

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

No. 2:07-CV-45-BO

DEFENDERS OF WILDLIFE, <u>et al.</u> ,)	RESPONSE TO ORDER
)	DATED APRIL 18, 2008
Plaintiffs,)	
)	
v.)	
)	
NATIONAL PARK SERVICE, <u>et al.</u> ,)	
)	
Defendants,)	
)	
and)	
)	
DARE COUNTY, <u>et al.</u> ,)	
)	
Intervenor-Defendants.)	

Defendants, the National Park Service ("NPS"); the United States Fish and Wildlife Service ("FWS"); the United States Department of the Interior ("DOI"); Dirk Kempthorne, Secretary of the Interior; Mary A. Bomar, Director of NPS; H. Dale Hall, Director of FWS; and Michael B. Murray, Superintendent of Cape Hatteras National Seashore ("Seashore") (hereinafter "Federal Defendants," collectively), by and through their undersigned counsel, hereby respond to the Court's Order dated April 18, 2008. Docket Entry 58.

On April 18, 2008, the Court issued an Order directing NPS to respond to the Court's inquiry regarding issues the Court considers material to the case. These issues include control over access to beach driving at existing ramps; the location of

access ramps as they now exist; the daily numerical count of vehicles accessing the beach at the Seashore; restrictions or limitation on the type, size, weight, and characteristics of vehicles; the requirement of permits or driver qualifications prior to eligibility for open driving; the requirement for safety screening and vehicle certification; and public safety considerations. Federal Defendants recognize that the Court also raised some or all of these issues during the hearing on April 4, 2008. Hr'g Tr. at 9-16; 21-23; 33-34.

The issues identified by the Court are important factors that will be considered by NPS in crafting the final Special Regulation required by 36 C.F.R. § 4.10, which will govern ORV use at the Seashore for the long term. As the Court is aware, the negotiated rulemaking process already is underway,¹ and,

¹The Negotiated Rulemaking Advisory Committee for ORV Management ("Reg. Neg.") was established officially on December 20, 2007, to negotiate and develop the proposed rule, which NPS will use to draft the final Special Regulation governing ORV use at the Seashore. See 72 Fed. Reg. 35373-75 (June 28, 2007); 72 Fed. Reg. 72316-18 (Dec. 20, 2007); see also Ex. 1, Reg. Neg. Charter. NPS decided to use the negotiated rulemaking approach in crafting the final Special Regulation because of the variety and number of interests likely to be affected by the final Special Regulation and the importance of reaching a consensus amongst these varied users for the appropriate balance for access to beach areas for ORV use, the quiet enjoyment of natural scenery without motorized vehicles, public safety, and the protection of the beach environment. Id. Since January 2008, three Reg. Neg. meetings, each of which was two days long, already have been held and various important issues related to ORV use already have been discussed. Additional Reg. Neg. meetings currently are scheduled for May and June, and four other meetings will be held in the fall of 2008.

under the proposed Consent Decree, the Special Regulation must be completed by April 1, 2011. The purpose of the rulemaking process and the associated environmental review under the National Environmental Policy Act and the Endangered Species Act is to allow NPS to gather relevant information, solicit public input from all interested parties, apply its expertise, and craft a final Special Regulation that reflects careful consideration of the relevant factors, including the important factors raised by the Court.

The proposed Consent Decree is not intended to be a substitute for the Special Regulation, nor is it intended to resolve all of the issues to be addressed during the rulemaking process, such as those issues raised by the Court. Rather, the proposed Consent Decree is intended to put interim environmental protection measures in place, pending the final review and consideration of all of the relevant factors and the promulgation of the final Special Regulation. Cf. Idaho Watersheds Project v. Hahn, 307 F.3d 815, 831 (9th Cir. 2002)(holding that district court was not required to conduct evidentiary hearing prior to issuing injunction where purpose of injunction was to impose "interim measures designed to allow for a process to take place which will determine permanent measures").

With this background, NPS² responds specifically to the issues raised by the Court as follows:

1. Does the proposed Consent Decree establish any control over access to beach driving at the existing ramps on Bodie Island, Hatteras, Island, and Ocracoke Island?

Under the Interim Strategy, adopted by reference in the proposed Consent Decree, all ORV access at the Seashore is restricted to the established ramps, which are described in the next section. Under the proposed Consent Decree, NPS will establish new regulatory signs at each ORV access ramp to notify ORV operators of the applicable regulations. The resource protection closures anticipated under the proposed Consent Decree will inherently restrict and reduce ORV access at heavily used sites such as the spits and Cape Point, and disburse use to other locations during the summer season. NPS plans to increase its level of law enforcement staffing during peak use periods such as holiday weekends.

2. Identify the description and location of the ramps as they now exist providing access on Cape Hatteras National Seashore from the paved road to the beach.

There currently are seventeen (17) ramps, of which sixteen (16) are open seasonally or year-round to ORV use. ORV access on the beach between ramps is often restricted by resource

²Superintendent Michael B. Murray and U.S. Park Ranger/Law Enforcement Specialist Paul K. Stevens assisted with the preparation of these responses.

closures,³ safety closures, and summer seasonal closures. The ramps are as follows, described from north to south (see ORV Site Bulletin map, attached as Exhibit 2):

- a. Ramp 1 - Located just south of Nags Head town line; closed year-round to ORV use; south of Ramp 1 the beach is open for pedestrian access but no ORV access for 1.6 miles.
- b. Ramp 2 - Located at south end of Coquina Beach; open seasonally to ORV use September 16 - May 14, except when restricted by closures; when open, provides access south to Bodie Island Spit (Oregon Inlet).
- c. Ramp 4 - Located just south of Oregon Inlet Campground; open year-round to ORV use, except when restricted by closures; provides ORV access north to Ramp 2 (open seasonally) and south to Bodie Island Spit (open year-round).
- d. Ramp 23 - Located just south of Salvo; open year-round to ORV use, except when restricted by closures; provides ORV access north to the northern boundary of Rodanthe (open seasonally) and south to Ramp 27 (open year-round). Beach areas fronting the villages of Rodanthe, Waves, and Salvo are seasonally closed to ORV use May 15 - September 15.
- e. Ramp 27 - Located between Salvo and Avon; open year-round to ORV use, except when restricted by closures; provides ORV access north to Ramp 23 and south to Ramp 30. Currently there is no through access for ORVs between Ramp 27 and Ramp 30 due to resource closures. A 1.5 mile stretch between the resource closures is open to pedestrian access but not ORV access.
- f. Ramp 30 - Located between Salvo and Avon; open year-round to ORV use, except when restricted by closures; provides ORV access north to Ramp 27 and south to Ramp 34.
- g. Ramp 34 - Located just north of Avon; open year-round to ORV use, except when restricted by closures. Currently,

³Resource closures may be added, modified, or removed as the breeding season progresses, depending upon the presence and location of any protected species.

there is no through access for ORVs to Ramp 38. The beach fronting the village of Avon is seasonally closed to ORV use May 15 - September 15. Currently, an ORV safety closure of 1.6 miles begins 1.9 miles south of Ramp 34 (.1 mi. north of Avon Pier) and extends to .3 mile north of Ramp 38. This 1.6 mile section is open to pedestrian access, but not ORV access.

- h. Ramp 38 - Located just south of Avon; open year-round to ORV use, except when restricted by closures; provides access north to Ramp 34 and south to the north boundary of Buxton village. The beaches fronting the villages of Avon and Buxton are seasonally closed to ORV use May 15 - September 15. Currently there is an ORV safety closure 2.8 miles long, beginning 1.8 of a mile south of Ramp 38 and extending to 0.4 of a mile north of Ramp 43, due to narrow beaches. This section is open to pedestrian access, but not ORV access. Within the safety closure, there is a resource closure that begins 0.85 of a mile north of the village of Buxton and extends south for 0.25 of a mile, with no pedestrian access through the closure.
- i. Ramp 43 - Located at the eastern terminus of Lighthouse Road near Buxton; open year-round to ORV use, except when restricted by closures; provides access to the beach south of Buxton village and to the Cape Point area. Beach fronting Buxton is closed year-round to ORV use due to narrow beaches.
- j. Ramp 44 - Located at the eastern terminus of Lighthouse Road near Buxton; open year-round to ORV use, except when restricted by closures; provides access to beach south of Buxton village and to Cape Point area, and to an interdunal road system with access to South Beach area via Salt Pond Road and Ramp 45. Currently, ORV and pedestrian access is open from Ramps 43 and 44 south 1.1 miles to the tip of Cape Point and south/west from Cape Point along the shoreline for approximately 0.25 miles to where a resource closure (prenesting area) begins. Salt Pond Road is closed in conjunction with the prenesting area, which includes a complete shoreline closure that starts approximately 0.25 miles south/west of Cape Point and ends approximately 0.3 miles east of Ramp 45. The total closure distance is approximately 1.0 mile in length. Currently, there is no through access for ORVs from Ramp 45 to Ramp 49 due to resource closures.

- k. Ramp 49 - Located at the south end of NPS Frisco Campground; open year-round to ORV use, except when restricted by closures; provides access north to Cape Point and south for 1.2 miles. Currently, there is no through access for ORVs from Ramp 45 to Ramp 49 due to resource closures. The beach in front of Frisco Village to Hatteras Village is open to pedestrian access, but not ORV access for 4.7 miles.
- l. Ramp 55 - Located just south of Hatteras Village; open year-round to ORV use, except when restricted by closures; provides access north 0.1 mile to southern boundary of Hatteras Village and south to Hatteras Spit (Hatteras Inlet) and the interdunal road system including Pole Road and Spur Road. ORV and pedestrian access is open along the ocean shoreline from Ramp 55 west to 0.1 mile south/west of the southern exit of the Pole Road. Currently, a section of the Pole Road is closed at the overwash fans and the ocean shoreline is closed from 0.1 mile south of the southern exit of the Pole Road to the inlet due to resource closures (prenesting areas). The latter is a full beach closure approximately 0.8 miles long and continues south/west around the tip of Hatteras Inlet. An additional resource closure was established on the soundside, 0.1 mile southwest of where the Spur Road exits onto the sound shoreline on April 9.
- m. Ramp 59 - Located near the north end of Ocracoke Island; open year-round to ORV use, except when restricted by closures; provides access north to North Ocracoke Spit and south for 1 mile. Currently, beach access is open for 0.9 miles north of Ramp 59 where the North Ocracoke prenesting closure begins. One mile south of Ramp 59, there is an ORV safety closure that is 5.2 miles long and extends to 1.4 miles north of Ramp 67 due to a narrow beach. This section is open to pedestrian access but not to ORV access.
- n. Ramp 67 - Located 1 mile north of Ocracoke Campground; open year-round to ORV use, except when restricted by closures; provides access north for 1.4 miles where an ORV safety closure begins and south to Ramp 68. The area from 0.5 miles south of Ramp 67 to Ramp 68 is seasonally closed to ORV use from May 15 until the last Monday in October, which is when the Ocracoke Campground closes for the season.
- o. Ramp 68 - Located at south end of Ocracoke Campground; open to ORV use seasonally, except when restricted by closures; provides access north to Ramp 67 and south to Ramp

70. The area from Ramp 68 south to 0.25 miles north of Ramp 70 is seasonally closed to ORV use from May 15 through September 15. Currently, a resource closure begins 0.9 mile south of Ramp 68 (or 1.5 miles north of Ramp 70) and extends for 0.25 of a mile.

p. Ramp 70 - Located adjacent to Ocracoke Airstrip; open year-round to ORV use, except when restricted by closures; provides access north to Ramp 68 and south to Ramp 72 and to South Point (Ocracoke Inlet). Beach is seasonally closed to ORV use May 15 - September 15 from 0.25 miles north of Ramp 70 to 0.5 miles south of Ramp 67. Currently, there is a resource closure 1.5 miles north of Ramp 70 which prevents through access.

q. Ramp 72 - (South Point Road) Located at the north boundary of Ocracoke Village; open year-round to ORV use, except when restricted by closures; provides access to South Point (Ocracoke Inlet). Access to inlet is currently open but restricted by prenesting area.

3. Is there now, and will there be under the proposed Consent Decree, a daily numerical count of the number of vehicles that make entry to and have access to beach driving on Cape Hatteras National Seashore?

NPS has installed traffic counters at all ORV beach access ramps and tabulates the traffic count data on a monthly basis. NPS also does periodic "spot counts" during regular ranger patrols and special airplane patrols on summer holiday weekends to determine how many vehicles are observed on specific beaches at any one time. The proposed Consent Decree establishes no specific limit on the numbers of ORVs, nor does it anticipate a daily numerical count of the number of vehicles using the Seashore.

The resource protection closures anticipated under the proposed Consent Decree will inherently restrict and reduce ORV

access at heavily used sites such as the spits and Cape Point, and disburse use to other locations during the summer season. In addition, NPS plans to increase its level of law enforcement staffing during peak use periods such as holiday weekends.

NPS has identified several options for establishing the ORV carrying capacity of the Seashore in the draft preliminary alternatives for the ORV management plan/NEPA analysis. The Reg. Neg. has established a work group to consider options for ORV carrying capacity to include in the Committee's recommendation for a proposed rule.

4. Is there any restriction or limitation on the type, size, weight, and characteristics of vehicles that will have access to beach driving under the proposed Consent Decree, other than the fact that they be registered for operation under state law?

The proposed Consent Decree does not address these specific issues. Currently, vehicle load, weight, and size limits established by State law are assimilated under 36 C.F.R. § 4.11. At this time, NPS does not have additional, Seashore-specific vehicle equipment requirements. In essence, vehicles that are "street legal" under State law are allowed on Seashore beaches. NPS is identifying ORV characteristics and equipment requirements in the draft preliminary alternatives for the ORV management plan/NEPA analysis. The Reg. Neg. has begun discussion of vehicle characteristics and equipment requirements to include in the Committee's recommendation for a proposed rule.

5. Does the proposed Consent Decree require separate permitting and qualification of a driver and vehicle, including the collection of a processing fee before either that driver or vehicle are eligible for open driving on the Cape Hatteras National Seashore beach?

The proposed Consent Decree does not establish a general permitting or qualification requirement for ORV use at the Seashore, nor does it provide for the collection of a processing fee. The proposed Consent Decree does establish a permit for authorizing night driving after 10:00 p.m. until 6:00 a.m. from September 16 through November 15, a period during which night driving is otherwise prohibited. NPS has identified permits as a component of its draft preliminary alternatives for the ORV management plan/NEPA analysis. The Reg. Neg. has identified permits as a topic for consideration as the Committee develops a recommendation for a proposed rule.

6. Does the perspective Consent Decree require safety screening and qualification of a driver in the operation of a motor vehicle on the National Seashore beach, and the certification that the vehicle is functional to operate on the National Seashore beach?

State requirements for operator certification and licensing, and for vehicle equipment and inspections are assimilated under 36 C.F.R. § 4.2. A valid state vehicle operator's license and a "street legal" vehicle are currently required for beach driving at the Seashore. The proposed Consent Decree does not provide additional ORV operator or vehicle certification requirements; however, NPS has identified operator education, training and/or

certification, and vehicle equipment requirements and/or inspections as components for consideration in its draft preliminary alternatives for the ORV management plan/NEPA analysis. The Reg. Neg. will consider these topics as the Committee develops a recommendation for a proposed rule.

7. Does the proposed Consent Decree take into account public safety considerations for bathers and pedestrian beach traffic during periods of high use in the summer season?

Under the Interim Strategy, adopted by reference in the proposed Consent Decree, park visitors have the opportunity to use ORV-free beaches, as well as beaches open to ORV use. For example, in mid-August of 2007, there were approximately 27.8 miles (44.1%) of Seashore beach open to pedestrians but closed to ORVs. This included all the beaches in front of the villages, which are closed to ORVs May 15 - September 15, all of the life-guarded beaches, and a number of narrow beaches away from the villages. At the same time there were approximately 25.4 (40.3%) miles of Seashore beaches open to ORVs, and approximately 9.8 miles (15.6%) of beach temporarily closed for resources protection.

Under the proposed Consent Decree, NPS expects a similar level of pedestrian-only beaches during the peak summer season, and a likely increase in temporary resource protection closures with a corresponding decrease in beaches open to ORV use. The proposed Consent Decree also provides an option for pedestrian-

only access during daylight hours to a spit or Cape Point that is otherwise closed to access when piping plover chicks are present, provided certain buffer distances are met.

While there are ample opportunities for vehicle-free beach use during the summer season, the Court's question may relate specifically to pedestrian safety in the areas that are open to ORV use. NPS recognizes and shares this legitimate concern. The Court may be interested to know it is clear already from public feedback and visitor inquiries received by NPS officials that the proposed Consent Decree is having, and likely will continue to have, a chilling effect on inappropriate beach driving behavior. The proposed Consent Decree provides that NPS will establish new regulatory signs at all ORV access points and will develop a new brochure on beach driving requirements, which will improve ORV operator knowledge of the rules and contribute to a more regulated atmosphere on the beach. The resource protection closures anticipated under the proposed Consent Decree will inherently restrict and reduce ORV access at popular sites such as the spits and Cape Point and will disburse ORV use to other locations during the summer season.

NPS plans to provide supplemental law enforcement staffing during the summer and particularly during holiday weekends and other peak use periods, which should encourage compliance. Under 36 C.F.R. § 1.5, the Superintendent has, and under the proposed

Consent Decree retains, the authority to close, restrict or limit use, if necessary. Under 36 C.F.R. § 4.21, the Superintendent also has the authority to designate and change speed limits, as appropriate. The Superintendent will not hesitate to use this authority as necessary to protect the public safety.

Federal Defendants, having responded to the Court's inquiry, respectfully request, on behalf of all parties in the case, that the Court enter the proposed Consent Decree as an Order of the Court concluding this litigation. As the parties stated in their Joint Motion for Approval and Entry of the Consent Decree, the parties believe that the Consent Decree represents a fair and reasonable resolution of this lawsuit that is consistent with applicable laws and in the public interest. Entry of the Consent Decree also will allow the parties, through the Reg. Neg., to focus their time and energy on expeditiously drafting a final Special Regulation, as required under 36 C.F.R. § 4.10.

Respectfully submitted, this 22nd day of April, 2008.

GEORGE E.B. HOLDING
United States Attorney

BY: /s/ Lora M. Taylor
LORA M. TAYLOR
Assistant United States Attorney
Federal Building, Suite 800
310 New Bern Avenue
Raleigh, N.C. 27601
Telephone: (919) 856-4907
Facsimile: (919) 856-4821
Maryland Bar

BY: /s/ Kevin W. McArdle
KEVIN W. McARDLE
Trial Attorney
Wildlife & Marine Resources Section
Environment & Natural Resources
Division
United States Department of Justice
601 D Street, N.W.
Room 3912
Washington D.C. 20004
Telephone: (202) 305-0219
Facsimile: (202) 305-0275

CERTIFICATE OF SERVICE

I do hereby certify that I have this 22nd day of April, 2008, served a copy of the foregoing upon the below listed parties by electronically filing the foregoing with the Court on this date using the CM/ECF system or by placing a copy in the U.S. Mail:

Derb S. Carter, Jr.
Julia F. Youngman
Geoff Gisler
200 W. Franklin Street, Suite 330
Chapel Hill, NC 27516

Jason C. Rylander
1130 17th Street N.W.
Washington, DC 20036-4604

Greer S. Goldman
1150 Connecticut Ave., NW
Washington, DC 20036

Lawrence R. Liebesman
Lois Godfrey Wye
2099 Pennsylvania Ave., N.W., Suite 100
Washington, DC 20006

L.P. Hornthal, Jr.
L. Phillip Hornthal, III
P.O. Box 220
Elizabeth City, NC 27907-0220

/s/ Lora M. Taylor
Assistant United States Attorney
Civil Division

Charter
2007
***Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management
at Cape Hatteras National Seashore***

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A. DESIGNATION.

The official designation of the committee is the Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore.

B. PURPOSE AND FUNCTION.

The Committee's function is to assist directly in the development of special regulations for management of off-road vehicles (ORVs) at Cape Hatteras National Seashore (Seashore). Executive Order 11644, as amended by Executive Order 11989, requires certain Federal agencies to publish regulations that provide for administrative designation of the specific areas and trails on which ORV use may be permitted. In response, the National Park Service (NPS) published a general regulation at 36 CFR § 4.10, which provides that each park that designates routes and areas for ORV use must do so by promulgating a special regulation specific to that park. It also provides that the designation of routes and areas shall comply with Executive Order 11644, and 36 CFR § 1.5 regarding closures. Members of the Committee will negotiate to reach consensus on concepts and language to be used as the basis for a proposed special regulation, to be published by the NPS in the *Federal Register*, governing ORV use at the Seashore. The duties of the Committee are solely advisory.

C. OBJECTIVES AND SCOPE OF THIS ACTIVITY.

The Committee will serve as an integral part in the NPS development of a proposed special regulation for ORV management at the Seashore. With the participation of knowledgeable affected parties, the NPS expects to develop a practical approach to addressing ORV management and visitor experience issues related to 1) access to beach areas for fishing and other recreational activities; 2) provision of a variety of visitor experiences on the beach, including both ORV and non-ORV experiences; 3) public safety; and 4) protection of beach environments and their associated plant and wildlife communities.

Within the constraints of NPS statutory and policy responsibilities to conserve natural and cultural resources and values and to provide for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Committee will evaluate and address key issues possibly including, but not limited to 1) the designation of specific ORV routes and areas, 2) the periods of the year and times of day during which ORVs may be operated on those routes and areas, 3) other conditions that govern the operation of ORVs

at the Seashore, and 4) other management options for accessing the beach (e.g., walkovers and shuttles). Special ORV regulations for the Seashore would identify criteria used to designate appropriate ORV use areas and routes and would establish consistent ORV management practices and procedures that include the ability to adjust ORV management in response to changes in the Seashore's dynamic physical and biological environment.

The Committee may also provide input, though not necessarily a consensus recommendation, on aspects of protected species management that may affect or be affected by ORV management and that are within the scope of the draft ORV Management Plan/Environmental Impact Statement being prepared concurrently with the proposed special regulations or that directly relate to the implementation of the Seashore's 2007 Interim Protected Species Management Plan. The NPS does not intend to establish a collaborative National Environmental Policy Act (NEPA) process, but rather to encourage information flow between the two processes at appropriate points. The primary focus of the Committee's work will be developing a consensus recommendation on the proposed special regulations.

D. MEMBERSHIP.

1. To achieve balanced membership among diverse national, regional, and local interests, membership of the Committee will consist of 30 representatives. Members will be appointed by the Secretary of the Interior (Secretary), and will represent the following interests:
 - a. User groups that have an active and ongoing interest in the management of the Seashore (such as ORV, open access, birding and recreational fishing groups, and other user groups);
 - b. Civic and homeowner associations;
 - c. Commercial fishermen;
 - d. Environmental and natural resource conservation groups;
 - e. Tourism, Visitation, and Business organizations; and
 - f. Federal, State, and county governments.
2. In addition to the principal representatives, alternate representatives will be appointed where possible to 1) ensure adequate representation when principal representatives are unable to attend, and 2) allow for broader participation. If a principal representative and alternate represent different organizations, then they shall be expected to represent the interests of both organizations in their Committee participation.

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3. Principals and alternates are appointed for the duration of the negotiation. Any member vacancy on the Committee will be filled by the alternate for that member. If both alternate and principal representative cannot serve, the NPS will endeavor to find a replacement representative to maintain the overall balance of the Committee.
 4. Members of the Committee will serve without compensation. However, while away from their homes or regular places of business, members attending Committee meetings approved by the Designated Federal Official (DFO) (see F.2 below) may be allowed reimbursement for actual travel expenses, not to exceed those permitted by the General Services Administration's rules for Federal travelers, in the same manner as persons employed intermittently in government service under section 5703 of title 5 of the United States Code (5 U.S.C § 5703).
 5. Poor attendance, lack of participation, not participating in good faith, or other significant violations of the ground rules adopted by the Committee are grounds for a decision by DFO to recommend to the Secretary that a member be removed from the Committee.

E. ETHICS RESPONSIBILITIES OF MEMBERS.

No Committee or subcommittee member shall participate in any specific party matter including a lease, license, permit, contract, claim, agreement, or related litigation with the Department of the Interior in which the member has a direct financial interest.

F. ADMINISTRATION.

1. CHARTER.

The Committee is subject to the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2, and shall take no action unless the charter filing requirements of Sections 9 and 14(b) of FACA have been complied with. The Committee is subject to biennial review and will terminate in accordance with Section G below, unless, before that time, the charter is renewed in accordance with Section 14 of FACA.

2. DESIGNATED FEDERAL OFFICIAL.

The Committee reports to the Superintendent of the Seashore, Manteo, North Carolina. The Superintendent, or in the Superintendent's absence, the Seashore's Chief of Resource Management, will serve as the DFO for purposes of Section 10 of FACA to oversee the management of the Committee. The DFO will be present at all meetings and is authorized to adjourn any meeting whenever he or she determines it to be in the public interest to do so.

3. SUPPORT AND COSTS.

Support for the Committee is provided by the NPS, which may pay for the rental of meeting space, necessary materials and supplies for the meetings, and the services of recording the content of those meetings. The estimated annual operating cost of the Committee, depending on the number of meetings held, is \$220,000.

4. CHAIRPERSON. The DFO will serve as Chair of the Committee.

5. TECHNICAL ADVISORS.

The Chair may accept technical assistance from representatives of other organizations. Areas in which technical assistance may be requested could include beach driving etiquette and outreach, pedestrian access, handicapped access, safety, and protected species. Technical advisors have no authority to make decisions on behalf of the Committee, nor can they report directly to the NPS.

6. WORK GROUPS/SUBCOMMITTEES.

The Committee, in consultation with the DFO, is authorized to form work groups or subcommittees for any purpose consistent with this charter, including issues such as communications and outreach, vehicle equipment and operations, bypasses and alternate routes, or criteria for designating routes and trails. Such work groups shall report back to the full Committee. They have no authority to make decisions on behalf of the full Committee, and they do not report directly to the NPS.

7. MEETINGS AND ANTICIPATED SCHEDULE.

The Committee is expected to meet approximately eight times during its term with a similar number of additional subcommittee meetings, but fewer or more meetings may be held, if necessary. When the schedule is further defined, it will be closely coordinated with the schedule of the concurrent NEPA process.

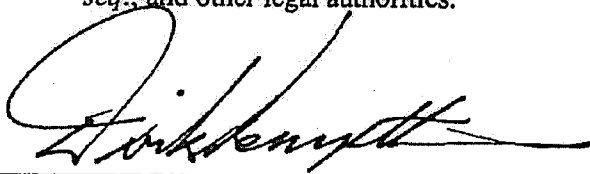
All meetings will be held at the call of the Chair, after consultation with the Committee. Committee meetings will be called, announced by publication in the *Federal Register*, and held in accordance with the requirements of FACA. Among other provisions, FACA requires open meetings and an opportunity for interested persons to file comments before and after meetings, and make statements during the meeting, to the extent that time permits.

G. DURATION AND DATE OF TERMINATION.

The Committee will terminate on the date the ORV management regulation is published in the *Federal Register*, or 2 years (24 months) after the Committee is established, whichever comes first, unless its charter is renewed in accordance with Section 14 of FACA (see F.1 above) or the Committee is terminated.

H. AUTHORITY. Case 2:07-cv-00045-BO Document 61-2 Filed 04/22/2008 Page 5 of 5

The Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore is established under the authority of 16 U.S.C. § 1a-2(c), and in accordance with the Negotiated Rulemaking Act, 5 U.S.C. § 561-570. The establishment of this Committee is in the public interest and supports the NPS in performing its duties and responsibilities under the NPS Organic Act, 16 U.S.C. § 1 *et seq.*; Executive Order 11644, as amended; 36 CFR § 4.10; the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*; the enabling legislation for the Seashore, 16 U.S.C. § 459 *et seq.*; and other legal authorities.



Secretary of the Interior

NOV 26 2007

Date Signed

JAN 2 2008

DATE CHARTER FILED _____

The filing date of this first charter constitutes the date of establishment of the Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore.



Off-Road Vehicle Use



GOVERNMENT
EXHIBIT

2

Cape Hatteras National Seashore contains a wealth of natural and cultural resources. The use of off-road vehicles (ORVs) is a popular way for visitors to enjoy the Seashore's ocean beaches and sound-side waters. To provide for both visitor enjoyment and the protection of park resources, please observe the following regulations and recommendations when using ORVs at the Seashore.

What traffic laws apply to beach driving?

- Drive only on marked ORV routes and **comply with posted restrictions**. Do not drive on or between the dunes unless marked as an ORV route. Driving or parking on vegetation is prohibited.
- **Observe posted speed limits** - the speed limit on the beach, generally 25 mph, is reduced in certain areas.
- Any law applicable to vehicle use on a paved road in the State of North Carolina also applies to ORV use.
- A current driver's license; and valid vehicle registration, insurance, and license plate are required for all vehicles, including ATVs.
- Use only designated beach access ramps and sound-side access roads to enter designated ORV routes. Reckless driving, i.e. cutting across marked ORV routes, is prohibited.
- Avoid driving or parking on the wrack line. The wrack line is a line of stranded natural debris on the beach left by the previous high tide that can be an important food source for protected birds.
- Pedestrians have the right-of-way.
- Open containers of any type of alcoholic beverage are prohibited in vehicles. Public consumption of spirituous liquors or fortified wines is prohibited.
- The use of seatbelts is required.
- Do not hang outside of moving vehicles or sit on the tailgate or roof. Those in truck beds must be seated on the floor with the tailgate closed; children in truck beds must be accompanied by an adult.

What are Park regulations that I need to know?

- **Pets must be on a six-foot leash at all times.** Pets are prohibited within any bird closure - they can disturb nesting adults, kill chicks, and crush eggs.
- **Feeding wildlife, including gulls, is prohibited.** Human food is unhealthy for wildlife and may create a harmful dependence on humans for survival. Feeding may artificially inflate animal populations, create aggressive behavior, and force other species out of the habitat.
- **Kite flying and frisbee tossing are prohibited within any bird closure.** Kites and frisbees can scare birds off their nests, leaving eggs and chicks exposed to predators and deadly heat.
- **Remove any trash or litter from the beach, including bait, fish parts, and dead fish.** Trash attracts predators that may disturb and prey upon park wildlife.
- **Return all fish (including skates and sharks) not being kept to the water alive.**
- **Camping is only allowed in designated campgrounds, not on the beaches.**
- **Beach campfires are permitted below the current high tide line and at least 100 feet away from any vegetation.** Burn wood completely and extinguish fires with water, not sand.
- **Jet skis and other personal watercraft are not allowed.**
- **Fireworks and metal detectors are not allowed.**
- **Do not dump wastewater or graywater on the beach.** Use park dump stations.

What are helpful tips for driving on the beach?

- **Drive only four-wheel drive vehicles on the beach.** Two-wheel drive or all-wheel drive vehicles do not have adequate traction and are likely to get stuck. Towing is limited and costly.
- **Some sections of beach can be cut off by high tide - be aware of tide changes and don't get trapped.**
- **Before entering the beach, lower tire air pressure to 20 psi or less.** Lowering tire pressure and driving at a slow steady rate of speed are the best ways to provide enough traction for a vehicle to maneuver. Inflate tires to normal pressure after leaving the beach.
- **If stuck, lower tire pressure more.** If your wheels start to spin, slowly back up in your tire tracks for several car lengths and then slowly accelerate forward. Fill in holes once your vehicle is unstuck. Rangers are not allowed to winch or pull out stuck vehicles.
- **Drive slowly and carefully around pedestrians, especially children.**
- **Avoid driving in the surf or standing water.** Salt water is corrosive and can ruin your vehicle. Rinse off vehicles after each outing.
- **Prepare for emergencies - know the current weather.** Area tackle shops have local tide tables and are a good source of information on current beach conditions. Carry a shovel, tire pressure gauge, spare tire, jack and jack support (at least 12" x 12" of non-bending steel, 5/8" plywood, or 2" hardwood), tow rope (at least 18' long with a load strength of 5000 lbs or more), fire extinguisher, flashlight, and first aid kit.
- **Do not stop on or block beach ramps or other vehicle access points.**
- **Watch for fishing lines.**

Why are some sections of beach closed?

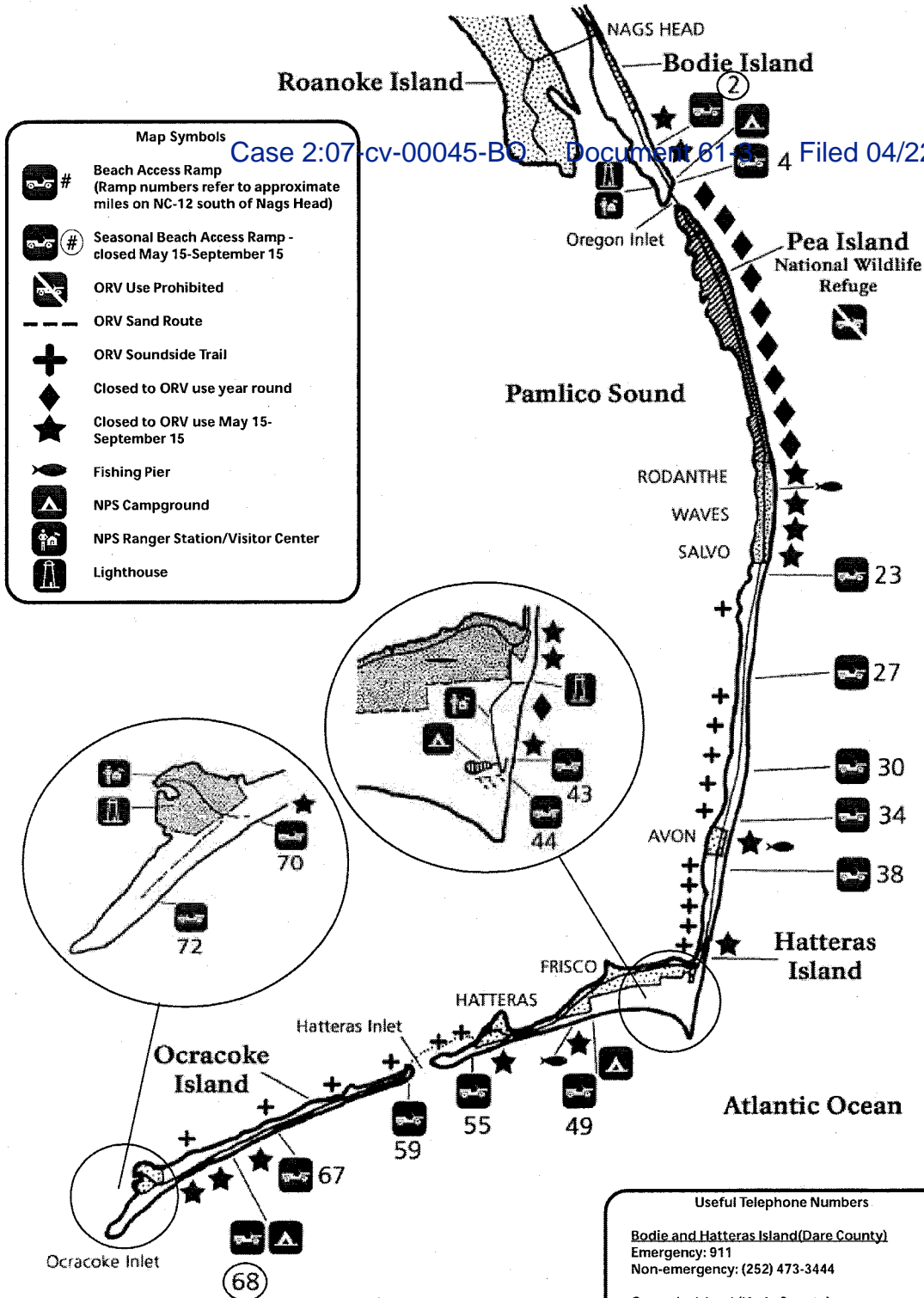
Some portions of the beach may be temporarily closed to ORV use due to beach narrowness, high seasonal pedestrian use, and for use by certain wildlife and plant species, such as protected birds and sea turtles. To provide for both species protection and recreational access, adaptive management will be used. In this, closure boundaries may shrink or expand given the specific behavior or requirements of the protected wildlife. If this behavior indicates that the shoreline needs to be temporarily closed, alternative ORV routes or bypasses may be established to maintain access. Narrow beaches will be reopened as the beach widens. For current beach access information, visit one of the Seashore visitor centers.

Cape Hatteras National Seashore Off-Road Vehicle Routes

Revised May 2007

Beaches are subject to closure when they become too narrow.

For updated information check: www.nps.gov/caha



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Have a safe and enjoyable visit to
Cape Hatteras National Seashore!

Useful Telephone Numbers

Bodie and Hatteras Island (Dare County)

Emergency: 911

Non-emergency: (252) 473-3444

Ocracoke Island (Hyde County)

Emergency: 911

Non-emergency: (252) 926-3171

National Park Service Headquarters

Non-emergency: (252) 473-2111