

**Cape Hatteras National Seashore Negotiated Rulemaking  
Meeting 12 – February 3, 2009  
Kill Devil Hills, NC**

***Draft Meeting Summary***

**Summary of Consensus Agreements**

The Cape Hatteras National Seashore Negotiated Rulemaking Committee reached consensus on the following during the meeting:

1. Approved the Meeting 8 Summary, dated December 9, 2008 (3 February, am).
2. Approved the Meeting 9 Summary, dated January 26, 2009, with changes described below (3 February, am).
3. Formed an Integration Workgroup (3 February, pm).

**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 its GIS support of Committee mapping efforts.

**Turtles**

The Committee reviewed and discussed the Adaptive Management Proposal for Night Access during Sea Turtle Nesting and Hatchling Season, dated January 21, 2009, which was developed as part of the work of the Natural Resources Subcommittee.

Committee members discussed aspects of the document and turtle management. Key themes and discussion points included the following.

- Night Driving Restrictions:
  - Concern about whether or how night driving restrictions will benefit turtles. One Committee member described a turtle that laid her eggs despite nearby human onlookers.
  - NPS preference for a plan that falls within the new loggerhead turtle recovery plan (which recommends no nighttime driving).
- Lighting:
  - Comments that lighting management should be the priority in sea turtle recovery efforts prior to managing other types of human-turtle interactions, and that this should begin with development of exemplary light protection regulations for the ocean beaches.
  - A proposal that NPS work to reduce lighting from village houses through education and incentive programs.

- A suggestion that if villages make substantial efforts to reduce nighttime light levels on the beach, restrictions on night driving should be reduced.
- A suggestion to put up filter fencing to protect nests from light.
- A suggestion that NPS tie requirements for turtle-friendly lighting to the permits allowing boardwalks to CAHA beaches, and a response that this would likely seem unreasonable to many people who already bear their own cost for such actions, which in turn, protect the dunes and vegetation.
- Clarification that the photography restriction was intended to prevent people from using flash photography when photographing nests and turtles, not to restrict people taking other photographs on the beach.
- Time of Day:
  - A suggestion that fixed times for night driving (rather than times linked to sunset and sunrise) would be easiest to enforce.
  - A comment that prohibitions on using the beach at sunrise will affect surfers.
- Escort Service: A request for people on the beach at night to have the opportunity of an escort off the beach once a night in support of families and other visitors, and corresponding concerns that this could have a significant impact on turtles.
- Dates: The loggerhead turtle recovery plan recommends no night driving “during the nesting season,” which in NC has been defined by some as May 1 – November 15. It was noted that these dates could be adjusted if other sufficient protections were in place.
- Geographic Area: A suggestion that nighttime human beach use be limited to specific geographic areas, leaving the rest of the seashore to other species.
- Turtle Management: A suggestion that resource managers should relocate nests when they are in danger and that they should focus on predator control.
- Commercial Fishing: A request for clarification of how night driving restrictions will apply to commercial fishermen.
- Resources: A request for a copy of the NC Wildlife Resources Commission’s Handbook for Sea Turtle Volunteers in North Carolina.

## **Routes and Areas Maps**

The Committee reviewed routes and areas maps. The maps of the seashore included three proposed “lines” representing proposals from the access, pedestrian and conservation interests for where driving would be allowed and prohibited. Jim Keene, Frank Folb, David Esham, Jim Lyons and Walker Golder presented the reasoning behind these three routes and areas approaches (including resource protection for different species, high use areas, desire for varied types of experiences, and ramp and other facility considerations). There were several errors on the maps that members made note of and asked that they be corrected prior to their being posted online.

Committee discussion centered on the following topics and questions regarding the three routes and areas proposals.

- *Map key* - The meaning of the different colored lines. Areas indicated with red lines would allow pedestrian but not ORV access. All areas would be subject to resource closures in which no pedestrians, horses or ORVs would be permitted. The purple lines mean different things to different people: routes subject to resource closures and provisional routes subject to sufficient natural resource protections being in place.
- *Data* - A desire for more data on use of the seashore by horses, by ORVs, by pedestrians and by different species of bird at different times of year. Discussion of data that was found by the conservation caucus and used in developing their routes and areas line. A desire for information on carrying capacity and on the impact that beach driving has on species success.
- *Measuring success* - How will NPS measure individual species success related to closing the beach to ORVs?
- *Species protection* - Is prohibiting ORV use the only way to protect certain wildlife species, or are there other strategies that could work as well or better?
- *Activities in non-ORV areas* - What activities would be permitted in pedestrian-only areas, given that some types of active recreation could have a negative impact on birds? NC Audubon agreed to share thoughts on pedestrian uses and non-breeding shorebird resource areas with the Committee.
- *Horseback riding* - NPS will need to clarify whether horseback riding will be permitted in non-ORV areas and where horseback-riding trails will be located. Currently, horses are allowed only where ORVs are allowed.
- *Villages* - There are many differing views on whether and when driving should be allowed on beaches in front of villages.
- *Mileage* - A request to sum the total mileage for ORV and non-ORV areas on each line on the map.

## **Recreational Use Maps**

David Goodwin presented the Recreational Use Maps prepared by Cape Hatteras Business Allies, dated January 30, 2009. These maps were intended to show the location of the many recreational activities other than general pedestrian use that occurs on CAHA. The Business Allies sought broad input from diverse users to develop the maps and based activities on some of the key ones identified in the original Committee groundrules. Solid lines on the map indicate areas of primary use for each activity; dashed lines indicate less frequent use for each activity.

## **Pets**

Judy Swartwood raised a concern that NPS management alternatives prohibit pets, even on leashes, from many areas of CAHA. She described the many motels, rentals and campgrounds that welcome pets, and expressed apprehension about decreasing opportunities for tourists with pets who come to the Outer Banks to enjoy the Park. Park staff said that under the Park's NEPA Action Alternatives, pets would generally be allowed on the seashore, but that they would be prohibited from full resource closures, areas under site-specific management or resource areas that are designated as non-ORV

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during the breeding season. Committee members requested clarification on how pets would be managed in the Action Alternatives and expressed a desire for CAHA to be welcoming to visitors with pets.

### **Committee Business**

*Integration Workgroup* - The Committee established a workgroup to develop a single package proposal for the Committee: Carla Boucher, Derb Carter, Walker Golder, Larry Hardham, Destry Jarvis (or Jason Rylander if Destry is unavailable), Warren Judge (or Lee Wrenn as needed), Jim Keene, Jim Lyons and Mike Murray. This workgroup will meet face-to-face for five or more days and by conference call. Workgroup members must commit to being at all meetings and to keeping their constituents up to date.

*Membership* – Bill Foster’s application to fill the seat previously filled by Roy Kingery was approved. Bill is now a member of the Committee in one of the Civic and Homeowner Association seats and is no longer the alternate for Commercial Fishing.

*Meeting 8 Summary* – The Committee approved the Meeting 8 draft summary dated December 9, 2008 with no changes.

*Meeting 9 Summary* – The Committee approved the Meeting 9 draft summary dated January 26, 2009 with the following changes:

- Page 3: replace “septage service” with “dump stations.”
- Page 5: revise sentence under *Committee Business: Linkage Between the ORV Management Plan and Natural Resource Management* to read: “The Solicitor’s office informed the Committee it must consider impacts to natural and other resources before designating ORV routes pursuant to Executive Order 11644.”
- Page 6: add a section heading entitled Adjournment.

*Meeting Dates* – The next Committee meeting is scheduled for February 26-27, 2009, and the meeting hours are listed from 8:30am to 10:00pm.

### **Public Comment**

Ted Hamilton asked whether turtle-related guidance applies just to people in ORVs, expressed disappointment that some Committee members did not complete their proposals for routes and areas until today, and quoted the Pope’s comment that we must look out for the environment but not at the expense of the people.

Jim Harris said that unprepared Committee members should be penalized, asked about the logistics of distributing nighttime driving permits, noted that even agency staff members often observe turtle nesting behavior closely when they have the opportunity, and expressed frustration at the Committee’s progress including lack of participation by one Committee member.

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Don Morris described seeing Piping Plovers nest near vehicles and questioned the need for special protection for these species. He said the biggest challenge for the birds is the construction of summer homes and condos that destroys habitat. He said that national seashores belong to all Americans and that their rules and regulations should be sensible to ensure continued use for next generations. He said someone from the NC Division of Coastal Management should be at the table, and he submitted written comment.

Fred Westervelt said it is important that the Committee not provide so much assistance to other species that we disadvantage humans, and he expressed hope that the Committee would come up with a balanced solution.

Wayne Clark expressed his family's desire to make a living on Ocracoke and stated that surf fishing, and with it the livelihood of the villages, is at risk. He suggested that new federal infrastructure funds be used to increase sound side ORV access.

Sharon Spencer spoke about the increases in unemployment and food stamp applications in Hyde County and wished the Committee wisdom and knowledge in making decisions.

Committee members thanked members of the public for their comments, said they are much appreciated. A member noted that one member of the public who had spoken previously was not present because her company is going out of business. A member noted that the membership participation issue identified had been addressed with the facilitation team.

Mike Murray thanked participants for their efforts and adjourned the meeting at 5:15pm.

### **Attachments**

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

**Attachment A: Attendance**

<b>REG NEG COMMITTEE MEMBERS</b>					
<b>Last Name</b>	<b>First Name</b>	<b>Seat</b>	<b>Organization</b>	<b>Principal or Alternate</b>	<b>Feb 3</b>
Ballance	Gene	County Govt	Hyde County, NC	A	AM & PM
Benjamin	Pete	Federal Govt	USFWS, Raleigh Field Office	P	AM & PM
Boucher	Carla	User Groups/ORV Use	United Four Wheel Drive Assoc	P	AM & PM
Bounds	Ronald	User Groups/Rec Fishing	United Mobile Sportfishermen	A	AM & PM
Broili	Thayer	Federal Govt	Cape Hatteras National Seashore	A	AM & PM
Cahoon	Renee	Tourism, Visitation & Business	Outer Banks Visitor Bureau	A	AM
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
Couch	John	User Groups/Open Access	Outer Banks Preservation Assoc	A	AM & PM
Davis	Robert	User Groups/Rec Fishing	Cape Hatteras Anglers Club	A	AM & PM
Eakes	Bob	User Groups/Rec Fishing	American Sportfishing Assoc	P	AM & PM
Esham	David Scott	County Govt	Hyde County, NC	P	AM & PM
Folb	Frank	Civic & Homeowner Assoc	Avon Property Owners Assoc	P	AM & PM
Forman	Trip	Other User Group	Watersports Industry Association	P	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
Goodwin	David	Tourism, Visitation & Business	Cape Hatteras Business Allies	A	AM & PM
Hagedon	Sam	Tourism, Visitation & Business	Outer Banks Chamber of Comm	A	AM & PM
Hardham	Larry	User Groups/Rec Fishing	Cape Hatteras Anglers Club	P	AM & PM
Joyner	David	User Groups/ORV Use	NC Beach Buggy Assoc	A	AM & PM
Judge	Warren	County Govt	Dare County	P	AM & PM
Kayota	Steven	Civic & Homeowner Assoc	Hatteras Island Homeowners Coalition	P	AM & PM
Keene	Jim	User Groups/ORV	NC Beach Buggy	P	AM & PM

<b>REG NEG COMMITTEE MEMBERS</b>					
<b>Last Name</b>	<b>First Name</b>	<b>Seat</b>	<b>Organization</b>	<b>Principal or Alternate</b>	<b>Feb 3</b>
		Use	Assoc		
Leggat	Scott	Tourism, Visitation & Business	Outer Banks Chamber of Comm	P	AM
Lyons	Jim	Other User Group	Cape Hatteras Recreation Alliance	P	AM & PM
Mathis	Wayne	State Govt	NC Marine Fisheries Commission	P	AM & PM
McCormick	Carolyn	Tourism, Visitation & Business	Outer Banks Visitors Bureau	P	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
Murray	Michael	Federal Govt	Cape Hatteras National Seashore	P	AM & PM
Paquette	Patrick	User Groups/Rec Fishing	Recreational Fishing Alliance	P	AM & PM
Peele	Michael	Commercial Fishermen	NC Fisheries Association	P	AM & PM
Piner	Lyle	User Groups/ORV Use	United Four Wheel Drive Assoc	A	AM & PM
Swartwood	Judy	Tourism, Visitation & Business	Cape Hatteras Business Allies	P	AM & PM
Wells	Jeffrey	Civic & Homeowner Assoc	Hatteras Landing Homeowners Assoc	P	AM & PM
Weston	Pat	Civic & Homeowner Assoc	Grtr Kinnakeet Shores Homeowners Inc	A	AM & PM
Winslow	Sara	State Govt	NC Marine Fisheries Comm	A	AM & PM
Wrenn	Lee	County Govt	Dare County	A	AM & PM

<b>AGENCY AND OTHER STAFF</b>			
<b>Last Name</b>	<b>First Name</b>	<b>Organization</b>	<b>Feb 3</b>
Ferguson	Ona	CBI	AM & PM
Field	Pat	CBI	AM & PM
Fisher	Robert	Fisher Collaborative Services	AM & PM
Holda	Cyndy	NPS	AM & PM
Stevens	Mike	DOI-Solicitor's Office	AM & PM
Vandyke	Nancy	Institute for Environmental Conflict Resolution	AM & PM
Waanders	Jason	Office of the Solicitor	AM & PM

<b>MEMBERS OF THE PUBLIC</b>			
<b>Last Name</b>	<b>First Name</b>	<b>Organization</b>	<b>Made Public Comment?</b>
Berry	Mike	self	
Berry	Sharon	self	
Clark	Wayne	self	Y
Ebent	Jim	self	Y
Goodloe-Murphy	Mary Helen	The Coastland Times	
Hamilton	Ted	self	Y
Harris	Jim	Self	Y
Moore	Pat	self	
Morris	Don	NCBBA, RIMS UMS	Y
Nolan	Irene	Island Free Press	
Spencer	Graham	self	
Spencer	Sharon	Hyde Co. Committee	Y
Westervelt	Ernestine	self/Ocracoke	
Westervelt	Fred	Ocracoke	Y

**Attachment B: Cape Hatteras National Seashore Negotiated Rulemaking  
Meeting 12 – February 3, 2009\*  
Draft Summary of Action Items**

<b>Task</b>	<b>From</b>	<b>To</b>	<b>Deadline</b>
Distribute Action Item list from Meeting 12.	CBI	Committee	Done
Provide the Handbook for Sea Turtle Volunteers in North Carolina.	NC Wildlife Resources Commission	Committee	Done
Provide revised routes and areas maps based on Committee discussion.	CBI	Committee	Done
Clarify pet/dog policy in buffers, closure areas and natural resource areas.	NPS	Committee	Done
Distribute rental data.	CBI	Committee	February 9, 2009
Confirm Integration Subcommittee participants.	CBI	Committee	February 11, 2009
Submit comments on turtles document.	NC Wildlife Resources Commission	Committee	February 11, 2009
Prepare and distribute draft Meeting 10 summary.	CBI	Committee	February 13, 2009
Distribute Cape Hatteras Recreational Alliance narrative.	CBI	Committee	February 13, 2009
Review draft Meeting 10 summary and submit comments.	Committee	CBI	February 20, 2009
Develop and distribute draft agenda for next meeting.	Agenda Planning Subcommittee in consultation with the Integration Subcommittee	Committee	February 23, 2009
Prepare and distribute draft Meeting 12 summary.	CBI	Committee	February 24, 2009
Provide review of activities list from groundrules regarding pedestrian uses and non-breeding shorebird resource areas.	NC Audubon	Committee	February 24, 2009
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.

**Attachment C: Cape Hatteras National Seashore Negotiated Rulemaking  
Meeting 12 – February 3, 2009  
*Materials Distributed***

1. Draft Final Agenda, dated January 26, 2009
2. ORV Safety Closure and Pedestrian Safety Committee Working Document, dated December 12, 2008
3. Vehicle Characteristics, Equipment and Operations Committee Working Document, dated December 12, 2008
4. Permit/Pass/Fee Conceptual Framework, dated December 1, 2008
5. Subcommittee Document on Reducing or Removing Natural Resource Bird Breeding Closures prior to August 31, dated January 5, 2009
6. Adaptive Management Proposal for Night Access during Sea Turtle Nesting and Hatchling Season, dated January 21, 2009
7. Natural Resources Subcommittee Document, dated January 19, 2009
8. CAHA ORV Routes and Areas Table presented by the Access Group, dated January 22, 2009
9. ORV Management Alternatives Matrix with Access Group Alternative presented by the Access Group, dated January 31, 2009
10. Key Issues and Options Identified for Routes and Areas by Joint Subcommittee, dated January 2, 2009
11. Draft Recreational Use Maps prepared by Cape Hatteras Business Allies, dated January 30, 2009
12. CAHA Non-Breeding Shore Bird Areas and Colonial Waterbird and American Oyster Catcher Nesting Areas Maps prepared by NC State Office of National Audubon Society, dated February 1, 2009
13. Draft Routes and Areas Aerial Photography Maps, dated February 3, 2009
14. Ground Rules for the Public
15. Written Public Comment from Don E. Morris, dated February 3, 2009
16. Written Public Comment from H. Wayne Clark Edwards, dated February 3, 2009