

A view of why Reg-Neg failed

By **JOHN ALLEY**

When the NPS announced the committee for the negotiations, there was a rush to “stack the deck” by all sides, since no one knew what number the committee would choose as consensus. The committee kept getting larger and larger. I remember a number in the mid-20s as the total, without special permission. As late as November, 2007, two more seats were added to bring the total to 30 seats. This is where the “herding of the cats” began.

The lawsuit by Defenders of Wildlife and the National Audubon Society completely fractured the process. The plaintiffs point out that the defendant/intervenors signed off on the consent decree, and this is true. When the Department of the Interior, the National Park Service, and the Justice Department failed to defend 37 years of non-compliance, what choice was there? Total shutdown of the Cape Hatteras National Seashore Recreational Area for three years or live to fight another day? Let’s not forget that the NPS completed a plan that met the Executive Order in 1978. What happened to it will probably never be known. During the decades that the NPS stuck its head in the sand, an economy was growing. Access to the beaches was a large part of what attracted visitors to the area. Promises made should be promises kept.

The Audubon Society decided to portray the residents and visitors to the Recreational Area as “Beach Bums” – knuckle-dragging rednecks who lived to rape the resource that Audubon sought to protect. To be fair, there was a lot of this stuff coming from both sides. One Internet posting suggested that Jason Rylander of the Defenders of Wildlife needed a visit from a .45 and a Shop-Vac. Emotions ran high, and the community was thrown into a civil war, with neighbor against neighbor.

I found that the negotiations were disjointed. The committee kept bringing up issues and lots of huge post-it notes were stuck to the walls. The phrase “We will get back to that” was like some kind of mantra. Endless discussion about what constituted an ORV and what equipment they should carry was just avoiding the issue. There is a clear definition of an ORV in the Executive Order. We went from an ORV plan to micromanaging the NPS. One member of the committee commented that we were “looking for the dumbest common denominator.”

Then there is the “best science available.” We heard from government experts as to what was needed to protect the various species. I heard a statement that piping plovers needed larger buffers here because “they may be able to see farther.” Another expert compared the seashore with Daytona Beach -- cleverly disguised as Volusia County, Fla. One size does not fit all.

As long as the Department of the Interior and the NPS were not willing to come to grips with the “congressional intent” of a Recreational Seashore, there was nothing to do but

fight against Hatteras Island becoming the southern extension of Pea Island National Wildlife Refuge.

At the end, Audubon produced some data that their representative intimated had been withheld from them by the NPS. One of the documents stated that the resource would benefit from ORV traffic in the off-season to prepare the nesting grounds for the spring, yet they kept up the pressure for year-round closures. We had proposals for “pedestrian only” areas that were really accessible only by ORV.

This is where we need to look back to the mid-80s when the NPS decided to let nature take its course. This resulted in closures of areas historically open to access during the non-breeding season. Large areas of prime breeding habitat were allowed to grow vegetation and become predator habitat, and now the government spends considerable tax money to eradicate the predators.

Let nature takes its course -- how does this even get brought up? The government totally reconfigured the landscape of this Recreational Seashore. The dune system is artificial, a product of the Great Depression. The moving of the lighthouse created an area that in heavy rains floods the parking lot and is now called wetlands. It is interesting that most of the breaches of the dune line during Isabel did not come from ORV ramps, yet the focus remains on the evil ORV. Don't pay attention to the science that says pedestrians cause more disturbances to the birds.

The Audubon Society is very cagey in its definition of how much human activity will be allowed on beaches that are actually open to the public. Do we have to take a number to enjoy federal land?

So now we come to the newest depression, or recession, as politicians like to label it. It really doesn't matter what you call it. The public access to the seashore is being denied and that brings economic loss to the Outer Banks.

Can all this be a result of the consent decree? Not likely, given the present state of our economy. But is adding insult to injury a good course at this place and time?

Likewise, the consent decree cannot be credited as the savior of the seashore. The Interim Species Management Plan was producing results way before the management of the seashore was turned over to the federal judiciary.

This is a very complex issue. How could it not be? The “dry hunk of sand” that is the Outer Banks is a very movable feast. Here today and gone tomorrow. For a management plan to draw lines in the sand and define the activities allowed is sheer nonsense. What if a storm wipes out a pedestrian-only area? Do we give them back their allotted area from ORV areas? When a year-round closure is wiped out, do we create another equal area somewhere else? The plan needs to be flexible and not “written in stone” like some 10-year Soviet plan.

Please do not take any of my comments as an attack on the present management of the Recreational Seashore. They are mired in the same muck as the residents, visitors, and non-resident property owners. They inherited this 37-year-old swamp.

I look forward to the National Environmental Policy Act process. Maybe we can find a solution to this issue.

(John Alley represented the Outer Banks Preservation Association on the negotiated rulemaking committee.)