

**CAPE HATTERAS NATIONAL SEASHORE
STATUS OF OFF-ROAD VEHICLE MANAGEMENT PLAN
AND NEGOTIATED RULEMAKING
JANUARY 29, 2009**



National Park Service
Cape Hatteras National Seashore
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I. INTRODUCTION

- Off-road vehicle (ORV) use predates the establishment of Cape Hatteras National Seashore (CAHA) and has become a popular method of access for other recreational pursuits such as swimming, fishing and water sports.
- Executive Order 11644 (1972), amended by Executive Order 11989 (1977), requires certain federal agencies permitting ORV use on agency lands to publish regulations designating specific trails and areas for this use. 36 CFR § 4.10(b) requires the National Park Service (NPS) to designate ORV use areas and routes by special regulation. In 1973 and 1990, CAHA submitted draft regulations through the Southeast Regional Office (SERO) to the Washington Office. The regulations were never promulgated.
- In January 2006, CAHA released an Interim Protected Species Management Strategy and Environmental Assessment (Interim Strategy) to provide guidance for the protection of beach nesting shorebirds and sea turtles, and a threatened beach plant species until a long-term ORV management plan and regulation can be developed. In July 2007, the Regional Director signed a Finding of No Significant Impact (FONSI) to finalize the Interim Strategy.
- In October 2007, Defenders of Wildlife and the National Audubon Society, represented by the Southern Environmental Law Center (SELC), filed a complaint in the U.S. District Court for the Eastern District of North Carolina challenging the Interim Strategy. The complaint was amended on December 19, 2007 to include U.S. Fish & Wildlife Service (FWS) as co-defendant based on Endangered Species Act (ESA) claims related to the FWS biological opinion. In December 2007, Dare and Hyde Counties and a coalition of ORV and fishing groups were granted Intervenor status by the Court.
- On April 30, 2008, the U.S. District Court approved a settlement agreement (consent decree) between the Plaintiffs, Federal Defendants, and Intervenors. The consent decree modified the Interim Strategy, settled all claims raised in the lawsuit, and will remain in effect until NPS completes an ORV management plan and special regulation for CAHA under two parallel processes.
- NPS is developing the ORV management plan and environmental impact statement pursuant to the National Environmental Policy Act (NEPA). A regulatory negotiation advisory committee (Committee) was formally established on December 20, 2007 to assist NPS in the development of the special ORV regulation. CAHA Superintendent Michael B. Murray was identified as the Designated Federal Officer (DFO) for the Committee.
- The Committee conducted its first meeting in early January 2007. Committee meetings are scheduled to conclude in February 2009. At that point, NPS will use whatever recommendations the Committee can reach consensus on. If no consensus is reached, NPS will develop the plan and regulation following the traditional NEPA and rulemaking processes.

II. ORV Management Plan/Environmental Impact Statement

Background: In January 2007, CAHA began public scoping for the development of an ORV management plan and environmental impact statement (ORV plan/EIS) under NEPA. The public comment period closed in March 2007. NPS received over 4,000 comments. In January 2008,

NPS released an ORV management alternatives options workbook, seeking additional public comment on a variety of ORV management issues. NPS received over 800 comments on the workbook. In November 2008, NPS introduced two no action alternatives and three action alternatives for ORV management to the Committee at its November 14 meeting. The purpose for the release of the NPS alternatives at that time, rather than wait until the draft environmental impact statement (DEIS) is to be released in fall 2009, was to provide additional ORV management information and options to the Committee to consider as it attempts to negotiate a consensus alternative. See Appendix 1 for a summary of the NPS ORV management alternatives.

Current Status: NPS has drafted and is internally reviewing the first four chapters of the DEIS, which include the purpose and need for action, a detailed description of the no action and action alternatives, and the affected environment. The Committee is in the process of developing one action alternative to be considered in the DEIS.

Next Steps: Under the Committee's ground rules, if the Committee reaches consensus on all ORV management issues, NPS will use the Committee's consensus alternative as the basis for the preferred alternative in the ORV management plan/DEIS and proposed rule. If the Committee does not reach a final consensus on all issues, NPS will endeavor to incorporate all areas of consensus into the preferred alternative developed by the NPS to the degree they are compatible with other elements of the preferred alternative. Either way, NPS will move forward with preparing the ORV management plan/DEIS, which is scheduled to be released for public comment in the fall of 2009.

III. Negotiated Rulemaking Committee

Background: Prior to the formal establishment of the Committee, NPS contractors conducted a feasibility assessment to determine the likelihood of success of a negotiation process involving diverse stakeholders and to recommend the composition of stakeholders on the proposed Committee.

February 8-9, 2007: NPS conducted a workshop in Manteo, North Carolina for proposed Committee participants to provide orientation and training on the regulatory negotiation process and mutual gains negotiations; and to provide an opportunity for participants to begin to get to know each other and their respective interests.

May 21-22, 2007: NPS conducted a second workshop in Avon, North Carolina for proposed Committee participants, which included the following topics: introduction of participants and their organizations; review of NPS legal, regulatory, and policy requirements, including the Organic Act, related management policies, the Executive Orders and NPS regulation on ORV use, CAHA's enabling legislation, and the NEPA planning process and requirements; and review of FWS and other federal legal and regulatory requirements, including the ESA, Migratory Bird Treaty Act (MBTA), Administrative Procedures Act (APA), and FWS roles and responsibilities. NPS provided an overview of regulatory analysis requirements under the Regulatory Flexibility Act and the use of data and science in decision making under NEPA. The group discussed etiquette and proposed ground rules. Field trips were conducted of Cape Point and Bodie Island Spit.

October 22-23, 2007: NPS conducted a third workshop for proposed Committee participants, which included the following topics: examples of regulatory approaches for managing ORV use; brief updates from stakeholders (upcoming events, activities, etc.); scope of the regulatory negotiation and its relation to the NEPA process, the Interim Strategy, the ESA Section 7 consultation; review of what is required for an ORV rule; review of ethical responsibilities of potential Federal Advisory Committee Act (FACA) committee members; review of draft ground rules; review of proposed work plan and time line for the Committee; socio-economic analysis requirements for NEPA and federal rulemaking; review of current status and science of piping plover and other species; discussion of available information, information gaps, and information needs for the committee; review of draft ground rules; review of draft work plan; update on NPS economic impact study; and a discussion of principles to guide deliberations.

December 20, 2007: The Committee was formally established by a Notice of Establishment in the Federal Register. The Secretary of the Interior appointed the following primary and alternate members to the Committee:

Civic and Homeowner Associations:

1. Rodanthe-Waves-Salvo Civic Association, member C.A. Duke, alternate Pat Weston (Greater Kinnakeet Shores Homeowners, Inc., and Rodanthe-Waves-Salvo Civic Association).
2. Avon Property Owners Association, member Frank Folb, alternate Pat Weston (Greater Kinnakeet Shores Homeowners, Inc., and Rodanthe-Waves-Salvo Civic Association).
3. Hatteras Island Homeowners Coalition, member Steven Kayota, alternate Vincenzo Sanguineti.
4. Hatteras Village Civic Association, member Roy Kingery.
5. Hatteras Landing Homeowners Association, Inc., member Jeffrey Wells.

Commercial Fishermen:

6. North Carolina Fisheries Association, Michael Peele, alternate William Foster.

Environmental and Natural Resource Conservation Groups, State/Regional/Local:

7. Southern Environmental Law Center, member Derb Carter, alternate Michelle Nowlin.
8. North Carolina Audubon, member Walker Golder, alternate Sidney Maddock.

Environmental and Natural Resource Conservation Groups, National:

9. Coalition of National Park Service Retirees, member Robert Milne, alternate Dwight Rettie.
10. Defenders of Wildlife, member Jason Rylander, alternate Andrew Hawley.
11. Natural Resources Defense Council and The Wilderness Society, member Destry Jarvis, alternate Leslie Jones (The Wilderness Society).
12. The Nature Conservancy, member Sam Pearsall, alternate Aaron McCall.

Government, County:

13. Dare County, member Warren Judge, alternate Lee Wrenn.
14. Hyde County, member David Scott Esham, alternate Eugene Ballance.

Government, Federal:

15. Cape Hatteras National Seashore, member Michael Murray, alternate Thayer Broili.
16. U.S. Fish and Wildlife Service, member Pete Benjamin, alternate David Rabon.

Government, State:

17. North Carolina Marine Fisheries Commission, member Wayne Mathis, alternate Sara

Winslow.

18. North Carolina Wildlife Resources Commission, member David Allen, alternate Susan Cameron.

Tourism, Visitation, and Business organizations:

19. Cape Hatteras Business Allies, member Judy Swartwood, alternate David Goodwin.
20. Outer Banks Chamber of Commerce, member Scott Leggat, alternate Sam Hagedon.
21. Outer Banks Visitors Bureau, member Carolyn McCormick, alternate Renee Cahoon.

User Groups, OVR Use:

22. North Carolina Beach Buggy Association, member Jim Keene, alternate David Joyner.
23. United Four Wheel Drive Associations, member Carla Boucher, alternate Lyle Piner.

User Groups, Open Access:

24. Outer Banks Preservation Association, member John Alley, alternate John Couch.

User Groups, Other Users:

25. Cape Hatteras Bird Club, member Ricky Davis, alternate Raymond Moore.
26. Cape Hatteras Recreational Alliance, member Jim Lyons, alternate Burnham Gould, Jr.
27. Water Sports Industry Association, member Trip Forman, alternate Matt Nuzzo.

User Groups, Recreational Fishing:

28. American Sportfishing Association, member Bob Eakes, alternate Patricia Doerr.
29. Cape Hatteras Anglers Club, member Larry Hardham, alternate Robert Davis.
30. Recreational Fishing Alliance, member Patrick Paquette, alternate Ronald Bounds.

Committee meetings began in January 2008. Each official meeting of the full Committee was (and is) announced in the *Federal Register* and conducted as a public meeting with a scheduled public comment period during each day of each meeting. Between the formally scheduled full Committee meetings, various subcommittees and workgroups regularly meet in-person or by conference call to work through specific issues and develop proposed management recommendations for full Committee consideration at the formal meetings.

January 3-4, 2008: The 1st meeting of the Committee was held in Avon, North Carolina. Topics covered included:

- o The Committee unanimously approved the facilitation team from the Consensus Building Institute and Fisher Collaborative Services.
- o The Committee unanimously approved and adopted the ground rules as revised at the meeting.
- o The Committee reviewed and discussed the Charter (2007) for the Committee as approved by the Secretary of Interior. The Charter defines the Committee's tasks and parameters, including objectives and scope of the Committee, ethics, and term/administration of the Committee.
- o The Committee discussed the legislative history and usage of the names "Cape Hatteras National Seashore" and "Cape Hatteras National Seashore Recreational Area." There are no differences in how national seashores or national seashore recreational areas are managed.
- o The Committee discussed the relationship of the CAHA ORV management plan to Pea Island National Wildlife Refuge - the Refuge is outside the scope of the plan.

- Carol Mansfield of Research Triangle Institute International (RTI) briefed the Committee on the development of the socio-economic analysis study conducted as part of the NEPA process.
- Sandy Hamilton of the NPS Environmental Quality Division went over the NEPA planning schedule and discussed how the Committee's work and the NEPA process fit together.
- The Committee formed two subcommittees to assist with agenda planning and the socio-economic analysis.

February 26-27, 2008: The 2nd meeting of the Committee was held in Kill Devil Hills, North Carolina. Topics covered included:

- The Committee approved the January meeting summary, with one addition.
- The Committee approved the written charge to the Socio-Economic Analysis and Agenda Planning subcommittees.
- The Committee discussed the requirements found in the Executive Orders and 36 CFR § 4.10(b) for designating ORV routes and areas; criteria for making changes to designated routes, areas, and closures; seasonal closures; safety closures; warnings, fines and penalties for violators; campfires; vehicle characteristics; safety equipment; and tire pressure.
- The Committee removed campfires from the list of topics to be addressed by the Committee, in essence, deferring to NPS authority to manage the issue.
- The Committee identified the safety equipment required for vehicles traveling on the beach: a jack, a shovel, a low pressure tire gauge and jack support.
- The Committee tentatively established 25 mph as the maximum speed limit on the beach.
- The Committee approved language about warnings (to violators) as general advice to NPS.
- The Committee formed four workgroups on carrying capacity, seasonal closures, vehicle characteristics, and permit/passes to begin working on proposed language for management of the respective issues.

March 18-19, 2008: The 3rd meeting of the Committee was held in Avon, North Carolina. Topics covered included:

- The Committee discussed temporary closures that may occur within areas designated for ORV use. Temporary closures may include ORV safety closures and seasonal/village closures.
- The workgroups on permits/passes, carrying capacity, and vehicle characteristics provided progress reports on their respective discussions.
- The Committee reviewed the current and historic use of all segments of beach within the Seashore.
- NPS staff presented the NPS procedure for making decisions under the Interim Strategy on natural resource closures for different species at different times of year. NPS also presented maps showing the planned prenesting closures for the 2008 breeding season.
- The Committee discussed the pending litigation on the Interim Strategy (see introduction).
- A workgroup was formed to begin discussion of designating ORV routes and areas and non-ORV areas.

May 8-9, 2008: The 4th meeting of the Committee was held in Nags Head, North Carolina.

Topics covered included:

- The Committee approved the February and March meeting summaries.
- NPS provided an overview of 36 CFR § 4.10(b), which requires that ORV routes and areas be designated. The Routes & Areas workgroup presented a progress report on its initial efforts to identify areas of the Seashore that should be open or closed to ORV use, which included some areas of agreement as well as areas of disagreement.
- The Committee reviewed maps of the Seashore and discussed ORV management considerations from Ramp 1 (just south of Nags Head) south to just north of Buxton. Discussion included the need for infrastructure improvements such as parking areas, additional ramps and interdunal roads to facilitate access to proposed ORV and non-ORV areas.
- The Committee tentatively agreed to areas open or closed to ORV use from Ramp 1 to Ramp 4.
- The Committee agreed to recommend that FWS continue with the current prohibition of ORV use at Pea Island National Wildlife Refuge and provide additional parking as feasible to protect the dunes from heavy wear.
- The Committee approved in principle that one or more additional ramp(s) be developed between Ramps 23 and 27, one additional ocean side bathhouse be located at or between Ramps 23 and 27, and additional parking be established at sound side Ramp 46.
- The DFO advised the Committee that he had received a number of requests from Committee members to remove other Committee members who had represented the Plaintiffs in the Interim Strategy lawsuit.*

**Note:* On June 6, 2008, the DFO notified the requesting parties in writing that NPS had decided not to recommend any change in the composition of the Committee to the Secretary of the Interior.

June 17-18, 2008: The 5th meeting of the Committee was held in Nags Head, North Carolina.

Topics covered included:

- Dr. Ted Simons, USGS NC Cooperative Fish & Wildlife Research Unit, Department of Zoology, NC State University, gave a presentation on the American oystercatcher (AMOY) in North Carolina. This included information about AMOY ecology and population dynamics; factors affecting reproductive success, nest survival, and chick survival; hurricane impacts; population trends; and a summary of various AMOY research projects conducted at CAHA and Cape Lookout NS. Questions/discussion that followed included the following topics: geographic area studied; listing status for AMOY in NC; causes of nest failure and chick loss; impact of monitoring; buffer distances and causes of disturbance; and impacts of nighttime activity.
- Anne Hecht, FWS Piping Plover Recovery Plan program coordinator, gave a presentation on the piping plover (PIPL). This included ecology and population dynamics; courtship behavior and protection needs; flushing distances; chick/brood mobility and habitat preferences; population status and prognosis; and a comparison of PIPL breeding success history at CAHA compared to other national seashores. Questions/discussion that followed included the following topics: buffer design; numbers of piping plovers in North Carolina; habitat enhancement for PIPL; predator management; use of chick fences;

standard of PIPL protection in most NPS areas usually exceeds minimum requirements; and the relative level of disturbance caused by vehicles vs. pedestrians.

- Dr. R. Michael Irwin, USGS Patuxent Wildlife Research Center and University of Virginia Department of Environmental Sciences, gave a presentation on ground-nesting colonial waterbirds (CWB) of Cape Hatteras National Seashore. This included information on the population status of CWB species in coastal North Carolina; habitat requirements for terns and skimmers; inter-species associations at colony sites; early management guidelines for CWB within national seashores; and recommended buffer distances for respective CWB species. Questions/discussion that followed included the following topics: geographic area included for consideration in defining “success” at CAHA; buffer distances and disturbance; predator management; use of chick fences; dredge islands and habitat management; and impacts of vehicular headlights.
- The Committee discussed site specific management options for Cape Point. Committee members shared their individual visions of how they would like to see Cape Point managed in the future, which for some included areas open to ORVs; active habitat management by NPS; well defined management procedures to manage ORV use; timely natural resource closures to ensure resource protection when needed; nighttime access; pedestrian use; and consideration of physical barriers to separate birds from access corridors.
- Carol Mansfield of RTI International provided an update on the status of the socio-economic study research design and requested additional information from the Committee on possible sources of information.
- The Committee formed five subcommittees to work over the summer via phone, email, and in-person as needed in order to bring forward written proposals to the Committee at the September meeting. The following subcommittees were established: Natural Resources; Permits/Passes/Fees; Routes and Areas; Vehicle Characteristics and Operations; and Village Closures.

July-August 2008: At the request of NPS, the Department of the Interior Office of Collaborative Action and Dispute Resolution (CADR) surveyed the 30 members of the Committee to get their opinions of how they believed the Committee was progressing. The CADR staff talked to 29 of the 30 Committee members and concluded the survey on July 31, 2008. A summary of the assessment survey was released in August 8, 2008, and is included as Appendix 2 of this report.

The report included the following observations:

- While there were a wide variety of views expressed by the 30 Committee members, a few common themes emerged in the survey. It was clear from these conversations that Committee members by and large take their roles very seriously and care deeply about the issues that are involved in the ORV plan. Many have a long standing and impassioned commitment to the interests they represent. They appear eager to work hard to accomplish the Committee’s objectives.
- Members were unanimous in their belief that the Committee is proceeding too slowly in its work. They offered a variety of reasons for the slow pace, including distrust between Committee members, the large size of the committee, the methods employed by the facilitators, poor sequencing of agendas, unclear guidance from NPS, and other reasons. Several members did say that more progress had been made in the May and June meetings than in the first few meetings.

- Despite the perceived lack of progress, members overwhelmingly supported continuing the negotiated rulemaking process. Several members felt it was the only forum through which local interests could be expressed. Other members said they believed the Committee process gives NPS better insight into the issues associated with visitor use of the National Seashore. Several members said they had devoted too much of their time to the process for it to be abandoned. However, four Committee members did suggest that NPS abandon the Committee process.

July 21, 2008: The Nature Conservancy (TNC) withdrew from participation on the Committee, leaving 29 Committee members. TNC assessment of the negotiations, as stated in its withdrawal letter, was that the negotiations were not based on a mutually acceptable information base, nor were plans materializing for the development of such a base; thus, success (science-driven consensus) by any given deadline seems unlikely. Like most negotiations, these were initially about defending pre-established positions, but TNC saw little chance for movement away from that.

September 8-9, 2008: The 6th meeting of the Committee was held in Avon, North Carolina. Topics covered included:

- Each subcommittee reviewed the results of its work over the summer.
- The Vehicle Characteristics and Operations subcommittee presented a summary of its work to date, which included a draft proposal on the following topics and issues: enforcement; process for stakeholder input; exempt vehicles; vehicle characteristic requirements; required and recommended equipment; driver's license requirement; speed limit; tire pressure; right-of-way requirement; self-contained vehicle camping; tent camping; and other relevant regulations. The presentation led to questions and discussion about the following: speed limit; enforcement of state vehicle inspection requirement; tire pressure; camping; NPS staffing; night driving; whether or not ATVs, motorcycles, or two-wheel drive vehicles should be allowed; and the applicability of any/all of the above to commercial fishermen.
- The Permits/Passes/Fees subcommittee presented a summary of its work to date, noting that some on the subcommittee were not willing to discuss permits further until it is clear where and when people will be allowed to drive on the beach. Following review of the subcommittee's work, the Committee unanimously rejected the idea of a Park-wide entrance fee (in lieu of an ORV permit). The presentation led to questions and discussion about the following: keep the permit or fee system simple and affordable; options for establishing the fee structure; enforcement and conditions under which a permit might be revoked; the relationship of permits to carrying capacity; use of fee revenues; the need to clarify if and how an ORV permit requirement may apply to commercial fishermen, who already are required to obtain an NPS commercial fishing permit; and the need for an education program, possibly in conjunction with the permit.
- The Village Closures subcommittee presented a summary of its work to date, which included a draft proposal on the following topics and issues: several options for managing ORV use in front of the villages; speed limit for village beaches if/when open to ORV use; and the need for more parking and pedestrian access. The presentation led to questions and discussion about the following: timing of (i.e., dates for) seasonal village closures; ensure visitor safety is the number one priority; clarify if/how village closures apply to

commercial fishermen; if village beaches are closed year-round to ORV use, identify infrastructure needs for improving public beach access in the villages (public parking is lacking); consider visitation and cottage rental data in determining dates for village ORV closures; and consider pedestrian density criteria for determining when to close village beaches to ORV use. The Committee tested for consensus on several subcommittee options, but did not reach consensus.

- The Routes and Areas subcommittee presented a summary of its work to date, which included draft proposals submitted by the environmental/pedestrian caucus and the ORV/access caucus. The subcommittee reported that its negotiations had come to a standstill because of concerns by some subcommittee members about designating permanent (i.e., year-round) ORV closures on this dynamic beach. The presentation led to questions and discussion about the following: the need for clear criteria to determine what is open, restricted, or closed to ORV use; the need for criteria for selecting pedestrian only areas; the need to have management flexibility if shoreline conditions, habitat, or visitor use patterns change; beach access considerations if areas that had previously been open to ORV were to be designated as non-ORV; consideration of potential wilderness areas; the need for infrastructure improvements (i.e., parking areas, ramps and interdunal roads); and the applicability of routes and areas designations to commercial fishing.
- The Natural Resources subcommittee presented a summary of its work to date, which included discussion of a draft site specific management proposal for Cape Point that included the following topics and issues: overarching goal to protect natural resources and maintain access to Cape Point, to the greatest extent possible, year-round; options for pre-nesting closures and buffer distances; active management tools to enhance colonial waterbird nesting; vegetation management; how to manage access when piping plover chicks or non-listed species chicks are in the area; the need for an extension of the interdunal road; adaptive management; additional options for accessibility; how violations should be handled; and other issues still in discussion. The presentation led to questions and discussion about the following: the need for an adaptive management approach; the need for NPS to identify desired future conditions of resources; how to manage human disturbance from ORVs as well as from pedestrians in shorebird nesting areas; buffer distances for shorebird breeding activity; applicability of general prohibition on kite flying to kite boarding near shorebird nesting areas; protection of sea turtle nesting activity; habitat management; use of volunteers to assist with resources management; and the applicability of resource protection measures to commercial fishing.
- NPS presented an update on the following: status of the socio-economic study; NPS development of ORV management alternatives based on the public scoping and the public comments received on the alternatives options workbooks; discussion of the progress review conducted by CADR, and NPS's decision and commitment to continue the negotiation process.
- The Committee reached consensus on the following items: added members to the Vehicles Characteristics and Operation, Natural Resources, Permits/Passes/Fees, and Routes and Areas subcommittees; agreed on how the subcommittees will address confidentiality and distribution of work product; approved the June meeting summary; and decided not to pursue a park-wide entrance fee.

Note: On the morning of September 8, approximately 100 ORV supporters demonstrated along the access road to the fire hall as Committee members arrived for the meeting.

October 22-23, 2008: MEETING CANCELLED. NPS cancelled the scheduled 7th meeting of the Committee to allow NPS the time to complete its work on action alternatives for the ORV management plan/DEIS, so that NPS could share that information with the Committee to assist them in their discussions of ORV management options. The cancellation also gave the Committee members time to continue working on proposals within the respective subcommittees; an informal opportunity to reflect on the Committee's efforts and progress to date; and a chance to renew their focus on the primary purpose of the Committee, which is to assist NPS with negotiating a consensus alternative for long-term ORV management and regulation. In announcing the meeting cancellation on September 26, 2008, NPS also announced that all future meetings of the Committee would be held at Wight Brothers National Memorial in Kill Devil Hills in order for NPS to assume control of meeting security.

November 14-15, 2008: The 8th meeting of the Committee was held in Kill Devil Hills, North Carolina. Topics covered included:

- Carol Mansfield of RTI International gave an update on the status of the socio-economic study.
- Sandra MacPherson, FWS national sea turtle program coordinator, gave a presentation on beach driving and sea turtles, which included information on the following topics and issues: population distribution and status of loggerhead turtles; impacts of beach driving on sea turtles; nest relocation justification and concerns; hatcheries and captive rearing programs and concerns; examples of management approaches at other locations; and recommendations from the loggerhead turtle recovery plan. The presentation led to questions and discussion about the following: concern about the limited data available on turtle history at CAHA; the effect of light on sea turtles; what constitutes "take" of sea turtles under the ESA; causes of nest loss; role of volunteers in turtle management; and key barriers to successful turtle nesting at CAHA.
- NPS provided an overview of its draft ORV management No Action and Action Alternatives that were being developed for consideration in the DEIS. Following the presentation, the Committee broke into three small groups to discuss the implications of the NPS alternatives on the Committee's work. Specifically, the groups discussed what Committee members found promising in the NPS alternatives and how might the Committee use, combine, and/or improve on those alternatives to craft a consensus alternative for the Committee. On the second day of the meeting the facilitators presented a summary of the small group feedback.
- The Committee also discussed broad principles common to the three NPS DEIS Action Alternatives. The principles included the following: designation of ORV routes/areas must be in accordance with the Executive Orders; identification of one set of desired future conditions for park resources; two levels of resources management effort (which are identified in the NPS alternatives as SM1 and SM2); year-round vehicle free areas for a low-density visitor experience of the natural beach environment; night driving restrictions during sea turtle nesting season; special use permit required for ORV driving, with an educational requirement and permit fee subject to cost recovery; the need to address overcrowding; identification of new access points and parking areas; and exemption of commercial fishermen from some recreational ORV restrictions, to be specified in their NPS commercial fishing permit, when not in conflict with resource protection.

- The Committee, after discussion, unanimously accepted the conceptual framework of a beach access permit as described in the November 14, 2008 proposal prepared by the Permits/Passes/Fees subcommittee, subject to additional details being worked out by the subcommittee.
- The Committee considered a recommended safety closure procedure from the Vehicle Characteristics and Operations subcommittee; however, did not reach a consensus on one aspect of the proposal (a minimum beach width that, if not met, would trigger a safety closure in front of villages).

December 11-12, 2008: The 9th meeting of the Committee was held in Kill Devil Hills, North Carolina. Topics covered included:

- The Permits/Passes/Fees subcommittee presented an update on the most recent proposal for ORV permits and fees, which included an ORV permit with a reasonable fee and an education requirement. The permit could be revoked for unsafe beach driving. The Committee, after discussion, agreed unanimously to move forward with the conceptual framework described above for permits and fees, subject to further details and reaching consensus on a complete ORV management alternative package.
- The Routes and Areas subcommittee presented an update, with maps, on the most recent proposed designation of ORV and non-ORV areas from one end of the Seashore to the other. The maps included proposed infrastructure improvements, and identified areas of subcommittee agreement and disagreement. The subcommittee is deferring the negotiation of ORV management on beaches in front of villages to the Village Closure subcommittee.
- The Vehicle Characteristics and Operations subcommittee presented an update on its most recent proposal, which includes a provision for self-contained vehicle camping at designated NPS campgrounds during the off-season. The Committee, after discussion, unanimously agreed to the proposal, as amended during the discussion.
- NPS presented an updated on the latest proposal for ORV Safety Closures and Pedestrian Safety that is being worked on by the Vehicle Characteristics and Operations subcommittee. The Committee, after discussion, unanimously agreed to the proposal, as amended during the discussion, with the understanding that the Village Closure subcommittee could recommend additional safety measures for village beaches.
- The Committee worked in small groups focused around three geographic areas of CAHA - Bodie Island, Hatteras Island, and Ocracoke Island. The groups discussed unresolved ORV route designations and resource protection considerations in the respective locations. Much of the group discussion revolved around management of the inlets (Bodie Island Spit, Hatteras Spit, North Ocracoke and South Point Ocracoke) and Cape Point. Some of the resource protection discussion included hours and dates for night driving restrictions and morning reopening, and dates for removal of shorebird nesting protections.

January 6-7, 2009: The 10th meeting of the Committee was held in Kill Devil Hills, North Carolina. Topics covered included:

- NPS clarified and confirmed the purpose and scope of the Committee relative to providing advice on resource protection measures; and also discussed the need to complete the Committee's alternative in order to keep the NEPA and rulemaking processes on schedule.

- The Committee broke into Natural Resources, Routes and Areas, and Village Closures subcommittees to work on their respective proposals.
- The Village Closure subcommittee presented 2 option packages it was considering. Both options were tested for consensus of the Committee. While there was considerable support for either option, neither option had consensus support. The subcommittee will continue to work to resolve the areas of disagreement.
- The Routes and Areas subcommittee presented the latest version of maps showing areas proposed for ORV use and non-ORV use from one end of the Seashore to the other. The maps contained many areas of subcommittee agreement and some areas of disagreement.
- The following updated proposals were shared with the Committee: Village Closures on Hatteras Island; Reducing or Removing Bird Breeding Closures Prior to August 31; Site Specific Management for Hatteras Inlet; Site Specific Management for South Point Ocracoke; and Adaptive Management Proposal for Morning Beach Reopening (to ORV use) during Sea Turtle Nesting and Hatching Season.

January 21-22, 2009: MEETING CANCELLED. NPS cancelled the scheduled 11th meeting of the Committee to allow several subcommittees additional time to prepare proposals on several key unresolved issues, including the designation of ORV routes and areas, site specific management at inlets and Cape Point, hours of allowable night driving, and management of beaches in front of the villages during the off-season.

Current Status: Since the January 6-7, 2009 meeting there has been intensive subcommittee work in an effort to resolve remaining issues identified by the Natural Resources and the Route and Areas subcommittees.

Next Meeting: The next Committee meeting is scheduled for February 3, 2009. Subcommittees will provide updated proposals and report on the status any unresolved items. It is anticipated that an integration group will be established at the meeting to pull together the various subcommittee proposals into one comprehensive alternative and attempt to resolve any remaining areas of disagreement before the final meeting.

Final Meeting: The final Committee meeting is scheduled for February 26-27, 2009 to provide the Committee with time after the February 3rd meeting to integrate the various subcommittee documents into a comprehensive package for final deliberation. The February 26-27 meeting will be used to conduct final deliberations on the combined proposals.

Next Steps: Under the Committee ground rules, if the Committee does not reach consensus on a proposed rule, Committee members will explore the basis of the disagreement(s), and the associated reasons for the differences of opinion, and will discuss what if anything to report to NPS about the Committee's efforts. As envisioned by the Negotiated Rulemaking Act, the Committee, through the facilitators, may transmit to NPS a report specifying any areas in which the Committee reached agreement, as well as the explanation for the disagreements, a description of the interests that must be satisfied to reach an agreement, and if possible, ways to address the differences. If a non-consensus report is submitted to NPS, and as permitted by the Negotiated Rulemaking Act, any Committee member may include as an addendum to the report additional information, recommendations, or materials.

If the Committee reaches final consensus on some but not all of the issues, NPS will, to the extent possible, include those areas of consensus in the proposed rule and duly consider the dialogue and proceedings generated by the negotiated rulemaking process. Committee member organizations and their representatives may oppose or comment negatively on those aspects of the proposed rule that are not based on a final consensus. If a final consensus is not reached on all issues, NPS will endeavor to incorporate all areas of consensus into the preferred alternative developed by the NPS to the degree they are compatible with other elements of the preferred alternative.

In other words, provided there is either a full consensus of all issues or at least substantial consensus on most issues, the Committee's work will be used as a basis for a fourth Action Alternative in the DEIS. In any case, NPS will proceed with preparation of the DEIS to release for public comment in the fall of 2009.

APPENDIX 1

NPS ORV Management Alternatives presentation

APPENDIX 2

Assessment Survey by the DOI Office of Collaborative Action and Dispute Resolution