

**PERMIT/PASS/FEE CONCEPTUAL FRAMEWORK**  
**Draft 11/14/08**

**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 users;
- Equitable, single point, 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.

**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.

The intent is to permit/pass those *individuals* 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

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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.

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

Permits/passes would be *available* via the Internet and in-person at a limited number of stations that could be established at various locations throughout the Outer Banks. 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 government, welcome centers, and/or interested businesses such as area hotels, bait and tackle shops, outfitters, and tour operators sell permits/passes via the internet for members of the public. 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 and issue tickets for failure to be authorized, excessive speeding, and so forth. 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.

### **Legal Authorities**

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

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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 are:

- 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

*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.

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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 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.