

NPS Cape Hatteras National Seashore Off-Road Vehicle Negotiated Rulemaking

January 2005 - February 2009

Location: Manteo, North Carolina

Background: The National Park Service sought the independent and impartial assistance of the U.S. Institute for Environmental Conflict Resolution to convene a Negotiated Rulemaking process aimed at developing broad-based consensus on an Off-Road Vehicle (ORV) Management Plan and implementing regulations for Cape Hatteras National Seashore. After completing an initial feasibility assessment, the Institute's facilitation team (Patrick Field and Robert Fisher) conducted a series of committee meetings between January 2008 and February 2009. The Committee hoped to reach broad consensus on recommendations for the ORV Management Plan, to be integrated into the National Park Service's analysis under the National Environmental Policy Act (NEPA). The Committee was unable to reach full consensus on an ORV rule, but was able to provide other information that will be of value to the NEPA process.

Results and Accomplishments

- The Committee developed content for the National Park Service to use in creating an additional action alternative for consideration in the NEPA process and to use in revising other alternatives.
- Because of the Committee's extensive discussions, the National Park Service gained a deeper understanding of what is important to stakeholders, which will allow them to develop more implementable alternatives.
- Information obtained by the National Park Service should result in a better ORV management plan than what would have been developed without the negotiated rulemaking.

Lessons Learned

- The lack of previous plans or existing regulations presented a major challenge. The Committee dealt with a large number of insufficiently defined topics, and had little baseline information to use in the development of alternatives. The release of NPS' draft alternatives a year after the Committee began working did provide a helpful framework for the Committee; however, an earlier release of the alternatives may have helped focus the group's effort.



- Relevant scientific information should be presented early on. The Committee was provided with minimal scientific information and much of it was received quite late in the process. Having technical experts as on-going liaisons to Committees like these may be useful in addressing these concerns.
- The use of other channels outside of the Negotiated Rulemaking effort to resolve concerns creates distrust and a sense that parties may not be fully committed to the process. At various points in the process, parties used litigation, influence with the Congressional delegation, and media campaigns to try to affect the negotiations and outcomes.
- Perseverance can pay off. There were multiple stages where the negotiated rulemaking process could have been terminated because of concerns about limited progress. NPS decided to pursue the process with support from a strong majority of participants. Much of the Committee's substantive work occurred in the last three months of the process and would have been lost had the process been discontinued prematurely.
- The full consensus rule may have been an unreasonable expectation for this effort, given the degree of complexity and controversy. The unanimous consensus rule was viewed as a means of adding weight to the group's decisions, it meant that individuals could wield power on single-issue topics, and led to challenging internal dynamics.

Credits:

Partners from National Roster of ECR Practitioners:

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