

UFWDA INFLUENCING THE FOCUS OF RECREATION MANAGEMENT

By: Carla Boucher, Attorney

United Four Wheel Drive Associations occupies one of 30 seats on a regulatory negotiation committee convened by the Department of Interior on behalf of the National Park Service (NPS), Cape Hatteras National Seashore Recreational Area.

The purpose of the committee is to develop a proposed alternative to be considered in detail by the NPS under its proposed rulemaking for Off-road Vehicle (ORV) management at Cape Hatteras National Seashore Recreational Area. The committee is comprised of stakeholders representing various interests such as the federal government, state government, county government, civic and homeowner associations, open access user groups, ORV users, recreational fishing, bird watchers, surfers, pedestrian recreation, commercial fisherman, businesses through the chamber of commerce, county tourism board, national environmental organizations, and state and regional environmental organizations.

The committee was convened in January. The committee met in January, February, and March, and will meet next in May, 2008. The issues to be addressed by the committee are often-times complicated, complex, and controversial. My experience thus far is that even the issues I think will be “easy” to articulate and agree upon are fraught with complications.

The issues tackled thus far by the committee included whether to have an ORV speed limit on the beaches and if so how slow in which areas. The speed limit issue remains unsettled where UFWDA and other stakeholders advocate for 25 mph on all beaches unless posted otherwise, with a second speed limit of 15 mph in the excepted areas. Some environmental and civic stakeholders can not reach consensus on the speed limit until the 15 mph exception is lowered to 10 mph. It might seem that both “sides” of the argument could just say it doesn’t matter and move from their stalwart positions. UFWDA feels that a 10 mph speed limit is so low that it would render forward movement impossible. That’s a round-about way of saying 10 mph is so slow we’d get stuck. So while it seems simple to merely compromise and agree to the lower 10 mph speed limit, doing so would likely leave the driver with the choice between not driving or breaking the speed limit to get through a particular section of loose deep sand. The choice between breaking the law and not getting access is really no choice. And so it goes with this and most other issues the committee has addressed.

Even vehicle requirements is still unsettled. A work group, on which UFWDA sits, suggested to the full committee a set of required vehicle safety equipment and related regulations. While all stakeholders agreed to the list, one issue was left undetermined and so consensus was not reached. The hold-out issue was whether to allow street-legal motorcycles on the beach who otherwise meet all the other motor vehicle requirements. UFWDA advocates that street legal motorcycles should be entitled to access where they otherwise meet all the other vehicle requirements. Opponents to motorcycle access rely on their belief that motorcycles utilizing sandy beaches are thrill seekers and have no place on the beach, or that sound from motorcycles is greater than the sounds emitted from screaming children, wave impact at waters edge, diesel truck engine noise, and other sounds to an extent that such noise would negatively impact wildlife. UFWDA is hopeful that motorcycle access can be negotiated if perhaps the speed limit is adjusted downward to mitigate fears of noise or thrill seeking.

The committee work is complicated by the fact that three of the environmental stakeholders have sued the NPS related to ORV management and interim species management. The process is complicated in different ways.

Each stakeholder is supposed to be committed to participating in good faith. UFWDA has questioned the three environmental stakeholders through their attorney (who holds 1 of the 3 stakeholder environmental seats) on whether those stakeholders would be willing to negotiate terms of species management and ORV closure management that differs from their demands arising out of the law suit and their request for preliminary injunction. The preliminary injunction seeks to close 6 very popular beach areas to ORV driving. The attorney for the environmental stakeholders responded they would consider something as part of the committee process other than the resolution they seek through the courts if sound science was presented to them. However, sound science has already been proffered by NPS. The interim species management plan decision was reached based upon species management protocols produced by the United States Geological Survey, Patuxent Wildlife Research Center (USFS PWRC) at the request of Cape Hatteras National Seashore and Recreational Area.

The protocols presented three management options for protected species including Option A (the most conservative and the highest degree of protection), Option B (moderate protection) and Option C (minimum protection). The protocols thus offered three management options, none of which were a “no action alternative” as you might suspect with an analysis under the National Environmental Policy Act (NEPA). I bring this up to point out that these protocols are all recommendations for MANAGEMENT, none of them are NON-management recommendations. However, the three environmental stakeholders are suing NPS to enforce the stakeholders’ management preference. UFWDA reasons that if one of the three options is sound science then all of the three options are sound science since all were prepared as MANAGEMENT recommendations by the same set of scientists from USGS PWRC. Therefore, it is my understanding from the environmental stakeholders that they will in fact not negotiate a resolution on the committee that is less than the demands they seek through the motion for preliminary injunction.

UFWDA contends that these three environmental stakeholders are not negotiating in good faith evidenced by their inability to negotiate ORV species interaction management different from the management protocol they seek and evidenced by their reliance upon the courts as a method of bringing their desire to fruition outside the negotiated rulemaking process.

A hearing on the motion for preliminary injunction is scheduled to be heard the first week of April, 2008. If the court grants the injunction as outlined by the environmental stakeholders, beach access at 6 areas on the seashore will be wholly closed to ORV use. In contrast, if the court denies the injunction, the 6 areas will still incur beach closures but an ORV corridor of access will remain along the water’s edge creating a buffer distance between ORVs and the protected species. Species protection closures will occur. The outcome of the court’s ruling will decide whether limited access can occur or no access will occur.

UFWDA is committed to representing 4x4 users through this rulemaking. The significance of this endeavor is not limited to access at Cape Hatteras. The work we accomplish at this seashore will undoubtedly impact 4x4 use elsewhere. Why, because the NPS does not work in a vacuum. The Bureau of Land Management will be undertaking its own version of route inventory in the next few years. The US Forest Service is in the midst of route inventory as we speak. I doubt it is mere coincidence that all

three federal agencies were petitioned by environmental group spearheaded by Bluewater Network and therefore no coincidence that all three federal agencies are undertaking their own method of OHV management to appease the anti-access community. UFWDA is coordinating our efforts with other national recreation organizations to move agency focus from one that seeks to appease the demands of the anti-access community to one that seeks to create a sustainable management plan that meets the needs of our community. Involvement at Cape Hatteras is just one example of how UFWDA is influencing the focus of motorized recreation management.