driving on the beach, all permittees will be required to read all educational material for the greatest informed beach user as possible. For instance, local in-person NPS 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. In any case, they should be available in at least one physical location each on Bodie, Hatteras, and Ocracoke Islands. It may also be possible to have local ~~Local~~ governments, welcome centers, and/or interested businesses such as area hotels, bait and tackle shops, outfitters, and tour operators sell permits/passes will be encouraged to sell permits/passes via the internet for members of the public as a convenience to their respective customers. Such non-NPS permit stations are not intended to become vendors by collecting any fees that may be associated with the pass/permit (if any) but rather will solely provide computer and Internet connections for the convenience of the public.

Law enforcement will periodically patrol the beach and beach parking lots to ensure vehicles have the appropriate permit/pass clearly visible and their drivers are acting responsibly. Law enforcement may ~~and~~ issue tickets for failure to be authorized, excessive speeding, and so forth.

OPTION #1: The point of control is the vehicle: individuals outside of their vehicle will in no way be required to carry any kind of permit, pass, tag or other indication of authorization.

OPTION #2: The point of control is the vehicle and/or the person.

Law enforcement will retain all other police powers authorizing them to issue tickets, for example, for excessive speeding, failure to have dog on leash, and so forth. Permits/passes for vehicles and individuals are obtained as a part of a multiple page printout via the Internet or as part of a multiple part system distributed at NPS distribution stations. The permit/pass can be revoked for a “major violation” (needs to be defined) and/or a number of “minor “ violations. Violations that endanger people or damage wildlife may result in loss of obtaining access, pending approval by the court. A standard system of fines and penalties is approved by the U.S. District Court, announced by NPS, and listed in required educational information.

The Park will keep *accurate records* of the number and types of permits/passes issued each time period, and keep cumulative totals as the year progresses, by week, month, season, and annually. NPS will retain basic, appropriate registration data on each individual when they apply the first time, and annually add any record of violations.

The park should prepare and distribute an *annual report* to document the number and type(s) of permits/passes 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 program, and the number and types of violations committed by (or the number of violation notices issued to) both permitted and unpermitted beach users.

**Education**

Education and awareness is key to protecting beach resources. Therefore, the following reinforcing and multiple actions are necessary to ensure the greatest number of educated beach users as possible.

- Education is required in order to obtain a beach driving/parking permit/pass. The applicant is required to read information and/or watch an educational video that provides education on park regulations, natural resource protection, vehicle characteristics, vehicle operation and instruction on how to access information on the current status of beach access. The applicant is required to sign the brochure or a form noting they had watched the video. The brochure shall include the terms and conditions of the permit/pass. It is expected that the driver/permittee will both educate passengers with the appropriate information who access the beach via the permittee’s vehicle as well will be responsible, to the extent possible, with the behavior of their passengers while on the beach.
- There will be a more general, expansive, and effective education and outreach program through the printing/form of the permit itself, the web, brochures, signs, NPS staff, and other means, to ensure the highest percentage of educated beach users as possible. Tailored education for Cape Hatteras National Seashore may be developed in partnership with such groups as Tread Lightly and Leave No Trace.
- All education will include significant information focused on natural resource protection/mitigation.
- Educational materials will make 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.

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**What is not Intended**

This Park/Pass system is not intended to:

- Be a general entrance permit/pass for the Park as a whole.
- Require a permit/pass for each individual enjoying the beach via driving, walking, or other means.

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- Require all legal parking to be solely on federally-developed parking lots [that are in compliance with FLREA?]
- Include additional special park uses or additional activities that otherwise require an additional or separate special use permit and/or fees (i.e., beach weddings, self-contained vehicle camping, etc.)

### Legal Authorities

The following are statutes and policies that may apply to the permit/pass system put in place.

The special use permit is authorized and guided by:

- 16 USC 3a - (PL 103-1138, Title I, November 11, 1993, 107 Stat. 1387)
- *NPS Management Policies 2006* Section 8.6

The entrance pass is authorized and guided by:

- 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

### Implementation

There are three potential mechanisms for implementing the above system as described. Given the complexities of federal regulations, policies, and guidance, the subcommittee has explored all three. These three mechanisms evaluated are outlined below. A single special use permit system is preferred by the subcommittee and the supported heartily by the [sub?]committee as a whole.

- A special use permit
  - This system implements a requirement for all beach users to obtain a special use permit however such permit does not equate to a pass for the general public. Each user to the beach at this particular unit within the National Park Service system places a unique and special demand upon resources within the unit. Each user, by the very nature of their activity(ies), is a special class of use with the need of an activity to be regulated, including but not limited to the class of kite flyers, swimmers, beach sport users, fishermen, bird watchers, and use for spiritual practices or enjoyment.
- A “combined” system that includes:
  - A special use permit for off-road vehicle driving; and

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- Those visitors using an off-road vehicle on the beaches of the unit would be required to obtain a special use permit prior to driving on the beach.
  - An entrance pass implemented at parking facilities for pedestrian access to the beach.
    - Those visitors utilizing a developed NPS-managed parking facility for the purpose of beach access would be required to obtain an entrance pass prior to utilizing said parking facility.
- An entrance pass
  - This system implements a requirement for every visitor to the unit to obtain an entrance pass.

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- ~~A special use permit~~
- ~~A “combined” system that includes:~~
  - ~~A special use permit for off-road vehicle driving; and~~
  - ~~An entrance pass implemented at parking facilities for pedestrian access to the beach.~~
- ~~An entrance pass~~

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A *special use permit* for beach users of NPS ramps and beach access parking lots would be preferred because: 1) it would be one kind of permit tailored under special use permit authority to the unique needs of Cape Hatteras National Seashore; 2) allow the Park to retain 100% of the revenue to enhance and support the principles and goals of the system. Such a special use permit is justified because: 1) the beach, as opposed to the Park as a whole, requires special on-going management in terms of public safety and natural resource protection; 2) the beach requires special facilities for use including ramps, boardwalks, restrooms, and so forth; 3) education is essential for on-going natural resource protection; 4) the majority of users of the beach fall into a class of special uses putting unique and identifiable demands upon resources distinguishable from the general public.

A *combined system* would include a special use permit for beach drivers and an entrance pass system for beach pedestrians accessing the beach via federal parking facilities. The system would charge the same fee for both the permit and the pass. Since the entrance pass fees are set nationally, they would need to reflect this consistency across NPS units. This bifurcated approach is more awkward and complex to administer than a single special use permit. However, it would ensure beach users accessing the beach via federal property (ramps or lots), have education and shared responsibility for beach and natural resource protection.

An *entrance pass*, obtained via the Internet or in-person, with the point of compliance at federal parking lots, ramps, and the beach (NOT on Highway 12), could provide some of the

same benefits as the above approaches. However, such an approach does not have the tailoring possible under special use permits and under current federal law, CAHA can only retain 80% of revenue and the use of that revenue is significantly restricted.

**Commercial Fishing**

Commercial fishing permittees regulated pursuant to 36 CFR 7.58(b)(2) are not subject to the provisions of this ORV permit regulation during times or periods when beach use occurs while engaged in commercial fishing from seashore beaches.

~~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 a pass/permit to drive on the beach (Comment: As a practical matter, NPS could issue single, combination fishing/beach access permit/pass to commercial fishermen.)~~
- ~~•The Superintendent shall waive permit fees for commercial fishermen, as long as federal law allows.~~
- ~~•The Superintendent may exempt commercial fishermen, who are actively engaged in authorized commercial fishing activity, from restrictions or requirements applicable to recreational beach 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/pass and as long as such is allowed by federal law.~~

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