

National Park Service
U.S. Department of Interior

Cape Cod National Seashore
Massachusetts



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Cape Cod National Seashore Hunting Program
Final Environmental Impact Statement
Barnstable County, Massachusetts

Cape Cod National Seashore Hunting Program Final Environmental Impact Statement Record of Decision

Approved:

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Date: 9/18/07

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Date: 9/11/07

**UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE**

RECORD OF DECISION

**CAPE COD NATIONAL SEASHORE HUNTING PROGRAM
FINAL ENVIRONMENTAL IMPACT STATEMENT**

Massachusetts

The U.S. Department of Interior, National Park Service (NPS) has prepared this Record of Decision (ROD) for the Cape Cod National Seashore Hunting Program Final Environmental Impact Statement (Final EIS). This ROD includes a description of the project background, a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferred alternative, findings on impairment of park resources and values, and an overview of public and agency involvement in the decision-making process.

BACKGROUND

The 1961 legislation establishing Cape Cod National Seashore (CACO) allowed the NPS to permit hunting within the seashore, and hunting has been regulated by existing state law and park-specific special regulations since that time. The most popular aspects of the hunting program include the annual deer, waterfowl, and rabbit hunting seasons. For many years, CACO has cooperated with the Massachusetts Department of Fisheries and Wildlife (MDFW) to release ring-necked pheasants within the seashore to provide a pheasant hunt. In 2002, CACO was sued for failure to follow the National Environmental Policy Act (NEPA) with respect to the hunting program, and failure to comply with NPS Management Policies regarding the introduction of exotic species (pheasants). In September 2003, the U.S. District Court ordered CACO to review the hunting program using the alternatives analysis and public participation approach required by NEPA. The court also enjoined the pheasant hunt until CACO completed the NEPA process.

The goals of the NEPA process were to develop and evaluate alternative approaches for managing hunting at CACO that would:

- balance diverse uses of the park while minimizing effects to wildlife populations, ecosystems, and sustaining natural processes;
- reduce or avoid conflicts during recreational uses of the park;
- protect natural and cultural resources, cultural heritage, and recreational values;
- provide opportunities for future generations to enjoy the natural and cultural resources, cultural heritage, and recreational values of CACO; and
- develop management solutions that address concerns related to the current hunting program to ensure diverse and high quality public experiences.

CACO formally initiated the NEPA process with a Notice of Intent to prepare an EIS published in the *Federal Register* on June 21, 2004. A series of public and agency scoping meetings followed to solicit input on hunting in the park from American Indian tribes, federal and state agencies, local towns, the public, and interested groups. Using the information gathered during the scoping process and the results of studies conducted to fill key information gaps, CACO prepared a Draft Environmental Impact Statement (Draft EIS) for public review and comment. The comment

period opened on April 21, 2006, with the Environmental Protection Agency's publication of a Notice of Availability (NOA) in the *Federal Register*, and closed on June 19, 2006, 60 days later. Two public meetings were held during the 60-day review period to receive oral comment. The availability of the Draft EIS and the dates and times of the public meetings were also publicized through a second NOA published by the NPS in the *Federal Register* on May 10, 2006, and through press releases sent to local newspapers and radio stations. Over 200 comments were received on the Draft EIS. These comments were used to improve the Draft and produce the Final EIS. Completion of the Final EIS was noticed in the *Federal Register* by the DOI and EPA on August 7 and August 10, 2007, respectively. This Record of Decision is based upon the Final EIS for the Hunting Program at Cape Cod National Seashore.

DECISION (SELECTED ACTION)

Based on the information and analysis presented in the Final EIS for the Hunting Program at Cape Cod National Seashore issued in August of 2007, the NPS has selected and will implement Alternative B - Develop a Modified Hunting Program. To provide enough time to adequately implement this alternative in a manner that minimizes confusion, Element 3 (Simplify and clearly delineate hunting areas) will not be put into effect until the 2008 hunting season, and Element 4 (Expand hunting-related outreach to hunting and non-hunting users) will be partially implemented immediately, but will not be fully implemented until the 2008 hunting season.

Description of the Selected Action: Alternative B - Develop a Modified Hunting Program

Element 1: Increase hunting opportunities for native upland game bird species.

Eastern wild turkeys and northern bobwhite quail are native species that were traditionally hunted on Cape Cod. Both turkeys and quail were extirpated from Cape Cod and other parts of New England in the past, but populations have now been restored to the point where hunting has been allowed by MDFW for some time. However, opportunities to hunt these species at CACO are limited by CACO's current hunting regulations and habitat conditions. The following measures will restore opportunities to hunt turkeys through modifications of CACO's hunting season, and would increase the opportunity to hunt quail as an ancillary benefit of cultural landscape restoration focusing on heathland and grassland plant communities. This element does not purport to replace the pheasant hunting experience - pheasant hunting involves pursuit of a farm raised and stocked non-native species, and hunting wild native upland game birds cannot replace that experience. Rather, the objective of this element is to enhance opportunities to hunt wild native upland game birds to improve the overall range of hunting experiences at CACO in a manner consistent with NPS policies.

Element 1A – Establish turkey hunting consistent with MDFW regulations:

Currently, MDFW only allows spring turkey hunting in the southeast region of the state which falls outside of the hunting season prescribed by CACO's special regulations. To implement this element, CACO will pursue a special regulation change that would expand CACO's hunting season to accommodate the state's spring turkey hunt. Fall turkey hunting would be allowed if MDFW established such a season in their southeast region. This element would not expand the hunting season for any other species. Turkey hunting within CACO will be a controlled hunt requiring a permit, limiting the number of hunters, and likely managed through a lottery system. Specific areas will be designated as open to turkey hunting. Continuation of this program would

be based on monitoring of the annual hunt by MDFW, and responsive management to ensure NPS goals regarding natural resource protection, visitor experience, and safety are met.

Element 1B – Ancillary improvement of upland game bird habitat:

As outlined in CACO's General Management Plan, CACO has established goals for restoration and management of cultural landscapes, management of heathland and coastal grassland habitat, and fire management. Toward this end, CACO has developed a Cultural Landscape Restoration Plan that addresses these goals, and is consistent with the Fire Management Plan and its Environmental Assessment and Finding of No Significant Impact. An ancillary benefit of this restoration will be to improve habitat conditions for northern bobwhite quail. CACO anticipates restoring and maintaining heathland and grassland habitat on 270 acres over a 15-year period using an adaptive management approach. Most of the restoration effort will occur in the Marconi area. This will represent a significant increase in the acreage of habitat suitable for quail in the Marconi area specifically, and in the park in general. All restoration activities will be implemented as presented in the Cultural Landscape Restoration Plan and the Fire Management Plan contingent on the continued availability of federal appropriated funding.

Element 2: Apply adaptive management to phase out the pheasant stocking and hunting program

An adaptive management approach will be used to phase out pheasant stocking as opportunities to hunt native upland game birds increase. The success of the heathland and grassland habitat management, called for by the cultural landscape restoration plan, will be used as an indicator of native species hunting opportunity. The number of pheasants stocked during the first year the program is resumed will be determined in coordination with MDFW, but will not exceed 800 - the number of pheasants released during the years preceding the court injunction that stopped the pheasant hunt. In each subsequent year, the number of pheasants stocked will be reduced as the number of restored heathland and grassland acres increases. This element will result in the end of pheasant stocking and hunting at CACO within 14 to 17 years. In no case will pheasant stocking continue beyond 17 years.

If the overall goal of phasing out the pheasant hunt can be achieved in a manner that is also sensitive to hunter interest and that reflects quail density, those considerations may be incorporated into the annual determination of the number of pheasants to be released. CACO will work with MDFW to determine if feasible measures of hunter interest and quail numbers can be developed, and to evaluate ways of integrating those considerations into this adaptive management approach.

In the years that pheasant hunting is being phased out, the program will also be managed to minimize the potential for impacts to natural resources and other park users. In addition to the adaptive management considerations above, the number of pheasants stocked within each year will be adjusted to reflect the number harvested from the park during the preceding season in order to ensure the number stocked is approximately equal to the take. The goal is to ensure that the number of pheasants released does not exceed hunter interest, and to minimize take by predators. In addition, pheasant release locations will be re-assessed at least every five years to determine if they are still suitable for pheasant stocking. This assessment would consider hunter success, visitor and resident complaints, and other recreational uses in the vicinity. The goal is to eliminate release locations that few hunters use, and those that conflict with other visitor and resident uses. MDFW will be encouraged to monitor the take of pheasants at each release location within the park to assist in implementing this element. If the State is unable to conduct this

monitoring, CACO will develop methods to estimate the numbers of pheasants taken. CACO will require that MDFW ensure that medications will be withdrawn from pheasants prior to release according to the drugs' prescribed withdrawal period, and that written documentation be provided certifying the health of the pheasants released in the park.

After reviewing cultural landscape restoration monitoring data, numbers or estimates of pheasant taken the preceding season, and the other considerations described above, CACO will inform the State each spring how many pheasants can be released within the park in the coming hunting season.

Element 3: Simplify and clearly delineate hunting areas

This element will simplify the scope of hunting areas and designate hunting-permitted areas versus the current policy that allows hunting in all areas except where specifically prohibited.

When examining the areas where hunting has been permitted, CACO staff found a number of small patches of land that are of only minimal value for hunting. These patches will be closed to hunting. In addition, the no-hunting buffer adjacent to bike paths will be increased from 150 feet to 500 feet. These changes are depicted on maps in the Final EIS. Minor adjustments to these maps may be made if errors are found in the underlying data regarding locations of structures or other facilities and ownership. Hunting areas may be further revised if necessary to meet public safety needs. Any changes to these maps will be made through the Superintendent's Compendium. Maps of the hunting-permitted areas, along with CACO and MDFW regulations, will be made readily available at various locations within CACO, and will be integrated into the outreach materials and objectives described in Element 4 below.

This element will provide an added safety precaution protective of visitors using the bike paths; should result in more predictable areas where hunting is likely to be encountered and where it will not; will provide consistent buffers for hunting set-backs from roads, buildings, and bike paths; will facilitate more efficient monitoring by law enforcement staff; and will result in little reduction in hunting opportunities.

Element 4 - Expand hunting-related outreach to hunting and non-hunting users

CACO will develop and implement an expanded outreach plan aimed at hunting and non-hunting visitors. Outreach to non-hunting visitors will focus on where and when hunting occurs in the park, where visitors can go to avoid hunting, safety precautions when in or adjacent to hunting areas (such as wearing orange), how to report any unlawful behavior or safety concerns, and the importance of courteous and respectful behavior to all users. Outreach to hunters will also focus on where and when hunting is permitted in the park, hunting regulations, the importance of courteous and respectful behavior to other users, and how to report any unlawful behavior or safety concerns. The outreach program will use the park's existing communication venues, such as the website and visitor centers, and will coordinate with MDFW, hunting organizations, and other entities as appropriate and as opportunities arise.

Element 5: Cooperative monitoring and management

CACO will invite MDFW to cooperate in integrated and expanded game species monitoring to support sound wildlife management with a focus on deer, eastern cottontail rabbits, eastern wild turkey, and northern bobwhite quail. Emphasis will be placed on monitoring abundance and

harvest of these species on the outer Cape to better inform coordinated wildlife management decisions by both CACO and MDFW. Currently, MDFW monitoring is very limited, and CACO's monitoring programs are focused on ecosystem processes and biological communities rather than single species. Implementation of this element will depend on funding to support expanded MDFW monitoring efforts. CACO will also invite MDFW to collaboratively locate and secure additional funding for related studies as needed. Regardless of funding, discussions regarding protection of New England cottontail rabbits will be a first priority. A study of New England cottontail and eastern cottontail rabbit hunting and ecology was initiated in 2004. Upon completion of this study, CACO will coordinate with MDFW and USFWS to review the results, and determine if action is necessary to protect the New England cottontail within CACO. CACO will preserve the prerogative to implement protection measures if indicated. This could include limiting rabbit hunting to areas outside of New England cottontail habitat, or discontinuation of rabbit hunting in the park.

OTHER ALTERNATIVES CONSIDERED

The Final EIS evaluates two other approaches for managing hunting at CACO:

Alternative A - No Action: The No Action alternative would retain hunting at CACO as it was prior to the court's decision to enjoin the pheasant stocking and hunting program. Thus, under this alternative, the pheasant program would be reestablished and managed as it had been prior to the injunction. The No Action alternative serves two functions: first, it provides a baseline upon which to compare the effects of the other alternatives; and second, it is an alternative approach that was evaluation for implementation.

Alternative C - Eliminate Hunting: This alternative considered the complete elimination of hunting at CACO. A sub-element of this alternative would have eliminated only pheasant hunting. Hunting would be phased-out within a five-year period according to a plan developed by CACO staff in coordination with MDFW. CACO would retain the management prerogative to implement proactive measures earlier should conditions indicate the need for more immediate action. Given that the pheasant hunt has been enjoined since 2003, a phase out of the hunt would not be necessary.

BASIS FOR DECISION

The NPS considered three main factors in selecting the preferred alternative. The first factor was ensuring that the chosen alternative would meet the project objectives (listed in the Background section above) while giving due consideration for minimizing effects to the environment, economics, public safety, cultural heritage, and public use. The second factor was determining which alternative was environmentally preferred and resulted in the least amount of adverse effects to natural and cultural resources. The third factor examined whether or not any of the alternatives would impair CACO resources. After careful review and consideration of these factors, the NPS determined that Alternative B best meets the project purpose, provides the most benefits and the least adverse effects to environmental and cultural resources, and does not impair CACO resources.

Project Objectives

The selected alternative best meets the project objectives by:

- maintaining a diverse range of appropriate recreational opportunities;

- preserving CACO's natural and cultural resources;
- providing for the eventual cessation of pheasant stocking thereby eliminating introduction of a non-native species to native ecosystems and achieving consistency with NPS management policies;
- continuing hunting as a customary activity and enhancing opportunities to hunt native species thereby conserving part of the outer Cape's cultural heritage;
- reducing the potential for visitor conflicts and enhancing the safety of non-hunting park users; and
- enhancing coordinated monitoring and management with MDFW.

Environmentally Preferred Alternative

The Environmentally Preferred Alternative is defined by the CEQ as “the alternative that will promote the national environmental policy as expressed in the National Environmental Policy Act [Section 101(b)].” Section 101(b) defines six criteria for an Environmentally Preferred Alternative: (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations; (2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings; (3) attain the widest range of beneficial uses of the environment without degradations, risk to health or safety, or other undesirable and unintended consequences; (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety, of individual choice; (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources. Generally, the Environmentally Preferred Alternative is the alternative that causes the least damage to the biological and physical environment and that best protects, preserves, and enhances historic, cultural, and natural resources.

There is substantial overlap between the environmental policy goals listed above and the project goals listed in the previous section. As described in the previous section, Alternative B (Develop a Modified Hunting Program) most fully meets these project objectives and the environmental policy goals, and thus was both the NPS preferred alternative and the environmentally preferred alternative.

Findings on Impairment of Park Resources and Values

The NPS has determined that implementing the selected alternative will not constitute an impairment of park resources and values. This conclusion is based on a thorough analysis of the impacts described in Final EIS, agency and public comments received, and the professional judgment of the decision-makers in accordance with the *NPS Management Policies 2006*.

Implementation will not result in major adverse impacts to a resource or value whose conservation is (1) necessary to fulfill specific purposes identified in the establishing legislation or proclamation of Cape Cod National Seashore; (2) key to the natural or cultural integrity of the seashore or to opportunities for enjoyment of the seashore; or (3) identified in the seashore's general management plan or other relevant NPS planning documents as being of significance. Based on the assessment of effects on CACO resources, implementing the selected alternative will not impair CACO resources.

PUBLIC, AGENCY, AND TRIBAL INVOLVEMENT

In order to fully and openly evaluate the environmental costs and benefits of the alternatives presented in this Final EIS, CACO sought input from tribes, federal and state agencies, local towns, the public, and interested groups. Tribal, agency and public consultation and coordination occurred during the scoping phase of EIS development, and again through broad public review of the Draft EIS. Consultation and coordination with MDFW occurred throughout development of the EIS as they manage hunting in Massachusetts.

Scoping

Scoping was initiated with a Notice of Intent to prepare an EIS published in the *Federal Register* on June 21, 2004. A subsequent notice was published in the *Federal Register* on July 16, 2004, announcing the beginning and end dates of public scoping, and alerting the public to watch for information about upcoming public meetings. Groups and agencies with an interest in the hunting program at CACO were contacted, and eleven meetings were held during the summer of 2004 to share information and to solicit input. All public meetings were announced through press releases sent to local newspapers and radio stations. Press releases were also sent to the newspapers of record for New Bedford and Fall River, Massachusetts, the home of many rabbit hunters who frequent CACO. The Cape Codder, the Provincetown Banner, and the Cape Cod Times each published at least one story notifying readers of upcoming public meetings. Letters were also sent to the six Outer Cape towns to notify them of CACO's intent to prepare an EIS and to solicit input during the scoping phase. Agency and public input from scoping was used to identify impact topics, formulate alternative approaches for managing hunting, and fill information gaps about hunting and its effects.

Public Comment

In April of 2006, CACO issued a Draft EIS for tribal, agency and public review and comment. The comment period opened on April 21, 2006, with the EPA's publication of a Notice of Availability in the *Federal Register*, and closed on June 19, 2006, 60 days later. Two public meetings were held during the 60-day review period to receive oral comment. Copies of the Draft EIS were available for public review at the Salt Pond Visitor Center, the Province Lands Visitor Center, the libraries of the six Outer Cape towns, the park's Headquarters Building, and via the park's web site. The availability of the Draft EIS and the dates and times of the public meetings were also publicized through a second NOA published by the NPS in the *Federal Register* on May 10, 2006, and through press releases sent to local papers and radio stations. Again, the Cape Codder, the Provincetown Banner, and the Cape Cod Times newspapers all published at least one story notifying readers of the availability of the Draft EIS and the public meetings.

Copies of the Draft EIS were sent to interested Indian tribes, agencies, and organizations accompanied by a letter noting the dates of the comment period, instructions on where to send comments, and notice of the two public meetings. The three individuals who joined the animal rights groups in bringing suit against CACO's hunting program were also sent copies of the Draft EIS. In addition, over 2030 individuals were sent letters or e-mails notifying them of the availability of the Draft EIS and inviting their review and comment. This included all individuals who had provided mail or e-mail addresses at the informational and scoping meetings, had submitted written comments during the scoping process, and had provided addresses at a public meeting held in 2002 regarding the pheasant hunt at CACO.

Over 200 comments were received on the Draft EIS, including letters and e-mails from agencies, organizations, and individuals, and the comments recorded at the public meetings. Many commenters shared their opinions about hunting, and voiced their support or opposition to hunting at CACO, but did not provide input on the information, analysis, or conclusions presented in the Draft EIS. The opinions expressed by multiple commenters included:

- opposition to all hunting at CACO;
- opposition to pheasant stocking and hunting at CACO;
- concerns about human safety and animal welfare;
- support for hunting at CACO;
- opposition to phasing out pheasant hunting and stocking at CACO;
- support for allowing turkey hunting at CACO; and
- support for ancillary habitat improvement for native quail.

Every statement of opinion has been noted, but only substantive comments, corrections, or questions were responded to in the Final EIS. Many groups and individuals provided specific input on the substance of the Draft EIS. In many cases, the NPS response to these comments resulted in revision to the EIS to correct errors, improve clarity, or improve the analysis of effects. In other cases, the NPS did not concur with the analysis or conclusions of the commenter and declined to revise the EIS. The NPS response to substantive comments is described in detail in the Final EIS.

American Indian and Agency Consultation and Coordination

CACO consulted with two American Indian Tribes: the Wampanoag Tribe of Gay Head - Aquinnah and the Mashpee Wampanoag Tribal Council, Inc.(Mashpee). The Wampanoag Tribe of Gay Head -Aquinnah was provided a copy of the Draft EIS but did not comment. The Mashpee provided written comment on the Draft EIS that voiced support for the preferred alternative. The park also met with the Mashpee during the comment period on the Draft EIS, and in that meeting the tribe requested an acknowledgement of aboriginal hunting and fishing rights within CACO's boundary. At that time, and at the time the Final EIS was drafted, the Mashpee had not yet received a final determination from the Department of the Interior acknowledging that the Mashpee exist as an Indian tribe within the meaning of federal law. Consequently, any comments on possible Mashpee rights to park-related resources were considered premature at the time the Final EIS was prepared. The NPS deferred comment on possible rights until the decision was final and effective, and the NPS had adequate time to discuss such matters with the Mashpee tribe. The determination was subsequently finalized and effective in May of 2007. The park and the Mashpee have not yet resumed discussions on this issue, however, implementation of the selected alternative will not constrain or otherwise affect consideration of any possible Mashpee rights to park resources.

The US Fish and Wildlife Service's comments helped clarify the information in the Final EIS on federally listed threatened and endangered species. Based on the improved information and the analysis in the Final EIS, CACO concluded that none of the alternatives evaluated in the Final EIS would affect any federally listed species, and that neither formal nor informal consultation pursuant to Section 7 of the Endangered Species Act was warranted.

In addition to soliciting input on the Draft EIS in general, CACO also requested that the Massachusetts State Historical Preservation Officer review CACO's determination that the alternatives in the Draft EIS would have no adverse effect pursuant to section 106 of the National

Historic Preservation Act. On May 23, 2006, the State Historical Preservation Officer provided concurrence with CACO's determination of no adverse effect.

The Massachusetts Division of Fisheries and Wildlife (MDFW) administers the Commonwealth Massachusetts' hunting program and the Massachusetts Endangered Species Act (MESA). The hunting program at CACO generally follows the Massachusetts program with additional specific provisions or restrictions as necessary to meet park objectives and NPS policies. CACO has adopted many of the State's regulations without additional restrictions. Although the ultimate responsibility for developing and managing an appropriate hunting program for CACO rests with the NPS, CACO regards MDFW as a key expert agency with the state- and region-wide perspective important for determining hunting seasons, bag limits, consistency with MESA, and other elements of a sound hunting program. CACO consulted with MDFW throughout preparation of the Draft and Final EIS. Continued coordination is reflected in several of elements of the selected alternative.

CONCLUSION

The above factors and considerations support selection of Alternative B - Develop a Modified Hunting Program, as described and analyzed in the Draft and Final EIS for the Hunting Program at Cape Cod National Seashore and this Record of Decision. Among the alternatives considered, Alternative B provides the best and most effective means of meeting the NPS's purposes, goals, and criteria for managing hunting at Cape Cod National Seashore. The selection of Alternative B will not result in the impairment of park resources and values, and will allow the NPS to preserve park resources and provide for their enjoyment by future generations.