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 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 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 for 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.