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Cape Hatteras National Seashore Negotiated Rulemaking
Meeting 10 – January 6-7, 2009
Kill Devil Hills, NC
Meeting Summary
Approved February 26, 2009

Summary of Consensus Agreements

None.

Welcome to All and Opening of the Meeting

Mike Murray, Cape Hatteras National Seashore (CAHA) Superintendent and Committee member, opened the meeting in his capacity as the designated federal official (DFO) for the Cape Hatteras National Seashore Negotiated Rulemaking process. He welcomed everyone, gave an overview of the agenda, and thanked Dare County for providing wireless access at the Wright Brothers Pavilion for this and future Committee meetings.

Subcommittee Work

The Committee worked in three subcommittees for most of the meeting: Routes and Areas, Natural Resources and Village Closures. Committee members and alternates who were not members of these subcommittees were invited, along with members of the public, to listen to subcommittee discussions.

Village Closures

Ona Ferguson presented the work of the Village Closures subcommittee to the Committee, identifying a range of options on key issues. The subcommittee discussed many aspects of village closures including: dates for opening or closing beaches in front of villages, the importance of assuring pedestrian safety everywhere on CAHA, appropriate village boundaries, possible triggers to close narrow village beaches, suggestions for strengthening NPS enforcement, and reasons for treating northern and southern villages inside the Park similarly or differently. The contents of the safety closures document on which the Committee reached conditional consensus at the December Committee meeting applies in front of villages and, in December, the Committee indicated that the Village Closures subcommittee might suggest additional restrictions in front of villages. Subcommittee members generally agreed that NPS could address concerns about dense pedestrian use of beaches during holiday weeks by using the already-approved trigger of “a high concentration of pedestrian users coupled with a narrow beach.” They described a problematic lack of parking in southern villages as the cause of some dense parking of vehicles on beaches near village boundaries. This subcommittee grouped northern and southern villages, northern villages being Rodanthe, Waves, Salvo and Avon and southern villages being Buxton, Frisco and Hatteras. The subcommittee’s reasons for discussing different management of beaches in front of southern and northern villages were (a) geographic and physical differences which cause

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the water to remain warmer longer in the south, affecting use patterns, (b) different historical and cultural uses, and (c) a tradition of being largely open/closed for decades. Frisco and Hatteras Villages have been primarily closed recently. According to Park staff, the historical basis of the closures in front of the two villages is muddled, and current policies do not fully explain the closures. The Park would like clear guidance from the Committee on how to manage driving in front of villages.

Two options were tested for Committee agreement in principal, but the Committee did not reach agreement on this topic at this time.

Options Tested

One option tested:

- Northern villages open to ORVs September 15 – May 15.
- Frisco and Hatteras open to ORVs November 1 – March 15.
- Buxton closed year-round to ORVs.

The reasons for the disagreements included:

- Concern that this option does not adequately protect pedestrian safety.
- Anticipation of increased user conflicts if closed beaches are opened to ORVs.
- An abstention due to lack of direct interest in what happens in front of villages.

Another option tested:

- Northern villages open to ORVs from October 1 – April 30.
- Southern villages open to ORVs from November 1 – March 15.
- A village beach that measures less than 100' from mean high tide to the toe of the dune, measured every quarter of a mile, would trigger a closure of the beach to ORVs while conditions remained.

The reasons for the disagreements were related to the beach width closure trigger:

- Doubt that NPS can adequately monitor for narrow beach conditions.
- The difficulty of calculating 100', with averages, over distance and time.
- A desire for density criteria with any beach width minimum.
- Lack of clarity on what would be achieved by a closure at that particular distance.
- The example of densely populated Nags Head beaches, which are open for driving October 1-April 30 and have not had incidents of property or bodily damage by authorized vehicle operators on the beach.

Routes and Areas

Members of the Routes and Areas subcommittee presented their work to the Committee using maps they produced dated January 6, 2009. Robert Fisher began by correcting typos in the maps:

- Page 1: The red box should read January 6, not December 19.

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- Map 3: The area north of Avon should be shown as solid green, not mixed red/green.
- Map 4: There should be a solid blue line from the Frisco airport to the left edge of the map.
- Map 7: The box on campgrounds should read “closed to ORVs when campground open.”

Jim Keene presented a modification by the access caucus of what the Routes and Areas subcommittee developed. He reviewed all the maps, describing Routes and Areas subcommittee work and those places where the access caucuses preferred a different designation. The following list describes those places where access caucus preferences differed from what was on the maps.

- Map 1: Ramp 4 to the Bait Pond should be purple (conditional ORV).
- Map 2: There is no longer a request for a new Ramp 25. New Ramp 24 and 26 would be adequate to allow access during natural resource closures.
- Map 2: Add new Ramp 28, making it possible to have a pedestrian only area in one direction on the beach and an area open to ORVs in the other.
- Map 3: Add new ramp 39 near Haulover, with ORV access year-round from there to Ramp 60 on the sound side.
- Map 4: From the south most point of the groin at the lighthouse to 4/10 of a mile south of there would be purple (conditional ORV).
- Map 4: From Cape Point to the boundary of Frisco Village would be either solid green (ORV year round) or purple (conditional ORV).
- Map 5: Hatteras Spit would become purple (conditional ORV) where the solid green line ends.
- Map 5: Pole Road would extend from where it currently ends to South Beach in order to provide access to the beach from the sound side.
- Map 6: The green line at the north tip of Ocracoke would start further around the tip.
- Map 6: Provide sound side access to the boat ramp at the Coast Guard base at the north tip of Ocracoke.
- Map 6: Add new Ramp 62 across from Quark Hammock.
- Map 6: Add new Ramp 64 at the North End Turnout across from the parking area close to the Pony Pens.

Derb Carter presented the environmental caucus perspective on the Routes and Areas maps, indicating that they are comfortable with the designations as they were agreed to by the subcommittee and as shown on the maps, and they do not propose to change any of the designations. He noted that areas of controversy are indicated with red and green dots, and that the solid blue line in front of villages indicates that these areas might be open to seasonal ORV use pending input from the Village Closures subcommittee and a Committee decision.

Committee discussion on the maps:

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- Designation of certain areas as purple has different meanings to different people. The purple lines are used at three key areas: Bodie Island, Cape Point and South Beach. Some understood the purple lines to be designated ORV routes subject to natural resource restrictions, as all routes and areas and pedestrian areas will be. Others understood them to be areas that could be designated as routes and areas depending on whether natural resource protection measures were determined to be adequate.
- There was a request to indicate the source of conflict (natural resource, ORV, pedestrian or other) on the maps in those places where the Routes and Areas subcommittee has not yet come to agreement.
- A concern was expressed about inequity for pedestrians on Cape Point and South Beach.
- Criteria were requested for how ORV areas are selected, and it was noted that such criteria would be criteria for the activities for which people use ORVs.
- Committee members requested maps that identify routes and areas preferred by those focused on natural resource and pedestrian areas.

Committee members discussed how those Committee members primarily focused on natural resource protection see resource protection and designation of ORV routes as inextricably linked in key parts of the beach. Some are not willing to designate ORV routes in key places unless the resource management activities are considered adequate to protect the resources. The NPS ORV Resource Protection Tables accompanying the DEIS action alternatives outline resource protection measures with several options. These tables describe the management options NPS is considering for the different alternatives. NPS, prior to this meeting, did not consider reaching agreement on natural resource protection measures to be part of the Committee's charge. NPS stated they now are open to a subcommittee or the Committee recommending changes or adjustments to the resource protection measures if that helps in reaching consensus on routes and areas. NPS also noted the tables are complex and there might not be enough time to work through them fully. The Natural Resources subcommittee will consider the tables and will then to share their views with the Routes and Areas subcommittee.

Committee Business

Conditional Designation of ORV Routes and Pedestrian Areas – Committee members asked for a response to their question about whether pedestrian areas could be phased in as related infrastructure was built. NPS responded that conditional pedestrian areas can be created based on particular conditions or contingency requirements, and that it would be problematic to do this for all areas being set aside for pedestrian use. NPS encouraged the Committee and the Routes and Areas subcommittee to identify desirable long-term use, identify needed infrastructure, and if necessary to deem certain designations conditional for now due to infrastructure concerns. NPS said that those areas the Committee determines should have ORV use even sometimes must be designated ORV routes with clear conditions, and that NPS considers seasonal ORV routes a condition to address seasonal user conflicts. NPS also noted that pedestrian-only areas need not be designated as such. One Committee member asked if there are criteria for non-ORV

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access areas in addition to infrastructure requirements, and NPS responded that they would like suggestions on what such criteria would be. Another suggested that ORV areas be designated based on habitat definitions rather than on maps.

Schedule – Committee members requested an extension beyond the February 3 Committee deadline to finish their work. [Update: NPS has added one final Committee meeting, which is scheduled for February 26-27, 2009.]

Workplan and Scope of Work – Committee members requested a detailed workplan outlining when and how remaining unresolved topics will be discussed. Mike Murray gave a memo to the Committee that highlights what NPS sees as the key remaining issues for the Committee to address. NPS is working to get something to the Committee on Periodic Review for the Committee to respond to.

Membership – The application to appoint Bill Foster to the Committee seat previously filled by Roy Kingery (representing the Hatteras Village Homeowners' Association) is going through the approval process.

Meeting Dates – Upcoming Committee meetings are scheduled for February 3 and February 26-27, 2009.

Public Comments (January 6-7)

Ted Hamilton said he appreciated hearing from NPS that ORV routes could be designated for future use. He said that establishing a beach width below which village beaches would close makes sense only if coupled with a particular pedestrian density, and that imposing a minimum width would arbitrarily close parts of the beach to ORVs.

Jim Harris stated that planning in detail for an unknown future is not useful.

Fred Westervelt said that Ocracoke is under economic stress and that he expects the situation to get worse. He asked for simple ORV regulations to reduce unnecessary bureaucracy, and he expressed dismay at the idea that some value birds more than people.

B.J. Oelschlegel said people are passionately drawn to Ocracoke beaches because there they feel a strong connection to the earth and that this passion is the foundation of the Ocracoke tourist industry. She asked Committee members to use good information and consider the common good.

Carol Garris voiced her opposition to the idea of year-round closures at the bridge at Oregon Inlet, an area used by families for swimming. She said that denying ORV access to Oregon Inlet would prevent access for those who cannot otherwise get to the beach. She said possible benefits to a few birds do not justify large community impacts.

Barbara Ackley described a misuse of science and lack of protection for visitors in the Committee's work. She suggested support of bike paths, lights with plate covers and

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more bird research. She asked the Committee to discuss public comments and the economic effects of their decisions. She said Red Knots are suffering because of harvesting of horseshoe crabs in Delaware Bay, not because of CAHA management problems. She said that banning people from the beach will cause substantial economic impact with little benefit to other species.

Peter Doherty described his research on Piping Plover in Ocracoke done November 2005 to March 2006. They followed the birds daily and published their results as “Winter Ecology of the Piping Plover at Oregon Inlet” in *Waterbirds Journal* (September 2008). They observed the large wintering range of the Plover, Plovers foraging at night, and Plovers foraging along the Rt 12 corridor during inclement weather.

Committee members thanked the public for sharing their perspective and noted the dedication of many members of the public to the Reg Neg process. They noted that while they might not have time to respond to individual public comments, they find it very worthwhile. One Committee member said many members don’t ask questions about the current local economic situation because they understand it all too well themselves, and another noted his eagerness to read Mr. Doherty’s study.

Mike Murray thanked participants for their efforts and adjourned the meeting at 3:55pm.

Attachments

- A. Attendance
- B. Action Items
- C. Materials Distributed to the Committee

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Attachment A: Attendance

| REG NEG COMMITTEE MEMBERS | | | | | | |
|----------------------------------|-------------------|---------------------------------|-----------------------------------|-------------------------------|--------------|--------------|
| Last Name | First Name | Seat | Organization | Principal or Alternate | Jan 6 | Jan 7 |
| Allen | David | State Govt | NC Wildlife Res. Comm | P | AM & PM | AM & PM |
| Alley | John | User Groups/Open Access | Outer Banks Preservation Assoc | P | AM & PM | AM & PM |
| Ballance | Gene | County Govt | Hyde County, NC | A | AM & PM | AM & PM |
| Benjamin | Pete | Federal Govt | USFWS, Raleigh Field Office | P | AM & PM | AM & PM |
| Boucher | Carla | User Groups/ORV Use | United Four Wheel Drive Assoc | P | AM & PM | AM & PM |
| Bounds | Ronald | User Groups/Rec Fishing | United Mobile Sportfishermen | A | AM & PM | AM & PM |
| Broili | Thayer | Federal Govt | Cape Hatteras National Seashore | A | AM & PM | AM & PM |
| Cahoon | Renee | Tourism, Visitation & Business | Outer Banks Visitor Bureau | A | AM & PM | AM & PM |
| Cameron | Susan | State Govt | NC Wildlife Res. Comm | A | | AM & PM |
| Carter | Derb | Enviro. & Nat. Res. Cons. (S/R) | Southern Enviro. Law Center | P | AM & PM | AM & PM |
| Couch | John | User Groups/Open Access | Outer Banks Preservation Assoc | A | AM & PM | AM & PM |
| Davis | Robert | User Groups/Rec Fishing | Cape Hatteras Anglers Club | A | AM & PM | AM & PM |
| Duke | C.A. | Civic & Homeowner Assoc | Rodanthe-Waves-Salvo Cvc Assoc | P | AM & PM | AM & PM |
| Eakes | Bob | User Groups/Rec Fishing | American Sportfishing Assoc | P | AM & PM | AM & PM |
| Esham | David Scott | County Govt | Hyde County, NC | P | AM & PM | AM & PM |
| Folb | Frank | Civic & Homeowner Assoc | Avon Property Owners Assoc | P | AM & PM | AM & PM |
| Foster | William | Commercial Fishermen | NC Fisheries Association | A | AM & PM | |
| Golder | Walker | Enviro. & Nat. Res. Cons. (S/R) | Audubon North Carolina | P | AM & PM | AM |
| Goodwin | David | Tourism, Visitation & Business | Cape Hatteras Business Allies | A | AM & PM | AM |
| Gould | Burnham | Other User Group | Cape Hatteras Recreation Alliance | A | AM & PM | AM & PM |
| Hagedon | Sam | Tourism, Visitation & Business | Outer Banks Chamber of Comm | A | AM & PM | AM & PM |
| Hardham | Larry | User Groups/Rec Fishing | Cape Hatteras Anglers Club | P | AM & PM | AM & PM |

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| REG NEG COMMITTEE MEMBERS | | | | | | |
|----------------------------------|-------------------|--------------------------------|--------------------------------------|-------------------------------|--------------|--------------|
| Last Name | First Name | Seat | Organization | Principal or Alternate | Jan 6 | Jan 7 |
| Joyner | David | User Groups/ORV Use | NC Beach Buggy Assoc | A | AM & PM | AM & PM |
| Judge | Warren | County Govt | Dare County | P | AM & PM | AM & PM |
| Kayota | Steven | Civic & Homeowner Assoc | Hatteras Island Homeowners Coalition | P | AM & PM | AM & PM |
| Keene | Jim | User Groups/ORV Use | NC Beach Buggy Assoc | P | AM & PM | AM & PM |
| Lyons | Jim | Other User Group | Cape Hatteras Recreation Alliance | P | AM & PM | AM & PM |
| Mathis | Wayne | State Govt | NC Marine Fisheries Commission | P | AM & PM | AM & PM |
| Milne | Robert | Enviro. & Nat. Res. Cons. (N) | Coalition of NPS Retirees | P | AM | |
| Moore | Raymond Neal | Other User Group | Cape Hatteras Bird Club | A | AM & PM | AM & PM |
| Murray | Michael | Federal Govt | Cape Hatteras National Seashore | P | AM & PM | AM & PM |
| Nuzzo | Matt | Other User Group | Watersports Industry Association | A | AM & PM | AM & PM |
| Paquette | Patrick | User Groups/Rec Fishing | Recreational Fishing Alliance | P | AM & PM | AM & PM |
| Peele | Michael | Commercial Fishermen | NC Fisheries Association | P | AM & PM | AM & PM |
| Piner | Lyle | User Groups/ORV Use | United Four Wheel Drive Assoc | A | AM & PM | AM & PM |
| Rabon | David | Federal Govt | USFWS, Raleigh Field Office | A | AM & PM | AM & PM |
| Swartwood | Judy | Tourism, Visitation & Business | Cape Hatteras Business Allies | P | AM & PM | AM & PM |
| Wells | Jeffrey | Civic & Homeowner Assoc | Hatteras Landing Homeowners Assoc | P | AM & PM | AM & PM |
| Weston | Pat | Civic & Homeowner Assoc | Grtr Kinnakeet Shores Homeowners Inc | A | AM & PM | AM & PM |
| Winslow | Sara | State Govt | NC Marine Fisheries Comm | A | AM & PM | AM & PM |
| Wrenn | Lee | County Govt | Dare County | A | AM & PM | AM |

| AGENCY AND OTHER STAFF | | | | |
|-------------------------------|-------------------|-------------------------------|--------------|--------------|
| Last Name | First Name | Organization | Jan 6 | Jan 7 |
| Holda | Cyndy | NPS | AM & PM | AM & PM |
| Waanders | Jason | Office of the Solicitor | AM & PM | AM |
| Ferguson | Ona | CBI | AM & PM | AM & PM |
| Field | Pat | CBI | AM & PM | AM & PM |
| Fisher | Robert | Fisher Collaborative Services | AM & PM | AM & PM |

| MEMBERS OF THE PUBLIC | | | | |
|------------------------------|-------------------|---------------------|-----------------------------|------------------------|
| Last Name | First Name | Organization | Made Public Comment? | Date(s) Present |
| Ackley | Barbara | self | Y Y | Jan 6 & 7 |
| Doherty | Peter | self | Y | Jan 7 |
| Ebert | Jim | self | | Jan 6 & 7 |
| Garris | Carol | self | Y | Jan 6 |
| Hamilton | Ted | self | Y Y | Jan 6 & 7 |
| Harris | Jim | self | Y | Jan 6 & 7 |
| Hite | Joe | NCBBA | | Jan 6 |
| Jones | Brad | | | Jan 6 |
| Moore | Pat | self | | Jan 6 & 7 |
| Oelschlegel | BJ | self/Ocracoke | Y | Jan 6 |
| Rigsbee | Ruddy | self | | Jan 6 |
| Shea | Jack | self | | Jan 7 |
| Westervelt | Ernestine | self/Ocracoke | | Jan 6 & 7 |
| Westervelt | Fred | Ocracoke | Y | Jan 6 & 7 |

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**Attachment B: Cape Hatteras National Seashore Negotiated Rulemaking
Meeting 10 – January 6-7, 2009*
Draft Summary of Action Items**

| Task | From | To | Deadline |
|--|------------------------------|--------------------------------|-----------------------|
| Distribute Action Item list from Meeting 10. | CBI | Committee | Done |
| Respond to question about designating pedestrian areas contingent upon infrastructure completion and question about whether ORV Routes and Areas can be designated year-round and open/closed seasonally or designated seasonally (open part of the year and closed part of the year). | NPS | Committee | Done |
| Prepare and distribute draft Meeting 9 summary. | CBI | Committee | January 16, 2009 |
| Revise Vehicle Characteristics and Operations Document and Safety Closure documents to reflect conditional consensus. | CBI | Committee | January 16, 2009 |
| Follow up on turtle recovery plan information. | NPS/FWS | Natural Resources Subcommittee | January 21, 2009 |
| Develop and distribute draft agenda for next meeting. | Agenda Planning Subcommittee | Committee | January 27, 2009 |
| Prepare and distribute draft Meeting 10 summary. | CBI | Committee | January 29, 2009 |
| Review draft Meeting 10 summary and submit comments. | Committee | CBI | February 3, 2009 |
| Continue subcommittee work. | Subcommittees | Committee | Prior to next meeting |
| Determine compatible uses regarding providing public parking on Pea Island National Wildlife Refuge, if public can use administrative parking lot, and parking space plans in comprehensive conservation plan, if any. | FWS and PINWR | Committee | |

*Action items not completed from previous meetings are carried forward into the most current action item list.

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**Attachment C: Cape Hatteras National Seashore Negotiated Rulemaking
Meeting 10 – January 6-7, 2009
*Materials Distributed***

1. Draft Final Agenda, dated December 29, 2008
2. Maps from the Routes and Areas Subcommittee, dated December 19, 2008
3. Maps from the Routes and Areas Subcommittee, dated January 6, 2009
4. Memorandum from Michael Murray to the Committee entitled Clarification of Purpose and Scope of the Advisory Committee, dated January 6, 2009
5. Draft Chart of Issues to Work, dated January 7, 2009
6. Ground Rules for the Public
7. Written Public Comment from Douglas A. Taylor, dated January 2009