

United Four Wheel Drive Associations (UFWDA) and Cape Hatteras National Seashore Recreational Area

By Carla Boucher, Attorney
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There are two activities happening at Cape Hatteras National Seashore Recreational Area (Cape Hatteras) effecting off-road vehicle (ORV) use.

Cape Hatteras has begun the process of rulemaking that will result in regulations for the operation of ORVs and species protection management for the seashore. The rulemaking is being conducted through the negotiated rulemaking process (Reg. Neg.). This rulemaking process is special. It utilizes a committee of stakeholders striving to reach consensus (unanimous consent at Cape Hatteras) in forming the preferred alternative that the National Park Service (NPS) will analyze as part of the National Environmental Policy Act (NEPA) process.

The NPS will do an Environmental Impact Statement (EIS). The EIS will study several alternatives for ORV and species protection management. The agency's preferred alternative will contain any elements that the Reg. Neg. Committee unanimously agrees to. The Reg. Neg. Committee was officially convened in January, 2008. There are 30 seats on the committee, representing various stakeholders, including the NPS, state government, county government, civic and homeowner's associations, open access organization, recreational fishing, bird club, local businesses, state/regional and national environmental groups, local and national ORV groups, and commercial fisherman, and tourism.

UFWDA holds the seat for the national ORV interest. The local ORV seat is held by the North Carolina Beach Buggy Association. The national environmental seats, there are 4 of them, are held (1) jointly by a person representing both the Natural Resources Defense Council and the Wilderness Society; (2) the Defenders of Wildlife; (3) the coalition of NPS Retirees; and (4) The Nature Conservancy. The two state/regional environmental seats are held by (1) the Southern Environmental Law Center and (2) a person representing Audubon North Carolina and his alternate representing National Audubon Society. I am unable to explain how the alternate on a state/regional environmental seat is a representative from a national environmental organization.

Each of the committee members agreed to the charter and the ground rules which require a member, among other things, to negotiate in good faith. To date, the committee has held three meetings and is working on reaching consensus on issues such as carrying capacity, vehicle speed limits, camp fire regulations, closure areas, and vehicle equipment requirements. I expect that species protection management will be discussed at the next committee meeting in May, 2008.

Simultaneous with the rulemaking is a law suit brought by Defenders of Wildlife, National Audubon Society, by their attorney Southern Environmental Law Center. The law suit was filed in October, 2007 against the NPS challenging the interim species management plan adopted by the agency in July, 2007. Dare and Hyde Counties, North Carolina and The Cape Hatteras Access Preservation Alliance were granted intervention in the case. In February the environmental groups filed a motion for preliminary injunction (PI) requesting that 6 areas within Cape Hatteras be closed to ORV use. These six areas include Bodie Island Spit (Oregon Inlet), Cape Point, South Beach, Hatteras Spit, North Ocracoke, and South Ocracoke. A hearing on the merits of the PI was scheduled for 4/04/08. The NPS and the environmental groups convinced the court to continue the hearing date until 4/11/08 with the promise of settlement negotiations on both the original suit and the PI. A settlement announcement is expected this week.

It seems that Defenders of Wildlife, National Audubon Society, and Southern Environmental Law Center will accomplish through litigation what they pledged to work cooperatively toward in good faith with all stakeholders through the rulemaking process.

UFWDA will continue to represent ORV interests at Cape Hatteras. Though the Reg. Neg. process is unlikely to yield a meaningful cooperative management strategy reached by various stakeholders due to the influence of the litigation and the refusal by the environmental groups to negotiate in good faith it will be imperative for access interests to continue to work as closely as possible with the NPS to ensure our voice is heard above the booming of the falling court gavel.

To donate to Rescue Cape Hatteras please contact UFWDA at www.ufwda.org or 1-800-44-UFWDA.