



United Four Wheel Drive Associations, Inc.
... An International Organization www.ufwda.org

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IPSMS EA
Superintendent, Outer Banks Group
1401 National Park Drive
Manteo, NC 27952

February 28, 2006

Dear Mr. Murray,

Please accept these comments made on behalf of United Four Wheel Drive Associations (UFWDA) regarding the Cape Hatteras National Seashore, Interim Protected Species Management Strategy/Environmental Assessment (EA).

I. FAILURE TO DEVOTE SUBSTANTIAL TREATMENT TO THE ALTERNATIVE FOR NO ACTION, ALTERNATIVE A.

Written documentation presented by the National Park Service at the public meeting held in Rodanthe, NC on February 10, 2006, indicated that the preferred Alternative (Alt.), Alt. D, was the most permissive of the four alternatives analyzed. However, the comparison between alternatives in terms of motor vehicle use was done only between Alternatives B, C, and D. The most permissive of the four alternatives is Alternative A, providing the shortest time period for motor vehicle restrictions as well as the least amount of geographical closure area for motor vehicle restrictions. This statement by the NPS is indicative of violations of the National Environmental Policy Act (NEPA) requiring the inclusion of “the alternative of no action”¹ and “a presentation of the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among option by the public, devoting substantial treatment to each alternative considered in detail so that reviewers may evaluate their comparative merits.”² There is no doubt that maps and other details were provided in the EA indicating some comparison to the alternative of no action (Alt. A). However, the agency failed to devote substantial treatment to Alt. A in violation of NEPA

¹ 40 C.F.R. 1502.15(d).

² 40 C.F.R. 1502.14 and 1502.14(b).

II. FAILURE TO ANALYZE THE ENVIRONMENTAL EFFECTS OF CONCENTRATED ORV USE RESULTING FROM INCREASE IN LENGTH OF TIME AND AREA OF GEOGRAPHY OF ORV CLOSURES.

The agency asserts that the impact of resource closures on visitor use is the same for Alternatives A, C, and D.³ However, the scope of the closures represented visually in Appendix A clearly demonstrates the error of this assertion. For example, comparison between the PIPL Closure area for Piping Plover Pre-Nesting Closures at Bodie Island Spit clearly indicates an increase in closure area between Alternative A and that of Alternatives C and D.⁴ Note particularly the Oceanside 150' wide pedestrian and ORV corridor in Alternative C and the 100' wide pedestrian and ORV corridor in Alternative D compared to the much larger access corridor pictured in Alternative A. Furthermore, Alternative A indicates access areas larger than 150' Oceanside and access areas soundside. In contrast, the access areas in Alternatives C and D are limited to 150' and 100', respectively, Oceanside and eliminate all access soundside. Utilizing this example, resource closures soundside will result in more concentrated use upon the 150' and 100' corridors available respectively Oceanside.

A similar example can be found for PIPL Pre-Nesting Closures at South Ocracoke Island Spit. The situation at South Ocracoke Island Spit demonstrates a drastic concentration of use between Alternative A and that of Alternatives C and D.⁵

Finally, a glaring example demonstrating the drastic concentration of use between Alternative A and that of Alternatives C and D can be found for Pre-Nesting Closures at South Beach/Cape Point, one of the heaviest use areas within this park unit.⁶

Furthermore, the agency completely fails to analyze concentrated use impacts to species and wildlife and wildlife habitats.

Eliminating access in the areas discussed above will nearly double the concentration of use on those areas remaining open to the public. The EA did not analyze the environmental consequences of the increased concentration of use on species, wildlife and wildlife habitats, visitor use and experience, physical, biological, or anthropogenic factors.

Closure of access areas does not equate to a reduction in use. Yet, in contradiction to the requirements of NEPA requiring a discussion of the environmental effects of alternatives, no qualitative or quantitative analysis was conducted on the potential of significant impact to the human environment caused by the increased concentration of use.⁷

³ Cape Hatteras National Seashore Interim Protected Species Management Strategy/Environmental Assessment, January 2006, page 115, table 5.

⁴ Cape Hatteras National Seashore Interim Protected Species Management Strategy/Environmental Assessment, January 2006, pages 314, 316, and 317.

⁵ Cape Hatteras National Seashore Interim Protected Species Management Strategy/Environmental Assessment, January 2006, pages 328, 330 and 331.

⁶ Cape Hatteras National Seashore Interim Protected Species Management Strategy/Environmental Assessment, January 2006, pages 333, 335 and 336.

⁷ 40 C.F.R. 1502.16.

III. NO RATIONALE FOR SUBJECTIVE WIDTH OF ORV CORRIDORS.

The agency established corridor widths for pedestrian and ORV access (hereafter referred to as ORV corridors) of 100' and 150' for Alternatives C and D, respectively.⁸ The same width of ORV corridors is used in each of the 5 geographic areas considered for PIPL Closure areas; Bodie Island Spit, Hatteras Island Spit, North Ocracoke Island, South Ocracoke Island Spit, and South Beach/Cape Point. Not only is the actual amount of the width arbitrary at 100' and 150', but the implementation of these corridors from place to place is arbitrary. The agency failed to provide a rationale for the corridor width limitation as it relates to area closure size. For instance, alternatives B, C and D institute a PIPL closure area at Hatteras Island Spit encompassing a large area on the southern point of the spit. Yet Alternatives B and C institute a 150' ORV corridor while Alt. D institutes a 100' corridor. In this example, the decrease in the ORV corridor cuts open ORV areas by 1/3 as compared to Alternatives B and C, yet only increases the closure area for species protection by 1/5. There is no apparent correlation or rationale between the size of the ORV corridor lost compared to the size of the protection area gained.

For these reasons adoption of a 100' corridor as opposed to a 150' corridor is arbitrary and capricious.

An ORV corridor width must be established above wrack line which correlates to the amount of closure area necessary for species protection in connection with the corridor width necessary to minimize concentration of use. The establishment of this corridor may be different from place to place, from time to time, and from protection need to protection need.

In advance of concerns articulated by the agency opposing the notion of an ORV corridor that is not consistent I point out that the pre-determined width of any ORV corridor is difficult at best for the public to visualize and comply with. In the alternative, if symbolic fencing will be utilized to mark every mile of ORV corridor then the need for consistency is eliminated. However, implementing symbolic fencing along every mile of ORV corridor is labor and cost intensive.

IV: MISCELLANEOUS

a) As funding appropriations by Congress are always changing, reduced, or reallocated from one budget cycle to another, budget concerns for implementation should not be a priority focus in reaching a final agency decision for implementing an interim protected species management strategy. UFWDA has several volunteer programs in place for ORV users which can be implemented to assist the agency with monitoring and law enforcement needs. Please contact whenever the agency has unfunded needs such as these.

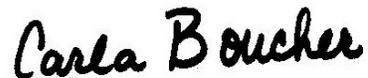
⁸ Cape Hatteras National Seashore Interim Protected Species Management Strategy/Environmental Assessment, January 2006, Tables 2, 3, and 4, and Appendix A.

b) The EA fails to indicate whether there are objective species recovery goals and how those goals will be utilized to diminish closure areas in each successive year as species counts increase.

c) UFWDA commends the agency for promulgating ORV regulations in compliance with a final interim protected species management strategy in compliance with Executive Order (E.O.) 11644 and for minimizing pedestrian and ORV use conflicts by educating pedestrian users on proper beach access ethics as well as the availability of Pea Island National Wildlife Refuge for opportunities for solitude. Your adherence to the spirit and letter of E.O. 11644 is appreciated.

I look forward to seeing our comments adopted in the final decision through a supplemental analysis where necessary. It is a privilege to partner with the agency on this important management aspect at Cape Hatteras National Seashore.

Very truly yours,

A handwritten signature in black ink that reads "Carla Boucher". The signature is written in a cursive, slightly slanted style.

Carla Boucher, Attorney