

**EVALUATING A NEGOTIATED RULEMAKING PROCESS AT CAPE
HATTERAS NATIONAL SEASHORE: TOWARD PIPING PLOVER AND
PEOPLE IN ONE PLACE**

A Dissertation

by

LAVELL MERRITT

Submitted to the Office of Graduate Studies of
Texas A&M University
in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

December 2009

Major Subject: Recreation, Park and Tourism Sciences

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ABSTRACT

Evaluating a Negotiated Rulemaking Process at Cape Hatteras National
Seashore: Toward Piping Plover and People in One Place.

(December 2009)

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Local communities, individuals, visitors, and special interest groups are often called upon to participate in the decision making processes of the National Park Service (NPS). Cape Hatteras National Seashore (CAHA) engaged in a Negotiated Rulemaking process to create an Off Road Vehicle Management Rule. The rulemaking process involved park stakeholders working with the NPS as a Negotiated Rulemaking Advisory Committee with the goal of creating an Off Road Vehicle Management Rule for CAHA. This dissertation used Senecah's practical theory Trinity of Voice to evaluate CAHA's negotiated rulemaking process. Interviews with park staff and negotiated rulemaking participants provided information about the presence of the grammars of TOV in this decision making process. This dissertation described the affects of negotiated rulemaking on the perceptions of participants towards the park resources and management of the national seashore. The effect of the negotiated rulemaking process was an increase in the knowledge of participants about the decision making process employed by the NPS. In general, participants also developed a stronger relationship with

park management. This research suggests critical dimensions for achieving widespread social legitimacy through meaningful public involvement in decision making.

DEDICATION

To my parents Carlita H Merritt and Lavell Merritt, Sr. for their support and advice throughout this journey. To my wife Andrea Merritt for her love, patience and encouragement as we took each step together. To my sister LaVerne Merritt for her counsel and lil sister love. And to my children Dorian Irene, Eden Mae, and Satiya Tescia for filling my life with happiness and pride.

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CHAPTER I

INTRODUCTION

One crisp early morning in February of 2007 I was standing along the beach at Cape Hatteras National Seashore (CAHA) with the rising sun warming my face and a fishing pole in my hand. The waves were running up the beach filling the air with that familiar taste of salt and sea. All of a sudden the slightest tug on my pole and with a whipping action I yanked taught on the line and the fight between me and whatever was on my hook began. The struggle lasted all of six minutes and as I looked into the water I could see the silvery shine off of the scales of a large fish. I gently dragged it onto the beach to my delight and its demise; a 21 inch puppy drum struggled to return to the ocean. My heart was pounding as the sun warmed me to the point of perspiration. I reached down to pick the fish up when I noticed a small crowd of park visitors surrounding me asking what I had caught. I proudly yet humbly displayed my catch to the onlookers. A park staff member had come over smiling on my morning work. He acknowledged that it was indeed a really great catch. At that point I checked my watch for the time because I needed to get a move on to the first meeting of the negotiated rulemaking process on Off Road Vehicle (ORV) management at CAHA.

That morning I experienced what was at stake at CAHA. The resources of this park are part of the unique and cherished inheritance of all Americans managed by the National Park Service (NPS). My opportunity to drive to the seashore and experience and visit a piece of the natural world with others in a manner that is truly free is what is great about the National Parks. I was not charged a visitor fee to enter the park. There were

This dissertation follows the style of *Tourism Management*.

very few people out there that morning. There was not one visible building along that span of beach to obstruct my view or constrain my access to America's beach, a truly public place. Looking in the water I could see clear to the bottom and watched schools of small fish and crabs swim around and through the waves. I, an African American man, could engage in a leisure experience protected by our federal government. This is what is at stake through the negotiated rulemaking process, the opportunity to experience nature in a manner that leaves it unimpaired and ecologically sound.

Breathtaking views, pristine beaches, lush flora, diverse fauna, important and unique cultural artifacts, and friendly inviting local people are anticipated parts of the tourism experience. Federal, state, and local organizations have come to realize that tourism is a major economic generator. Preservation of natural and cultural resources is one part of the formula of creating and sustaining tourism. Sustainable tourism development is a multifaceted undertaking requiring scientifically based decision making coupled with planning that involves the various stakeholders of a given resource (Daniels & Walker, 2001). This research seeks to examine and explain the complexity of public involvement through a case study of collaborative decision making at Cape Hatteras National Seashore (CAHA) on the Outer Banks of North Carolina. This chapter begins with a discussion of sustainability as it relates to recreational opportunity. The chapter then introduces CAHA as the site of a conflict managed by the National Park Service (NPS). Necessary to understanding the motivation for public involvement, a discussion of democracy and deliberative democracy is also included in this chapter. An overview of the public policy that has allowed for deeper forms of public involvement in decision

making is described. The chapter then describes the theoretical framework I employed to evaluate the NPS efforts to provide a meaningful public involvement decision making process at CAHA. I close the chapter by revealing my personal subjectivity that helps form my research lens as it relates to democracy and national park management.

Sustainable Recreational Opportunity

Many scholars have identified the importance of the working relationships between the tourism industry and the local, national and international community. Scholars focus on the importance of dialogue, cooperation, and participation of the local community, recreationist and those outside of the management structure of a given destination to achieve the goals of sustainable development. Managers must develop tourism sustainably and use engagement techniques or interventions that provide for intelligent decisions that are supported by a wide range of stakeholders (Farrell & Twining-Ward, 2005; Fisher & Ury, 1991; Hall & Lew, 1998; Place, 1995; Wall, 1997). Place (1995, p.165) identified several studies that “suggested that local participation from the beginning of conservation projects is critical to their success.” She goes on to say, “If so, participatory planning for park-based tourism development may provide the best opportunity for integrating conservation and community development“. Fisher and Ury (1991, p.4) defined wise decisions as “one that meets the legitimate interests of each side to the extent possible, resolves conflicting interests fairly, is durable, and takes community interests into account”. People and their institutions whether community, group, corporate, or public entity add to the complexity of resource management due to their requirement for involvement that provides the public with access to the process,

respects them by offering the opportunity for standing, and ultimately allows them to influence management decisions which sustain resources. These three process pieces access, standing and influence were presented by Senecah (2004) in her conceptual framework Trinity of Voice. Her framework was used here to analyze the decision making process at CAHA and will be described with more clarity in the literature review chapter. Here we continue to unravel the National Park Service's requirement to engage in sustainable conservation of resources for public use and enjoyment.

Many benefits emerge from development which is planned sustainably by creating environmental stewardship, social equity, economic growth and learning by destination managers and resource stakeholders about the issues, interests, and practices to achieve each other's mutual goals (Daniels & Walker, 2001). Adaptive management has been identified as a sustainable management practice which responds to change and evolves to preserve natural resources through conservation while allowing the local community to survive and maintain their way of life through long term economic benefits (Mowforth & Munt, 2003). The sustainable development process requires managers to revisit and recalibrate their management practice through involvement of many and at times changing stakeholders and various destination managers. On a national scale there has been an evolution of public involvement perspectives that have led to opportunities for the public to engage in resource stewardship. Over the past 40 years sustainable development has emerged to convey the importance of creating benefits for the present generation while planning so future generations can also benefit (WCED, 1987) American public policy has expanded opportunities for civic engagement to move natural

resource development closer to achieving the goals of sustainable development. Through this research I seek to better understand how natural resource conservation is achieved by providing opportunities for resource stakeholders to participate in a democratic decision making process based on sustainable development goals.

Democracy in Natural Resource Management

Ideally democracy is government that vests supreme power in the people. Citizens in a democracy actively engage in the governing of their society (Dryzek, 2000; Habermas, 1996). The United State's democracy provides citizens political access through deliberation between elected officials representing the public interest in the local, state and national bureaucracy. Deliberative democracy is an organizing principle that has been evolving at the federal and state level in the United States to provide its citizen input on regulations and policy making that affect public resources (Senecah, 2004). The opportunity of the public to be involved in governing through deliberation adds to the participant's emotional and intellectual connection to the outcomes of their engagement through investment of time and energy. Public agencies are formed to control the speed and direction of change on local, state, and national scales. The outcomes of the bureaucratic process though agonizingly slow affect the livelihood and landscape throughout the nation and world. At a smaller scale community, families, and individuals who participate in democracy go through an experience based learning process in preparation to engage in democratic action. The democratic participant must learn about an issue, to guide her or his actions toward being effective in the process. To be effective democratic participants must educate themselves of the issues to form opinions and

positions or to reinforce their knowledge and strengthen their ability to be persuasive as they state their position to others in democratic decision making processes (Daniels & Walker, 2001; Habermas, 1996; Mainemelis, Boyatzis & Kolb, 2002; Vygotsky, 1978). This transformative experience builds the participants capacity to engage affectively in the democratic processes. There are other skills these participants must learn to be affective and successful in engaging in civic action. Participant need to learn the rules of engagement in public decision making, the decorum, and the ways they can best manipulate the process and their opponents to accomplish their goals and interests (Cox, 2006). Through this study I also seek to better understand how a deliberative democratic process provides opportunities for the public to become civically engaged in decision making and how participation in democratic actions affects participant's attitudes towards the process and the agency managing tourism resources.

National Parks as Tourism Destinations

Tourism destinations evoke a variety of meanings by each tourist. Each individual has a perception of these unique environments. We see the world through our eyes and discourse with others about our environment through our individual voice. There are many special cherished spaces for all of us and for many these spaces include public lands. The public lands are cherished by people of diverse backgrounds and experiences. We all have unique motivations, perceptions, and deep personal attachments to our nationally significant common spaces. The decisions that guide action which affect public space are areas where individuals, communities, business, tourism operators, managers, and government officials have become active in the deliberative democratic process

affecting those destinations. The importance of public involvement was written about by Garret Hardin in his article *Tragedy of the Commons in Science* (1968). He wrote that through mutual coercion people, citizens, and organized groups work to persuade each other to embrace their ideas and ways of organizing society and more specifically to conserve community space. Hardin (1968, p.1245) said “it is tempting to ecologists as it is to reformers in general to try to persuade others by way of photographic shortcut. But the essence of an argument cannot be photographed: it must be presented rationally – in words.” One such place that requires the public to be involved in decision making process is Cape Hatteras National Seashore (CAHA), the first national seashore park. It is located on the Outer Banks of North Carolina (Binkley, 2007).

The national parks have been described as this nation’s best idea. The agency’s mission is to conserve public space for all Americans to seek restorative experiences while protecting the nation’s most unique landscapes and ecosystems. Today there are 391 National Park Service units throughout the country. Millions of visitors visit these destinations while natural and cultural resources are protected under a management philosophy that seeks to sustain them for future generations. The NPS is an internationally respected tourism and land managing agency (Sellars, 2006). In 2008 the NPS reported 274,852,949 visits to the 391 units throughout the nation, Puerto Rico and Guam. The NPS is a respected leader in sustainable tourism development and CAHA is a unit of the NPS. CAHA’s management team is working to conserve this national seashore in a manner that protects natural and cultural resources for current and future generations. CAHA is a primary tourism destination for domestic and international visitation.

Responding to the need of public access to the Cape Hatteras seashore while balancing that with the protection of endangered and threatened species has become more complex since the creation of this park.

Cape Hatteras National Seashore

One of the first colonies in the America's Cape Hatteras was settled by European explorers in 1585 earning this destination its national cultural significance (Torres, 1985). The park conserves many tangible cultural resources of national importance including three lighthouses. The lighthouse's historical significance has been to increase safe navigation along the east coast of North Carolina. The park shares with the visiting public the many stories of heroism and disaster related to ship traffic which ventured too close to the shoreline of the Outer Banks and became stranded or was destroyed by the dangerous shoals along the barrier island's coastline. Another site within CAHA is the Life Saving Service which was established in 1871 to save lives from shipwrecks (Torres, 1985).

The people of the Outer Banks have been described as independent minded and belonging to a close knit community (Torres, 1985). Many of the historic families made their living from fishing, farming and raising cattle. The population of Cape Hatteras grew from the many ships that harbored in Ocracoke at the southern tip of the barrier island and created a large settlement there in the 18th century. Historic reports of the area describe a lawless group of settlers in the 19th century who populated other parts of the island making their living causing shipwrecks and scavenging from the ships that became stranded on the seashore. These unsavory characters were also described as potential

outlaws from the mainland where on the islands of Cape Hatteras could conduct their illegal operations outside of the control of the law. The Outer Bankers have also been described as not trusting the government (Binkley, 2007). The NPS report identified most of those early Outer Bankers as outgoing, highly trustworthy people, who were helpful to the visitors to its shores. The population of Outer Bankers has changed considerably over the past two hundred years. Today the residents of the Outer Banks are a diverse community with many professionals, retirees, blue collar workers, and some members of those families of early settlers of the islands. Today millions of visitors come to Cape Hatteras and upon their visit the local communities are their first contact on the seashore.

The Conflict at CAHA

Cape Hatteras is a major tourism destination. Fishing, bird watching, beach going and visiting the unique cultures and historic sites in the park and in the villages of Cape Hatteras draws tourists to this area from all over the world. The NPS, the local community, and outside stakeholders of the CAHA recognize the need to maintain a high level of tourism based economic activity while protecting the natural environment of the seashore. The beach at CAHA has played an important social and economic role for the local community (Kozak, 2005). The use of this public space has been under contention since the development of the national seashore. In the early planning for the park there was opposition by the local community to the creation of the national seashore. NPS control of access by the local community to fish and hunt on the seashore were at the center of this conflict. The manner in which the park service took over the land through large private land donations and purchases by the federal government of smaller tracts of

land from Outer Bankers was complicated and not supported by all locals due to the public perception that the prices paid by the Department of Interior were below market value (Binkley, 2007). There was an argument by North Carolina State officials that retaining private property ownership of seashore would continue to generate the needed tax revenue to the state. An additional argument against federal management of Cape Hatteras was the opportunity lost to private development of the land into tourism resorts, hotels and shops like those of Myrtle Beach, SC, Atlantic City, NJ, and Coney Island, NY. Another conflict issue identified in a 2007 NPS historic study of CAHA was the NPS opposition to a paved road through the barrier island that would threaten the wilderness value of the seashore by increasing private development and altering the islands landscape. (Binkley, 2007). The NPS felt that development of the road would lead to dense resort development similar to that seen along shorelines in South Carolina, New York and New Jersey. The locals wanted the road and believed it would provide access and encourage development that would bring jobs, tourists and tax revenue. This is an example of an early conflict between the NPS and the local's community in regards to development of the Outer Banks.

Negotiated Rulemaking at CAHA

From 1935 until 1953 the NPS engaged in a public information campaign to gain public support and overcome the negative perceptions of the NPS and the federal government among the Outer Bankers. The local community ultimately supported the creation of the park, but only after long deliberation, education, and sanctions to the public by the NPS. The sanctions included a letter from the former NPS Director Conrad

Wirth defining the park's commitment to provide the local community access to the seashore and their ability to benefit from the tourism economy at CAHA. The public affairs campaign resulted in the creation of CAHA where all parties recognized the need to conserve the environment through management which allowed for tourism and local commercial and recreational uses of the park. The current conflict management effort at CAHA is tied to the history presented. This case study analyzed the Negotiated Rulemaking process the NPS has implemented to manage the conflict between access for ORV use and protection of sensitive natural resources like habitat of the endangered piping plover. The NPS has organized a diverse group of stakeholders into a Negotiated Rulemaking Committee to engage in creating an Off-Road Vehicle Management Rule intended to protect the natural resource while also allowing for some level of acceptable use (The Consensus Building Institute & Fisher Collaborative Services, 2006; Murray, 2006).

The Negotiated Rulemaking Process is one among many public involvement policies enacted by the United States government. The Administrative Procedures Act, the National Environmental Policy Act, Negotiated Rulemaking Act, Federal Advisory Committee Act, and several state and local policies have emerged to create greater opportunities for the public to become directly involved in the decision making process of public land management (Cox, 2006; Meier & Bohte, 2006). These public participation processes represent a shift in paradigms from how public land has been managed in the past which was done by resource managers' void of public involvement. One hundred and fifty-five programs at the federal and state level have requirements of

public involvement in decision making (Black, 2004; Meier and Bohte, 2006). “Studies of democratic participation over the past 200 years also indicate the importance of democratic processes, and citizen participation in them, for building the trust and cooperation needed to hold democratic communities together” (Sabatier, Focht, Lubell, Vedlitz & Matlock, 2005. p. 8). This research seeks to understand how Negotiated Rulemaking, as a public involvement process, affected the perceptions of the participants towards the process, the federal agents managing the resources under contention, and the resources at the center of conflict.

Purpose of This Research

Senecah (2004) put together an analytical framework called Trinity of Voice that included three elements. She called the three elements grammars; access, standing and influence. I have studied these grammars closely and believe them to be excellent benchmarks to creating a socially legitimate process for public involvement. This research uses TOV to evaluate the Negotiated Rulemaking Process as CAHA to better understand how the NPS provides the local community and the parks stakeholders’ opportunity to be involved in sustaining park resources for current and future generations. TOV was chosen as the decision making evaluation tool because of its applicability to a multiparty conflict and its unique perspective on interpersonal relationship orientation in a decision making process. The objectives of this research are four fold.

Research Purpose I: To better understand if the grammars of TOV exist in this
Negotiated Rulemaking Process

Research Purpose II. To investigate the relationship between the grammars of TOV;
access, standing, and influence.

Research Purpose III: To understand how the grammars of TOV contributed to the
Negotiated Rulemaking Process

Research Purpose IV: To assess how the Negotiated Rulemaking Process influenced
participant's attitudes towards park management and park resources.

The outcome of this research will inform the NPS and tourism managers of TOV as an evaluation tool for the decision making process Negotiated Rulemaking. The research will also analyze how Negotiated Rulemaking can be used in creating rules in a contentious decision making process. Finally this research will inform managers of the outcomes of a deliberative democratic process and the constraints and success in regards to participant attitudes towards resource management and the natural resources of CAHA.

CHAPTER II

LITERATURE REVIEW

American Democracy

To understand how public participation has evolved it is necessary to trace democracy back to the founding of the Nation. Carole Pateman (1970) discussed how the philosophy of Jean Jacques Rousseau and John Stuart Mill led to a theory that is centered on the importance of democratic participation by citizens of the democracy. Thomas Jefferson's philosophy helped shape the founding doctrines of the United States as a representative style government (Beetham, 2005). The U.S. gained its independence from England through direct participatory involvement in governance. The Revolutionary War is an extreme example of how early American's exercised their need to be involved in their institutions of governance. The irony of America's founders was that they formed the nation through the sacrifice of the masses and went on to organize the government on a Representative Democratic Model. The model chosen by men like Jefferson was based on governance through a select group of elected citizens. One man one vote was a basic right that established the US form of democracy. The ability of individuals to vote or organize and voice their concerns to their elected official is how representative democracy works (Pateman, 1970). The writings of Rousseau described the importance of how ordinary citizen's involvement in democracy increased the social legitimacy of governance among the masses through processes that moved beyond voting.

Rousseau wrote about the importance of individual participation in the democratic system in his seminal work *The Social Contract* written in 1762. His philosophy was that through individual participation in democracy the individual will support the laws and rules created through the process (Pateman, 1970). The ordinary citizen participating in democracy through voting and expressing voice to elected leaders support the laws and rules which governed the land. He also believed that citizens must be free, that no one person must be the master of another. The politician is no more powerful than the farmer and that each person shares in the benefits of society. The participatory action of the masses in democracy is regarded as an educative experience for the participant. The citizen learned the mechanisms of democracy and through practice the citizen was affected psychologically. The psychological attitudes of the democratic participant were shifted towards acceptance and support of democracy. John Stuart Mill's contribution to the formation of the Theory of Participatory Democracy is important to understanding how the theory is reflected in the philosophies in American democracy and the NPS.

John Stuart Mill was directly influenced by the philosophy of Rousseau. Like Rousseau, J.S. Mill also believed in the importance of public participation in democracy. The citizens' action at the national level of governance through participation in the election process and then by holding discourse with elected officials were important to achieving democracy, but according to J.S. Mill that was not enough (Pateman, 1970). His philosophy expressed the importance of citizen's participation at the local level of government. By voting, running for office, and participation in democracy in the work place provided for an educative experience in democracy. The educative function of the

participatory experience would enhance citizen support and motivate citizens to continue to participate in democracy. J.S. Mill's Theory of Participation is evident in the work John Dewey (1938) *Experience and Education* as well as Paolo Freire (1970) *The Pedagogy of the Oppressed*. These philosophers shared the idea that experience led to the transformation of the participant's attitudes and beliefs. The idea was that we learn by doing and doing resulted in transformation of the actor's ideas and abilities. Participatory Democracy was achieved when citizens became actively engaged in the practices of democracy. The Theory of Participatory Democracy is evident in many policies that emerged over the past sixty years.

Administrative Procedure Act (1946)

In 1946 the Administrative Procedure Act (APA) provided one of the first policies which supported opportunities for the public to become directly involved in the regulatory process in the United States of America (Cox, 2006). When regulations were being promulgated that affect the US citizenry the APA instructs agencies responsible for enforcement of the regulation to publish the rule in the federal registry for public review. In many cases the public then has the opportunity to comment on the proposed rule for the consideration of the agency. The goal adheres to the philosophy of participatory democracy by allowing the ordinary citizen the opportunity to learn about federal actions and to have the opportunity to provide individual input about the regulation. The APA is significant because of past White House Administrations negative view of public involvement. Force and Forester (2002, p. 5) described the Woodrow Wilson

administration's poor regard for public involvement as allowing unfair "political influence or patronage by party politics." They described the behavior prior to the APA as insulating policy makers from the public. The average citizen in the American democracy viewed voting for public officials as an efficient and representative means of governing. Yet there were many groups that felt underrepresented and unfulfilled by the representative democracy. Throughout American history these groups sought ways to influence positive public change in American Democracy and influence the emergence of public policies that involve the citizenry in decision making and direct governance of the nation. The women's movement, labor movement, civil rights movement and environmental movement would change how politics, social change, governance, and public land management were engaged in this country for ever. In 1969 the National Environmental Policy Act (NEPA) was created to provide opportunities for additional direct involvement by the public.

National Environmental Policy Act (1970)

NEPA specifically calls for public input in decision making at the federal level. The timing of the creation of this legislation coincided with some of the most tumultuous years of citizen activism since the Civil War. Trust in governance began its precipitous decline in the mid 1960's as depicted in Figure.2-1. (Blind, 2007). Blind's (2007) paper to the United Nations Department of Economic and Social Affairs presented relevant literature on the emerging issues of trust in governance from the international perspective. He identified the decline of public trust in governance based on corruption,

lack of transparency in the decision making process, and the lack of public participation in decision making. During the 1960's and 1970's public trust declined in the United States because of these issues. At the macro level the Vietnam War called into question the belief in our leaders in the executive branch. During the 1970's the economic crises caused Americans to further challenge governance and influence the peoples negative perceptions of the government's ability at all levels of the bureaucracy. The economic crisis in the US was tied directly to the nation's environmental crises. Americans were forced to ration oil, while pollution threatened human health and increased endangered species to be listed and lost. Americans recognized the destruction of the nation's natural resource through development of growing cities and industry for profit. These negative occurrences coincided and refocused the nation's population on the need for good, transparent, and responsive governance (Clarke and McCool, 1985). At this time President Richard M. Nixon was presiding over a nation at war abroad while he struggled to form a response to the call for civic activism at home. The war in Vietnam was being waged by American soldiers, while other Americans and peace advocates around the world were contesting whether the war was a just, honorable, and achievable cause. The previous presidential administration of Lyndon B. Johnson had attempted to address the issues of poverty through social programs directed towards urban renewal by creating

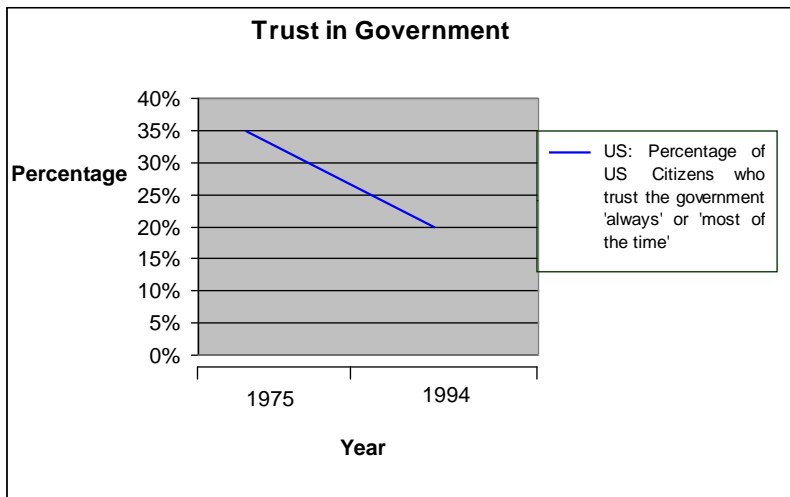


Fig. 2-1. Trust in Government. Blind (2007) paper to the United Nations Economic and Social Affairs

various citizen action programs. His administration used forms of direct participation to involve minority and impoverished communities in the decision making process through the establishment of Citizen Advisory Committees and Community Action Agencies (Arnstein, 1969). These programs only provided the most basic involvement of those communities. Arnstein (1969) introduced her Ladder of Citizen Participation as a typology of empowerment of local communities. Many of Johnson's programs only offered the lowest level of Arnstein's (1969, p. 2) typology described as "manipulation", "therapy", or "nonparticipation." Throughout this era there were various challenges to the activities and effectiveness of the bureaucracy by the public that it was formed to serve.

At the time of the civil rights and peace movements there was also an environmental movement that was fueled by the writings of Rachel Carson, Garrett Hardin, Aldo Leopold and many others. In 1970 thousands of American citizens were involved in celebrating the first Earth Day, a moment and movement dedicated to spreading environmental stewardship around the world (Sabatier et al, 2005). The previous year January 1, 1969 Richard Nixon established NEPA. In his remarks on signing the act into law he said, “If you look ahead ten years, you project population growth, car growth, and that means of course smog growth, water pollution, and the rest. An area like this will be unfit for living; New York will be, Philadelphia, and, of course, 75 percent of the people will be living in areas like this. So unless we start moving on it now – there is a lead time – unless we move on it now, believe me, we will not have an opportunity to do it later.” (Nixon, 1970, p.1). NEPA created the opportunity for the public to participate in the decision making process directing government actions that affected the environment.

The National Environmental Policy Act of 1969 directs federal agencies to protect the nation’s natural and cultural resources in a manner that is sustainable for future generations (Pub. L. 91-190, 42 U.S.C. 4321-4347). The public involvement process based on this policy is lengthy. It affords the public an opportunity to participate in very specific areas of the process. The scoping and review phase of NEPA are areas for public involvement. When a federal agency is proposing an action that may alter the environment they must draft a categorical exclusion, environmental assessment or environmental impact statement. These documents explain the impacts and alternatives to

actions proposed by the federal agency. The public is involved through the scoping process which requests public comment to determine the impacts of the proposed federal action (Ugoretz, 2001; Black, 2004; Cox, 2006). The scoping process can take various forms ranging from written comments, public hearings, workshops, or other public involvement options (Pub. L. 91-190, 42 U.S.C. 4321-4347). NEPA provides the opportunity for the public to become involved in decision making, without dictating specific styles of public involvement. The agency retains the latitude to deploy the tactics it deems appropriate to involve the public.

The public land manager is given some discretion in the way they involve the public in the process. NEPA can be accomplished through sending letters of intent to the public, then allow the required 60 days for comment to elapse and then the agency can move towards the next phase of the process. Deliberation with the public is not required by NEPA. There are no requirements for a deliberative process where the citizenry can sit before decision makers and be listened to and hold dialogue in a dialectical manner. Federal agencies have come to recognize the need to involve the public in more depth partly because of the constant litigation and lack of public trust in their management of resources (Meirer and Bohte, 2006). The charge made by Arnstein (1969) of the bureaucracy offering the public an “empty ritual of participation” is meaningful to this study of public participation. NEPA was created to place a check on government actions that may alter the natural environment in a manner that degrades the quality of life for American citizens. NEPA provided the gateway for the public to become involved in the decision making process, but did not dictate how that participation is actualized. Over the

past thirty years public participation has evolved to allow more effective processes of public involvement in decision making. There has been an ever increasing call for public involvement by US citizens in the federal decision making process. Public agitation motivated the creation of APA which led to NEPA and later produced the Negotiated Rulemaking Act, the focus of this research in the case study investigated at CAHA.

Negotiated Rulemaking Act (1996)

The Negotiated Rulemaking Act (NRA) of 1996 as described by Harter and Pou (2001, p. 111) is a “consensus based approach in which an agency develops a proposed rule by employing a neutral facilitator and a negotiating committee consisting of representatives of the affected interests. It is intended as a flexible and optional supplement to traditional rulemaking processes.” Negotiated rulemaking has its proponents and opponents. Proponents of negotiated rulemaking value the process as taking less time than regulation by rulemaking. The regulation by rulemaking process allows the agency to create the rule but also allows the public several opportunities to challenge the rule through judicial review and political action which can become time consuming and a means of slowing regulatory action by the agency. Other proponent of negotiated rulemaking view the process as less costly than rulemaking by litigation due to the need of agencies to defend themselves in the court of law and pay the cost of the plaintiff’s attorney fees and other legal penalties when they are found out of compliance with regulations or liable for impacts upon the plaintiff (Morriss, Yandle, and Dorchak, 2005). The perceived benefit from negotiated rulemaking was the decreased likelihood that the affected stakeholders

would litigate against the federal agency over the rules created through the process allowing early and meaningful public involvement in the decision making (Coglianese, 1997; Bingham and O'Leary, 2005; Moriss, Yandle, and Dorchalk, 2005). Opponents of negotiated rulemaking charge that the process is not more efficient than conventional rulemaking due to the agencies staff's preparation time for working with participants, time necessary for meeting and working towards consensus, and the "additional time drafting regulatory language and responding to comments" (Coglianese, 1997, p. 1286). The rules created through negotiated rulemaking have been found to be as effectual as conventional rulemaking in regards to litigation on the formed rules (Coglianese, 1997). An important motivation for the NPS to use negotiated rulemaking is its potential for bringing adversarial parties together through deliberative discourse where the parties learn from one another, and through consensus create rules they can "live with." A final benefit of negotiated rulemaking as a public involvement process is the potential for increasing the relevancy of the NPS through civic engagement by the parties involved. NPS Management Policies 2006(p.17) stated that, "Park and program managers will seek opportunities to work in partnership with all interested parties to jointly sponsor, develop, and promote public involvement activities and thereby improve mutual understanding, decisions, and work products." Increased relevancy and trust among the public are valuable outcomes for the NPS as a way of redefining the service's public image as a transparent and ethical land managing agency.

The negotiated rulemaking process is intended to provide a public involvement framework that will create better regulations through the participation of those persons

and groups directly affected by the regulation. The situation of Cape Hatteras National Seashore involves complex deliberations with parties who are multiple and diverse in their perspectives of issues. McCool, Guthrie, and Smith (2000) refer to complex decision making scenarios as “messy.” Webber and Rittel (1973) characterized this type of problem as a “wicked problem.” These authors are referring to how the complexities of the issues compel stakeholders to place personal values on the conflict and form adversarial perceptions against one another (Fisher and Ury, 1991). Fisher and Ury (1991) identified a negotiation method centered on achieving ones goals defined by the principles of the argument rather than the positions of actors. Principled negotiation moves parties towards shared interests or goals and away from their personal positions. The agency is often put in a decision making position which will render one side unsatisfied with the outcome in position based deliberation. Collaboration has emerged as a decision making strategy that will allow participants to learn from one another in an effort to arrive at a solution that all parties can “live with” (Daniels and Walker, 2001; The Consensus Building Institute & Fisher Collaborative Services, 2006; Sabatier et al. 2005).

Public Participation and the NPS

The NPS is an important tourism manager in the United States of America. Millions of domestic and foreign visitors experience the National Parks throughout the year, learning and recreating in natural and cultural resources. The National Park Service reported managing over 84 million acres of land in 2008. The NPS manages this land

through its enabling legislation, the Organic Act of 1916. The Organic Act states that the National Park Service,

...conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same by such means as will leave them unimpaired for the enjoyment of future generations. (16 U.S.C. 1 2 3, and 4)

There is a paradox faced by land managers through the dual mandates of enjoyment and conservation within the Organic Act (Sellars, 1997). The authors who wrote the founding legislation of the NPS had a specific intent when crafting the act. Fredrick Law Olmstead Jr. was the principle author. Olmstead was an accomplished landscape architect. His father was responsible for designing central park, arguably the nation's most well known urban park which is located in New York City (Winks,1997). Olmsted's original intent was to establish legislation that would direct park usage as pleasuring grounds for the health and recreation of the American people. Sellars (1997, p.41) described Olmstead as, "A landscape architect who had developed parks and other public places across the country, he made his living designing outdoor areas for the aesthetic appeal, enhancing their scenic beauty for the enjoyment of the people." Stephen T. Mather, the first director of the National Park Service identified the potential conflict in the language of the Organic Act as having a "double mandate" (Sellars, 2006). Mather's view of the double mandate was, "that the parks be both used and preserved" (Sellars, 2006). Other perspective on the language described the act as having a

“fundamental dilemma” (Winks, 1997). Winks (1997, p. 18) illustrated the issue, “that the Service was asked to attempt ‘harmonizing the unharmonizable,’ and that the dilemma is not capable of either logical or historical resolution.” Winks clarified the Park Service’s Statement of Purpose in an analysis through the use of logical rhetoric. The group of men who framed the legislation was one of distinguished citizens and Congressmen. They were educated in the use of rhetoric and organized the language of the act with specific persuasive functions. “The principles of rhetoric held that, when listing two or more elements to an argument, the most important be stated first...If the principle of rhetoric were applied to the language of the preamble, then conserving ‘the scenery and the natural and historic objects and the wildlife’ within a park took precedence over providing of public ‘enjoyment,’ and there was no contradiction between two elements of equal weight for the elements were not in fact, equal” (Winks, 1997, p. 22). The NPS Management Policies of 2006 expressed the overriding philosophy of the NPS when there is a conflict about the founding legislation. The document instructs managers to, “...ensure that conservation will be predominant when there is a conflict between the protection of resources and their use” (NPS Management Policies 2006, p. 4).

A multiplicity of conflicts arises every year due to incompatible uses of a park’s natural and cultural resources (Daniels and Walker, 2001). NPS land managers have a complex charge in managing the public’s resources. The complexity arises due to the need to maintain the public trust in the agency to make decisions that protect the land while providing for the enjoyment of the public. Members of the public, especially those

interest groups directly affected by management decisions, expect to have some say on how land managers regulate use of public land (Cox, 2006; Meier and Bohte, 2006; McCool et al. 2000; Walker et al. 2006; Sabatier et al. 2005).

A study conducted by Clarke and McCool (1985) identified the shortcomings of the NPS to effectively reach out to stakeholders. The culture of NPS as experts or technocrats in resource conservation created a closed minded perspective of park professionals and made communication with the public in the form of input unsupported and thus unsolicited. According to Force and Forester (2002) this culture changed due to the Vail Agenda developed in Vail Colorado by the NPS Director Bob Stanton and his leadership council. The outcome of Vail was to launch new approaches to public involvement focused on outreach to the public, training of staff to engage in public involvement, and encouragement of partnerships between the park and the local community. Force and Forester (2002) cited several studies that reflected the changing strategy of the NPS in regards to public involvement. At New Orleans Jazz NHP in 2000 the park initiated an effective public information campaign to inform and encourage input by the community on the parks new General Management Plan. The park used newsletters to educate the public about plans for the park. The newsletters also elicited participation by the public through face to face meetings with park staff to ask question and provide public input on park plans.

Sequoia and Kings Canyon National Park in 2000 was drafting alternatives to a draft Environmental Impact Statement (EIS) and used newsletters and public involvement

workshops to gain a deeper understanding of the public needs and aspirations to park development. The staff at the park conducted analysis of public comments and presented the public input through inclusion of this data into its alternatives in the EIS.

Glacier Bay National Park in 1998 engaged in a public involvement process to regulate commercial fishing of Glacier Bay. The park provided opportunities for public involvement through open houses, press releases and newsletters to the public. The park also hired facilitators to improve the transparency of the process. The goal of the process was to generate better solutions to the problems of resource deterioration through commercial fishing. The park decided to close commercial fisheries in Glacier Bay. A fund was generated to compensate fishermen impacted by the closure. Public involvement resulted in recommendations to the park on dispensing the payments. In 2003 Glacier Bay finalized its compensation plan that resulted from “considerable public comment and several public meetings” (Glacier Bay National Park and Preserve, 2006, p.1).

Use of Negotiated Rulemaking in the NPS

The NPS has used negotiated rulemaking in three parks prior to CAHA. The first use was at Cape Cod National Seashore (CACO). The goal of negotiated rulemaking at CACO was to revise the ORV Management Rule at the park. The process involved several stakeholders and resulted in consensus on an ORV Management Rule. The process at CACO was a revision of a current ORV Management Rule rather than the

creation of a new rule and thus was somewhat different than the process being implemented at CAHA.

The second use of negotiated rulemaking was in 2003 at Fire Island National (FIIS) Seashore. ORV management again was the issue addressed through the negotiated rulemaking process. The outcome of this process was consensus on ORV Driving Regulations at FIIS.

The third negotiated rulemaking event was at Golden Gate National Recreation Area (GOGA) in 2007. This process focused on management of dog walking in the park. The process provided opportunities for a diverse committee of park stakeholders to participate in the process. To date the committee has not been able to reach consensus on dog management at GOGA. Through discussion with park officials the participants in the process were highly polarized and unwilling to work toward consensus on dog management. Negotiated Rulemaking is a unique decision making process that seeks public involvement to create outcomes that all parties can support. The NPS has a specific mandate to conserve natural and cultural resources unimpaired while allowing for public enjoyment. Negotiated Rulemaking is one tool used to achieve NPS goals.

The Management Policies of 2006 are, "...the basic policy document of the NPS for managing the National Park System. Adherence by NPS employees to policy is mandatory unless specifically waived or modified by the Secretary, the Assistant Secretary for Fish and Wildlife and Parks, or the Director" (NPS Management Policies 2006, pg. 1). Included in these policies are several points that are germane to the

operations and management of all National Parks. The Organic Act directs the Service to preserve resources while allowing for public enjoyment. If there is potential or actual impairment due to visitor use, actions by the NPS or a third party, then the park manager is charged with intervening in those actions through thorough investigations. According to the Management Policies of 2006 “If it is determined that there is, or will be, an impairment, the decision-maker must take appropriate action, to the extent possible within the Service’s authorities and available resources, to eliminate the impairment...as soon as reasonably possible, taking into consideration the nature, duration, magnitude, and other characteristics of the impacts on park resources and values, as well as the requirements of the National Environmental Policy Act...”(NPS Management Policies 2006, p.13).

Law suits, public actions, and basic disputes arise between the NPS, private citizens, public agencies, private organizations and special interest groups. Disputes range from methods of protecting cultural resources, access to in holding property, and adherence to federal law and regulations. (CRS Report for Congress, 2004). The Administrative Act of 1946 legislated federal agencies to provide the public with information about proposed regulations and allowed the public the opportunity to comment on proposed rules (Force and Forester, 2002). The National Environmental Policy Act of 1969 specified that regulations that affected public resources required public involvement directing federal agencies to achieve higher levels of social legitimacy through collaborating with the public on creation of rules (Force and Forester, 2002). Social legitimacy has been defined by Peterson (2003) as process that results in

decisions that are: technically effective, economically efficient, administratively implementable, politically feasible and socially acceptable. She defines socially acceptable as “policy making processes and outcomes *that* conform to social norms (including fundamental democratic values) and satisfy fiduciary expectations for substance and participation and thus do not stimulate significant opposition by non-governmental stakeholders.” (Peterson, 2003, p. 233). Habermas (1996) echoed the importance of legitimacy through democratic process that provide citizens opportunities for open accessibility to decision making that affords participants venues for argumentation. According to Habermas (1996 p. 305) “Citizens...share a commitment to the resolution of problems of collective choice through public reasoning, and regarding their basic institutions as legitimate in so far as they establish the framework for free public deliberation.”

The ultimate goal of public involvement is multifaceted. When the NPS is altering its operations or restricting use of resources, impacts on the local community may occur. Visitation could become reduced or increase putting pressure on local resources to their benefit or decline. Public involvement is necessary for sustainable development through deliberation that informs all participants of needs, shared and opposing perceptions of resource, and provides opportunities for collaboration between communities and the various stakeholders of a destination. Sustainability as a park and tourism development model seeks collaborative opportunities to create management decisions that meet park goals, community needs, and environmental conservation (Force and Forester, 2002; Farrell and Twining-Ward, 2005; Jamal and Getz, 1995; and Tosun, 2005). Sustainable

resource conservation engages the public in decision making processes that not only result in better decision but the process also engages the public in meaningful discourse. In these processes managers must open themselves to the interests of the public through encouraging productive debate that elicits dialectical occurrences between all involved. Meaningful public involvement processes are more than talking to the public, they provide the opportunity for the public to talk back to managers in a manner that the participants' perceive their voices are being heard, acknowledged, and decision making power is being shared with the public through the decision making process.

Arnstein's (1969) Ladder of Citizen Participation

Arnstein's (1969) Ladder of Citizen Participation shown in figure. 2-2. provided a perspective on the limitations and opportunities for deliberative democracy to achieve effective involvement of the public. The Ladder of Citizen Participation described eight levels of participation. Each level was identified with increasing empowerment of the citizenry in the decision making process. At the bottom of the ladder are the two rungs of "therapy" and "manipulation". Arnstein described this section as "non participation" (Arnstein, 1969). These typologies involve one way communication between the bureaucrat and the public. Public meetings can take the form of non participation. There are several critics among Arnstein (1969) that place little value on the effectiveness of

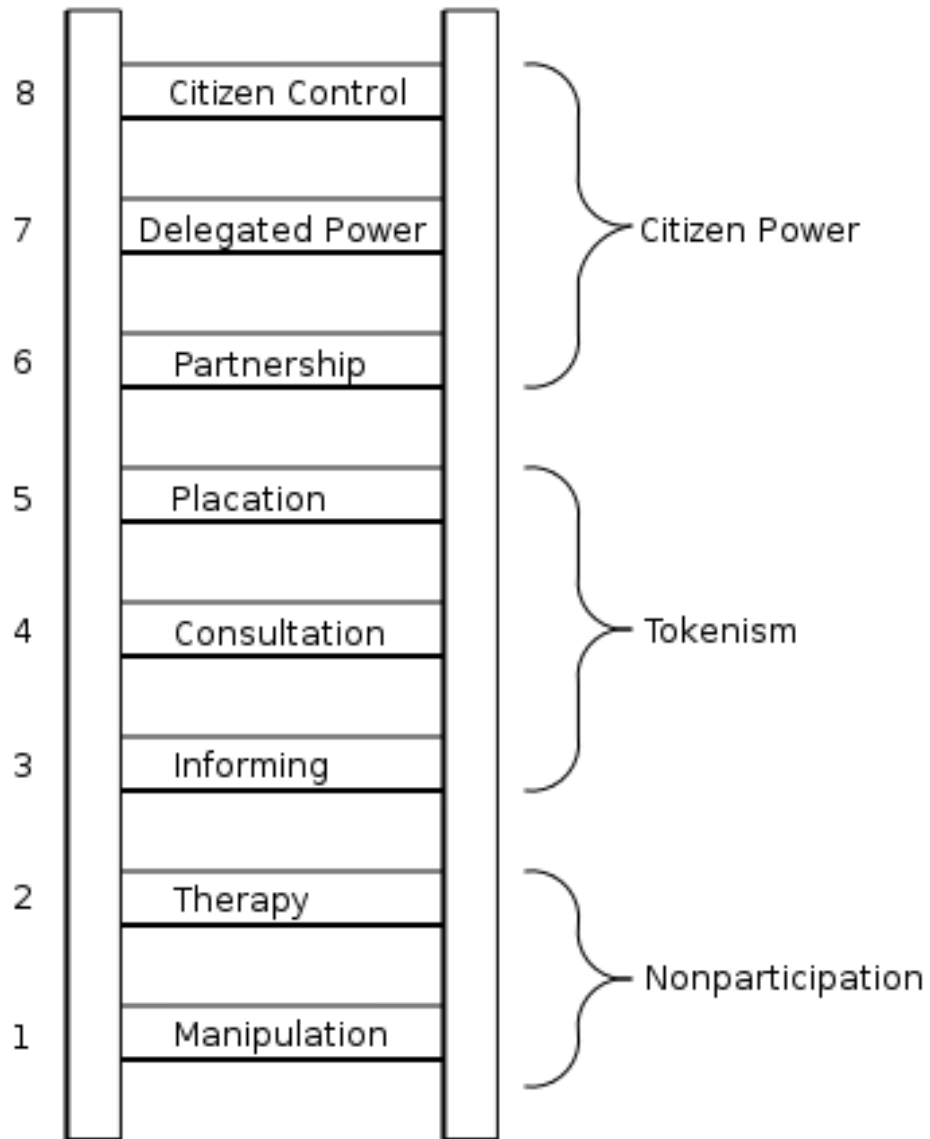


Fig. 2-2. Arnstein's (1969) Ladder of Citizen Participation

civic engagement through public meetings. Senecah (2004, p. 18) described the problem with public meetings as “significant incongruency ...between the expectations for public participation raised by laws, executive orders, and treaties and the actual experiences of participants in those processes.” Highly critical is Cox’s (2006) description of public meetings as showcases for bureaucrats to inform, invite and ignore the public comments. Walker and Daniels (2001, p.9) described public meetings where “a public land management agency can inform the public about a proposed action, invite the public to provide comments on the action, and ignore what members of the public say.” Beirle and Caryford (2002, p. 23) charged public hearings as “probably the most counterproductive mechanism of all” for achieving the goals of public involvement.” Communication at public hearings is often one-way and lacks a discursive interaction between bureaucrats and the public thus coming short of the indicators of deliberation. There are other forms of public involvement that can be used that ascends Arnstein's (1969) Ladder of Citizen Participation. A step up the ladder is the section of “tokenism” in this section are the three rungs, “informing”, “consultation”, and “placation”. At this level the government agency will often use “news media, pamphlets, posters, and responses to inquiries to achieve citizen involvement.” (Arnstein 1969, p. 5). According to Arnstein (1969, p.5) this “can be the most important first step toward legitimate citizen participation.” This form of public involvement is limited in that it does not provide the public with an opportunity to provide feedback and engage in deliberative democratic practices of discourse. Atop the Ladder of Citizen Participation is the section “citizen power” exemplified by the three rungs “partnership, delegated power”, and “citizen control”.

These levels of public involvement place citizens in position of influence and control. Bureaucrats at this level recognize citizens as equal stakeholders and decision makers over public resources. The Federal Advisory Commission Act of 1972 (FACA) made this level of public involvement possible by legally legitimizing Citizen Advisory Commissions (CAC). CAC's generally use collaboration to empower the public in decision making (Cox 2004, p. 10). Daniels and Walker describe collaborative processes as involving "interdependent parties identifying issues of mutual interest, pooling their energy and resources, addressing their differences, charting a course for the future, and allocating implementation responsibility among the group." The outcome is discourse between all parties including bureaucrats in an atmosphere that encourages learning and achieving the indicators of deliberative discourse; legitimacy, better outcomes, preference formation and transformation. The onus is upon the agency to use a style of public involvement that appropriately engages stakeholders to achieve the requirements of law and increases their ability to participate in deliberative discourse. The result will be a deeper sense of trust among the public, better outcomes in the form of policies that involve diverse perspective of achieving the greater good. Ultimately agencies which apply deliberative discourse that elevate public involvement to the highest rungs of Arnstein's (1969) Ladder of Citizen Participation will ideally form relationships with the public for continued communication and creation of policies that better serve the resource and the community of stakeholders involved. National Parks as destinations are uniquely different from other federally and privately operated lands, in that resource conservation and the enjoyable experience of the public are the goals of the agency. Public

involvement in the NPS has been a driving force behind their creation and sustenance for over ninety years. As parks continue to provide access to the public and conservation of resources the public will press for involvement in their care. Designing and implementing meaningful decision making processes will continue to be required at the highest possible level of citizen involvement as described by Arnstein (1969).

Deliberative Democracy

Deliberative democracy is the involvement of the public through discourse in governance that directly affects decision making. (Button and Ryfe, 2006; Deliberative Democracy Consortium, 2006; Habermas, 1996). Deliberation is a means of sharing individual ideas in a social environment that may take four forms; educative, consensual, activist/instrumental, and or conflict (Button and Mattson, 1999). One outcome of deliberation at the individual level is the adoption of a wider perspective of an issue. Another outcome of deliberative democracy is a decision that is formed through the consensus of parties with competing interests that is widely accepted between those affected (Beierle and Cayford, 2003; Sabatier et al., 2005; Daniels and Walker, 2001).

Public participation in environmental decision making was initiated by the federal government with five goals in mind (Beierle and Cayford, 2003). The first goal was to incorporate the public interests through direct participation in decision making. Federal agencies and the public do not always share the same interest in regards to management of public resources. Often conflict arises between the citizens or stakeholders of public resources and the government. Conflict can also occur between private citizens or user

groups of public resources that require intervention at the national, state, or local government level.

Daniels and Walker (2001, p. 26) defined conflict as “incompatibility involving issues, parties, processes (how, when, and by whom) and outcomes.” For example, a citizen may value a forest for its solitude and leisure opportunities while the U.S. Forest Service may value the forest for its value as a renewable resource. The conflicting interests may result in an adversarial relationship where the citizen’s position is trumped by those of the laws and legislation directing the Forest Service’s actions. One such case was described by Daniels and Walker (2001) where the Wenatchee National Forest was planning a long term forest recovery plan. The agency recognized the issues of environmental conservation, public access, and fire management as areas of contention with the local community and decided to engage in a public involvement process on creating a management plan. The agency used collaborative learning as a method to educate and involve the public about the science supporting action while allowing flexibility for the public to educate the agency about their expectations, observations, and input on federal action. Deliberation allows the citizen to share their interests with the agency and vice versa which may result in an alignment of interests informing more compatible actions that are allowable under the law. The second goal was to increase the quality of the management decisions through learning the public’s perspective of an issue. The communities’ knowledge of a resource can be different from the public manager’s knowledge of the resource. When various stakeholders participate in decision making the compilation of their input creates a more substantive outcome than that

formed in isolation by an agency. The third goal of public participation is to create solutions to contestable conflicts that have the support of the parties involved.

Adversarial processes are expensive and can prolong the conflict without rendering solutions that all parties “can live with”. The fourth goal of public participation is to increase the public’s trust in the federal bureaucracy through the citizen’s involvement in decision making. The public’s practical experience gained through deliberative decision making increases their appreciation of bureaucracy. The fifth goal is capacity building among the participating public and the agency through the sharing of knowledge and information during the deliberative decision making process. The theory of deliberative democracy is a response to the dissatisfaction with the more adversarial and strategic models found of democratic action. According to Button and Ryfe (2006, p. 26) deliberative democracy seeks to bolster the necessary conditions, “to sustain a democratic political culture.”

The theoretical indicators of deliberative democracy are legitimacy, better outcomes, preference formation and transformation. Legitimacy is achieved by the structure of the deliberative process. The public must be provided equal opportunities to participate in discourse. Fairness, a factor of legitimacy, is achieved through building the participant’s capacity of engaging in the deliberative process (Habermas, 1996). Information sharing between the public and the agency assists all participants in forming more informed knowledge of the subject matter affecting the decision. Better outcomes are achieved by a deliberative process that is legitimate. The shared perspectives through exchanges of ideas lead to decisions that are better than those created without public

involvement. The exchange of ideas of participants leads to preference formation through the expansion of their perspective of an issue. According to Button and Ryfe (2005, p. 28) "...it is erroneous to suppose that individuals already possess a clear enlightened and coherent understanding of their preferences or opinions on complex social and political issues". The experience of deliberative discourse increases knowledge and solidifies the participant's preference formation. Transformation results from the building of consensus among participants. Individuals that entered the process leaning towards a specific interest based preference can experience a shift of paradigms through the knowledge gained in deliberative discourse. The shared or altered perspective of participants through reaching a consensual agreement is a sign of transformation. Senecah (2004) provided another compelling perspective of deliberative democracy in environmental decision making that contributed a framework to how agencies like the NPS can affectively engage the public in decision making that meets the needs of social legitimacy.

Trinity of Voice (TOV) A Practical Framework

Senecah (2004) identified three essential elements to increasing affective decision making that is socially accepted through her Trinity of Voice (TOV) access, standing and influence. Her work was based on research conducted in 1966 by William Schutz. Shultz illustrated that people have three interpersonal needs. The interpersonal need for inclusion is defined behaviorally as the need to establish and maintain a satisfactory relation with people with respect to interaction and association. The need for inclusion is defined as the need to establish and maintain a feeling of mutual interest with other

people. This feeling includes (1) being able to take an interest in other people to a satisfactory degree and (2) having other people interested in the self to a satisfactory degree. The scale is measured from originating or initiating interaction with all people to not initiating interaction with anyone. This behavior was further developed by Senecah as the grammar access. Senecah (2004) described access as the first component of public involvement. It is the ability for people to speak to decision makers and the assurance that their voices are being heard. The ability to speak is the beginning to opening the doors to public involvement and influencing the ultimate decision. Access also involves provisions for education of the public in a manner which allows the public to be prepared for meetings, or discussion. Trust is an important factor which arises early in the decision making process through access. The public must trust that the decision makers are listening to their needs (Sabatier et al, 2005). They must trust the information being provided is objective and the education is empowering. Access leads to the second element in TOV, standing.

Schutz (1966) second aspect of interpersonal behavior is control and is defined behaviorally as the need to establish and maintain a satisfactory relation with people with respect to control and power. This dimension ranges from controlling all behavior of other people to not controlling any behavior of others. The need for control is defined as the need to establish and maintain a feeling of mutual respect for the competence and responsiveness of others. This feeling includes (1) being able to respect others to a satisfactory degree and (2) having others respect the self to a satisfactory degree. This parameter is reflected in Senecah's (2004) grammar of standing. Standing is closely

related to access. Standing involves the need for the decision makers to hear the participants in the decision making process. Senecah (2004, p.24) described standing in this way, “it is the civic legitimacy, the respect, the esteem, and the consideration that all stakeholders’ perspectives should be given. Access and standing are mutually dependent of each other to achieve influence.” The decision maker should show respect and indicate that the participant’s suggestions and needs are being considered. Standing leads directly to the last grammar of the TOV influence.

Schutz (1966) final behavior is affection. The interpersonal need for affection is defined behaviorally as the need to establish and maintain a satisfactory relation with others with respect to love and affection. Affection always refers to a person to person relation. The dimension ranges from initiating close, personal relations with everyone to originate close, personal relations with no one. Influence is Senecah’s (2004) final aspect of public involvement based on Schutz (1966) work. Senecah (2004) described influence as a result of access and standing. She defined influence as the power to make an impact on the ultimate decision. Power is important to achieving influence. The participant can claim power, but it also must be given by the ultimate decision maker through providing access and standing. Trust must be assured through the decision maker through their stating that the needs, ideas, and suggestions of the participants will influence the final decision.

TOV is a practical theory. Senecah (2004) borrowed from the ideas of John Dewey. Senecah (2004, p.21) discussed the importance of practical theories, “John

Dewey's admonishment to develop ways of studying social phenomena that take human experience seriously, to value what is in process and fraught with possibility ("ends in view") as much as what is finished and perfected ("ends"), and to avoid taking socially constituted phenomena for natural factors or powers." Senecah (2004) encouraged policy makers and public land managers to adopt the TOV as means to plan and evaluate public involvement process in decision making.

Conclusion

Deliberative democracy is a process that seeks to achieve the ideals of America's founding documents. Freedom of speech is the Nation's most fundamental right. Speech is not uttered for the sake of exercise. One of its main goals is to create action, through persuasion, argumentation, and deliberation. Today mankind has achieved levels of technology of harnessing the Earth as never before. Astronauts have visited the moon and peered from spaceships at the world from the heavens. Daily we are beamed pictures depicting the change of the Earth's climate. Garret Hardin implored us in 1968 to recognize the impacts we place on our common natural resources.

Sustainable development is more of a process than a means to an end. Involvement of local stakeholders especially the local community in tourism development in activities that generate economic benefit and empower them to be decision makers in tourism development will create advocates for sustainable tourism development. Education of the local community about the issues, policies and potential changes of tourism or park resources is essential for success over the long term.

Education of the park or tourism destination increases the relevancy of that destination to the community and increases positive attitudes towards that destination. When the local community is properly engaged through shared knowledge and transparent operation by the tourism industry the local people are more apt to participate in the decision making process and support the tourism or park destination.

The NPS is a leader in tourism management. It was founded on the premise that the parks were designated for the people to enjoy in a manner that left them unimpaired. The NPS Management Policies of 2006 have taken the public's central role in parks a step further through the forward thinking implementation of deliberative democratic principles of civic involvement. As ordinary citizens engage in the tough decision making process they gain a deeper appreciation of the work of the staff of the NPS. The resources will gain a deeper meaning to the participant through their generation of a shared knowledge. Interest groups learning together through deliberative democracy will lead all parties to emerge being more informed through cohesive ideas about their shared resources. Stephen T. Mather and Frank Law Olmstead, Jr. may have never imagined that the parks would have evolved to become not only places to learn about history, enjoy natural resources, but to have become places that ordinary citizens can participate in democracy through forming policies and regulations that seek to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations (16 U.S.C. 1 2 3, and 4).

This case study uses Senecah's (2004) TOV to evaluate the efforts by CAHA to engage the public in a decision making process to create an ORV Management Rule. TOV's grammars will provide a deeper understanding of how participants in the process view the NPS's effort through negotiated rulemaking to achieve the goals of deliberative democracy and build trust and cooperation of the park's stakeholders. The NPS has the opportunity to achieve a rule created through public involvement that meets its management goals of resource conservation. This research will provide park managers, the public, and tourism managers a deeper understanding of the complexity of democratic action to manage public natural resources through public involvement in the negotiated rulemaking process.

CHAPTER III

RESEARCH METHODS

Ethnography

This study took an ethnographic approach. The style was based on the work of Creswell (1998) “As a process, ethnography involves prolonged observation of the group, typically through participant observation in which the researcher is immersed in the day-to-day lives of the people or through one-on-one interview with members of the group.”(Creswell, 1998, p.58). I engaged in participant observation of the population of members of the Negotiated Rulemaking Advisory Committee (NRAC). I approached this research through the lens of my life experience including my professional status as a National Park Service Ranger, my love of recreational fishing and my role as doctoral student. The orientation created by experience was enhanced with empirical data and theory on public involvement in decision making. I worked to balance theory, practice and life experience to interpret CAHA’s Negotiated Rulemaking Process.

My Theoretical Lens

It is exciting in this new century, that there have been so many opportunities for the emergence of democratic process all over the world. Here in the United States of America we elected the first African American President Barack Obama. I fully participated in the Democratic process of electing our President. I moved from the basic citizen right of voting to the deeper experience of engagement in the Democratic process through participating in organizing action and by representing my community at the

county and state democratic political caucuses. Dryzek (2000), Dewey (1938) Peterson, Peterson, Peterson, Allison and Gore (2006), and many others argue that engagement in democracy begins with voting, but the American form of democracy is more deliberative, more participatory through citizen discourse at the community level, including argument, manipulation, and persuasion of each other and our elected officials to shape policy and political action. Public participation in democracy requires the citizen to invest their time, energy and passion to effect social and political change and that equates to American style democracy.

I engaged in citizen action through our deliberative democracy by representing my district - 2 in Brazos County, Texas at the Democratic Caucus. As a Democratic Caucus member I received e-mails from party members and had the opportunity to discuss my ideas about our community, state, and country's future. I attended the Democratic County Caucus held in Bryan, Texas. I observed hundreds of members of the Democratic Political Party meet in a middle school gym engaging in discourse about how to move their organization and thus our nation forward. It was inspiring. It was a very jovial event. There was a jazz band and most everyone in attendance was interested in engaging in the process of democracy. Participating in the process were my neighbors, county and state residents. We talked, argued and at times agreed on how to set our charter to better organize our society. As a diverse group we created a document that was taken to the Democratic Caucus in Austin, Texas and then deliberated over, refined and delivered to Denver, Colorado to the National Democratic Convention. In addition to the formal phone calls, emails, and occasional meetings, we also sat down had dinner and

more casually talked and argued about how democracy would become actualized in local, state and national programs and policy to facilitate change to the status quo. I heard many positions, learned of my community's interests which I came to share and some I did not. The result of my engagement in the process was an increased capacity to engage in the democratic process and a deeper knowledge and kinship with my fellow citizens. This event was among many others around the county, state, and nation involving ordinary citizens engaged in democracy which led to the election of the first African-American president of the United States.

President Barack Obama has made an impact on me as a researcher. He began as a community development worker as I did. He believes in the power of change that originates at the local level which I do. An example of his philosophy is captured in this quote of Supreme Court Justice Louis Brandeis (Obama, 2006, p. 92-93). "...the most important office is that of the citizen...Our constitution organizes the way we argue about our future. All of its elaborate machinery – its separations of powers and checks and balances and federalist principles and Bill of Rights – are designed to force us into conversation, a 'deliberative democracy' in which all citizens are required to engage in a process of testing their ideas against an external reality, persuading others of their point of view, and building shifting alliances of consent. Because power in our government is so diffuse, the process of making law in America compels us to entertain the possibility that we are not always right and to sometimes change our minds; it challenges us to examine our motives and our interests constantly, and suggests that both our individual and collective judgments are at once legitimate and highly fallible." My research has

focused on this ideal, this deliberative democratic principle that the NPS is engaging the public in through the Negotiated Rulemaking Process at CAHA.

I feel I also need to share with the reader my personal experience as an employee of the federal government, an international development worker and as a community organizer. I have been a national park ranger since 1998. I began as an interpreter at a small park in western Pennsylvania. Prior to becoming a park ranger I was a Peace Corps Volunteer stationed in Ethiopia from 1996 to 1997 as a development worker and a high school English teacher. After returning from Ethiopia I was a community organizer in Washington DC working in Ward 8, an African American low socioeconomic community. I taught nutrition and urban gardening to extremely poor residents participating in a welfare to work program. Through these experiences I recognized the importance of engaging the local community to encourage better solutions to community problems through indentifying mutual goals and engaging cooperative action.

The means to achieve the common good is treacherous, easily thwarted and requires determination and long term investment by all parties involved. During my experience as a Peace Corps volunteer, the community I served did not trust me as a representative of the US Government. Ethiopians viewed me as an outsider and a potential CIA agent. Adding to this was my inability to fully communicate with the community because of the language differences. There was also the need for them to share their valuable time to formulate, deliberate, and agree on their community goals to generate plans for community success. This was one of the toughest jobs I ever loved. I was learning how to generate a publically legitimate process in a community that had

never experienced American style community action. This experience taught me more about the deliberative process than I could have ever taught the people who were kind and patient enough to participate in this new form of community action. The lesson learned were to first build trust by listening and then to motivate participation of the community through providing them with as many opportunities as possible for them to set the agenda and suggest ways for their own success. Lastly as an agent of positive change I learned the importance of being legitimate, knowledgeable, and transparent by keeping the doors open, providing counsel and advice when asked, and to invite all to be part of the community's action.

My experience as a national park ranger and Peace Corps volunteer reinforced the lesson taught to me in Ethiopia and instilled in me the passion to work long hours with communities to build trust and respect to accomplish the greater good for the community. I believe the greater good is accomplished through sustainable practices that first conserve natural resources, by involving the community and stakeholders in meaningful decision making to create long term economic gain for all stakeholders.

As a community organizer in Washington, DC I worked for a non-profit organization. The community I worked with had little motivation to engage in the work program I was introducing to them. Through participant focused adult learning techniques we strategized a plan to build an urban organic garden, community farmers market, and a welfare to work program to the benefit the community. As an organizer I learned how to listen to encourage participation of the community and to lead by example by picking up a shovel and hoe and sweat along side of the community to build

something that benefitted all engaged. From these experiences I embraced Paolo Freire (1970) philosophy of Praxis, learning by doing. These communities perceived themselves as powerless, but through community action and organization they were the most powerful agents in their lives. I created an environment for these communities to share their mutual goals and create a plan to succeed.

From my first induction into the NPS I learned that the culture of the NPS began with the park ranger (Sellars, 1997). Historically park rangers were men who could hunt, fish, fight wild fire, build shelters and keep people out of the public lands who would do harm to park resources. I have been taught to do most of those things. I don't hunt.

The philosophy of the NPS has changed. We don't overtly keep people out of the parks, but I don't believe we want everyone in the great numbers to visit the parks, because of the harm that would be done to the resource. Park rangers and park staff are a privileged group of people, because we have access to these beautiful natural and cultural resources. But with this privilege comes a great responsibility. We are entrusted by the American public to protect these resources. NPS employees are technocrats in a sense (Sellars, 1997). We are educated in our specialized fields and the American public has empowered us to conserve the nation's resources while making them available to the public to learn from and enjoy.

My experience as a park ranger over the past decade has been as an interpreter. I welcome visitors to the park, tell them factual stories about the resources, inform them of the rules guiding their visit, and act as an ambassador and steward of the NPS's natural and cultural resources. In this position I have a dual mission to educate and to listen to the

needs of the public. I have been active in all of the gateway communities to the parks that I have served. In Western Pennsylvania I worked with the Amish to help them build an interpretive exhibit of the local history that many of our visitors would stop and view prior to coming to the national park. I encouraged local Pennsylvania public, private, and home schools to use the parks as an educational resource. In DC as a park ranger I provided my knowledge as a Master Gardener to community groups to beautify roadside gardens that welcomed visitors at the entrance of the park. And I worked with at-risk-youth programs to learn from nature to better value the Earth and the NPS green spaces in their backyards. Throughout my career it has been reinforced to me that people need three things; access to the organizing process also stated as decision making processes, standing from others in their community, organization, or authority figures, and influence to make a difference through the implementation of a plan created through their involvement in the process. These are the grammars of TOV I used through the case study to analyze CAHA Negotiated Rulemaking Process.

The CAHA Case Study Background

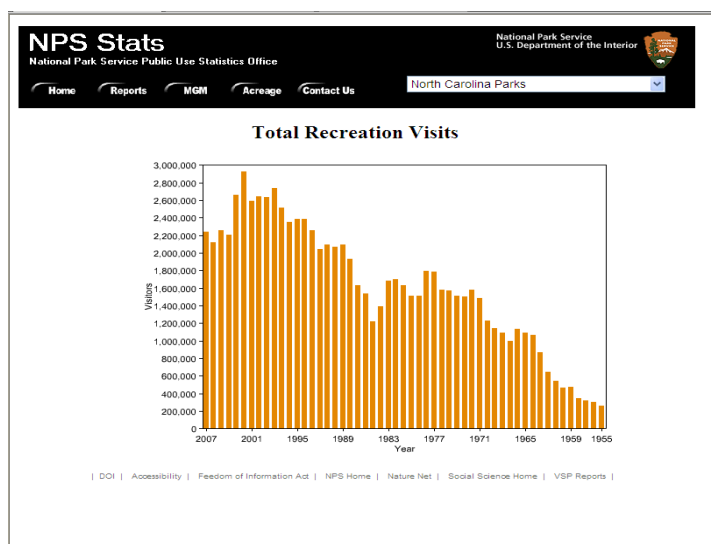


Fig. 3-1. CAHA Visitation Statistics.

CAHA was designated a national seashore January 12, 1953. At its inception ORV use was allowed on the beach of Cape Hatteras. It was a fishing village that has been rapidly transforming into an upscale second-home community. NPS visitation statistics depicted in Figure. 3-1 illustrates the astronomical growth of visitation to CAHA over the past fifty years. At times there are over 2200 vehicles on the beach a day during high tourism season according to law enforcement park rangers at CAHA. The increase of visitation and the ability of park visitors to access the beach through the use of ORV's has made negative impacts on the visitor experience and the natural resources of CAHA.

The conflict at CAHA is over the lack of an ORV Management Rule and how visitor access to the seashore will be affected by the rule that is being created through the Negotiated Rulemaking Process (Kozak, 2005). The areas of contention along the seashore are the inlets and spits that are prime habitat for endangered and threatened species as well as surf fishermen. ORV and open access positioned stakeholders participating in Negotiated Rulemaking charge CAHA with engaging in ad hoc regulations that result in arbitrary closing of segments of beaches along the 103 mile stretch of beach managed by the NPS (The Consensus Building Institute & Fisher Collaborative Services, 2006; Federal Register, 2006). ORV users are threatened by the potential for permanent closures of portions of CAHA's shoreline to their use. Environmentalists are placing litigious pressure on the NPS to effectively protect the beach habitat for plants and animals through creating and enforcing regulations on ORV use in the park (Federal Register, 2006; Kozak, 2005). CAHA enabling legislation of August 17, 1937

...said area shall be, and is hereby, established, dedicated, and set apart as a national seashore for the benefit and enjoyment of the people... (16 U.S.C. §459)...the legal residents of villages... shall have the right to earn a livelihood by fishing within the boundaries to be designated...subject to such rules and regulations...necessary in order to protect the area for recreational uses...

(16 U.S.C. §459 a-1) Except for certain portions of the area, deemed to be especially adaptable for recreational uses, particularly swimming, boating, sailing, fishing, and other recreational activities of similar nature, which shall be developed for such uses as needed, the said area shall be permanently reserved as a primitive wilderness and no development of the project or plan for convenience of visitors shall be

undertaken which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing in this area.... (16 U.S.C. §459 a-1; The Consensus Building Institute & Fisher Collaborative Services, 2006)

This park legislation states that the NPS must provide for public enjoyment, but should not threaten the wilderness environment of the seashore. The legislation is a challenging mandate for park managers, but taken into consideration with the Organic Act, Endangered Species Act, Migratory Bird Act and NPS Management Policies of 2006 it is clear that the overwhelming dictate of park management is to protect the parks natural resources.

The park has lacked an ORV management plan since its inception. Executive Order 11644 of 1972, amended by Executive Order 11989 of 1977, requires certain federal agencies permitting ORV use on agency lands to publish regulations designating specific trails and areas for this use. (The Consensus Building Institute & Fisher Collaborative Services, 2006). The Organic Act (1916) instructs the NPS to conserve natural and cultural resources unimpaired for future generations. The NPS Management Policies of 2006 highlight conservation as the agency's top management mandate for the nation's natural and cultural resources. CAHA created an Interim Protected Species Management Strategy in January 2006. This plan was deemed insufficient through a law suit filed by Defenders of Wildlife, National Audubon Society and the Southern Environmental Law Center. The judge issued a consent decree closing several miles of beach to ORV use through the spring and summer of 2008. This lawsuit seriously

complicated the decision making process and affected the ability of rulemaking participants to achieve consensus on a package for ORV management at the seashore.

The atmosphere at CAHA has been one of uncertainty in regards to beach closures and has negatively affected the relationship between CAHA's environmental groups, recreation and commercial fishermen, and the local community (The Consensus Building Institute & Fisher Collaborative Services, 2006; Kozak, 2005). Figure 3.2. shows the crowding that occurs at Cape Point at CAHA during the high tourism season. When Piping Plover are present on the beach the NPS resource managers post 'symbolic fencing' around the Plover's habitat to protect them from park visitors and ORV's. At times it is necessary to close the entire point to visitor access in order to protect Plovers. Several positions by interest groups on this conflict over visitor access and protection of Plovers have been publicly stated over the internet on blogs and webpage's as well as in media outlets in the Eastern North Carolina area. One previous superintendent had been reassigned and subsequently retired from the NPS due to his handling of the conflict between the local community and the NPS's closure of the beach. Currently there is a new superintendent at CAHA who is dedicated to achieving a more socially acceptable outcome to the decision making process (M. Murray, personal communication, September 27, 2006). The current emotions surrounding the beach closures and the perceived poor management of park resources are flaming the contentious nature of this conflict. The public involvement process will require agile leadership that is able to create an atmosphere of collaboration (Fisher and Ury, 1991; Leach, 2005; McCool et al. 2000; Sabatier et al. 2005; Ury, 1993; Walker et al. 2006). Superintendent Murray as the

designated federal official represents the NPS as the ultimate decision maker in this process. His final decision on ORV Management will be influenced by the Negotiated Rulemaking Process, by his agency's culture as well as the regional and national management personnel of the NPS. The challenge is whether this agency's is capable of achieving its mission of sustainable tourism development through conserving natural



Fig. 3-2. Cape Point, North Carolina with Safety Closure for Piping Plover

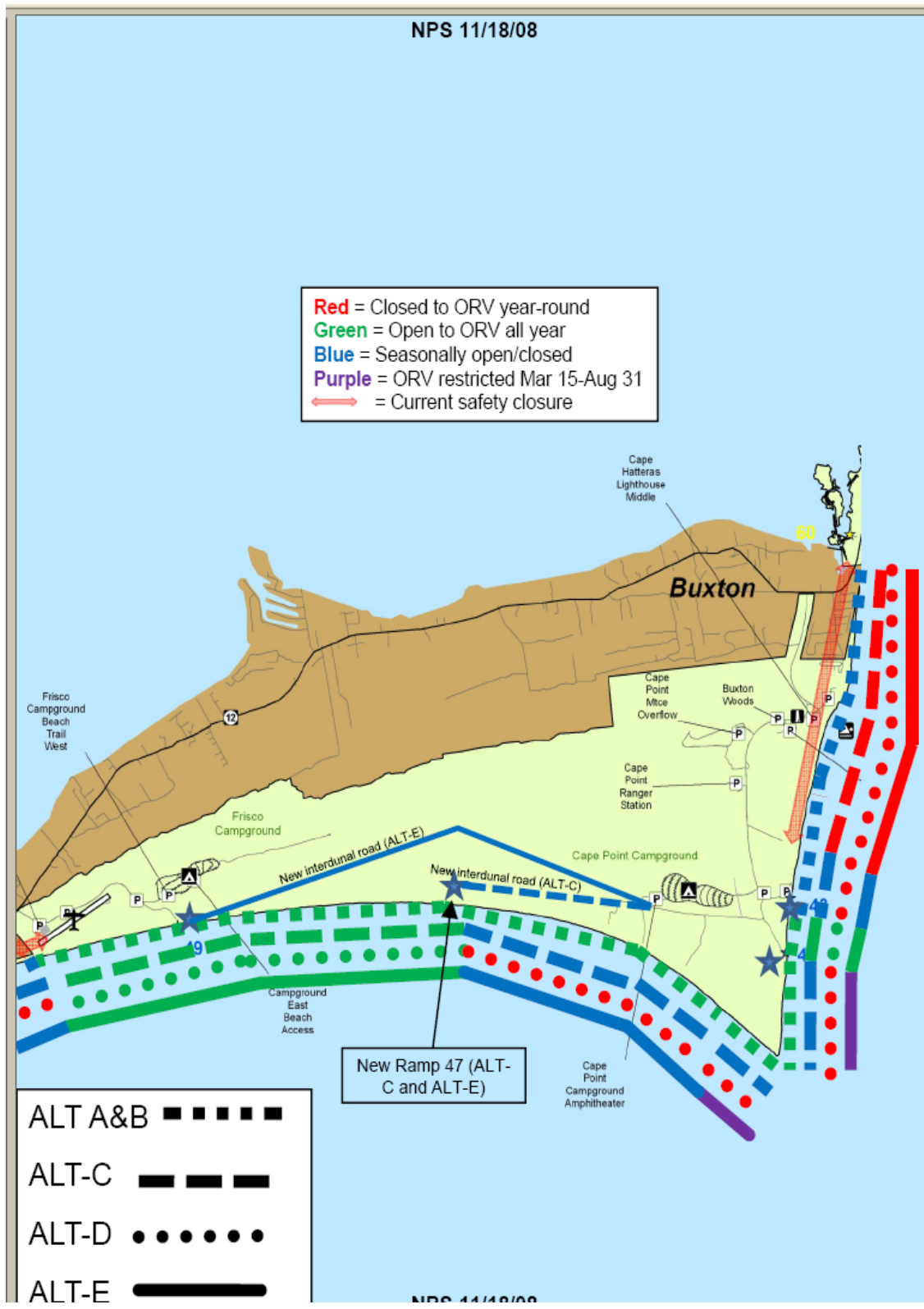


Fig.3-3. Cape Hatteras National Seashore ORV Management Alternative Map 11/08/09



Fig.3-4. Picture of Typical ORV at CAHA

resources for the future while accommodating the needs of today's visiting public. Figure. 3-3. shows four alternatives for ORV Management at CAHA. These alternatives represent several ideas of where the seashore should be open and closed to ORV's during nesting and breeding season as well as areas that should be permanently open and other

areas that should be permanently closed. Also notice on the south side of Buxton Island where all alternatives show an area that should remain open. The NPS is working with the park's stakeholders to create an ORV Rule that protects the parks resources while providing opportunity for visitors to enjoy the seashore.

The use of ORV's on the seashore has been one of the catalysts fueling the conflict between users of this resource for almost thirty years (Draft Interim Management Plan, 1978; The Consensus Building Institute & Fisher Collaborative Services, 2006). In 1952 NPS Director Conrad Wirth published a letter to the people of the Outer Banks. The letter described the interest of the NPS to create a national seashore that would allow American's to experience and enjoy Cape Hatteras through "access" to the beach without destroying the natural resources of the area (Wirth, 1952). This letter by the former NPS director promising access to the local community and park visitors has become a point for ORV advocates to rally around in the conflict over managing ORV access to CAHA. Figure. 3-4 depict the typical style of ORV that visitors use to access the soft sand at CAHA. Over the last forty years ORV's have become more prevalent throughout the United States and has been identified as a cause of disturbance of Plover habitat and the cause of Piping Plover mortality at CAHA.

Today, fishermen, sun bathers, beach walkers, birders, and other visitors have varying perceptions about access to the beach and the multiplicity of ways to experience the seashore. These different segments of the population value this resource and as stakeholders expect to participate in the decisions that regulate how the public will

experience the park. The Cape Hatteras Access Preservation Alliance is an example of one organization that is challenging the extent to which ORV's will be regulated at CAHA (Outer Banks Preservation Association, 2005). The Defenders of Wildlife is another group that has used litigation to pressure the NPS to make a decision on ORV regulations to benefit natural resource conservation for non-human species (Southern Environmental Law Center, 2009).

The Piping Plover

The Piping Plover is a small shoreline nesting bird. The Piping Plover's nesting habitat is found along the east coast of the United States from North Carolina to Texas. The bird is also found in the Northern Great Plains and the Great Lakes (Federal Register, 2006). Its migration pattern is up and down the east coast during the winter months and returns north in the summer. CAHA has been designated as a critical habitat for the wintering population of Piping Plover's by the Fish and Wildlife Service (FWS) (Federal Register, 2006). ORV's have been cited by FWS as a direct threat to Piping Plovers and their habitat. The counties of Dade and Hyde as well as the Cape Hatteras Access Preservation Alliance filed a lawsuit against the FWS for their inclusion of ORV's as a threat to Piping Plover's which would result in limits to use of the vehicles, decrease visitation to the seashore, and cause an undue economic impact on the local community. The court ruled that the Department of Interior had not factored in the economic impact on regulation of ORV use in the two counties. The FWS was forced to implement a public involvement process based on NEPA prior to designating the shoreline in North Carolina as critical habitat for the birds. The economic impact of restrictions of ORV use

within this habitat was identified as lacking in the original designation by the FWS (Federal Register, 2006).

NPS resource managers monitor the beach daily. Beach driving has been connected with the destruction of the birds nesting areas, disturbance to birds, and has

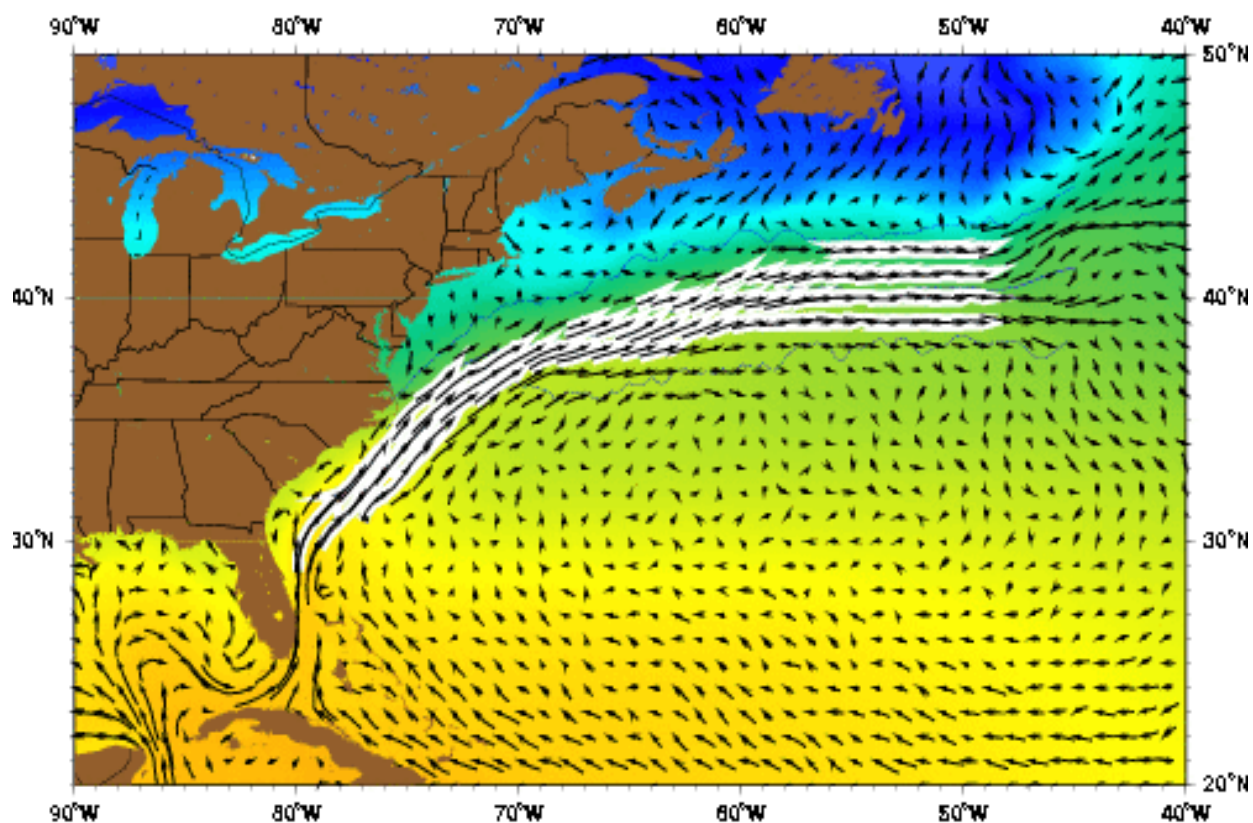


Fig.3-5. Depiction of The Gulf Stream and Labrador Currents meeting at CAHA

caused the death of Piping Plovers, and other water birds. Another factor included in the argument to regulate ORV's is the threat to the safety of park visitors and community members who may become stranded or injured while driving their vehicles through areas of eroded and narrow beaches. The threat to vehicular accidents involving recreating visitors has also been identified by law enforcement rangers (CAHA Talking Points, 2003). There has been evidence of decreasing bird populations to a variety of causes other than ORV use including predators, beach walkers, pollution, road kill, climate change, and other causes. The conflict involves multiple parties that straddle the issue of access versus control of access to CAHA natural resources. ORV users are threatened by the potential for permanent closures of portions of CAHA shoreline to their use. ORV's are used by visitors to navigate by four wheel drive through the deep sand to choice fishing and recreation spots at CAHA.

Figure. 3-5 shows how the Gulf Stream and continental shelf are closer to the shore in Cape Hatteras North Carolina than anywhere else in the Americas and that results in world renowned fishing. Surf casting into deep oceanic water allows anglers to catch a diversity of fish including blue marlin, blue fin tuna, cobia, red drum, striped bass, shark and others (Gyory, Mariano, and Ryan 2008). This place is at the least extremely unique for its attraction of all of type's wildlife. CAHA is a destination with sun, sea, and sand that provide habitat for a diversity of human and non human organism. Tourism at CAHA is a central economic generator for many people on the island. Fishing draws millions of visitors a year who spend millions of dollars on bait, tackle, food, hotels, rental spaces, souvenirs, entertainment, and taxes. And the seashore itself is the

destination for several threatened, endangered and healthy species to live, multiply, and return in later generations. This research evaluates Cape Hatteras' efforts to involve multiple stakeholders in the Negotiated Rulemaking Process to create an ORV Management Rule for CAHA. The research provides suggestions that could improve the NPS efforts to provide meaningful public participation in the decision making process.

Stakeholder Participating in CAHA Negotiated Rulemaking Process

Stakeholders include NPS staff, environmentalists, community groups, park visitors, and ORV beach access groups. A more in depth description of the NRAC can be found in the appendix. The research participants are the twenty-seven members of the Negotiated Rulemaking Advisory Committee (NRAC) formed to participate as stakeholder groups on the Negotiated Rulemaking Advisory Board. The stakeholders were formed by an open publicly involved process. The Negotiated Rulemaking facilitators generated a list of potential categories of stakeholders to be represented on the NRAC with the assistance of the NPS, concerned community groups, and national stakeholder groups. The facilitators then sought feedback on the list by the NPS and the general public. They then identified the number of representatives for the stakeholder groups and solicited feedback by the public to establish a balance among groups represented on the NRAC. The facilitators then requested names of proposed representatives and alternates by an additional public process. They issued a draft list of members and alternates on the federal registry. The facilitators received and analyzed extensive public comment on the list of stakeholder to participate in the Negotiated Rulemaking Process. The NPS then reviewed the list and forwarded the list to the

Department of Interior. The Notice of Intent to Establish a Negotiated Rulemaking Committee was published in the Federal Register. After the 30 day public comment period and analysis of the public's input the NPS decided to proceed with additional steps under the Federal Advisory Committee Act which included a vetting process by the White House to create the actual committee and to begin the Negotiated Rulemaking Process (The Consensus Building Institute & Fisher Collaborative Services, 2006).

NRAC Members Interviewed

Each stakeholder group had different motivations and expectations of the outcomes of this Negotiated Rulemaking Process. I interviewed twenty-one NRAC members during the first round of interviews between June 17 - 23, 2008 about their perceptions of the park, the park's management, the Negotiated Rulemaking Process, the natural resources under contention, and their perceptions regarding management of those resources. The four groups that did not participate in the first round of interviews were Dare County, United Four Wheel Drive Association, Watersports Industry Association, Inc, and Hatteras Village Civic Association. These NRAC members were either unavailable or unwilling to participate in this research. The one member that was unwilling to participate did not discuss why they would not participate. They did request more information about my study which I provided and this member still would not agree to participate in an interview.

During the second round of interviews I interviewed nineteen of the NRAC members February 26 – 28, 2009 on their perceptions of the park, the park's

management, the Negotiated Rulemaking Process, the natural resources under contention, and their perceptions regarding management of those resources. The goal of the second round of interviews was to collect data to compare to the first round of interviews and identify changes in NRAC members perceptions based on their participation in the Negotiated Rulemaking Process. The seven members that did not participate in the second round of interviews were Dare County, United Four Wheel Drive Association, Coalition of NPS Retirees, American Sport Fishing Alliance, North Carolina Beach Buggy Association, Hatteras Village Civic Association, and the Natural Resources Defense Council. One of members would not participate because they did not have enough information about my research to feel comfortable participating. The other members who did not participate in the second round of interviews did not have time at the conclusion of the last meeting to talk with me about their experience in the NRAC. Many of them were departing for flights off of the island.

The Interview Format

Interviews with decision authorities and NRAC members provided the data to analyze how the Negotiated Rulemaking Process affected participant perceptions of the decision making process and management of natural resources at CAHA. Key informants were chosen as the sample because of their unique experience as participants in the Negotiated Rulemaking Process (Cresswell, 1998; Gall, Gall & Borg, 2007). Structured interview was used to explore the participant's perceptions of Negotiated Rulemaking through the grammars of TOV. The researcher gained a baseline of the presence of the

grammars of TOV during the first round of interviews with which to compare to the perceptions of NRAC during the second round of interviews. Each round of structured interviews focused on the three elements of TOV in relation to CAHA's Negotiated Rulemaking Process.

The Negotiated Rulemaking Process Facilitator

Through the support and leadership of the U.S. Institute for Environmental Conflict Resolution, the Consensus Building Institute (CBI) was chosen as the independent impartial third party to facilitate the Negotiated Rulemaking Process at CAHA. CBI conducted a consensus based rulemaking assessment of the 55 stakeholders proposed to participate in the Negotiated Rulemaking Process. The assessment "identified and interviewed affected stakeholders to assess their willingness to constructively participate on a committee". The facilitator also assessed "whether constructive negotiations would or would not be possible". (Cape Hatteras National Seashore ORV Planning Update Feb 22, 2005, pg 1).

CBI was founded in 1993 by Lawrence Susskind a scholar and expert in conflict management (CBI, 2000). The mission of the institute is to "... improve the way leaders, advocates, experts and communities make public and organizational decisions. We use innovative strategies to engage diverse stakeholders, identify shared goals, manage conflicting interests, achieve joint gains, and build productive working relationships. We work with government agencies, community groups, businesses, advocacy organizations,

researchers and educators.” (CBI, 2007). CBI was the facilitator chosen to consult on the Fire Island National Seashore Off Road Vehicle Driving Negotiated Rulemaking.

Research Purpose

The purpose of this research is to evaluate the public involvement approach deployed by CAHA as a deliberative democratic process. The second broad purpose is to suggest improvements to the National Park Service’s public involvement decision making process.

Research Purpose I: To better understand if the grammars of TOV exist in this Negotiated Rulemaking Process

Research Purpose II. To investigate the relationship between the grammars of TOV; access, standing, and influence.

Research Purpose III: To understand how the grammars of TOV contribute the Negotiated Rulemaking Process

Research Purpose IV: To assess how the Negotiated Rulemaking Process influences participant’s attitudes towards park management and park resources.

The efforts the NPS is exerting to create a regulation through public involvement is admirable and in step with efforts by like agencies to work with communities towards sustainable development (Walker, Senecah, & Daniels, 2006). The outcome of this

research will add to our understanding of how the grammars of Senecah's (2004) TOV align with a real world decision making process. Management of ORV's through the creation of an ORV Management Rule at CAHA is a highly contentious issue with multiple parties involved. The outcome of this process has the potential to create a

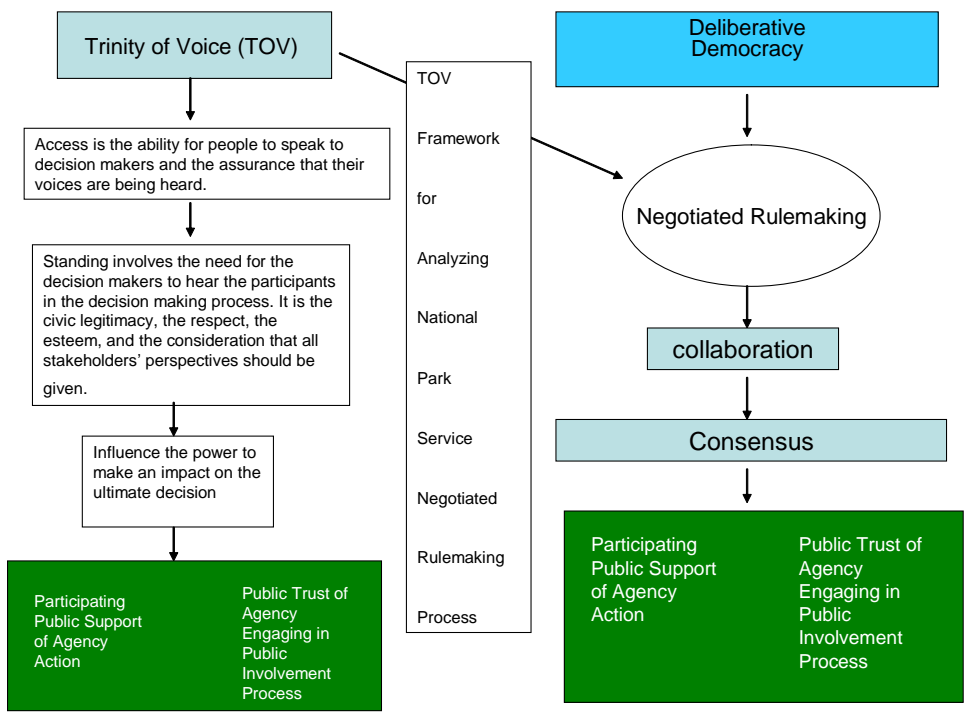


Fig.3-6. Framework for Analysis of Negotiated Rulemaking

sustainable park visitor experience while protecting the park's natural resources.

Analytical Framework of Deliberative Democracy through Negotiated Rulemaking

Figure.3-6. provides a visual representation of the three grammars of TOV used through this case study to analyze the Negotiated Rulemaking. The effort by the National Park Service to involve the public through Negotiated Rulemaking has been designed to achieve the outcomes of a deliberative democratic process depicted in figure. 3-7 to the right. The potential outcomes of deliberative democracy are increased legitimacy of the agency, better outcomes through public participation, preference formation by the public involved, and transformation of all participants through shared ideas between agency personnel and the public. Negotiated Rulemaking was the process chosen by the NPS to create the ORV Management Rule at CAHA. TOV is the theoretical tool used by this researcher to assess the Negotiated Rulemaking Process employed by the NPS as a deliberative democratic process. Collaboration is the means by which the NRAC will achieve consensus for ORV Management Rule at CAHA. Consensus has been defined as unanimity as agreed upon by the NRAC members during the Cape Hatteras Negotiated Rulemaking Advisory Committee and adopted by the Committee on January 4, 2008 (The Consensus Building Institute & Fisher Collaborative Services, 2006). This research assessed this process for its fulfillment of the grammars of the TOV through observation of the Negotiated Rulemaking Process and interviews of participants of the process.

Trinity of Voice a Public Involvement Analytical Framework

This research explores three areas; the first is the public involvement process of decision making Negotiated Rulemaking, the second is the effects of the process on the

participating stakeholder's attitudes towards the park management, and the third are the participant's attitudes towards the parks resources as influenced by the Negotiated Rulemaking Process. The theoretical framework of TOV is used to evaluate the Negotiated Rulemaking Process. This research investigates how one park, CAHA, provides an opportunity for the public to participate in democracy through Negotiated Rulemaking.

TOV is an analytical framework developed to evaluate decision making processes. The concept identifies the importance of three simple grammars as benchmarks in the public participation process. The presence of these grammars will increase sustainability of the decisions made through community involvement towards the production of good environmental decisions, increased capacity for civic engagement, and improved community cohesion through open communication and better relationships between all of those involved in the process (Senecah, 2004).

The first six questions of the CAHA stakeholder interview elicited information about the participant's familiarity with CAHA, their residence at CAHA, and their personal connections to CAHA. These questions also provide information on the participant's motivations to become active in this process and provided a glimpse of the community, the groups, and the organizations represented.

Interviewee's Background at Cape Hatteras National Seashore

- 1) Do you live in Cape Hatteras? (If no got to 3)
- 2) How long have you lived here and why did you choose Cape Hatteras?
- 3) If you do not live nearby how familiar are you with Cape Hatteras?
- 4) What about this place has compelled you to participate in this decision making process?
- 5) What stakeholder group do you represent?
- 6) What is your relationship to the Cape Hatteras National Seashore?

The next five questions are directed towards learning the participants attitudes towards the parks resources, park management, and the decision making process.

Interviewee's Perceptions of CAHA and the Negotiated Rulemaking Process

- 7) How do you describe your perception of the natural resources of Cape Hatteras National Seashore? What meaning do the parks natural resources have for you?
- 8) What is your perception of the job the National Park Service is doing managing this parks resource?

9) What is your perception of the Negotiated Rulemaking Process, consensus building and the collaborative process?

10) Can you talk about your perception of the Negotiated Rulemaking meetings over all?

Throughout the interviews I focused the discussion on the Negotiated Rulemaking Process and away from the issue of regulating ORV's and the bitterness that had developed between opposing agendas in the process. As a researcher I felt it was important to not fuel animosity towards groups in the process as well as staying unbiased and objective in my research approach. ORV management at CAHA is a very sensitive issue and I did not want to affect the process through probing Negotiated Rulemaking participants about their positions or interests in the Negotiated Rulemaking Process. Yet each interviewee made their way back to the issues and even the individual they felt angry or opposed to in the process. Throughout this dissertation the participant's names are kept confidential and there is an effort to disassociate any personal remarks or aspersions to any participants in the research.

The next five questions use the specific TOV grammars of access. Senecah (2004) described the presence of access as “an attitude of collaboration, convenient times, convenient places, readily available information and education, diverse opportunities to access information and education, technical assistance to gain a basic grasp of the issues and choices, adequate and widely disseminated notice, early public involvement, and ongoing opportunities for involvement.” I added question twelve regarding who was

involved in the process to better understand if participants perceived the process as legitimate and involving all stakeholders of the CAHA.

Committee Interview Questions Based on TOV Access

- 11) Are they organized at convenient times held at convenient places?
- 12) Do you think the groups participating in the Negotiated Rulemaking are a representative of the stakeholders affected by the rules that will be formed through this process? If not who is not represented and why?
- 13) How would you describe the information being shared by committee members and the National Park Service on the issues of ORV Management and resource protection? Is the information meaningful to the process?
- 14) Have you learned new information about Cape Hatteras National Seashore through the Negotiated Rulemaking Process? If so can you share an example?
- 15) Do you think others are learning from you?

Standing is closely related to access. Standing involves the need for the decision makers to hear the participants in the decision making process. Within this next set of questions are TOV's set of grammars representing standing as described by Senecah (2004, p. 24);

“opportunities for dialogue and deliberation; active listening; courtesy, or an absence of discounting verbal and nonverbal behavior; early and

ongoing voice; clear parameters of expectations for authority of participation (e.g., how outcomes of participation will be accorded standing in the decision making process); clear parameters of investment (e.g. how long will a task force be active?); collaborative room arrangements (e.g. attention to non intimidating proxemics); reflection of genuine empathy for the concerns of other perspectives, dialogue , debate, and feedback.”

Senecah (2004, p. 24) goes on to describe standing as“... the civic legitimacy, the respect, the esteem, and the consideration that all stakeholders’ perspectives should be given. Access and standing are “mutually dependent of each other to achieve influence.” Access opens the doors while standing emerges from the deliberation which can be an educative process for all participants in deliberation. Through this research I was looking for standing as the respect afforded by the NPS decision maker towards participants to their ideas needs and suggestions.

Committee Interview Questions Based on TOV Standing

- 16) Is the physical room environment conducive to collaboration (e.g., room arrangement, participation format, ground rules)?
- 17) Are there opportunities for dialogue and deliberation between the rulemaking committee participants and the park’s staff?

- 18) Are members of the rulemaking committee and park management listening to each other and making progress through the collaborative process?
- 19) Has the designated federal official (DFO) clearly defined how participant input will be considered in the decision making process?
- 20) How would you describe the group's attitudes towards collaboration in the CAHA Negotiated Rulemaking Process?

Committee Interview Questions Based on TOV Influence

Influence results from access and standing. Influence is the power of the public participant to make an impact on the ultimate decision. Power is important to achieving influence. The participant can claim power, but it also must be given by the ultimate decision maker through providing access and standing. Trust must be assured through the expression of the decision maker stating that the needs, ideas, and suggestions of the participants will influence the final decision. The questions within this section of the interview informs us of the participant's perception of influence through the grammars identified by Senecah (2004, p. 25) "meaningful decision space, transparent process that considers all alternatives, opportunities to meaningfully scope alternative, opportunities to inform the decision criteria, and thoughtful response to stakeholder concerns and ideas".

- 21) Are participants concerned about the perspectives of ALL members of the rulemaking committee and park staff?

- 22) Is there meaningful decision space for collaboration (e.g., does the issue allow a broad enough range of alternate decision opportunities to accommodate the multiple interests involved in this collaboration)?
- 23) Is the decision making process transparent and does it consider all alternatives?
- 24) Are there opportunities to discuss all decision alternatives?
- 25) Are there opportunities for participants to give their input on the decision criteria?
- 26) Do you feel that park managers and meeting facilitators are exhibiting concern about your ideas in regards to the Rulemaking Process?

Observations

Observation of the Negotiated Rulemaking Process provided information about the application of the elements of the TOV. A continuous recording observation strategy was used “to identify important behavior patterns” of participants during the Negotiated Rulemaking meetings (Gall et al. 2007 pg. 269). The manner in which participants, facilitators, and park managers communicate informed this research of the achievement of access, standing, and influence of the TOV. Observation of meetings provided first hand analysis of the interpersonal behaviors that affected how participant’s attitudes were constructed in regards to the Negotiated Rulemaking Process (Daniels and Walker, 2001, Mainemelis, Boyatzis, & Kolb, 2002).

The Research Data Collection Timeline

The Negotiated Rulemaking Process began the winter of 2008. The first interview was conducted in June of 2008. The National Park Service published meeting agendas and schedules on their Planning Environment and Public Comment (PEPC) website. The PEPC site provided me the opportunity to time my data collection based on the actions undertaken during the Negotiated Rulemaking Process. Based on the agendas and meeting minutes the first set of interviews occurred at the point where participants had had a chance to deliberate during the process and report back to the members of the groups they represent.

The second phase of interviews occurred in the March of 2009 after the committee had experienced several attempts at achieving consensus on rulemaking for ORV management at CAHA. Both phases of interviews were 1 hour structured interview sessions seeking to gain information about the achievement of TOV and the effects of the decision making process on the participant's attitudes towards the decision making process, park resources, and park management. The interviews were transcribed using Dragon Naturally Speaking 9. The interviews were analyzed using content analysis to ascertain the relationship between the grammars of TOV (Bernard, 2000). Each individual interview was broken down into thematic units called *context units* (Bernard, 2000). These units informed the research of how the Negotiated Rulemaking Process affected participant's attitudes towards park management and the resources of CAHA.

Observations of the Negotiated Rulemaking Process provided valuable data to better understand the application of TOV. The manner in which participants, facilitators, and park managers communicated at the table informed the research of the achievement of the grammars of TOV; access, standing, and influence. Observation of meetings provided me the opportunity to experience the meeting environment and the communicative nuances between group members, facilitators, park staff, public, and the media during the Negotiated Rulemaking Process. I kept extensive field notes to create a narrative of the meeting proceedings to later apply to the descriptions given by the rulemaking participants through interviews.

Communication between the park and the public was followed through the internet to understand how attitudes are potentially influenced through the information shared by the park and the manner in which it is shared with the public. The park communications office shared vital information on resource management studies and natural resource violations that impacted the deliberations during the Negotiated Rulemaking Process.

Limitations of This Research

The first limitation of this research is the external threat to validity defined as the threat to population validity as defined by Gall et al. (2007). The ability to generalize the finding based on this sample is limited to cases that closely resemble the conflict issue and the sample being studied. The participants of the Negotiated Rulemaking Process at CAHA were chosen because of their specific relationship with the park and its resources.

Another conflict issue would generate a totally different group of stakeholders on a different issue. The ability to replicate the findings of this research would be highly difficult because of the specific demographics of participants, their knowledge of the issue, deliberating skills, and previous relationship with this park and its resources. The facilitator and decision authority would also be very different from any other found participating in a mediated conflict. This research uses TOV as the analytical tool to better understand its validity to evaluating a conflict management scenario at a national park. Reporting the uniqueness of this sample of participants will aid future research when improving evaluations and measurement tools at the stakeholder level of conflict management.

A second threat to external validity is the Hawthorne effect. The participants may alter their behavior because they know that they are being scrutinized by a researcher. To avoid this threat to validity the research informed the participants of the goals of the research without describing the purpose of analyzing their changes in perceptions of park management and park resources as affected by the Negotiated Rulemaking Process. Participants were informed that the research was based on better understanding the Negotiated Rulemaking Process. The extent of information about the study was protected to avoid the Hawthorne effect.

A third threat to external validity is the pretest sensitization where participants learn about the research through the pretest or questionnaire experience and then the participants alter their behavior based on the pre exposure to the research experience thus

confounding the research. Attention was paid to the length of time between interviews to allow the previous interview experience to decay in the minds of NRAC members to avoid pretest sensitization.

The first threat to internal validity identified is the potential for outside occurrences to affect the attitudes of the participants towards the park and its resources. If for instance a toxic spill occurred at the park or additional congressional funding resulted in lowered user fees along the seashore than these outside variables could alter the attitudes of participants towards the park and its resources. These occurrences are described by Gall et al. (2007) as historical internal validity threats. To account for this type of threat I have closely followed what has happening outside of the Negotiated Rulemaking Process and reported those occurrences that have potential for influencing the attitudes of the participant towards the Negotiated Rulemaking Process, park management, and park resources.

Experimental morality is another threat to the internal validity of this research. At the onset of this process there have been several threats by non participants in the Negotiated Rulemaking Process to sue the NPS. A lawsuit could draw participants away from the Negotiated Rulemaking Process resulting in experimental mortality (Gall et al. 2007). This threat to the external validity is impossible to avoid in this research study. The Negotiated Rulemaking Process has support by the stakeholders and NPS to complete the process. The NPS has alternate representatives listed that will replace NRAC members in the case that a primary NRAC member drops out of the process (The

Consensus Building Institute & Fisher Collaborative Services, 2006). The researcher sample would be altered to include the incoming NRAC member in the case that experimenter mortality occurred during this study.

Conclusion

This case study seeks to identify how involved parties are provided access, standing, and influence in the Negotiated Rulemaking Process according to TOV. The findings of this research will inform the NPS of the correlation between their public involvement process and the participating public's attitudes toward the park and its resources. This research will also suggest areas where the Negotiated Rulemaking Process could be improved to increase meaningful stakeholder engagement that results in more effective public participation (Senecah, 2004; Walker, Senecah, and Daniels, 2006). This research also seeks to further refine TOV through an in depth analysis of its components as they relate to deliberative democracy theory.

This research will provide national park managers, federal state and local park agencies, tourism managers and developers, and community involvement researchers with a deeper perspective and hopefully a model for socially legitimate public participation that fulfills the goals of deliberative democracy which empowers the public to get involved in land conservation and stewardship through the achievement of our mutual goals of sustainable development that meets the needs of the current generation without compromising the needs of future generations.

CHAPTER IV

RESULTS

This Chapter examines the findings of interviews conducted with stakeholders participating as members of the Negotiated Rulemaking Advisory Committee (NRAC) in the CAHA Negotiated Rulemaking Process.

Throughout this chapter a referencing code is used to assist identification of the interviewee. Table. 4-1 identifies the stakeholder groups, their referencing code, the organization they represent, and the stakeholder's orientation to ORV Management. Through my observation of the NRAC two orientations toward the issue of managing ORV's at CAHA emerged. One orientation was based on controlling ORV access to natural resources. The second orientation that emerged was maintaining open access to the seashore by the visitors of CAHA. The referencing code consists of the first letters of the stakeholder group's name, i.e. Federal Government: FG. There is a number placed after the abbreviation based on where the stakeholder groups were placed on the federal registry' listing of Negotiated Rulemaking participants. After the number in the referencing code a suffix is used to describe the interviewee's orientation. The con suffix represents the stakeholder groups that support controlling ORV access to the natural resources at CAHA through limiting ORV access to the seashore. The open suffix represents the groups that supported open access to the seashore. An example of the use of the referencing code is CHA2Open; Civic and Homeowner Association, 2nd listed stakeholder group, open access orientation. All groups did not strictly support one or the

Table 4-1. Interviewees References

Stakeholder Group	Referencing Code	Stakeholder's Conflict Orientation
Federal Government	FG1Con	Controlled access to the natural resources at CAHA through limiting the access of ORV's to the seashore
Federal Government	FG2Con	Controlled access to the natural resources at CAHA through limiting the access of ORV's to the seashore
State Government	SG1Open	Open Access to CAHA
State Government	SG2Con	Controlled access to the natural resources at CAHA through limiting the access of ORV's to the seashore
Civic and Homeowner Association	CHA1Open	Open Access to CAHA
Civic and Homeowner Association	CHA2Open	Open Access to CAHA
Civic and Homeowner Association	CHA3Con	Controlled access to the natural resources at CAHA through limiting the access of ORV's to the seashore
Open Access	OA1Open	Open Access to CAHA
Off-Road Vehicle Users	ORV1Open	Open Access to CAHA
Recreational Fishing	RF1Open	Open Access to CAHA

Table 4-1. Continued

Recreational Fishing	RF2Open	Open Access to CAHA
Recreational Fishing	RF3Open	Open Access to CAHA
User Groups	UG1Con	Controlled access to the natural resources at CAHA through limiting the access of ORV's to the seashore
User Groups	UG2Con	Controlled access to the natural resources at CAHA through limiting the access of ORV's to the seashore
User Groups	UG3Open	Open Access to CAHA
Commercial Fishermen	CF1Open	Open Access to CAHA
Tourism, Visitation and Businesses	TVB1Open	Open Access to CAHA
Tourism, Visitation and Businesses	TVB2Open	Open Access to CAHA
Tourism, Visitation and Businesses	TVB3Open	Open Access to CAHA
Environmental & Natural Resource Conservation Advocates	ENC1Con	Controlled access to the natural resources at CAHA through limiting the access of ORV's to the seashore

Table 4-1. Continued

Environmental & Natural Resource Conservation Advocates	ENC2Con	Controlled access to the natural resources at CAHA through limiting the access of ORV's to the seashore
Environmental & Natural Resource Conservation Advocates	ENC3Con	Controlled access to the natural resources at CAHA through limiting the access of ORV's to the seashore
Environmental & Natural Resource Conservation Advocates	ENC4Con	Controlled access to the natural resources at CAHA through limiting the access of ORV's to the seashore

other of these positions. For instance the NPS did not overtly support either orientation during the negotiated rulemaking meeting, but based on the goal of these meetings the park service is mandated to manage ORV access to the seashore in order to conserve park natural resources. By default the NPS can be described as supporting conservation of natural resources at CAHA through limiting ORV access to the seashore. There were two groups that appeared to change their position during the process. Both the Tourism Outer

Banks Visitor Bureau and the Cape Hatteras Recreational Fishing Alliance moved from supporting open access of ORV's to the seashore to control of access to natural resources oriented position at CAHA during the negotiated rulemaking process. At the end of each quote the interviewee's assigned reference code is used to identify the interviewee quoted.

All committee members reported a long relationship with CAHA ranging from 10 to over 40 years of experience at the seashore. Participants reported their enjoyment of park resources in their spare time. I asked participants about their personal attachment to CAHA in the first and second round interviews with NRAC members as depicted in the Table. 4-2.

Table 4-2. NRAC Members Personal Attachment to CAHA

Point in the Process	Do you feel a personal attachment to CAHA?	Number of positive responses
1 st round interview	n=21	19
		90%
2 nd round interview	n=18	16
		89%

NRAC Members Personal Attachment to CAHA

Question: Do you feel a personal attachment to CAHA?

First Round Positive Perceptions Related to Attachment

NRAC members during the first round expressed deep connections to CAHA. All of the participants shared their long relationships with this National Park. They expressed their interest in participating in the Negotiated Rulemaking Process as evidence of their close personal attachment to CAHA.

Yes, and that's why I participated in it. And I would not waste my time. I want a good outcome here. (CHA1Open).

Yes, I love this place. It's great. I've been coming down here for so many years. I hope to continue to. It's one of my favorite places. (ENC4Con).

Absolutely! Yes, yes a definite personal attachment. I mean, I have been coming here forever you know. And I vacation here. You know I have spent time here professionally, spent time here personally. And I definitely feel a connection to the place. (ENC3Con).

Absolutely! I am here because I want to be here. I intend to spend my declining years here. Hopefully to do a lot more fishing and loafing at the beach, but I find that I have to fight for my rights to access that beach right

now. After 39 years in the military, I don't mind fighting for what I think is right. (SG1Open).

During the Negotiated Rulemaking Process NRAC members talked in depth about the length of time they had been coming to the seashore. They talked about the time they spent with their families at the seashore, fishing, hunting, camping and enjoying the resource. Regardless of their orientation all of the participants talked about the great value in having the opportunity to enjoy CAHA.

First Round Negative Perceptions Related to Attachment

I did - I used to but I am beginning to lose it now. I am beginning to wonder why I didn't go to Colorado. Yes I am here and everybody has got to be somewhere, but it is not as pleasant now as it was a couple of years ago when you could go into any business and people were friendly and they didn't have these slashed Plover decals on their bumper and on the backs of their cars and they didn't put it on their restaurants that Plover tastes like chicken, or things of that nature. I refuse to go into any business that has that kind of attitude. And I have cut out a lot of businesses that I use to go into. (UG2Con).

This interviewee's negative perception of CAHA was more based on the community treatment of him, his family and other conservation minded community members of the Outer Banks. The CAHA local community was dominated by open access supporters. During the public comment periods at the Negotiated Rulemaking

Process community members talked about the importance of preserving their way of life as business operators relying on ORV access to the seashore. Many speakers talked about the threat to the local economy by limiting ORV access and closing points and spits on the seashore to visitors. The pressure placed on controlled access minded committee members to stay quiet and compromise with ORV open access advocates was strong and present in the meetings. UG2Con talked in depth about the personal threats and poor treatment he received regarding his position as an advocate of controlled access on the Negotiated Rulemaking Committee.

Second Round Positive Perceptions Related to Attachment

During the second round positive responses remained constant among NRAC members. They stated that the park is their favorite place to visit on vacation and it is their home. Many of the participants continued to have a high regard for and personal attachment to CAHA throughout the Negotiated Rulemaking Process.

Oh yes, we still volunteer to lead the bird walks. I volunteer; I would for anything they call me for. Last year they didn't call me. I think they know if they did, they were subjecting me to a lot of the anger these people are expressing. But yes I stand ready to help again whenever I am needed and any way I can help. (UG2Con).

Yes I love it here. (FG2Con).

Sure I grew up here all my life. This park is part of our community and part of me. Without it I probably wouldn't be here. I definitely have an attachment to it. (TVB1Open).

I live here man. I live here, right in the middle of it. Ha ha ha ha. I can't get home without going through the seashore. Yes. (CHA2Open).

UG2Con expressed his positive perception of CAHA and his willingness to support the park when called on. In the following response he remains negative in his perceptions of his experience in the local community of the Outer Banks. The threats and intimidation by community members have soured his perceptions of the local community as it has with other NRAC members.

Second Round Negative Perceptions Related to Attachment

Negative perceptions provided by NRAC members were few. The negative perceptions focused on the negative treatment conservation group stakeholders received from the local community.

Well I have spent a couple years of my life working on this issue. I would feel more of a personal attachment if I felt I could bring my family here and be welcomed. (ENC1Con).

Did up until this process started and maybe I will again if it dies down, but right now it's sort of difficult to go out and have people yell at you or in my case worse than that. We have been subjected to a lot of criticisms and

overt acts. A lot of people have nails put in their driveway. I have had two automobiles that have been damaged. We have one guy who drives by our house two or three times a week maybe more often blowing his horn as he goes by. It has been going on for maybe a year. So I have got less than an attachment to this community than I did up until a year and a half ago. (UG2Con).

My observations of the negativity that existed in the local community support these participants' perceptions. There were several negative signs on business and bumper stickers sold and placed on vehicles that stated animosity towards protection of Piping Plover through limiting ORV access to the seashore. There were several public participants that were outright threatening to several NRAC members. The atmosphere at CAHA during these meetings had a feeling of hostility towards controlled access oriented NRAC members.

NRAC Member's Perceptions of the Natural Resources of CAHA

The perceptions of NRAC members toward the natural resource values of CAHA were established as a baseline to then compare with perceptions held later in the process. The hope was to identify changes that might be attributed to the Negotiated Rulemaking Process. The goal was to understand how the Negotiated Rulemaking Process affected participant attitudes towards the park. Participants were asked about their perceptions of the natural resources of CAHA. Generally participants reported the value of the beach as a complex dynamic, yet enjoyable resource, rich in fauna and flora.

I think the natural resource consists of more than just birds. I personally think foxes and raccoons are natural resources, the beach, shells, the waves, and the weather. All of it's a natural resource and I think that we should be allowed to enjoy the natural resources. We should not be allowed to harm it or destroy it, but we should all be able to enjoy it. (TVB2Open).

Another view of the parks resources is captured by this NRAC member.

Well the natural resources here consist not only of the wildlife and the avian species which are at the center of contention right now but we have a large mammalian population that is very diverse. A lot of reptiles here that I have seen dwindle elsewhere are still present in the area. We have a couple of resident alligators. I recognize green snakes, grass snakes, hog nose snakes are still available and abundant down here. There are a diversity of lizards. Mammals, the largest mammals we have are deer. We don't have any bear on the island now. A couple of years ago there were a couple on Ocracoke, deer, minx, foxes, raccoon and the range of small mammals all the way down to mice and other things. I would say wildlife is very divers here it is an integral part of the community. For many years duck hunting was very popular activity out here. Still many people do it. We have a very active chapter of ducks unlimited of which I am a member. All and all I would say the community views the wildlife

resources and the natural resources as assets here and they are part of what shaped the unique character of our island and part of what brings people here which feed the tourism industry on which the island is now economically dependent. (SG1Open).

These perceptions of CAHA natural resources resemble the respondent's general perceptions of natural resources at CAHA. The participants place a high value on the diversity of resources and the conservation of those resources for public enjoyment. A second view illustrated in the next set of NRAC member responses support conservation of the natural resources through control of ORV access to Cape Hatteras. This orientation diverged from the theme of enjoyment and focused on the importance of protection of natural resources for conservation void of public enjoyment. These two perspectives provide the context of the contention surrounding the issue of ORV management at CAHA. The two camps that emerged during this process were the controlled access group and the open access group. Throughout the process the contention over how natural resources were preserved were argued over by NRAC members falling into one of these two groups. There were a few NRAC members who were described by members as not closely aligned with one or the other. Those NRAC members moved between both groups. The following quote represents the controlled access group's orientation. Protection of natural resources and the importance of protecting the habitat for animal species defined the controlled access group's philosophy.

Cape Hatteras National Seashore is home to a number of threatened and endangered species of nesting shorebirds, sea turtles, sea beach amaranth a plant on the federal endangered species list, as well as numerous other species that are in decline that use the shoreline for nesting. Least Turns, Cormorants, Blacks Skimmers and American Oyster Catchers and of course a host of other wildlife of fauna and flora that are not on any particular list, but are part of the wildlife heritage of this place.(ENC2Con).

This perception highlights the importance of CAHA as a habitat for the protection of endangered species.

The next perception of park resources was held by participants that placed value on protection of resources while allowing for public enjoyment which is the mission of the NPS. The contentiousness of managing ORV's through limiting access to CAHA is evident in this participant's statement on the importance of resource protection while providing opportunity for public enjoyment of the seashore.

Top billing! I think that the birds that we get here and the turtles that we get here are just as important,[pause] more important really to me than the people who come to the beach to just drive on it. I am all in favor of the tourists who come here and they come here by the thousands especially during the summer. We do have a lot of people who come here during the winter for the fishing and during the winter when they are on the beach

when they have access to the beach there is generally plenty of room for the birds when they are not nesting and not being scared away from chicks and eggs. So there is plenty of room for all and it can be managed. I think it can be managed during the breeding season. It is not sitting well right now. It is something that should have been done thirty years ago. Because that by law is something that should of [sic] been done. It wasn't done. And now when it is being done finally there is so much controversy so much ill will. But for me there has got to be a place for the resource. (UG2Open).

Participants Perceptions of CAHA, Park Management, and the Negotiated
Rulemaking Process

Table 4-3 Participants Perceptions of CAHA, Park Management and the Negotiated Rulemaking Process

Point in the Process	How do stakeholders in your group perceive the National Park Service decision making process at Cape Hatteras National Seashore?	Number of positive responses	What is your perception of the job the National Park Service is doing managing this parks resource?	Number of positive responses	What is your perception of the Negotiated Rulemaking Process?	Number of positive responses
1 st round interview	Did not ask in first round		n=20	11 55%	n=20	13 65%
2 nd round interview	n=17	9 53%	n=17	10 59%	n=18	4 22%

The interviews were analyzed for NRAC member's positive and negative perceptions of park management of natural resources of CAHA and the CAHA Negotiated Rulemaking Process through the three elements of TOV; access, standing and influence. Tables were

created to provide the reader with a snapshot of the participant's perceptions early in the Negotiated Rulemaking Process as compared to the interviews held at the conclusion of the Negotiated Rulemaking Process. The tables show the overall percentages of positive responses to the interview questions by NRAC members. The researcher provided the positive and negative themes that emerged in each of the group interviews followed by select quotes to provide examples of the key findings within the data.

Question: How do stakeholders in your group perceive the National Park Service decision making process at Cape Hatteras National Seashore?

In table 4-3 are the questions I asked in regards to participant's perceptions of CAHA, park management and the negotiated rulemaking process. The first interview question was asked to gain a better understanding of the NRAC member's perceptions of the Negotiated Rulemaking Process. This question was not asked in the opening round of interviews due to the limited time for the NRAC members to report to their stakeholders about the process and to receive feedback. During the first round of interviews in June of 2008 the NRAC had not attempted to reach consensus. They were at this point learning about the process and each other's positions in regards to ORV Management. There was not ample time for NRAC members to have the opportunity to inform stakeholder groups about the process and receive feedback from them on negotiated rulemaking. The question was asked during the second round of interviews to gain an understanding of how NRAC members perceived the process at the conclusion of Negotiated Rulemaking. Several NRAC members stated the importance of having a voice in the decision making process.

Other responses centered on the importance of informing the park service of their constituents' perceptions of the issue of ORV management.

I think we wanted to be a part of the rule that was going to govern how the park was run, rather than being an outsider looking and reacting to it. We wanted to have input. (RF1Open).

...As you know the park has been out of compliance with federal law for off road vehicle use for 30 years. Management has been very poor from a resource management perspective. That is what we have been trying to change. This particular decision making process has not proven to be successful in terms of an agreement that all sides can support. I think it has been useful to bringing out information and crystallizing some of the issues for the park. But I think the park is going to have to go back and do its own rule because the stakeholders were unable to agree on a comprehensive package. (ENC1Con)

The ability to inform the park service of its stakeholder's positions was an important aspect of the Negotiated Rulemaking Process. The ability to achieve consensus on an ORV Management Rule through Negotiated Rulemaking was frustrating but not viewed as a complete waste of time by NRAC members since the NPS was able to learn how the many stakeholders in the process wanted ORV Management to occur at CAHA.

Several NRAC members, specifically local community representatives had a lack of trust in the process. The lack of an ORV management rule had caused park superintendents

in the past to adopt various techniques of ORV management where beach closures disrupted access to the seashore by visitors from the local community's perspective. During the Negotiated Rulemaking meetings public comments stated that tourist planning a visit to the seashore to fish and sunbathe on the beach had cancelled hotel and rental property reservation to CAHA and this had been detrimental to the local economy due to lost rental proceeds, restaurant visits, and purchases in local tackle and gift shops.

Negative Perceptions of NPS Decision Making Process

Negative NRAC member's perceptions of the NPS decision making process are expressed as a lack of trust in the NPS management. "They [commercial fishing community] are very leery of it. We [commercial fishing community] have been told a lot of stuff. Our access is very limited." (CF1Open).

A lot of them [Outer Banks Community] don't feel it was worthwhile, that they got a lot out of it. A lot of them felt it was a waste of time. They were glad I was doing it and not them. (TVB1Open)

Frustration with the Negotiated Rulemaking Process was an overriding theme that emerged through the interviews. It was described as slow and repetitive. Committee members emphasized the importance of being involved in the process, but that their expectation was for a faster more efficient experience.

Question: What is your perception of the job the National Park Service is doing managing this park's resource?

First Round Positive Perceptions Related to NPS Management

During the first round of interviews NRAC members perceived management at CAHA as understaffed and underfunded with an extremely tough mandate of conserving a dynamic resource under a mission that calls for the public to be able to access those natural resources without causing impairment to them.

It's a tough situation there, and I don't think anybody could do it any better. It's so contentious that people have lost their jobs over this issue. It's a very tight line they have to walk so I think they've been doing a pretty darn good job. There are always aspects that some of us could do better, but I think they're doing a good job. (SG2Con).

First Round Negative Perceptions Related to NPS Management

The identification of special interests groups influencing park management was another theme that emerged throughout this research. The consent decree created through the lawsuit by three environmental groups participating in the Negotiated Rulemaking Process against the Park Service was an intervening variable that impacted how NRAC members viewed the entire process. In October 2007 the lawsuit was filed. "In April 2008, a U.S. District Court Judge signed a consent decree to settle the lawsuit. The consent decree was agreed to by the plaintiffs and the NPS; and by Dare and Hyde

Counties and a coalition of local ORV and fishing groups (Cape Hatteras Access Preservation Alliance) which participated in the lawsuit as interveners. The consent decree, which is enforceable by the court, provides for specific species protection mandates and requires the NPS to complete the ORV plan and required special regulation by Dec. 31, 2010 and April 11, 2011 respectively.

New ORV and Species Protection Requirements

To meet the legal requirements of the consent decree, the NPS must:

- increase the frequency and degree of monitoring and protection of certain shorebird and all sea turtle species;
- establish and enforce larger closures around nesting areas;
- mark, monitor and enforce pedestrian and ORV corridors along the shoreline; and
- enforce a prohibition of vehicles on beaches between 10 p.m. and 6 a.m., May 1 - Nov. 15, with a permit system to be established for night driving Sept. 16 – Nov. 15.

Protected species closure violations that disturb or harass wildlife, or vandalizes fencing, nests, or plants are mandated to expand 50 meters for the first violation, 100 meters for the second, and 500 meters or more for the third. These violations may have up to a \$5,000 fine and/or imprisonment up to 6 months.” (Cape Hatteras National Seashore, 2008).

To controlled access members the consent decree was a positive action taken to compel the park service to properly protect endangered species that use the seashore as

habitat. To open access members the consent decree decreased access to the seashore and in their perception degraded the visitor experience.

Over all I would say they are doing a good job. Through doing a good job they are rather handicapped because they can't necessarily do everything they want to do, the way they want to do it, because of other special interest groups. They [plaintiffs in lawsuit against NPS] keeps them on a different path, a different tract than maybe what they want to do. But overall they are doing a good job. (CHA3Con).

CHA3Con grasped the necessity of the park service to achieve the dual mandate of conservation while maintaining visitor access to the seashore for public enjoyment. His statement of the special interests groups keeping the park service on the conservation path refers to his perception of the special interest group's manipulation of the NPS from providing visitor access by closing shoreline through the consent decree. The litigation variable has further complicated the Negotiated Rulemaking Process.

Today, they're understaffed, and they're under a lot of pressure...because it's so fluid on what's open and what's closed. I don't know if you been along that beach, but there are signs everywhere, and it is an all-encompassing job for them. So they are working as hard as they can as fast as they can. I don't think all of the judgment calls that they're making because of the pressure they're under are the best, but there is an excuse for that because they need to make very quick decisions. And they're

working right now under a consent decree. That I don't even think Audubon or Defenders of Wildlife even thought through completely about what a burden it would put on the Park Service and not just the Park Service [but also the local community]. I'm telling you unreasonable expectations from the judge because of his emotion and his animosity towards a few has put us all into a situation that is making it very difficult. It's difficult for consumers. I think the Park Service is doing the best they can do under some very bad circumstances. (TVB1Open).

TVAB1Open confirms the previous respondent's perception of park management of CAHA natural resources by identifying the pressure placed on the Park Service by the lawsuit and the lack of park staff to respond to the requirements of the consent decree. The perception that the NPS was doing the best job they can do with limited resources is recognized in TVAB1Open's response. The lawsuit by three NRAC members groups was perceived as causing more work for the NPS by forcing the park staff to place and maintain the symbolic fencing protecting plover and other nesting birds and turtles. The maintenance of fencing was perceived as taking away from the park staff's time to conduct other NPS conservation and essential park operations. The local community became more angered and active by the consent decree that closed important historically open access areas. The local community's anger was placed on the three environmental groups and other conservation minded groups participating in the Negotiated Rulemaking Process. TVB1Open in the early part of the Negotiated Rulemaking Process expressed a more open access conflict orientation, but as the process continued this participant moved

into a more conservation minded approach. This transformation of position may have occurred due to the deliberations and dialogue that occurred in the Negotiated Rulemaking Process.

Second Round Negative Perceptions Related to NPS Management

NRAC members negative perceptions of CAHA management centered on the lack of an ORV Management Plan. Respondents also focused on the poor quality of management over the decades at the seashore. The negative perceptions of park management of natural resources at CAHA are captured in the following second round of interview responses.

The reason we are at this table in this regulatory negotiation is that they haven't managed this park. It's remiss by several decades in not having an ORV management plan. Every other unit that has ORVs virtually has an ORV management plan or has addressed it effectively in some other planning document. This unit has not. A reason why many of the local ORV interests take such offense at this proposal in the current situation is it was allowed to go unmanaged unregulated causing impacts for easily the last 20 years with no ORV management plan which is a requirement of law. So when the lawsuit was filed by other organizations last year it was an open and shut case. There was no question the judge was going to say the Park Service was operating illegally and too the credit of those organizations who are participating in this regulatory negotiation they

were willing to sign a settlement, consent decree that is far more lenient to ORV use than the judge would have been had the case gone to the judge's decision. Recognizing that there is a legitimate economic interest here, but not one that can be allowed to take precedence over the management preservation of this unit of the National Park System, that's what the law requires. (ENC1Con).

Second Round Positive Perceptions Related to NPS Management

In the second round of interviews of NRAC members perceptions of CAHA management improved slightly. The general theme of positive NRAC member's responses is that a better park management team is in place at CAHA over those in the past. Through the Negotiated Rulemaking Process participants became better acquainted with current park management and learned about the legal mandates upon the NPS to conserve park resources under several pieces of legislation.

This park's resources? I think that they once again are making a sincere effort to meet their legal mandate and balance that against public demand and public perception. But because it is so complex it's difficult to please anybody including me. (TVB2Open)

Overall I think the park is doing a very good job. They are just put in a real tough spot, real tough position. I think they made a big mistake not writing a plan back in the 70s when they were supposed to. I think it would have been a world easier back then. But it's the amount of beach

driving has gotten so much more since then. It's just so much more controversial. (SG2Con)

Second Round Negative Perceptions

The negative perceptions by NRAC members of CAHA's management of the natural resource in the second round of interviews centered on the consent decree and the lack of an ORV management plan. Participants identified the closures under the consent decree as restrictive toward access of visitors to the park. "There wasn't anything wrong with it five years ago and now there is plenty wrong with it. It is too costly, it's too bulky, and it's too restrictive." (CHA1Open).

Their hands were tied. There wasn't much they could do. They couldn't take an initiative to do anything. They are operating under the consent decree. So they basically had their hands tied. (CHA2Open).

Question: What is your perception of the Negotiated Rulemaking Process?

First Round Perceptions of the Negotiated Rulemaking Process

In the first round of positive perceptions from NRAC members focused on the benefit of information sharing with the Park Service. Participants realized the importance of influencing the Park Service's decision making process. The idea of avoiding further litigation by involving a diverse committee of stakeholders in creating an ORV Management Rule was another benefit identified by NRAC members.

The intent is ideal, to reduce litigation. As I understand it, Fish and Wildlife and all these agencies under Interior and their budgets for reacting to lawsuits consumes a greater and greater percentage of their budget every year and to a degree that has led to the backlog in maintenance, because they just have a limited amount of money... Negotiated Rulemaking - it's a good concept in contentions areas. I could see where it would work. I am not sure that it is going to be successful here. I think ultimately here the Park is going to wind up writing it. Maybe they will get some ideas from Negotiated Rulemaking... (RF2Open).

I support these types of collaborative efforts. If they're successful the result has the best chance of being durable. You've got this active involvement of a broad range of interested parties. So the process, I am supportive of in general.... (FG2Con)

I think it could be a real benefit, but this particular one, I don't feel so well about consensus. I think that's [collaboration] great, otherwise if you don't have the sides come together to agree on something and then you're just going to have constant fights and squabbles. So too get the opposite parties together and say okay and agree on something, I think that's a powerful tool. (OA1Open).

...the process itself is an attempt to try to find common ground and I think it's a way of sharing information among various stakeholders and the Park

Service. I am optimistic that at the end of the day we will help the Park Service create a rule that can be supported and defended.... (ENC2Con).

Most of parties involved in this Negotiated Rulemaking Process were fixed in their positions. They found that the ability to inform the NPS of their positions was a benefit to their participation. As an observer I recognized the information shared between participants and the park service as a meaningful way of coercing and informing participants of adversarial positions as a means of educating other NRAC members. I saw participants listening to each other, working together to persuade one another and clarify areas of difference. Throughout the process I witnessed the NPS officials taking notes, and listening to positions stated in the process. The Negotiated Rulemaking Process was an opportunity for participants to speak and be heard; at times the process was imperfect, but as stated by NRAC members a worthy attempt at meaningful public participation.

First Round Negative Perceptions of the Negotiated Rulemaking Process

Negative perceptions in the first round of interviews with NRAC members focused on the frustration felt by members regarding the length of time deliberations took among the twenty-seven members. Members expressed consternation about comments made by opposing sides lacking empirical science to back up their divergent viewpoints and perceptions of the issue of natural resource conservation and ORV management.

... I have minor concerns about the control of things that are said. I think quite often, people make statements that they really have no background or knowledge of. I think the negotiators need to ask them why they said

that or what background and for example, you often hear folks with no biological background making statements about what sea turtles will do or what birds would do or a particular bird would do or where birds are and they really don't have any idea and make false statements. They think they're true. Maybe ask a biologist, is this true or straighten the situation now before it gets blown into a rumor. (SG2Con).

Slow and hard. We're making headway. It feels like each group is going out for itself. They're not willing to negotiate or compromise with another group. (CF1Open).

The process, it's been an interesting process. What's disappointing is we haven't made as much headway as I think as we'd all like to make... (TVB1Open).

These responses are consistent with my observations of the Negotiated Rulemaking Process. The deliberations were difficult with this size of a committee. Each meeting was organized around large tables in the shape of a U with members seated around the tables facing each other. When members wanted to speak they had to raise their name placard and speak when called upon by the meeting facilitator in the order of their raising their placards. The participation format required time for each member to pass around microphones to speak to the entire committee and attending audience.

All members were provided the freedom to say what was on their mind, raise issues, and provide their stakeholder group's position. As SG2Con stated there were

many different positions about the quality or validity of scientific data from members with no back ground in the biological or natural resource management field.

During small group work and in the caucuses there was a greater opportunity for dialogue between NRAC members than in the full committee. After these breaks the decisions made in the small group environment were relayed back to the full committee where discussion would continue on what was shared by the caucuses and small groups. The negative perceptions of the process during the first round were valid and possibly a natural reaction to such a large group of passionate people working to participate in this decision making process.

Second Round Positive Perceptions of the Negotiated Rulemaking Process

Positive perceptions decreased in the second round of interviews. The positive responses focused on the benefit of information exchanged between NRAC members and the NPS.

It's a heck of a process, I'll tell you. We have learned a lot about what the different interest groups views and interests are. We have gotten to know the committee members better. I guess we are finding out today if we have made any real progress. On the down side it has been very long and very labor intensive and no doubt frustrating for all involved. (FG2Con).

Well being a tax payer it has been a heck of a lot of money for what they got out of it. I know they were hoping for consensus and I think the

superintendent got a lot of good ideas. I am not saying he couldn't have gotten them by meeting with each group individually and coming up with a plan on his own and not being a lot better or a lot better for the tax payer. I mean we went through a lot of time and effort and I hope he got enough out of it... (TVB1Open).

But again I do feel the process was worthwhile because it brought a lot of valuable information to the table which will help the park make a more informed plan that will be more representative of how the park is used. Even though we didn't reach a consensus in the Negotiated Rulemaking Process the most valuable part about the process was the download of all of the information from the experts which is going to help the Park Service make an informed decision. The most enjoyable part was meeting all of the new people. I made a lot of new friends in the process and crossed a lot of cultural bridges and made new contacts. I thought that was enjoyable. (UG2Con).

These responses reflect the benefit of learning that occurred among NRAC members. The participants learned from each other about the natural resources of CAHA and how they each value those resources. The sharing of common interests and love for CAHA was a benefit of this process. The park service also benefitted from learning how this committee of stakeholders perceived the park's resources. The outcome of this

process should be a more informed decision maker and group of stakeholders with a better understanding of the common interest.

Second Round Negative Perceptions of the Negotiated Rulemaking Process

There was some increase in the negative perceptions of the Negotiated Rulemaking Process during the second round of interviews with NRAC members. The negative perceptions were generally related to the large size of the committee, the lawsuit filed by the environmental groups against the NPS, and the lack of parameters identified by the NPS within which to form an ORV Management Rule for the seashore. NRAC members were also frustrated by the inability of stakeholders to collaborate and compromise towards consensus on an ORV rule at CAHA. Several participants felt the process had failed because of the inability to reach consensus through Negotiated Rulemaking.

It is not going to work. Not with these 30 stakeholders. 30 people are too many. You can't negotiate anything with 30 people. It might work if you had 30 people and only 2 view points but when you have 30 people with a dozen different viewpoints it's not going to work. (CHA2Open).

It was dead from the beginning. You had way too many people. You had groups that were non-existent that were created only for the process. We all agreed that it was going to be negotiation and not litigation. Three groups immediately filed suit got the upper hand and they have kept the

upper hand all the way through. It was doomed it was dead. This might be the longest beating of a dead horse there ever has been. (OA1Open).

Contentious, frustrating. The process could have been better designed. If the Park Service had put stricter parameters on what was open for discussion. They didn't. It took them nine or ten months to begin to state what they felt the law and biology required and partly because we had never gotten consensus on what the facts are and what are the obligations of the park in terms of managing this place. (ENC1Con).

Within these comments are several areas covered by Senecah (2004). The committee size though difficult to manage did provide the greatest opportunity for the largest number of stakeholders of CAHA to have access to the decision making process as allowed in Negotiated Rulemaking. The facilitators and NPS provided all groups to speak and be heard during the Negotiated Rulemaking Process. The perceived slowness and frustrating nature of public deliberation is perhaps unavoidable. I have attended several public meetings and these experiences have all been time-stakingly long and at times numbing, waiting for lines of public speakers to approach the microphone and speak their piece. The value of public deliberation is hearing participant's positions as they relate to the topic and how their speech informs my ideas about the issue. Within this process there were many comments by NRAC members and the attending public during the public comment period that informed the participants and decision maker.

Another issue raised through the interviews was the lack of parameters, an area of standing described by Senecah (2004). She described parameters as how members input would be afforded standing in the process. The NPS clearly stated that members input would be given equal standing in the final decision. Consensus was described as unanimity. Each member had equal power in the ultimate decision of forming an ORV Management Rule. Senecah (2004) also goes on to describe clear parameters of investment of time. How long the committee will be active. This area was also clearly stated by NPS.

The parameters committee members were describing were the issues of Managing ORV's at CAHA. Members wanted to know what the NPS would allow in regards to adjusting the landscape of seashore to accommodate vehicular access. How habitat would be altered or not altered to protect species. When they would close areas and open them based on scientific based resource management. Through my interviews with CAHA park management I learned that the NPS deliberately did not dictate what it would or would not do in regards to ORV Management at CAHA. The NPS wanted the NRAC members to generate an ORV Management Rule that they all could agree upon without having the NPS control the discussion. The legal mandates of the governing acts were referred to throughout the Negotiated Rulemaking Process and all committee members had access to the law focused on natural resource management at CAHA as they created the ORV Management Rule for CAHA. The decision making parameters were not laid out by the NPS during this Negotiated Rulemaking Process in an attempt to increase the legitimacy

of the process as participant led and the rule being generated by a diverse CAHA stakeholder based committee.

Analysis of Negotiated Rulemaking Using Trinity of Voice

Negotiated Rulemaking was chosen by the NPS at CAHA because of the legislated requirement of the agency to create an ORV Management Rule and the parks goal of involving stakeholders in the decision making process. Negotiated Rulemaking is a collaborative process resulting in consensus by participating stakeholders (Hesse, 1999). The outcome of this process could achieve the park service's goal of improved trust and relevancy within the local community as well as other stakeholders involved in the process. Trinity of Voice has emerged as an analytical tool to evaluate public participation designed to improve social legitimacy through meaningful decision making. The next sections of this chapter present my observations of Negotiated Rulemaking at CAHA and the results of the NRAC member's interviews based on the grammars of TOV access, standing, and influence used as the evaluation tool of this process.

Access

Senecah (2004) described access as the opportunity for the public to speak and be listened to by decision makers. Access involves the opportunity for participants to learn more about the issue, inform, and be heard by decision authorities. The idea of learning is present throughout the grammar of access as presented by Senecah (2004). The following

positive responses shown in table 4-4 by NRAC members illustrate the general themes that emerged from the TOV Grammar of Access during the first round of interviews.

Table 4-4 Summary Results of Participants' Responses to Questions Intended to Measure the Grammar of Access

Point in the Process	Question: Are the meetings organized at convenient times and held at convenient places?	Number of positive responses	Question: How would you describe the information shared by committee members on the issues of ORV Management and resource protection?	Number of positive responses
1 st round	n=21	17 90%	n=20	17 85%
2 nd round	n=18	8 44%	n=18	8 44%

Table 4-4. Continued

Point in the Process	Question: Have you learned new information about Cape Hatteras National Seashore through the Negotiated Rulemaking Process?	Number of positive responses	Question: Do you think others learned from you?	Number of positive responses	Question: Have you learned more about the federal decision making process?	Number of positive responses
1 st round	n=20	13 65%	n=20	18 90%	Did not ask in first round	
2 nd round	n=18	11 61%	n=18	14 78%	n=18	15 83%

The meeting locations were all held within Cape Hatteras National Seashore. During the first round of interviews NRAC members described the meeting locations as appropriate due to the opportunity of members to experience the seashore and to learn from community members about the issues surrounding resource conservation and the impacts on the local community.

Question: Are the meetings organized at convenient times and held at convenient places?

First Round Positive Perceptions Related to Accessing Meetings

They have been. They have attempted by and large to have them in Eastern North Carolina either up in the center near the Park Service headquarters what I refer to as off island. And of course they have had a couple of meetings down here in the Avon area which was convenient here. People have to travel from some distance to attend these meetings, but I haven't seen anybody that viewed it as a particularly onerous task. The Institute for Environmental Conflict Resolution through the Park Service has offered to fund travel for people so they can come on per diem. It is certainly no more onerous than being called for jury duty for those of us who lived down here. (SG1Open).

Yes they are, even though I have to drive five hours to get here. I know why they are held here and not traveling around all over this state. The seashore is here. The issues that we need to deal with are here and I am

fine cause[sic] I like to come up to this part of the state any chance I can get. It's not bad at all. (ENC3Con).

I have to say that an answer to that is probably yes and so far the CBI [Collaborative Based Institute – Negotiated Rulemaking Process facilitators] people can do it. When they get ready to have a meeting, they put up charts, and let everyone who is a member of the committee write the days of the month or week that they are unavailable, the days that they are most available, and then the CBI people will take these charts and determine which dates are the best for the most people. And they've done that just about every time we had a meeting. The places we have been meeting like that Comfort Hotel Motel in South Nags Head the Firehouse in Avon, may have been a couple other places. They generally have satisfactory accommodations. Maybe not as much and as some people would like, but they do the best they can. I think that given what we've had to choose from, we have done very well. (UG2Open).

As a participant observer I found that each meeting room allowed for NRAC members to participate in a comfortable environment. The meeting venues also allowed adequate space for the public to attend. There were always announcements published in the federal register weeks, if not months, in advance about the meeting schedule. The day of the meeting signs were visibly placed on the main thoroughfare for the public to know a meeting was being held.

First Round Negative Perceptions Related to Accessing Meetings

NRAC member's negative responses to meeting locations in the first round of interviews focused on the issue of inconvenience for local and non paid NRAC members who were required to take a week off of work to participate in the process. Another issue was the burden placed on the local community and general public to travel to Nags Head, NC or Avon, NC within the National Seashore. Ocracoke Island is three hours one way from Nags Head including a ferry ride across Hatteras Inlet. This trip required a resident of Ocracoke or Hatteras Island to lose a full day of work to attend a meeting in Nags Head. A final issue was the lack of experience and knowledge of the non local NRAC members about the impacts the local economy suffers from seashore closures. Local NRAC members stressed the importance of exposure of the non local NRAC members to the plight of the people in the Villages within CAHA by holding the meetings within the local community.

I've been very critical of sometimes the time framework mostly of the meeting locations. The last two meetings for example are in Northern Dare County, the middle part of Nags Head. I mean for god's sake right now my beaches are closed. I have political lobbyists sitting on this committee. They don't have a clue what's closed down here. They're not here. They're not able to go into a restaurant and ask a waitress does this hurt, am I impacting you. We are up in Nags Head. So the argument that comes out of local Park Service is that we had two meetings down there back to back

in January and February. Guess what? The harm is today. By the time we get back in September and October the beaches will be back opened and the harm is done. You don't get the sense sitting up in Nags Head that you do down here. I think that it's a crying shame that the meeting sites are there to facilitate the people in Manteo and not those of us who live here. It's harder for the people in Ocracoke to get to Nags Head, than it is for lobbyists in DC to get to Nags Head. (RF1Open).

In January of 2008 the NPS decided to move the Negotiated Rulemaking meetings to Kill Devil Hills, NC. The meetings were held at Wright Brothers Memorial within the park. The meeting prior to this was held in Avon, NC at the local fire house. An unprecedented number of protesters gathered along the road leading to the fire house. They were holding signs stressing the importance of keeping the seashore open to vehicular and pedestrian access. The protests focused on members of the committee who were natural resource conservation representatives. The protesters were described as threatening and uncivil in their behavior by several NRAC members. The targeted members felt intimidated and harassed by the crowd. The Park Service and CBI facilitators made the decision to move the meetings to NPS property where the NRAC members could be better protected from this behavior and protestors could be kept at a comfortable distance from NRAC members. This decision impacted the perceptions of committee members and appeared to be related to the decline in the more positive perceptions of the NRAC members between first and second round interviews.

Second Round Positive Perceptions Related to Accessing Meetings

Positive responses to the meeting locations in the second round of interviews by NRAC members centered on the decline of hostile communication from the public directed towards resource conservation members of the NRAC. The quality of the meeting space was also cited as a benefit to moving to the larger NPS site.

The reason why we shifted to Kill Devil Hills by the park service ...was because of protests by the ORV crowd as you might call them. Lining the street from the highway up to the meeting house carrying signs yelling epithets derisive signals hollering go home, we don't want you, intimidating. I never had any outright threats as a result of that, but there were a lot of people there that were expressing themselves and being intimidating if that is the right word. So moving it from that kind of criticism from those kinds of demonstrations to the National Park Service up there was a big improvement. (UG3Con).

A little bit of a difference. It is a little bit easier for me in terms of where I have to travel, but I didn't mind going to any of the locations either. This is a bigger facility. I think there is a little bit less hostility directed towards our side up here than down in Avon, Buxton so forth and but I haven't noticed any major differences. I am happy to meet anywhere. (ENC1Con).

The change in location to Kill Devil Hills was a larger facility with more comfortable restroom areas and access to the larger community. The decorum of the meeting appeared to be more subdued though there was a disruption that I witnessed by a member of the public towards the NPS and the conservation oriented groups. The change to a NPS managed location was a decision made by the park service to provide a more controlled environment that would increase all group members safety from physical and emotional intimidation.

Second Round Negative Perceptions Related to Accessing Meetings

Negative perceptions of meeting locations during the second round were that the change in meeting locations made travel for local community members of the NRAC and their constituents difficult due the distance from their homes.

Yes by moving it to Kill Devil Hills it prevented a lot of people that would have gone for public comment, not to go. And especially the ones from Ocracoke that would have liked to have attended all of them. To go from Ocracoke Village to the Wright Memorial with the ferry ride is somewhere around a 2 1/2 to 3 hour trip one way. And they are all business owners. To come from Ocracoke to come to Hatteras Village or to here [Buxton, NC] is about 1 hour and 1/2. They could have closed [local business owner] for a half of day and could of made it and come back, but not after that. (RF2Open).

The distance to travel was perceived as onerous by some committee members. I witnessed a consistent attendance by the public at all of the meetings. In the last meeting there was more local community members present than any other meeting I had attended and that was after the location had been changed to Kill Devil Hills. The issue of sacrificing a day of work is valid in regards to local community business members due to the distance from the Outer Banks to the mainland.

Question: How would you describe the information shared by committee members on the issues of ORV Management and resource protection?

First Round Positive Perceptions Related to Shared Information

NRAC member's positive perceptions in the first round of interviews were that the information shared by committee members was present in the process. They were critical of the quality of the information provided by committee members. NRAC members stressed the importance of peer reviewed empirical science to assist the committee in understanding the issue of resource conservation and ORV Management at CAHA.

I think they are all sharing their information. It is not necessarily good information or the right information, but I think it is being shared.
(CHA3Con).

I think that is the process. I think the whole process here is basically an easy way for the Park service to gather data, ideas. So that they can go on and formulate the program that they want. I don't expect us as members of

the Reg Neg [Negotiated Rulemaking] to produce a document that will reach total consensus. But I think we will share a lot of ideas for the Park service, who will ultimately have to make the decision and write the program. (ORV1Open).

The NRAC members recognized the inflexible positions held by committee members early in the process. I witnessed participants argue vehemently about their positions for open access to CAHA based on several of their constituents needs to use their ORV's as a means of getting out on the beach. Deep sand causing an arduous walking experience for park visitors was a reason to support ORV access. Lack of parking locations along the seashore was identified as another need for ORV access. The argument for closing access to beach was based on protection of endangered species. Another argument for limiting ORV access was pedestrian and village safety from vehicular collisions with beach goers. Preserving the wilderness experience was another position held by NRAC members for limiting ORV access. The deliberations among participants were varied and provided good information for the park service to consider as the ultimate decision maker in the Negotiated Rulemaking Process. The NRAC was charged with creating an ORV Management Rule. The park service had the federal authority to make the final decision on ORV Management. The first round responses to the question about information shared by NRAC members revealed that information was being provided by committee members and the NPS was hearing that information, which was one of the goals of the Negotiated Rulemaking Process.

First Round Negative Perceptions Related to Shared Information

The first round negative perceptions of the information shared between committee members during the process were that the committee members were not sharing information between the two caucuses. The controlled access oriented groups were not sharing information with the open access groups. Another charge was that the quality of information was not based on science but was opinion and biased towards one group's interests. There was also the charge that the information that was being shared by the open access group with the public through the caucuses was detrimental to the public perception of participating groups and was threatening and intimidating to NRAC members.

It's shared by the different caucuses, maybe, but that's all. Do the environmental groups talk together? Yes. Do the access groups talk together? Yes. But do they intermingle between each other? Not at all. (RF1Open).

All information is meaningful. I don't think committee members are sharing much information. I mean as much information as we are getting from committee members were getting emotions and personal feelings or observations, but not anything quantifiable. I haven't seen anything quantifiable that I can think about coming from a committee member. Now our presenters certainly this week presented information of scientific

value. You have information being shared at the table and you have information being shared behind the scenes. I believe strongly that the information is being shared by certain committee members behind the scenes is damaging and disruptive, destructive to the process because it is misleading information, information that is being shared from Audubon to OBPA to other organizations. Everybody is on the outside trying to fight this circulating information to the average person where it's uncensored, which is damaging to the process, but no one is stopping that. We keep attempting to have people stop the negatives and stop the threats and that information that is being shared it is damaging to the process. (TVB1Open).

Second Round Positive Perceptions Related to Shared Information

NRAC member's positive perceptions of information sharing between committee members during the second round were based on the amount of information shared within likeminded groups. The presence of information sharing was cited by Senecah (2004) as an important factor. The sharing of information among groups and the Park Service is illustrated by the following NRAC comments.

I think the quality of the information is good. At times it has been a little slow. A little slower than the committee would have liked in terms of getting the information from folks. But overall I think we have the

information we need to make the decision we are being asked to make. (FG2Con).

I think the information, the proposal for information sharing were extensive and I think well intentioned throughout the process and there was much information interchanged throughout the meetings as you are aware from comments over the last meeting there was question to whether or not proposed deadlines were met. Some organizations preferred the information, but did not make it available according to the schedule. I would cite for example the proposed changes or proposed recommendations on management of sea turtles which are supposed to be available to the integration committee. During the last meeting or two over the phone conferences and I don't think they were ever delivered. So information sharing went on. More information was proposed to be shared but some of it was not as well screened as it could have been. There was a lot of reliance of peer reviewed or not peer reviewed data. Of publications which had not been certified or tested for veracity or had not met tests for science and scientific peer review. Also I think a lot of the information had been cherry picked to serve a certain agenda. For example there was a lot of talk about Piping Plover studies some of which emphasized or were widely published that emphasized the susceptibility of these birds to disturbance but there was one piece of information presented which very

clearly demonstrated the great biological adaptability of Plovers, their ability to move to forage, their adaptation to forage literally on shoulders of roads. This was documented but received little or no attention or comment. And in that respect I thought there was a lot of cherry picking of information to serve the specific agenda. I believe also one author a publication was quoted in the last meeting with opinions that he previously published it contradicted some the stances he was taking in this particular point in time.(SG1Open).

Second Round Negative Perceptions Related to Shared Information

During the second round of interviews NRAC member's negative responses to information sharing between committee members increased and focused on the lack of timely information sharing between committee members. There was also lack of trust between interest groups about the validity of the information provided.

Generally good, but also somewhat flawed. For instance today we are coming down to the final hour we have had an integration group from both sides preparing proposals for us and we get here and we find there is no narrative, nobody thought to do that. The maps typically come out late. Today we were waiting for PowerPoint presentation. It isn't ready and won't be ready until noon or so. I think that part, you would have to give them a C- on. (TVB2Open).

It is hard to get information. A lot of the information is available the problem is with the environmental groups saying the best science available, best science available, well hell it didn't show up until September and then we find out that a lot of it is master's thesis and papers that were not peer reviewed. They were not published or accepted in the university and the other people they bring are just basically like people said here before lobbyist for the animals. (OA1Open).

There was a lot of information. I termed the information miss, ill, and un. Misinformed, ill-informed, and uniformed. And these people, I know full well that the science is what they want to deny, but the science exists. They want to pick up and move birds. Dig up turtle nests and do that as a form of management. The management for resources is well established. It has been done by hundreds of people. It has been done by people who have devoted their life to it. Twenty-five years, a generation of study and a lot of the people that are in the negotiation that are stakeholders would not admit to that they denied it. And they questioned the science. I think it was a lot of posturing. I think they full well know what a lot of the requirements are and should be, but they are protecting their interest. And the public did also. Most of the public, very few of the public were on the side of the protection of the resource most of them were dead set against it. In their expressions again I think it was a lot of posturing and a lot of

appealing to minds trying to convince other people. I didn't see that as very useful. (UG3Con).

Question: Have you learned new information about Cape Hatteras National Seashore through the Negotiated Rulemaking Process?

First Round Positive Perceptions Related to Learning Something New

First round positive interview responses by NRAC member's to learning new information about CAHA through the Negotiated Rulemaking Process centered on the new knowledge participants gained about conservation of the park's natural resources. The decision making process was an area that committee members stated as an area of increased knowledge. NRAC members reported learning more about the perceptions of committee members and their interests.

Yes, primarily what I learned was something about the organic legislations and the founding legislation that Cape Hatteras National Seashore is under. (SG2Con).

Absolutely, Absolutely I have learned a lot of the legislative mandate the Park Service operates under. Things about the Endangered Species Act, Migratory Bird Act. I have learned about behaviors of the birds that are in question. And I have learned a lot actually on the ORV side to, about the cultural and historical, perspective and how deeply rooted these traditions are of beach driving and fishing and that how much a part it is of their

lives. I saw a bumper sticker this morning I am sure it is also over the place but it really struck home, it was this guy's bumper sticker it said eat, sleep, fish, you know and too many people here or on that ORV constituency that is what life is all about for them you know. (TVB3Open).

Absolutely, it's been an incredible learning experience for me, I know more about this island now than I thought I'd ever know. I have learned more about wildlife and wildlife preservation, of history, of the geological forces involved. History and it's been a huge lesson in the political system. I always felt I understood the political system very well but this is getting a new insight into portions of how the political systems work and ultimately affect a place like Hatteras Island. So, I've learned that Hatteras Island is the victim of politics and unfortunately it is. I would call the island a victim not the people that live on it. But the island has been a victim. It has been victimized. You don't realize that when you choose to buy a piece of property on the ocean. You think okay, and most people don't get deeply involved in what is really happening. They get involved with how much that property is appreciating or not appreciating. How much I can turn or whether I can keep it long term as an investment. But they don't get involved in what could have been instead of what is and it's just that this island I believe has been victimized. (CHA1Open).

First Round Negative Perceptions Related to Learning Something New

The first round negative responses by NRAC members centered on the participants current depth of knowledge about CAHA and the inability of the process to inform them of anything they did not already know. The following quote represents the primary perceptions reported by stakeholders.

No, I can't say that I've learned a whole lot after you've lived here for 10 or 15 years. Even before this started, and have been coming down here since the middle 60s. I have pretty well informed myself of things that go on here. (UG2Con).

Second Round Negative Perceptions Related to Learning Something New

The NRAC members during the second round of interviews expressed a similar amount of positive perceptions about their increase of knowledge during the Negotiated Rulemaking Process as the first round. Perceptions centered on the knowledge gained about other committee members' perspectives and the information gained about the natural resources of CAHA.

I have been here 11 years now so I certainly have gained more knowledge about the mentality of folks that live on Hatteras Island, the hardships that they face, the struggles. You know I certainly now know where beach ramps are. I have driven with a park employee last year. I drove the entire National Seashore, where we could drive, with all of the signs everywhere

and took pictures and discussed it. I got a bit closer with the Park Service trying to understand how they were trying to balance and manage and handle things. So certainly the process was one that I learned more. I know more today than I knew yesterday. (TVB3Open).

I certainly did about fishing, fishing techniques, where people like to fish, where people like to drive, the passion that people have. Learned a world about how people feel about the economics of the issues. So sure, yes I learned a lot. (SG2Con).

Absolutely, I have learned a lot about wildlife, breeding patterns, habitat, things that I wasn't aware of before. It has been an education. And it brings my own perspective to a little better balance. (TVB2Open).

Second Round Negative Perceptions Related to Learning Something New

Negative perceptions about the learning process in Negotiated Rulemaking stated by NRAC members during the second round of interviews also remained constant. Participants shared their deep familiarity with CAHA and their anger about the changes to access to the seashore. There was also an expression of regret felt by some members on the contention surrounding the establishment of an ORV Management Plan which resulted in polarization of the local community and the threats against the environmental groups which had caused fear and intimidation of those environmental advocates within the community.

Well I have been coming down to Cape Hatteras National Seashore for many years. The first time I saw this place was in the 1950s shortly after it was created and back then there wasn't even a bridge to get here. I can't say that I have learned a lot more about the park. I think that I probably know as much about the park. I recall when you could literally travel the entire thing. It was wide open. Anywhere you were capable of getting you were authorized to go. And I have been to a lot of places in past that I am not allowed to go now. And so I can't say I learned anything more about the park. As far as interpretation of the park, I have been a volunteer interpreter in the lighthouse and I have been a participant in the Take Me Fishing Program [popular volunteer staffed CAHA visitor program] for between 10 and 15 years. I couldn't tell you how many we ran through that program. That was probably the most popular interpretive program in the whole park and in the last two years I have been a volunteer in what is referred to as the beach ambassador trying to educate the visiting public about water safety, in particular to raise their awareness of the hazards placed by rip currents, how to recognize and avoid them. So I probably know a little about the park. I don't profess to know everything, but I can't say I learned anything new. I had no epiphany. (SG1Open).

I haven't learned a great deal beyond what I already knew. I have learned that it carries a lot more anger, rage, and the expression of this rage and

anger by I don't know how many, I hope a very relative few, but in the proceedings for example nails in driveways, threatening and obscene phone calls, other things that are done, throwing people out of their restaurants refusing to serve them. That carries over to the Park Service personnel as well. They even had one at least that I know of and probably had more. They had one of their biotech's and workers who left the job because of threats and intimidations. I have learned that some of these people can be very obnoxious. (UG3Con).

Question: Do you think others learned from you?

The decision making process according to Senecah (2004, p.23) should provide participants opportunities for education to “understand the process in an informed active capacity.” This question was posed to gain a better understanding of how participants were able to be active in the process of educating others of their perspectives in the decision making process, to teach others through a deliberative dialectical process of public involvement.

First Round Positive Perceptions of What Others Learned from You

The first round of interviews of NRAC members showed a high positive response rate to this question. Most participants hoped that they were teaching others. Comments centered on their individual effort to share factual information with committee members.

They also focused on the open opportunities to speak to other committee members about their stakeholder's interests in ORV management and natural resource conservation.

I hope so. I've tried to make sure what I said was factual and contributes in some way to their knowledge, because a lot of these people don't know anything and (*an identified NRAC member*) to have been going on about needing more shoreline here on the sound side. I told him, that's the ocean. I have tried to be factual with everything and if it's not a good plan based on facts and data than it's not worth my time. (OA1Open)

Well I certainly give them every opportunity. If they don't learn from me it because they are shutting their ears, because I tended to be a little outspoken on certain things. Oh, and there is so much that they could learn if they wanted to apply themselves. They could learn about the resource, birds primarily they could learn that these birds require a distance between human activity and their nest site. And this year should prove something. Up and until this year we have had very, very poor, success on birds nesting, and nests surviving, chicks surviving. This year it looks like we have a pretty good record going. Birds still disappear, chicks still disappear. That is predation; at least if you have eggs and if you have chicks you have the opportunity for the bird or the turtle to at least put something on the ground. Something will come out of it. If they don't have an opportunity to nest if they get run of from the nest or if their nests

get destroyed because of human activity then you know you are not going to have any success, and I think we have a very good record this year without all of the human interference. We are showing some success. Birds may get killed in a storm, but they have been doing that for thousands of years. It is the human influence, the destruction of habitat the interference, people running around out there with kites, with dogs, noise, automobiles. In the past I think it has kept the birds from having any success whatsoever. (UG2Con).

First Round Negative Perceptions of What Others Learned from You

The few negative responses by NRAC members to this question focused on the inability of community members to be open minded. The narrow interests represented by many of the groups were identified as an obstacle to information sharing and learning. A final point stated by committee members was the anger and contention that clouded member's ability to listen and absorb points of view that ran counter to their own.

I don't know if they're learning anything from me because you have so many closed minded people on the committee right now, that seriously have tunnel vision right now. They're not looking at the bigger picture. (TVB1Open).

Second Round Positive Perceptions of What Others Learned from You

The second round of interviews of NRAC members showed a decrease of learning among committee members. The dominant positive perceptions among committee members were that each member had the opportunity to speak and be heard. Several comments discussed the professionalism and expertise of each member as a voice of authority in their individual interest groups. A common theme was that NRAC members hoped they were teaching others.

I definitely think so yes. I think there was a lot of learning going on. You know again if you have that many experts at a table and you are each getting time to talk I think there is going to be information shared. My only regret is obviously we didn't reach an agreement. And I also, I hope we had some great out of the box ideas to come to a better net solution for the Park, not based on worldwide guidelines, but based on what will actually work here. And I hope they are allowed to entertain those ideas and potentially put them into play. (UG2Con)

I don't know. I hope so. I hope they learned a little bit. Being one of the only truly local people on the committee. There were three or four of us. There weren't that many in what I am talking about that grew up in the Outer Banks so I hope they learned a little about the local perspective if

nothing else. I am not a bird professional or anything like that so. The local knowledge, I hope they learned some of that. (TVB1Open).

Second Round Negative Perceptions of What Others Learned from You

Negative perceptions of learning among committee members focused on the closed mindedness and entrenchment of interests. The intimidation of NRAC members who held pro-environmental positions was identified as a limitation to open discourse. The indecorous behavior impeded information sharing among committee members and shaped NRAC members perceptions of the ability to teach fellow participants in the Negotiated Rulemaking Process.

I don't think that many of them listened to anything I had to say. And if you notice the last meeting I kept my mouth pretty well shut. That was because I certainly was under duress (TVB3Open).

I doubt that the people learned a great deal from me that they didn't already know. Those that are on the ORV driver's side they know where I stand. I happen to be local so they can take things out on me and a couple of others that live here. Some of the other stakeholders that come from other parts of the state or perhaps out of state they aren't subject to some of the things that we are locally. But I don't think that anybody really learned anything from me that they couldn't already deduce. (UG2Con)

Question: Have you learned more about the federal decision making process?

Positive Perceptions of Knowledge Gained about Federal Process

NRAC members were asked this question in the second round. During the first round of interviews committee members did not have enough experience with the Negotiated Rulemaking Process and exposure to the federal decision making process to present their perspectives on them. Response by NRAC members in the second round to the knowledge gained about the federal decision making process was overwhelmingly positive. The majority of participants appeared to have learned how the process is carried out. They also expressed a deeper appreciation of the mandates placed upon the NPS as public land managers.

I have, I have, and you know a lot of people take a lot for granted. You got to learn to I guess to be more receptive to other people's ideas than just your own. (CF1Open).

Yes I have learned a lot in that regard in the steps that have to be followed to get something done. It's just not to say this is what we are going to do and six months later do it. It is a long drawn out process to go through all of the steps and I realized that after going through it here it has to be done that way, because they try to do it so that its legally defendable.(RF2Open)

Yes. I have learned a lot of that. A lot to go through before anything can get done. A process like these has to appease a lot people. That is for sure.

It is quite overwhelming to somebody like me from doing what I do daily. I don't have a lot of knowledge of the Washington side of things, big government. (TVB1Open)

I have very much so, and even seeing that as a federal employee in a federal agency that does this type of rulemaking. Even if there are different approaches between how the park service is approaching this and how we approach things within the Fish and Wildlife Services. So you get a little peek inside another bureaucracy and it's different, enlightening. (FG2Con)

Negative Perceptions of Knowledge Gained about Federal Process

NRAC members negative perceptions of the federal decision making process centered on the participants previous knowledge of the NEPA process that was carried out by the NPS to create the interim strategy in 2006. There were also committee members who had retired from public service in the federal government and were knowledgeable of the alternative dispute resolution process as part of their work experience.

I don't think that can ever be understood. We have been through NEPA before for the interim species plan and we will be going through it again. (OA1Open).

No. Basically I did very similar work when I worked for the government, so I know pretty much about their decision making process and the Reg Neg [Negotiated Rulemaking] process are a variation on a theme. They keep changing the names of things. When I left 15 years ago it was primarily dispute resolution and that was used to resolve all kinds of problems from arbitration to negotiations, dispute resolution. So this process we just went through is a combination of what was then known as dispute resolution and mediation. You had a facilitator to guide you through the dispute and you had mediators to try to get the two sides to agree to something and these guys were working as both, these guys the facilitators. (CHA2Open).

Standing

Standing is the civic legitimacy afforded to participants through the decision making process by the decision makers. The decision maker respects and listens to the public's perspectives in regards to the issues. NRAC members were asked three questions to better understand how they perceived the presence of the grammars of standing described by Senecah (2004) in the NPS Negotiated Rulemaking Process. Senecah (2004) specifically described standing in meaningful decision making processes as the inclusion of dialogue, deliberation, active listening, and feedback by the decision maker. I asked NRAC members about the presence of these grammars in their experience on the NRAC as shown in table 4-5.

Table 4-5 Summary Results of Participants' Responses to Questions Intended to Measure the Grammar of Standing

Point in the Process	Question: Were there opportunities for dialogue and deliberation between the rulemaking committee participants and the park's staff?	Number of positive responses	Question: Were members of the rulemaking committee and park management listening to each other?	Number of positive responses	Question: How would you describe the feedback given by the NPS to issues you presented through the decision making process?	Number of positive responses
1 st round	n=21	18 86%	n=21	20 95%	n=12	12 100%
2 nd round	n=18	17 94%	n=18	18 100%	n=18	11 61%

Question: Were there opportunities for dialogue and deliberation between the rulemaking committee participants and the park's staff?

First Round Positive Perceptions of Opportunity for Dialog with Park Staff

NRAC members during the first round of interviews identified many opportunities for dialogue and deliberation between committee members and park staff. Participant's general responses discussed the opportunity of NRAC members to engage each other and park staff during the meetings, between breaks and during lunch. Among the positive responses are several critical comments regarding the large group size of thirty participants and the challenges posed by that large of a committee to deliberate. But overall NRAC members reported the openness by the Park Service to discuss issues of natural resource conservation and ORV management as a positive element of the Negotiated Rulemaking Process.

That's pretty good I wish we could do more subcommittee and small group work either at the meetings or in particular between the meetings. I think more can be done to maybe flesh out issues, work on particular aspects of a problem. Exchange as the committee as a whole is pretty good with a big group like that. I think it has worked pretty well with the microphones and you take turns and you raise the signs, the placards and all that. We are getting good input from the Park staff that is here, but I would like to see more subcommittee and small group work. (FG2Con)

There are opportunities. I was in the Superintendent's office last week and he's very available to talk to in the process. I think it's appropriate. Yes, there are opportunities for dialogue. At times I have spoken to people here that I probably wouldn't have spoken to otherwise. It does offer some opportunities. (ORV1Open)

There are opportunities for dialogue between Park staff and the community members. The caucuses are called, for example, you can have four separate caucuses going on. And some time one of those caucuses is the government and the Park Service staff having their own caucus so do I think that we are benefiting right now by the makeup. But I don't think we are benefiting from the park service alternate [the parks chief of resource management]. I think that the National Park Service should be the superintendent and the assistant superintendent as alternate. I think that we should be fielding more staff to the meeting that is the same staff sitting there that could participate in the caucuses. I think those players should swap routinely around the different caucuses. So if we are sitting here in a caucus I'd like to know what the Park Service's thought process is on the different caucuses, I'd like to hear it organized. Not directive but an organized thought process that stays constant. So the resource manager and the superintendent have the same thought process on the same issues. A lot of times they don't. (RF1Open)

During my observation of the Negotiated Rulemaking meetings park staff appeared to be available and accessible to all members of the NRAC. Many members used the opportunity to speak directly to the park superintendent or other staff members. The superintendent had an alternate NRAC member. His chief of resource management served as the NPS alternate on NRAC. From my observations the superintendent was present and took a leadership role in every meeting. The alternate sat aside, took notes and participated in the process when he was asked for clarification on NPS policy or resource management based information at CAHA.

First Round Negative Perceptions of Opportunity for Dialog with Park Staff

Negative responses during the first round about opportunities for dialogue between members of the NRAC and park staff focused on the competition among NRAC members to speak one on one with the park superintendent. The large size of the group and the lack of small group opportunities to work on pieces of the ORV Management rule were also identified as lacking in the Negotiated Rulemaking Process. Finally some group members felt that they were viewed as less important than other members by park staff and were not given the respect they felt they deserved during the Negotiated Rulemaking Process.

No, there's almost been no opportunities and no created opportunities other than the formal presentations. There have been very little opportunity because the breaks are short; the lunches are short to mix and

by the way the Park Service staff is seated apart. They are all back in the corner and so if you really wanted to foster that and send a visual people signal you could've of done something differently. Sit with the group.

When a person is invited to participate to a meeting and either put them at the table or put them behind someone at the table and then require them to not only meet the person, but to write a one paragraph what I have found out about this person and what I learned about them or their organization.

(CHA1Open)

Very little well it depends on who you are. If you are (name of NRAC member) you can talk to all the park staff you want. They call you every day and you can call them every day. But the rest of us. There are certain people, you could take all the people that were involved in the consent decree and just let them write the damn rule because the rest of us just don't count. (TVB2Open)

Not much and it is because of the reps (park staff) they're in particular the ones that are the most involved are inundated you know. They have to give their ear to everybody. I don't know how they get a chance to use the bathroom when we get a break, because someone wants to grab them and talk to them. And so there isn't a lot. I don't fault them for it and its just you know there is only so much time. (TVB3Open)

No not really except on the few field trips and then we do it as a group but no we have not had the opportunity to necessarily to interact with park staff. (ENC4Con)

Second Round Positive Perceptions of Opportunity for Dialog with Park Staff

During the second round of interviews NRAC members reported a slight increase in opportunities for dialogue and deliberation between committee members and park staff. The average response discussed the abundance of opportunities to deliberate between committee members face to face, on the phone, email, and within subcommittee groups working on particular ORV Management issues. NRAC also reported the opportunity to talk with park staff, specifically the park superintendent. Many members have expressed their respect for the park superintendent in his approach to community outreach and skills as a public affairs oriented park manager.

Yes and by that I went to many many subcommittee meetings where there were not only my constituents that I felt were on my side or my fellow committee members, but also the committee members that had different interests. And I felt like we were able to sit across the table from one another and work on items to say we accomplished everything.

(CHA1Open)

Yes there were lots of subcommittees, lots of phone calls, conference calls. There was plenty of dialogue going on. It was very time consuming.

I spent particularly in the last two months I spent most of my days dealing with this; answering requests for information, talking on the phone, conference calls, putting data together, looking up information, talking to my director, talking to my coworkers. It just takes a lot of time. (SG2Con)

Yes there was especially in the subcommittee groups. There were a lot of opportunity for dialogue and discussion with anybody on the committee.

(TVB1Open)

Second Round Negative Perceptions of Opportunity for Dialog with Park Staff

Only one committee member reported a negative perception of opportunities for dialogue and deliberation between NRAC members and park staff. The comment was that there were not consistent opportunities for dialogue between participants in the Negotiated Rulemaking Process.

Question: Were members of the rulemaking committee and park management listening to each other?

First Round Positive Perceptions of Managers Listening to the Committee

NRAC members reported that listening was occurring between committee members and park management, but they distinguished between listening and hearing. The Negotiated Rulemaking Process at CAHA required members to reach consensus and this forced NRAC members to listen to each other as reported by NRAC members in order to formulate counter argument in defense of their positions. NRAC members in the first round generally indicated that committee members were listening. On the other hand

committee members reported that park management was listening intently, taking notes and considering all points of view in order to create a rule that represented the diversity of perspectives of ORV management at CAHA.

Yes I would say they are. That doesn't mean they are acting on what they hear. But I think they are listening. (CHA3Con)

I do think members of the committee are listening better than they were early on. Early on it's my opinion that people came in and some stakeholders just simply staked out a position. And they threw their spear in the middle of the ring and said here is my position and I am not budging it. And to me that is not a way to make a decision collaboratively. And it is not good faith negotiation. (ENC3Con)

I believe park management is committed and invested in this process and I believe park management is listening and I would again for example offer a point at our very last meeting, where you were present that the superintendent is very interested in exploring the options for adaptive management as far as habitat enhancement in an effort to minimize the conflict between his dual mandate of resource protection and making the resources available for use and enjoyment. He is groping for ways to do it and he has bent over backwards to try to implement suggestions.

(SG1Open)

I think they are. I think that they are listening, and I think they are recording a lot of the things that are being said. And the reason I think this is that I suspect I've said it before to other people that I deal with on my side [Controlled Access] - that eventually it's going to come down to the Park Service writing the regulation, and they are going to have to write a regulation, which conforms to the Endangered Species Act and the Migratory Bird Act, the Organic Act, the Presidential Proclamations and maybe a dozen other things, out there. And they're going out to make sure that everything is done legally and is done according to the EIS or to NEPA. And I think the Park Service people probably realize that in the final analysis the elephant that we are talking about is going to be on their shoulders, and they're going to have to write it in such a way that it will eventually become a regulation and I think they have to listen to both sides. And they are going to make their decisions based on their best estimate of what's being said, take what these people want compared to what must be done legally and put it together. So yes I think the Park service is paying attention to both sides of the argument to put it together. So yes, and hopefully they will make up their minds. I am relying on them to come up with something that even I could vote for. (UG2Con)

These comments identify the presence of listening by the NPS. The issue of whether the park service is going to act on their suggestions will not be known until the

ORV Management Rule emerges from this process. But there were instances reported by NRAC members that the park service did take advice from community members and acted upon it. There are several examples of CAHA management working with the local community to build visitor comfort stations identified as a need by the local constituencies. There are volunteer programs created by the local community that are supported by the NPS. And there is a working relationship with state and federal agencies where these entities advise the CAHA resource managers on natural resource conservation and the NPS takes action based on this advice. In this process participants have stated the NPS is listening, but proof of action resulting from the Negotiated Rulemaking Process has not been demonstrated. We will have to wait until this process concludes to identify what will happen due to the NPS's listening to NRAC members.

First Round Negative Perceptions of Managers Listening to the Committee

NRAC member's negative perceptions of listening among committee members focused on the entrenched nature of positions held by stakeholders in the process. Members preparing arguments to counter the information provided by adversarial NRAC members that challenged their positions was the primary reason given for participants to listen.

You know, I really don't think they are. They really like to hear themselves talk, and after they have talked, said what they have had to say, I don't think they hear any response. I think they said what they had to say. And they believe that that is the way it ought to be. They are not going to

be influenced by the other fellow. Sure, some of them listen and if you can show them that they are dead wrong, or that they are off-base, or that they've misinterpreted something, you might get some response, but all in all, I think that people just don't get through to the other side. (UG2Con)

Second Round Positive Perceptions of Managers Listening to the Committee

During the second round of interviews there was unanimity of NRAC members of the presence of listening between committee members and park staff. The general perception was that committee members were listening but again they were doing so to formulate arguments to rebut and reinforce their individual points of view. NRAC committee members continued to perceive park management as fully engaged and invested in the Negotiated Rulemaking Process through the visible behavior of the park superintendent.

I think so yes. I get a sense that there was, it is not universal. I can't say it applies throughout, but you can definitely tell folks were paying attention when you say something, people repeat it back to you, you hear that, you see it across the table, you see dialogue it does appear to be real dialogue and listening. So yes. (FG2Con)

Yes they were listening. I am not sure they were always hearing but they were listening for the most part everyone was polite, attentive. They let the other people have their speak. But I am not sure they were always hearing.

A lot of time they were obviously thinking about what they were going to say next. (CHA2Open)

Yes, I think they're listening to each other. But they didn't always believe each other. But yes they were listening. (SG2Con)

Question: How would you describe the feedback given by the NPS to issues you presented through the decision making process

First Round Positive Perceptions of Feedback Given by NPS

During the first round NRAC members unanimously reported that park management was providing feedback to their issues. The average response discussed the need for the NPS to achieve social legitimacy in the ORV Management Rule created through the Negotiated Rulemaking Process. NRAC members agreed that the superintendent's ability to listen was beneficial to the process and would help the Park Service to achieve its goals of natural resource conservation.

I think Park management is listening very carefully to the committee. I think there has been listening by the Park Service in the process that has been leading to more collaboration in the Park Service's thought process. (CHA1Open)

Oh yes, yes they are. And they are contemplating. I think they are contemplating changes in some of the things they do based on what they hear during the meetings. (CHA3Con)

I think they are sincerely trying to. I have listened to the superintendent particularly over the last few days and before he would basically signal that he was going to let the process happen and absorb information. I think he has less faith in the process himself now so that he is signaling that he is going to have to take a stronger role in this and recognized ultimately he is going to be the one making these decisions because there isn't going to be consensus and so is signaling that whether it is deliberate you can see he has a certain perspective that he feels he is going to have to end up with it regardless of what people say. (TVB3Open)

Second Round Positive Perceptions of Feedback Given by NPS

In the second round of interviews with NRAC members there was a decrease of positive perceptions of the NPS feedback to committee member's issues regarding the Negotiated Rulemaking Process. Positive feedback centered on the park manager's ability to listen to committee members. He was present at all of the meetings. Participants' reported that the Park Service even made adjustments to how they were currently managing the Park as well as the Negotiated Rulemaking Process based on the NRAC members' feedback.

Pretty good. I think the DFO has been pretty open to the input I have offered. I have heard back from him and other members of the Park

Service to suggestions I have made throughout the process. So they have been pretty open I think. (FG2Con)

I think they listen and within their discretionary authority they would take suggestions and implement them. He in the last year in a half his flexibility has been severely constrained by the presence of the consent decree. (SG1Open)

I think the Park did a good job of some of the issues that I presented or our groups presented. They did a good job of trying to balance them out and not ignoring anybody. (TVB1Open)

Yes I have got all good straight answers to what I was talking about. (CF1Open)

Second Round Negative Perceptions of Feedback Given by NPS

Negative perceptions by NRAC members in the second round of interviews focused on the lack of clarity given by the NPS on the issues presented by committee members. NRAC members also expressed criticism about the lengthy amount of time it took for NPS to respond to the needs for information and turn in reports requested by the committee members.

Some of it was good, but it was a long time coming back. Now we have yet to receive the feedback and I guess you call it the minutes of the

February third. We just got the January ones this week. That is how far behind they were. (RF2Open)

They responded to specific questions I guess for the most part. It was hard to get certain information from them. I can't give you specifics right now. And it seemed like it was always slow coming. By the time they got the information back to you, you were on to something else and whatever that issue was, was on the back burner and it may or may not have come up after that. It wasn't timely. The same for the facilitators. They were always slow. I think the last week we got the final minutes from the November meeting for our approval. (CHA2Open)

Mediocre and I don't know why. I don't think they gave us much back. I think their leadership. And I don't know if the superintendent was made to be that way. Whether he couldn't say anything, I think he tried his best. I felt like the solicitor went around himself to try to not give us information. I felt like they [NPS regional official] totally failed us. And I don't know. They did not give us any material that we needed to go forward. We didn't know which path to follow. (CHA1Open)

Table 4-6 Summary Results of Participants' Perceptions of the TOV Grammars of Influence

Point in the Process	Question: Are participants concerned about the perspectives of ALL members of the rulemaking committee and park staff?	Number of positive responses	Question: Do you feel that park managers and meeting facilitators exhibited concern about your ideas in regards to the Rulemaking Process?	Number of positive responses	Question: Is the decision making process transparent?	Number of positive responses
1 st round	n=21	7 33%	n=21	19 90%	n=19	7 89%
2 nd round	n=17	4 24%	n=18	16 89%	n=18	16 89%

NRAC members complained about how slow requested information was returned to committee members. The facilitators recorded the minutes at each of the meeting and at times it took weeks to get that material back to committee participants or have it placed on the NPS information website. Questions asked by participants of NRAC members also were rarely addressed and answered in full at committee meetings. In this regard there was a lack of professionalism by the NPS and facilitator to the issues raised by committee members.

Influence

Influence as described by Senecah (2004) is the opportunity of decision making participants to affect the ultimate decision. She adds that influence includes the consideration by all members including the decision maker to the ideas and interests of those participating in decision making process. A transparent process that considers all alternative is an important grammar of a meaningful decision making process. Table 4-6 shows the results of NRAC member's responses to the presence of influence in the Negotiated Rulemaking Process.

Question; Are participants concerned about the perspectives of ALL members of the rulemaking committee and park staff?

First Round Perceptions of Participant Concern about Perspectives

Positive perceptions of NRAC members during the first round of interviews discussed the need of all members to listen and understand where all members were

coming from in order to adjust their arguments to support their own interest. The amount of positive responses to concern about member's perspective was very low.

I've heard yeah that; I've heard acknowledgment from all sides of the legitimacy of the interest of the other. (FG2Con)

I think they are pretty much well aware of the perspectives of each other and their concerns are shaped by their own agenda. Their level of concern is shaped by what they perceive as attainable. (SG1)

First Round Negative Perceptions of Participant Concern about Perspectives

The first round interviews of NRAC members revealed a perceived lack of concern shown by many members. The dominant response was that committee members were too entrenched in their position to show concern for other member's perspectives.

No. They may be concerned because they're opposed to them, but I'd say they're not. Many of them don't want to hear what the other side thinks, because they know they're right. (ENC1Con)

No not necessarily I think that kind of goes back to some of the comments I made on being open and considering other members concerns and points of view and I have not felt that some were open to the positions of others on the committee, open to even hearing it and they dismissed it. You know immediately rather than actual listening and trying to understand where

someone might be, how they feel and what their position actually is.

(ENC3Con)

No probably not. It's so acrimonious at this point, because of all that has gone on the Audubon coming out with a Beach Farm article calling the residents down here nothing but a bunch of drunken, redneck, hillbillies. It has gone past; no they don't give a damn. I personally, I want to respect the people I am dealing with. I want them to respect me, and so I do care how I appear to them, how I conduct myself, the words I choose. The vast majority and I don't think the other side cares, thinks about what the other thinks about them either. (OA1Open)

Second Round Positive Perceptions of Participant Concern about Perspectives

The second round of interviews revealed that NRAC member's were even less concerned about others positions and ideas later in the process. The few positive NRAC perceptions centered on the need for everyone to listen to each other to collaborate and work towards achieving consensus. The ultimate outcome of the process was an inability to achieve consensus. The following perceptions represent the positive responses to mutual concern for perspectives among NRAC members.

Yes. Obviously some people have a stronger point of view and will voice that stronger and maybe those people get more attention than people who sit back in the corner and make comments every once in a while, but when it comes to votes everybody's vote counts the same. But yes I think

everybody was concerned about trying to get everybody on board with consensus. You know there is a couple of off shoot groups like the people like the surfing guys. They didn't get in the conversation as much because maybe they didn't have quite as much at stake. They used a lot of the sound side access areas, so they weren't as concerned about getting everywhere. But I think everybody was pretty much concerned about making sure all of the views were heard. (SG2Con)

Sometimes yes and sometimes no. It depends on who you were speaking with. I think there were a lot of people there genuinely interested in negotiating in good faith. And I think there were a lot of people there that never left the line they brought when they came in the first day. (UG2Con)

Absolutely. When you say concerned. I think everybody was concerned. I think there were some stakeholders that were just warm bodies. They didn't participate and some were just absolutely single issue stakeholders. They didn't care. They didn't contribute. And in fact there were several stakeholders that were put on the committee by the Park Service that were never interviewed by the facilitator, did not participate in the selection of the facilitators, didn't participate in any of the early activities to set up the committee and they were put on because the Park Service felt they needed to get as broad a representation of the type of visitors. (RF1Open)

Second Round Negative Perceptions of Participant Concern about Perspectives

Negative NRAC member's perceptions of mutual concern by committee members focused on the issues of entrenched interest and inability to listen to other perspectives. Another challenge to NRAC members ability to share concern for others perspectives in the process was that some committee members represented narrow interests such a closing beaches behind villages and seeking pedestrian areas. Some NRAC members charged that those groups were not able to view the entirety of ORV Management at CAHA.

I think there are a couple of constituencies that are single issue constituencies, so that's all that is on their agenda, so you know from that perspective, you know. I don't think those were as prepared as actually the broader groups here. I am talking specifically about village closures and those who want no driving in front of their homes, but don't care what happens on the rest of the island. (TVB2Open)

I think there was some cross over, there was at least lip service paid to it. I believe particularly in the conservation caucus there was a very clearly defined agenda and their actions demonstrated their literally lack of concern of other groups and that is epitomized in the deliberations reported in the integration group in the last few days. When rather than converging when one group offered compromised positions the other

group demanded more for their agenda, so that the answer is no.

(FG2Con)

Question: Do you feel that Park managers and meeting facilitators exhibited concern about your ideas in regards to the Rulemaking Process?

First Round Positive Perceptions of Participant Concern about Perspectives

In the first round of interviews NRAC members stated that Park management and facilitators exhibited concern about committee members' ideas. The average statement discussed the superintendent's availability to listen to committee members' concerns. They also expressed that the facilitators listened and reacted positively to committee members input on suggestions to enhance the decision making process.

I think park managers are listening attentively to our ideas and again I cite the most recent meeting we were in on the informal discussion on the beach that evening. Park management received several suggestions for habit enhancement which he brought back to the group and just about went so far as saying he was going to do it. I think the facilitators are concerned about the lack of progress we have made, and in my feedback to the facilitators in private I chastised them a bit in the last couple of meetings for their failure to push the group hard enough towards consensus, and to demand when someone put forth a negative idea that they instead be required under the ground rules to come up with a positive suggestion. They have not been very scrupulous in doing that. And I do notice [more effort] this time when they appointed work groups to go over

the summer. They did some very positive things. First they reduced the size of the work groups while trying to retain the balance. The second thing is they gave it a clear cut charge that each work group must produce at least three recommendations back to the group within the guidelines and parameters that were laid down to them. And I also advised them that I thought it would be every desirable to attach a penalty to failure, by example what we would do in the military, if you give someone a job they do not perform, you relieve them and you put someone else in his place and I would think that would be one way to approach it. And I have suggested that to facilitators. I think they are trying to adjust their process, but I don't believe they have been as aggressive in pushing the group as they could have been. (SG1Open)

I think so yes. I think the facilitators have been good at considering our concerns and they listen. They have been available outside of this meeting to discuss concerns. I know a lot of folks have contacted them. I know I have discussed issues that I had, and even talked about it to get their advice from their experience in dealing with things like this. Most of the people in the room have never participated in a committee such as this. So they have been very willing to talk with me anytime I wanted to discuss something. Whether it was about process or whether it was about issue. Or just to pick their brain. You know what can I do as a committee member to help the process. Is there anything I can do? Speak up more, bring these

issues up, and keep my mouth shut you know. Share a little of your wisdom and experience with me. And they have been really good at doing that. (ENC3Con)

First Round Negative Perceptions of Participant Concern about Perspectives

Negative responses by NRAC members during the first round of interviews focused on the lack of attention paid to certain committee members. The equal sharing of information by facilitators and Park management was also cited as lack of concern for all members of the committee.

No, because I've expressed to the facilitator on numerous times about how there is many of us who feel like we're filler and part of it comes from right there, because they keep calling the same people, the same people, the same people. Okay, I don't ever get phone calls, and I am never told what's going on and they tell certain people and certain people don't pass them on to everyone else. (TVB2Open)

No, you talk about my ideas. Some people's yes or some other interest group's but mine no. The facilitators I don't think. I don't think that they need to. They must need to run the meeting in a fair and transparent way and think they're pretty much doing that. With the exception of enforcing some of the ethics stuff that we were supposed to be operating under.

When a participant shouts something out and looks at it as a (committee

member name) don't do that. I don't think that's an appropriate response to something they consider to be inappropriate. (UG1Con)

Second Round Positive Perceptions of Participant Concern about Perspectives

During the second round of interviews NRAC members shared their positive perceptions of facilitators and park management's interests in committee members concerns about the Negotiated Rulemaking Process. They stated that park management and facilitators listened to committee members. The facilitators and park manager encouraged input from committee members on how the process was evolving. Park management listened intently to committee members to better understand their perspectives and preferences for a positive and socially expectable outcome of the Negotiated Rulemaking Process.

Oh yes I think that anytime I had a point whether it was in a committee or outside a committee I did not feel like I was blown off or anything. I have even had the facilitators in my office before some meeting there. We would sit down and they would say, how do you think it's going, what do you think is going to happen. It was two months ago that I said I didn't think it was going to happen. I don't think you are going to get it through. You've got some folks who just won't move. (TVB3Open)

Yes the facilitators did a phenomenal job in controlling and managing and moving us along and pressing us. It was a herculean task to manage this group and they did a phenomenal job, pushed us, pushed us, pushed us,

out of our comfort zone a few times where we then had to retreat back into the comfort zone. Maybe that was their job. I don't know. I have done a lot of participation in a lot of facilitated meetings. I have never participated in one where the committee was pushed as hard as in this one.
(ENR2Con)

Second Round Negative Perceptions of Participant Concern about Perspectives

Negative perceptions discussed in the second round of interviews by NRAC members focused on the lack of guidance by park managers and facilitators in assisting caucuses in creating proposals that met the legal framework of the NPS.

I am not sure how to answer that one. I know that some of the first proposal that we put forward we were told that they weren't legal. And I believe that the facilitators could of done a better job than what they did in controlling the way the meeting went. In the first few meetings if anything got started the access group had to get it started. The rest of them would not come with a proposal at all. And when we made our proposal then all the rest of them would set there and cut it apart and the Park Service says well what you put forward wouldn't be legal anyway. That's the best way I can answer that question. (RF2Open)

I felt that the facilitators toward the end I think were much more attentive particularly when they were concerned about the fact that we weren't making progress. I think part of the failure to get together quicker was due

to their laxity in the fact that they would not test the consensus of the group as often as they should. And when they ran into a dead lock they allowed the group to fall into haggling over trivial details as opposed to compelling those who would have objections to clarify and express clearly their specific objections and to offer solutions or to offer compromises. I think the group would have had a better chance of success if they had been more aggressive in facilitating rather than being so passive. For example, my background is in the military, I am used to having a decision maker who would let one person talk at a time and after he has heard it all makes a decision. This is a much more free-wheeling and looser process designed to facilitate information. It wasn't done as effectively early in the process as it could have been done. (SG1Open)

Question: Is the decision making process transparent?

First Round Positive Perceptions of Process Transparency

During the first round of interviews NRAC members positive perceptions of the transparency of the Negotiated Rulemaking Process focused on the meetings being all open to the public. They also stated that a subcommittee may work behind closed doors, but they gave full reports of their minutes to the full committee which was open to the public.

The meetings are open to the public and I have not seen a public comment period that was not fully utilized in any of the meetings, so I mean the

community and the public appear ready and they not only participate and speak and render their comments and advice to the committee during the allocated public comment period but they stay for the rest of the meeting, you may have noticed. (SG1Open)

Within the committee, I think it's very open, I think the facilitators have done a good job in terms of memorializing what's been done and the people. Everything is done in open meetings we have broken up into some small groups, but all that gets brought back to the committee ultimately. So they are obviously public meetings and the public's allowed to come in and see what's been done, what's been said, so, I don't have any concerns about transparency. (ENC4Con)

First Round Negative Perceptions of Process Transparency

First round negative comments by NRAC members on their perceptions of the lack of transparency in the Negotiated Rulemaking Process centered on the need for committee members to deliberate with likeminded groups outside of public view and the possibility of deals being made during those discussions.

No not really. I mean by design it is not transparent because you have groups caucusing and certainly that is not transparent to the public. You have the caucus days and weeks ahead of the actual meetings are sending information back and forth and developing strategy so that often what happens in the meeting is just something that has been preplanned. You

know the moves have already been discussed and the positions have already been discussed. From that aspect there is not transparency. I don't know that I find that as a criticism as much as it is part of what has to happen because those groups are not going to do it in front of one another. (TVB3Open)

No, there are a lot of behind-the-scenes things that all of us are not part of that's exactly what I am here telling you. (TVB2Open)

Second Round Positive Perceptions of Process Transparency

During the second round of interviews NRAC members indicated that the process was transparent. They discussed the written media coverage of the meetings as well as the last three meetings being video recorded and made available to the local public on the Dare County Government Access Channel as well as on the Dare County website <http://www.co.dare.nc.us/>. NRAC members also talked about the meeting being open to the public with opportunities for public comment during all of the meetings.

I believe it was yes. We had significant public attention focused on the media reported in at least two of three media outlets. The Coastal Times covered it. The Island Free Press covered it in an online publication and of course the Virginia Pilot reported on it. The very enthusiastic public interest at some point drove Superintendent Murray to bring the meetings out of the public forum into a forum where the physical control of the

facility was that of the National Park Service and I think that in some ways made a chilling effect. (SG1Open)

I think yes. It was open to the public. It probably became even more transparent when they decided to video the last three sessions or so. It was fairly well reported in the local paper here in Dare County and to some extent in the Virginian Pilot by the reporters such as Mary Ellen and Kozak the one from the pilot. They did a fair job of reporting, but not in great detail. We covered two days in these meeting. Each time we had a meeting and their newspaper articles would cover it best a half of a page. The people in the public were well informed and the local blog sheets things like the red drum, their website they made sure a lot of the information got out, but it was never, it was biased, it was never balanced. There were no official transcripts published, but the reports were always available. They didn't distribute the official things. I guess it was available for people who wanted to look up on the web, but it wasn't mailed to anybody as far as I know. (UG3Open)

Second Round Negative Perceptions of Process Transparency

Negative comments during the second round by NRAC members pointed to the slow release of information. Members perceived the process as controlled by the Department of Interior and upper Park management in Atlanta or Washington, DC where decisions were being made outside of the Negotiated Rulemaking Process.

Well you know as far as the committee functioning I think so. The Park Service put out its alternative in January. I thought it would have been nice to have that at the beginning to frame what the option would be. Especially with this group, the size of the group. But you know ultimately the Park Service is going to come up with a rule behind closed doors and there will be public comment on it and a full NEPA process. And it will be as transparent as that kind of thing is. (ENC1Con)

The Negotiated Rulemaking Process at Cape Hatteras came to an abrupt end on February 26th 2009. The committee was unable to achieve consensus on an ORV Management Rule for CAHA. The NPS and meeting facilitators asked NRAC members if they wanted to continue Negotiated Rulemaking and all parties agreed that collaboration towards achieving consensus was impossible. The committee did gather important information for the NPS. The deliberation that occurred during the meetings informed the NPS about important areas to consider in creating the ORV Management Rule for the seashore. (Final Report of the CAHA Negotiated Rulemaking Advisory Committee, 2009). The Negotiated Rulemaking Process evaluation through TOV is discussed thoroughly in the next chapter.

CHAPTER V

DISCUSSION AND CONCLUSION

The first purpose of this study was to better understand if, and to what extent, the grammars of TOV existed in this Negotiated Rulemaking Process. The second purpose was to investigate the relationship between the grammars of TOV; access, standing, and influence. The third purpose was to understand how the grammars of TOV contributed to the Negotiated Rulemaking Process. The fourth purpose was to assess how the Negotiated Rulemaking Process influenced participant's attitudes towards park management and park resources.

The Grammars of TOV in this Negotiated Rulemaking Process

The first purpose of locating the grammars of TOV in the Negotiated Rulemaking Process was to better understand if Negotiated Rulemaking at CAHA met this theory's requisite for effective public participation. Senecah (2004, p.20) described public participation as leading to trust through "accessibility, fairness, perceived understandability, empowerment, openness, consistency, dialogue early and often enough to keep stakeholders engaged, protection of minority rights and interest, improved decision making, even the political playing field, even the resource playing field, comprehensive representation, information flow, response, legitimacy, early involvement, dialogue and discussion, adequate time to talk, clarity about how the input will be utilized,[and] conduciveness to collaboration." The lack of trust by the Outer Bank community towards park management was evident through the historical and more

current relationship at CAHA (Blinkely, 2007). One of the goals the NPS had when using the Negotiated Rulemaking Process was to increase trust among the local community participants and the various outside stakeholders who participated in the process (The Consensus Building Institute & Fisher Collaborative Services, 2006). The achievement of improved trust based on a meaningful decision making process will be discussed after the evaluation of the Negotiated Rulemaking based on TOV.

The first purpose of this research was to determine if, and to what extent, the grammars of TOV were present in the Negotiated Rulemaking Process at CAHA. As the study began contention over the issue of ORV Management at CAHA was high. Prior to the Negotiated Rulemaking Process park officials were vocally threatened, physically attacked, park resources were vandalized, community members' property was damaged, community members were threatened by vocal and bodily attack, and endangered species habitats were trespassed on and destroyed. The NPS felt strongly that dialogue with the local community was needed. Community involvement in the decision making process would provide an environment for community members to voice their ideas and needs to the NPS. Through Negotiated Rulemaking the NPS could educate the community about the park's mission to conserve resources while providing opportunities for visitors to enjoy the park in a manner that does not impair those resources (Heese, 1999). The diverse make up of the NRAC presented the opportunity for dialogue and collaboration between groups toward the creation of an ORV Management Rule that all parties could live with (The Consensus Building Institute & Fisher Collaborative Services, 2006). The NPS chose Negotiated Rulemaking to help the agency achieve the goals of deliberative

democracy; legitimacy, better outcomes, preference formation through adopting a wider perspective of an issue, and transformation of the parties involved through working towards consensus on an ORV Management Rule (Beierle and Cayford 2003; Button and Ryfe, 2006; Daniels and Walker 2001; Sabatier et al 2005).

Access

I began the evaluation of Negotiated Rulemaking with the TOV grammar of access. Senecah (2004) described access as the opportunity to speak and be heard, to be educated about the rules of engagement in the decision making process. Important references identified by Senecah (2004) in this grammar are opportunity, potential and safety embedded in a meaningful public involvement process. The process allowed for a large group of stakeholders at CAHA to be involved in the decision making process. The NPS exceeded the maximum number of participants as prescribed by the Negotiated Rulemaking Act by two members. Prior to the process the NPS held three public workshops that educated the public about the Negotiated Rulemaking Process, ORV Management and the legislation that mandated the creation of an ORV Rule. The workshops also presented basic negotiation and deliberation techniques, collaboration, and how multiple parties can work towards consensus (Daniels and Walker, 2001). The material presented by CBI and the NPS mirrored the Fisher and Ury (1991) principled negotiation techniques that emphasize collaboration through identifying common interests rather than negotiating through fixed positions. Fisher and Ury (1991) emphasized the importance of negotiating with four propositions in mind. The four proposition are; separate the people from the problem, focus on interests not positions,

invent options for mutual gain, and finally insist on using objective criteria The participants in these early workshops were members of the NRAC as well as park officials and the general public. Prior to the Negotiated Rulemaking Process the NPS prepared the public to be effective negotiators in the Negotiated Rulemaking Process through these workshops.

The NPS appears to have met the benchmark of the grammar of access through the Negotiated Rulemaking Process at CAHA as characterized by Senecah (2004 p.24) “as an attitude of collaboration, convenient times, convenient places, readily available information and education, diverse opportunities to access information and education, technical assistance to gain a basic grasp of the issues and choices, adequate and widely disseminated notice, early public involvement, and ongoing opportunities for involvement.” International, national, state and local constituents were invited to participate on the NRAC. The composition of the NRAC was a large group of representatives who not only represented the local community but also millions of CAHA stakeholders. Through my investigation of the NPS Planning Environment and Public Comment website I found the schedule of all of the meetings. They were widely advertised in local newspapers, various websites, the federal register, and through emails disseminated by the NPS. The locations of the meetings were held within the park or in very close proximity to the park as described by NRAC members in the first round of interviews. One interviewee described the opportunity for NRAC members to receive reimbursement for their travel to the meetings by the NPS. The meeting summaries provided by CBI described how the public was invited to participate in the process by

written comment at every meeting or during the public comment periods at almost all of the meetings. All of the NRAC meetings provided opportunities for the public to voice their issues to the NPS and members of the NRAC. Through my observation I witnessed NRAC members and the NPS respond to questions asked by the public. During the interviews several participants described the presences of opportunities for NRAC members and the public to talk directly with the park superintendent and his staff during the public meeting and outside of the meetings.

NRAC member reported the presence of information sharing by the park service. The laws and legislation that mandated the park service to create an ORV Management Rule was explained to NRAC members and the public present at the meetings by the NPS and Department of Interior Solicitors. Three scientists presented their data on Piping Plover, Colonial Waterbirds and American Oyster Catchers which are species present at CAHA and relevant to ORV Management. NRAC members and the attending public were encouraged to share their beliefs and observations on ORV Management and natural resource protection in an open deliberative forum in the Negotiated Rulemaking meetings. The process at CAHA was a collaborative learning experience where participants were supported through opportunities to learn from one another, increase their technical knowledge and reflect back to the process areas to collaborate on resolving the issue of ORV Management at CAHA (Daniels and Walker, 2001).

The achievement of the TOV grammar *access* was supported by the interviews of NRAC members. Based on the theoretical work of Dyzek (2000) NRAC members are likely to have increased their capacity to engage in democracy through education about

the NPS gained through the Negotiated Rulemaking Process and the working relationship that was built with park staff. A majority of participants cited that they learned more about CAHA, the NPS, and their fellow community members and other stakeholders of CAHA through the Negotiated Rulemaking Process. The fostering of positive relationships was an outcome that is supported in the literature. Hess (1999 p. 306) identified the EPA's Office of Reinvention experience with Negotiated Rulemaking as "fostering positive relationships between affected parties by putting potentially adversarial parties on a first-name basis." The NRAC members were able to work directly with park managers. Sitting at the table with the park superintendent working out plans to manage ORV's at CAHA created better working relationships than with past park officials.

A limitation of the process involved threats and intimidation by the local community against controlled access oriented NRAC members outside of the NRAC meetings. The result of the intimidation was fear by controlled access positioned interest groups on the NRAC causing them to behave with trepidation to vocally participating in deliberations in the Negotiated Rulemaking Process. A goal of Negotiated Rulemaking is deliberation between adversarial groups to better understand each group's position and to move towards shared interests in formulating a rule through collaboration towards consensus by parties involved (Hesse, 1999). The admonishment against threats and intimidation was present in the ground rules of the Negotiated Rulemaking Committee. Committee members perceived the NPS and facilitators as not enforcing this ground rule. The Park Service did not overtly accuse members of the NRAC with being responsible

for the threats. The NPS and facilitators did not take action against members who were accused of leading the intimidation campaign. The threats against environmental groups did escalate to the point that the Park Service was forced to move the committee meeting from within the local community to the Wright Brothers Memorial under the control of the NPS. This action increased the safety of NRAC members. The move of the meetings had the negative effect of creating a sense of bias towards controlled access oriented groups and a negative impact on the perception of accessibility of the Negotiated Rulemaking Process by local community members.

Another limitation to the fulfillment of the grammar of access was the large size of the Negotiated Rulemaking Committee. The Negotiated Rulemaking Act directs the federal agency to limit the size of the committee to twenty-five, but it can increase the number to allow for balanced representation of all interested parties (Negotiated Rulemaking Act of 1996 §565b). The Negotiated Rulemaking Committee at CAHA was made up of twenty-seven stakeholders. Several committee members charged that stakeholder groups were created at the last minute and did not represent large enough numbers of the community affected by the ORV Management Rule to deserve the extra seats in the process. According to some of the NRAC members these narrowly focused committee members were extremely fixed in their positions and were not amicable to persuasion by other member's arguments. The charge of inflexibility was directed towards each of the members of the NRAC regardless of position. The ability to collaborate towards any meaningful consensus was not possible due to lack of trust and the intransigent positions of NRAC members. These factors resulted in the Negotiated

Rulemaking Process ending without creating any proposal towards an ORV Management Rule. This issue was a bit perplexing since the NPS and CBI held three workshops emphasizing negotiation, collaborative learning techniques and consensus. As a participant in these workshops I perceived them as a benefit to NRAC members and the public in attendance through learning how to work together through the Negotiated Rulemaking Process. Trust and respect among committee members and reaching a consensus based outcome to the Negotiated Process was not achieved. The Park Service and the CBI facilitators were not at fault for this short coming of the Negotiated Rulemaking Process at CAHA. The issue fell upon the ability of the participating stakeholders to work together and to compromise and collaborate towards consensus which they were not willing to do regardless of the actions of the NPS or CBI facilitators.

Standing

The second grammar of standing was achieved by the Negotiated Rulemaking Process at CAHA. Senecah (2004, p. 24) described standing as including “opportunities for dialogue and deliberation; active listening; courtesy, or an absence of discounting verbal and nonverbal behavior; early and ongoing voice; clear parameters of expectation for authority of participation; clear parameters of investment, collaborative room arrangements; reflection of genuine empathy for the concerns of other’s perspectives, dialogue, debate and feedback.” Through my observations and respondent data the Negotiated Rulemaking Process met all of these grammars of standing.

In the interviews NRAC member described meaningful opportunities for dialogue and deliberation. Some participants cited they felt there was too much of an opportunity to talk and at times it slowed the process down too much. Daniels and Walker (2001, p.11) warned against an enthusiasm for collaboration, “grounded in a presumption that it is either quick or easy; in fact, experience shows that it is often neither. Under the best circumstances it taxes our collective ability to communicate competently, to debate constructively, and to explore thoroughly.” During my observations I witnessed members speak in lengthy responses. This was important to the process, to better understand the intent of committee members and to encourage an environment of safe open dialogue. One of the charges against traditional modes of public participation is that they “lack adequate mechanisms and forums for informed dialogue among stakeholders.”(Cox 2006, p. 128).

Through the participant’s discussion the committee was better able to understand why a committee member was opposing a specific decision. At one point a committee member talked at length about his constituents’ ‘God given right’ to access the beach. He closed his presentation by stating the business interests in protecting access to the beach. He talked about how his business community benefited from the many fishermen who spent money in his constituent’s tourism and bait and tackle shops. Within this lengthy dialogue participants were able to learn about the interests that this member was protecting in the Negotiated Rulemaking process. Dialogue takes time and patience, but is essential to learning the perspectives and ultimately learning the interest of participants in public decision making. (Cox, 2006; Daniels and Walker, 2001)

NRAC members reported numerous opportunities to deliberate directly with NPS decision makers in the Negotiated Rulemaking Process. The park superintendent was present at all of the meetings and spoke often to clarify points and share his thoughts about a given issue. NRAC members recognized and reported that the park superintendent and park staff was listening intently to them, taking notes and even empathizing with the groups in regards to their concerns and needs for beach access and protection of the park's natural resources. Through my interviews with the park superintendent he stated that he understood the deep emotions with regards to CAHA and ORV Management. He also understood his legislative mandate to protect resources, but stated he would do so with an eye on protecting the public's opportunity to enjoy the resource without causing those resources harm. NRAC members were impressed with his understanding of the complexity of the issue while having an empathetic approach to decision making. His managerial approach was a valuable asset in the Negotiated Rulemaking Process. This park superintendent was able to demonstrate his ability to listen and take opposing views into consideration through empowering the NRAC with creating an ORV Management Rule. At the top of Arnstien's (1969) Ladder of Citizen Participation is Citizen Power. This Negotiated Rulemaking Process provided NRAC members with the standing necessary move to the highest section of the ladder through influencing the decision of ORV Management. The years of distrust of park managers has begun to be improved from having this superintendent lead the Negotiated Rulemaking Process and CAHA.

The interviews with NRAC members indicated a lack of trust between committee members. Senecah (2004) identified trust as the most important element present in an effective public involvement based decision making process. The lack of trust between committee members was an issue identified by NRAC members that constrained the participant's ability to collaborate and work towards consensus on an ORV Management Rule for CAHA. The lawsuit by three of the environmental stakeholder groups in the Negotiated Rulemaking Process created a perceived imbalance between the NRAC members. The lawsuit led to a consent decree which replaced the CAHA's Interim Strategy created by the Park Service in lieu of an ORV Management Rule. The goal of the Negotiated Rulemaking Process was to create the preferred alternative in the NEPA process that would ultimately become the ORV Management Rule for CAHA. Participants in the process stated that they felt undermined and manipulated by the environmental groups who filed the lawsuit at the beginning of the Negotiated Rulemaking Process. The purpose of Negotiated Rulemaking is to avoid litigation and create rules that citizens have buy-in and will support. The lawsuit circumvented the goals of Negotiated Rulemaking and lessened trust between members of NRAC.

The lawsuit by three of the conservation groups was described by some of the NRAC members as a complicating negative factor which created distance between the open access groups and the controlled access groups. The NPS continued to encourage NRAC members to work together to create an ORV Management Rule that all could live with.

I interviewed the groups that decided to file the lawsuit against the NPS. They stated it was their belief that several of the species of birds and the nesting turtle populations were in decline and required immediate protection that would not occur in a timely manner through the Negotiated Rulemaking Process. These groups felt that litigation was their only option to creating immediate action towards protection of these species. They stated that they felt the Negotiated Rulemaking Process was a worthy endeavor, but litigation was a means to achieve their goals of natural resource protection. Coglianesse's (1997) finding that Negotiated Rulemaking may not be effective at avoiding litigation is largely confirmed by this study. Hesse (1999) also found several reasons that members involved in Negotiated Rulemaking choose litigation. The first is the inability of the process to reach consensus. The second reason is the breach of the agreement by the agency to use the consensus rule generated by the NRAC. Third is the alteration of the rule by the agency after Negotiated Rulemaking. Fourth the plaintiff does not feel that his interests were properly represented in the rule.

In the CAHA Negotiated Rulemaking Process the lawsuit was filed before Negotiated Rulemaking began because the plaintiffs believed the protection of the endangered species at CAHA would not be addressed in time and to the extent they felt necessary through Negotiated Rulemaking. This research confirms the finding of Coglianesse (1997) and Hesse (1999) that Negotiated Rulemaking does not lessen the likelihood for litigation.

The Park Service faced a problem that it could not avoid; all citizens have the right to litigate against the federal government. The options for the Park Service were to

defend their management decision in the judicial process and to seek to create an ORV Management Rule as the Executive Order directed. The Negotiated Rulemaking Process was a good decision for the Park Service as a means to involve the diverse stakeholders local and national to create the ORV Management Rule. The benefits of the process were multifaceted; information sharing, capacity building, and increased trust in Park management as supported by Coglianesi (1997) and Hesse (1999).

A shortcoming by the NPS was the agency's inability to address the administrative needs of the Negotiated Rulemaking Process a component of the grammar of standing. There were many times that the NRAC members requested natural resource management data on bird populations, turtle nesting areas, or visitor access closures that the NPS could not produce in a timely manner. But many participants understood that the NPS is not funded to the level necessary to accommodate the requests and demands placed upon them by NRAC members. Daniels and Walker (2001, p. 11) discussed the importance of citizens involved in collaborative decision making processes to "be responsible and pragmatic in terms of demands they place on agency personnel and the public purse."

During Negotiated Rulemaking, members recognized the NPS was concurrently managing the daily operation of providing opportunities for the many visitors of CAHA to enjoy the national seashore, while conserving natural and cultural resources, defending the agency from litigation, and running the Negotiated Rulemaking Process. The personnel actively participating in the process had an awesome responsibility. Some NRAC members stated that the agency was doing the best job it could do through the

circumstances confronting them. The need for additional funding and staff to better manage park resources and engage the public in the decision making process is a recommendation given by several NRAC members.

The ability of NRAC members to speak in an unthreatening environment during the Negotiated Rulemaking meetings was enforced by the NPS and the meeting facilitators. The NPS encouraged all members to participate and share their ideas regarding ORV Management. The ground rules were created by the NRAC early in the Negotiated Rulemaking Process and during the meeting those ground rules were posted and adhered to by NRAC members. Some NRAC member stated they felt the NPS could have come down harder on participants in regards to the ground rules, but from my observations I did not see any violation of the ground rules identified in the Senecah's (2004) grammar of standing. The NRAC members and the NPS were courteous to each other in the meetings. There was an absence of discounting verbal and nonverbal behavior in all of the meetings I attended. No member's reported any discourteous behavior during the meeting by NRAC members or the general public.

The meetings were held in comfortable meeting rooms where all committee members sat among one another in a large U shaped table. Each member had the opportunity to speak and be heard by all committee members and the general public through the use a professional public announcement system. From time to time the microphones suffered from technical difficulties but the NPS did the best job it could do to make the process an uninhibited deliberation environment.

The NPS provided feedback to NRAC members. They were afforded ample opportunity to ask the NPS questions, state ideas, and raise issues with the NPS about ORV Management. The superintendent and his staff were on hand to respond to direct questions, elaborate on management decisions or add to the conversation with their own suggestions and ideas on creating an ORV Management Rule. I witnessed park managers engage in the discussion and provide feedback to NRAC members consistently through the Negotiated Rulemaking Process. A shortcoming as stated earlier was the production of data, maps, and empirical evidence about natural resource management and the effects of those decisions on the local community and the national seashore. It is my opinion that the NPS must work to be more prepared to respond to the intellectual needs of the public when scientific data is requested to justify NPS decision making. A possible means to achieve this goal is to maintain digital libraries of data that can be easily accessible to all park staff and the public. There should also be GIS capable staff within the park to handle requests for maps and other sorts of graphic data about the NPS. The park managers must be prepared and to prepare their staff to engage the public with consistent messages and factual information about how the agency views the issue and will implement a plan designed through the decision making process. At times it appeared that some of the NPS staff was caught unprepared to respond to questions and provide accurate coherent feedback during the Negotiated Rulemaking Process.

Influence

The Negotiated Rulemaking Process at CAHA met the requirements of the grammar of influence. Senecah (2004, p. 25) described influence as “meaningful decision

space, transparent process that considers all alternatives, opportunities to meaningfully scope alternatives, opportunities to inform the decision criteria, and thoughtful response to stakeholder concerns and ideas.” The NPS encouraged NRAC members to submit suggestions to the benefit of ORV Management. When I asked NRAC members about meaningful decision space they reported that there was decision space to create an ORV Management Rule that met their constituent’s interests. The concern by some committee members was that the suggestions made by opposing participants in the process were outside of the scope of the laws governing the NPS. The NPS was viewed by some groups as too open to all types of suggestions by NRAC members. These NRAC members expressed concern that the NPS provided too much decision space and needed to better confine NRAC members to suggestions that were within tighter parameters of the law governing the NPS. The nature of collaboration according to Daniels and Walker (2001, p.63) “is based on joint learning and fact finding; information is not used in a competitively strategic manner.” An example of the open deliberative style of the Negotiated Rulemaking at CAHA was a suggestion by a NRAC member to build berms along the seashore to protect wildlife from ocean surges. Another was to build roads within the seashore to provide vehicular access around nesting areas. Opposition to these suggestions came from controlled access oriented NRAC members during the deliberative process, but the park service remained accepting, encouraging and open to all suggestions on ORV Management.

The NRAC member’s opposition to each other was respectful of some of the more abstract suggestions. Responses to creative yet illegal suggestions was addressed by

NRAC members by stating park policy on landscape integrity and pointing to the exorbitant cost of road construction in response to some of the suggestions given. The NPS continued to encourage participants to make creative suggestions. The NPS allowed the committee to deliberate over the merits of the suggestions. The deliberative process seemed to eliminate suggestions that were unlawful under the Historic Preservation Act (1966), the Organic Act (1916) or other park legislation. The NPS allowed the NRAC to generate as many open minded suggestions as possible to identify where opposing parties could discover areas that they could collaborate towards consensus on an ORV Management Rule. The superintendent stated that he benefited from hearing the out of the box ideas provided through the Negotiated Rulemaking Process towards creating an ORV Management Rule.

A majority of NRAC members identified the Negotiated Rulemaking Process as transparent. The meetings were all open to the public. The last three meetings were televised on a local cable television station and placed on the internet for anyone to view. The minutes of the meetings were placed on the NPS information website and available to the public to download. When groups met in subcommittees and deliberated on the ORV Management Rule they reported their conclusion back to the general body of NRAC and those minutes were also placed on the NPS public information website.

Some NRAC members did not feel as though the NPS presented the entire scope and content of the ORV Management Rule they sought to implement. NRAC members perceived the park superintendent as not providing enough guidance on what was expected of the committee in regards to the content of the ORV Rule. There were many

criticism of the process as being too open ended and not specific of the Park Service's expectation and needs in regards to the laws and requirements of the ORV Management Rule. During the meetings the superintendent was present but did not provide heavy handed direction for NRAC members on the specific input he wanted from the committee. Opportunities were made for opposing NRAC members to negotiate, collaborate and work towards consensus, but they did not do the hard work to engage one another in the process as evidenced by interviews. Members on opposing sides of the issue reported neither meeting once outside of the Negotiated Rulemaking Process, nor receiving phone calls or even emails from the other side. Negotiated Rulemaking at CAHA took a more hands off approach where the park managers and meeting facilitators put the onus on the committee members to self motivate towards collaboration and consensus. The goal was for committee members to arrive through their own participation at collaborating by compromising with one another and working towards consensus to create an ORV Management Rule. According to Senecah (2004) the Park Service engaged in this process with the right mindset for achieving meaningful public participation. They provided early participation of the public in providing them with a venue to work together to advise the agency in creating a policy for ORV management. The shortcoming was with the committee's ability to work together and build the necessary trust and respect of each other to create a consensus based outcome to their conflict. A short coming of the Negotiated Rulemaking Process was participants' unwillingness to move from their fixed positions to seek areas to collaborate towards the NRAC's common interest at CAHA by creating an ORV Management Rule that protected park

resources and fulfilled the legislative mandate on the NPS. Through the interviews members talked about the inability of participants to work across the negotiating table with members of opposing views. The NPS and facilitators worked throughout the process to encourage participants to meet in small groups to seek areas to collaborate and make suggestions to the larger group on ORV Management. The NPS also organized field trips and social events to create better cohesion between NRAC members. At the end of the day there was unwillingness to collaborate due to the distrust between opposing sides of the Negotiated Rulemaking Process.

Based on my observations and what participants related through interviews about the Negotiated Rulemaking Process at CAHA appears to have met the requirements of the grammars of TOV. A benefit of this process is a better informed community of stakeholders of the national seashore who are better prepared to engage in deliberative democracy. The park service benefited from learning more about its stakeholders interests in protecting the visitor experience while protecting the natural resources of CAHA. Ultimately the NRAC was not able to achieve consensus on an ORV Management Rule. The park service will be left to write the rule through the information they gained through the Negotiated Rulemaking Process with the goal of better representing the interests of CAHA stakeholders and protecting the fragile and nationally significant natural resources at CAHA.

The Relationship Between the Grammars of TOV; Access, Standing and Influence

The grammars of TOV are hierarchical in nature. The Negotiated Rulemaking Process began by creating the NRAC through several public input processes that provided the opportunity to create a diverse group of stakeholders to participate as members of NRAC. Collaboration between multiple stakeholders was an important element of Negotiated Rulemaking. The NRAC members stated they supported collaboration and were interested in using a consensus based process as their means of creating an ORV Management Rule for CAHA. The achievement of the grammar of access empowered NRAC members to participate in the process, to understand the issues of ORV Management, natural resource conservation and the laws and policies governing the NPS. This prepared NRAC members to participate on a more equal footing with each other in the Negotiated Rulemaking Process and to enter into the next phase of TOV, standing.

The achievement of the grammar of standing provided NRAC members a decision making environment where they could be heard and achieve civic legitimacy in the Negotiated Rulemaking Process. Not all members took advantage of their opportunity to speak and be heard, but the process as designed by the NPS and CBI facilitators implemented strategies to pull each participant out and to motivate them to engage in deliberation. One of the Negotiated Rulemaking meetings began with facilitators asking each NRAC member to state their position on an aspect of ORV Management. The participants were given as much time as they needed to state their position and then were instructed to pass the microphone around the room so each member could speak and be

heard. After this process the participants were encouraged to deliberate on how to move forward on that issue. After this process they were better informed about each other's positions. This deliberative empowering process was followed throughout Negotiated Rulemaking at CAHA. As Senecah (2004) suggests, access and standing should lead to influence and they appear to have done so in this process.

The park superintendent as the designated federal official in the Negotiated Rulemaking Process was the ultimate decision maker. He completed the Trinity of Voice by affording NRAC members opportunities to inform the decision criteria and to provide thoughtful response to NRAC members concerns and ideas. The NRAC were provided citizen power by the NPS as described by Arnstein (1969) by empowering NRAC members to create the ORV Management Rule through a collaborative process. Though the Negotiated Rulemaking Process did not result in the committee members creating an ORV Management Rule the process was socially legitimate and it is my belief that the NPS benefited as an agency who responds to public input and values its stakeholders in public land stewardship.

Implications to the NPS

My presence during Negotiated Rulemaking Process carried out by the NPS provided me with a unique perspective of areas the agency could consider in future decision making processes. The following areas will be discussed as implications to the NPS approach in future negotiated rulemaking processes.

- Consensus Based Process

- Capacity Building in Deliberation
- Information Sharing
- Training of NPS Park Managers
- TOV as a Evaluation and Planning Tool for Public Participation

Consensus Based Process

The Negotiated Rulemaking Process was developed to result in a consensus by NRAC members. Sitting in the workshops when members submitted different suggestions for defining consensus I recall imagining how such a large contentious group would ever arrive at consensus. I remember speaking with NRAC members about their perceptions of achieving the defined goal of 100% unanimity and giggling with them as their pessimistic shoulders hunched and eyes rolled. Hesse (1999) identified that participants in negotiated rulemaking do not always reach consensus and this is where litigation arises. Daniels and Walkers (2001) collaborative learning process which is built on a structure of adult learning accomplishes the outcomes prescribed by negotiated rulemaking without setting an unrealistic bar of unanimous consent. The failure by the NRAC at CAHA ended with parties feeling unsatisfied and disappointed by not achieving their goals. A consensus based process that has as its goals information sharing through deliberation may have resulted in stakeholders less frustrated and motivated to continue to work together to create an ORV Management Rule (Jamal and Getz, 1999).

Capacity Building

Capacity building as identified by Senecah (2004) is an important outcome for public participants of a meaningful decision making process. The participants in this

process learned more about the democratic process from engaging in Negotiated Rulemaking. They gained a better understanding of negotiation, the NEPA process, and the complexity of civic engagement requiring time and patience to navigate the bureaucratic process. The local community knows more about sharing their community needs and ideas with park managers, i.e. who to go to, what constraints are faced by park managers, and how to agitate for change in resource management decisions and park management practices. The park managers also became more knowledgeable and more effective at public engagement. They learned how contentious ORV Management has become and now have a group of community leaders to work with as they move forward managing the resources of CAHA.

Information Sharing

This research provided an understanding of the importance of information sharing between committee members in the Negotiated Rulemaking Process. TOV identified information sharing through each of the grammars; access, standing, and influence. Through deliberation committee members shared their interests and knowledge of resource conservation and ORV Management. The outcome of this information sharing was knowledge gained by committee members and park personnel. Participants that held adversarial positions discovered common interests with NRAC members as they worked together on the issue of ORV management at CAHA. The information shared by the Park Service was also a benefit to NRAC members.

There were problems with the slowness of the NPS response to request for information by committee members. The NPS must dedicate staff to their public involvement processes so that the needs of the public can be met and negative attitudes do not emanate from poor customer service on the part of the agency.

The superintendent of CAHA expressed an appreciation for the increase in his knowledge of the perspectives of park stakeholders through the deliberations in the Negotiated Rulemaking Process. The information sharing benefited managers at CAHA through learning how community members viewed the park and its resources in a manner more deliberative than the commonly used public meeting (Cox, 2006; Senecah, 2004; Daniels and Walker, 2001). Through dialogue the park managers could observe and participate in the learning process occurring during the Negotiated Rulemaking meetings. The relationship of some of the group members with the park managers was improved and friendships were fostered. The collaborative nature of Negotiated Rulemaking as carried out by the NPS and CBI facilitators created beneficial outcomes of a stronger network of stakeholders and improved perceptions of CAHA management.

The Negotiated Rulemaking Process also educated participants about the natural resources of CAHA. Through scientist led presentations participants learned more information about the habitat and the needs of the endangered species at the center of the ORV Management Rule. This knowledge assisted members by being more informed of the issues at CAHA. NRAC members also benefited by learning more about the legislation and management constraints of the NPS to achieve their mission of conservation of public resources while providing the public the opportunity to enjoy the

seashore. The process helped all participants become more informed not only of the issues of natural resource management but also of the process of public involvement.

CAHA Park Management

The local community had long standing issues with the Park Service based on the history of the creation of CAHA (Binkley, 2007). Overcoming the historical distrust by current NPS management was complex. The local community's and NRAC members' perception of the poor quality of past park leadership at CAHA carried over to current managers at CAHA. The new management at CAHA worked hard to change those perceptions and to gain wider support from the local community. The present management has become better acquainted with the local community and is viewed as more responsive to stakeholder's needs and input through the relationships built during the Negotiated Rulemaking Process. The improved relationship between the local community and the NPS was identified in interviews with NRAC members. Management at CAHA will have to continue to exercise a policy of engagement and communication with the local community to continue to build upon these beneficial relationships and improved trust of the NPS (Hesse, 1999).

Mike Murray the superintendent at CAHA was highly effective as a park manager during the negotiated rulemaking process. His back ground in alternative dispute resolution and ability to engage in reflexive listening made a strong positive impact on this process. NRAC members described working with this manager as definite improvement over past park managers at CAHA. I witnessed on several occasion

community members and NRAC members talk negatively of park management, current decisions at the park and Superintendent Murray respond with taking defense and agreeing that the park needs to work to better achieve the agencies goals of resource conservation and public enjoyment. His controlled responses to direct accusations deescalated what could have become a shouting match or worse during the negotiated rulemaking meetings. Training in alternative dispute resolution, principled negotiation and collaborative learning would be a benefit to NPS managers who engage the public. Communicating with the public in a consistent informative and factual manner will add to the positive relationship between stakeholders of the NPS.

TOV as a Decision Making Process Evaluation Tool

TOV is a good evaluation tool for public involvement process. The grammars of TOV, access, standing and influence are appropriate characteristics (grammars) for use in evaluating what needs to be addressed in designing a decision making process that can produce meaningful public engagement. The perceptions of NRAC members in this decision making process led to beneficial outcomes for the NPS through the transformation of participants' knowledge of the issues as well as the information about participant's perceptions of natural resource management and the important areas of concern in creating a socially legitimate ORV Management Rule. The Park Service has heard the input of a diversity of CAHA stakeholders and is now in a position to make a management rule for ORV's that can achieve resource stewardship goals while accomplishing its dual mission of providing opportunities for public enjoyment. According to NRAC members the process built trust in current management that had

devolved over the years at CAHA with past park managers who were not able to listen and communicate effectively with the local community or outside stakeholders. The Negotiated Rulemaking Process achieved the goal of providing a venue for CAHA stakeholders to participate in a decision making process that met the grammars of TOV.

An area of limitation in TOV is the relationship between stakeholder participants. The anger and rancor that clouded this process only seemed to increase as deliberations unfolded through the fixed positions that were obstacles to collaboration in Negotiated Rulemaking. Could there have been actions taken by the Park Service and facilitators to better engage participants in small group's exercises that allowed participants to deliberate more closely with one another and possibly create better working relationships? Did the large size of the NRAC hamper dialogue and deliberation between committee members due to the physical distance apart at the negotiating table and the discussion format necessary to working with such a large group? Taking turns talking around a group of twenty-seven participants did not allow for a natural conversation style. The issue of common interest caucuses sitting next to one another and facing off with the other interest group added to the adversarial competitive relationship of those involved in this Negotiated Rulemaking Process. The facilitator attempted to address that with pre-assigned seating mixing interest groups up around the table. They also used subcommittee work groups in the decision making process to force groups to deliberate and collaborate on ORV Management components.

I suggest that in future attempts by the Park Service to use Negotiated Rulemaking involving multiple parties to implement strategies of trust building and

cooperation between adversarial groups early and throughout the process. Intervening early in the process by fostering working relationships based on trust and respect, locating meetings close to the resources with NPS facilities, encouraging civil discourse and pressuring groups to work towards common interest rather than fixed positions are important actions to take by the agency and facilitator. This process may have benefited from a more hands on approach to relationship building early and throughout the decision making process.

Senecah (2004) does discuss the issue of trust and respect but only from the perspective of decision maker to the citizenry seeking voice in the decision making process. In democratic processes the citizenry needs to show respect and build trust for people who hold different positions than one's own in order to seek the common good that will be sustainable for all involved. Adversarial tactics like intimidation, position based negotiation, litigation, and stalling only leave one side winning and another seeking to get even and fight for another day. The future of environmental conflict management will continue to involve multiparty disputes and will continue to ask all parties to work together to choose better ways of conserving resources for future generations. We will all need to share the commons, by respecting and building trust, seeking where our interests overlap, and taking action which we all can live with. With these goals in mind we will be successful in natural resource stewardship.

Conclusion

This research provided me with a unique perspective on the decision making process in the NPS. My experience as a NPS employee has made me, at times, highly critical of the agency's ability to achieve its mandates. I have been on the frontline where the public called upon me to deliver our promise of protecting resources, kept in a pristine manner for public enjoyment. American families have gone to the parks for four generations now. The legacy of the national parks has been passed down from ranger to ranger. My dedication to achieve the park mission through my action and my research is strong. As a researcher observing the managers and facilitators at CAHA move the paradigm of meaningful public involvement and democratic action forward refined my personal obligations as a steward of the public's resources. Taking into consideration the theoretical underpinnings of deliberative democracy through the analytical framework of Senecah (2004) TOV the NPS engaged the public toward building a more sustainable use of America's natural resources.

Areas to continue investigating public involvement in land management is to analyze how the visiting public perceives deliberative democratic action through representation by NRAC in Negotiated Rulemaking. The NRAC members represented a large population of park users and accessing their constituencies through survey on TOV would yield interesting finding on their perceptions of the Negotiated Rulemaking Process and the NPS.

Another area of interest would be to investigate how the NPS prepares its park managers to participate in public involvement processes. The superintendent at CAHA was unique in his ability to engage the public, to empathize with committee members, and to articulate his ideas speaking clearly about the agencies goals in a manner that was responded to positively by most of the NRAC. Identifying the skills necessary to succeed as a manager in a highly visible, public affairs type of position like CAHA would benefit this and other public land management agencies.

Finally investigating how national parks in other countries are moving along the public involvement paradigm would add to our understanding of resource conservation at an international scale to compare and contrast practices and difference based on culture and political makeup. Democracy as a political organizing mantra is dominating the world. Learning how deliberative democracy at the micro level is occurring in regards to public land management would yield information about sustainable development over the macro scale. Graphically illustrating the outcomes of deliberative democracy on land stewardship would provide a visual depiction to how deliberative democratic decision making affects land management. Longitudinal studies would add to our understanding of the affects of changed management to affect the public natural resources. In this case study I was not able to follow the creation of the ORV Management Rule through the NEPA process. Continuing to study the process and how NRAC members perceive the final rule would yield a deeper understanding of their perceptions of Negotiated Rulemaking. A final area of interest is to investigate how communities evolve over time

and how public involvement with those constituencies is affected by attitudinal change of resource management.

The evolution of democracy in America continues on its path through the action of the American people seeking better ways to govern and become involved as active citizens. The nations forefathers wisdom of creating a system based on documents that allow interpretation by current generations have been a great benefit to our society. Negotiated Rulemaking has emerged from this legacy of democratic development. In the future I am looking forward to how we ascend Arnstein's (1969) ladder of citizen participation through process that at their foundation allow us to access, have standing and influence management of the commons to effect positive difference and build a better more just sustainable world.

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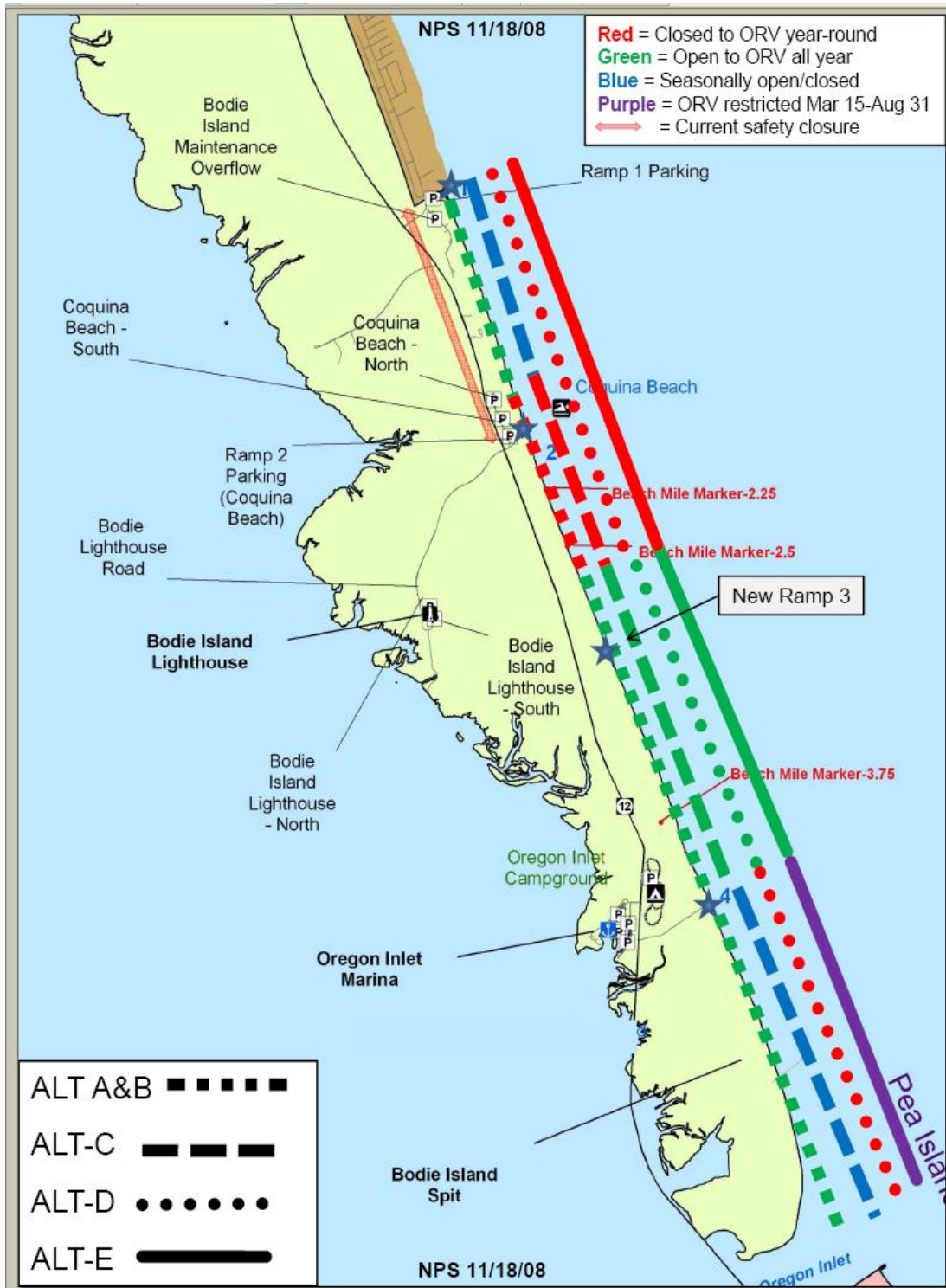
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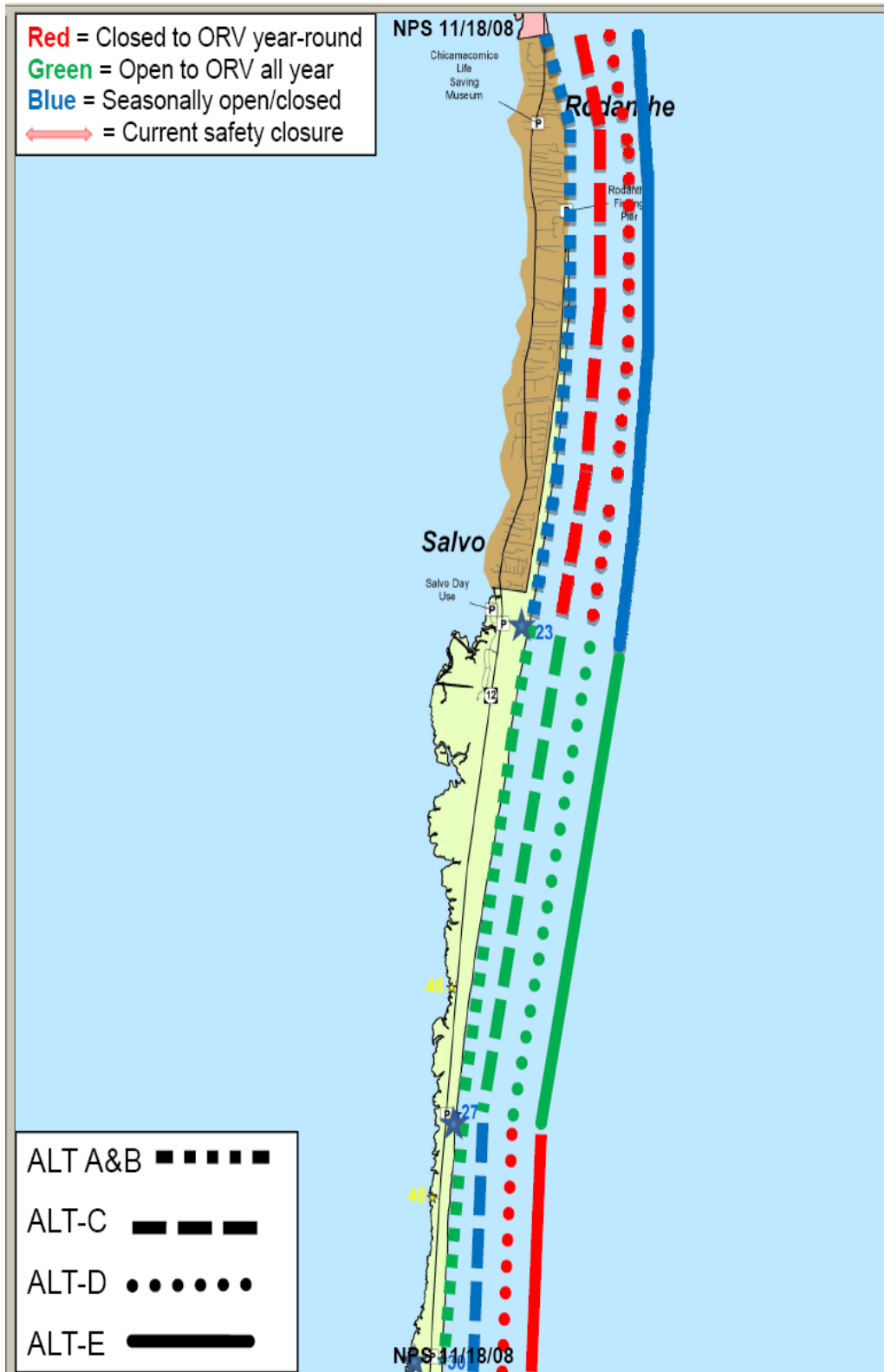
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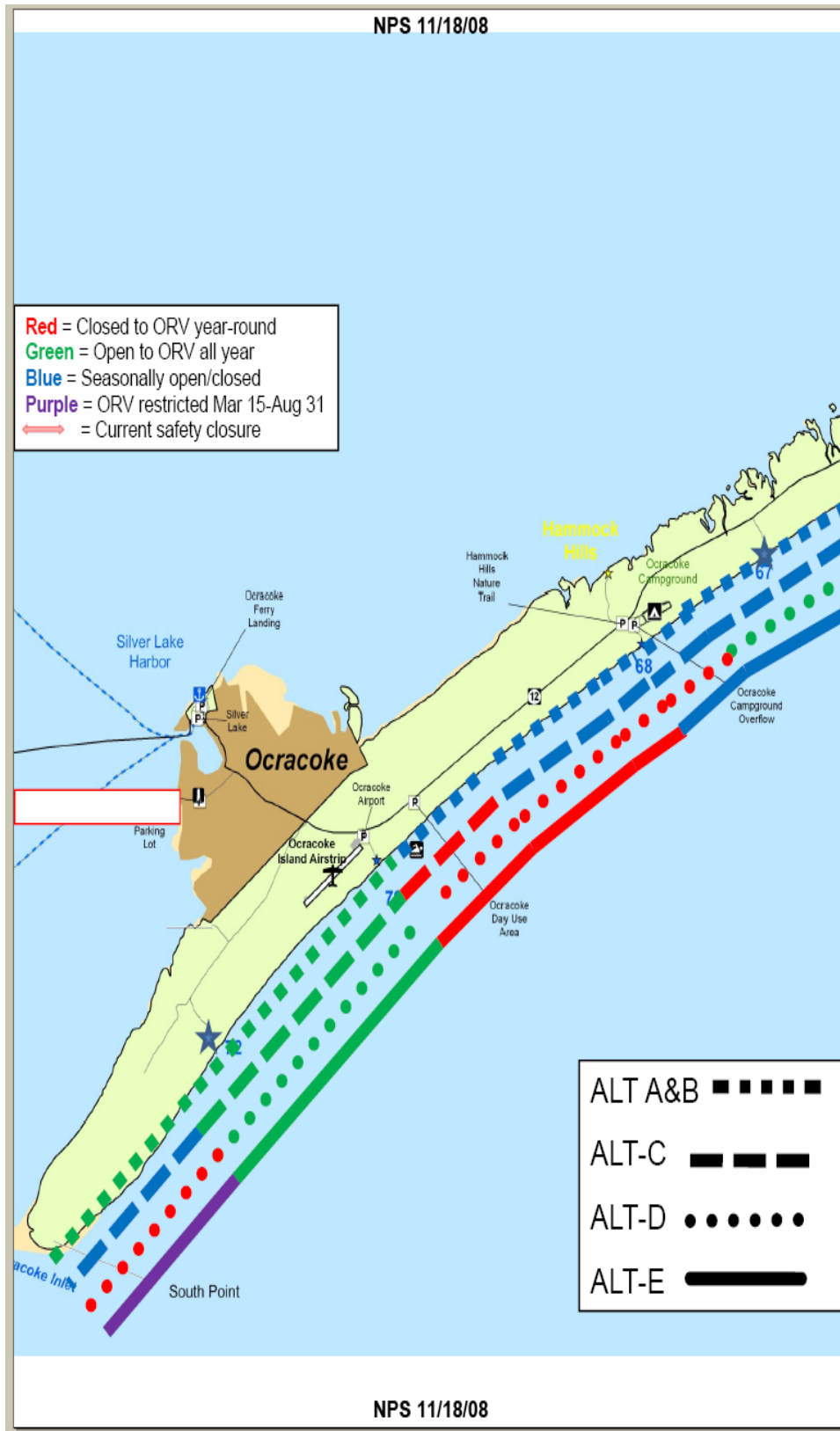
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APPENDIX A









APPENDIX B

CAHA NEGOTIATED RULEMAKING COMMITTEE

Stakeholder Group	Name of Representative Organization	Organizations Mission Statement / Interest in this decision making process
Federal Government	Cape Hatteras National Seashore	Protect natural and cultural resources of CAHA including the Piping Plover through creation of an ORV Management Plan while allowing for an enjoyable visitor experience.
Federal Government	US Fish and Wildlife Service, Ecological Services, Raleigh Field Office	Protect the Piping Plover from extinction as mandated by legislating establishing FWS
State Government	North Carolina Marine Fisheries Commission http://www.ncfisheries.net/mfc/ncmfcom.htm	The North Carolina Division of Marine Fisheries (DMF) is responsible for the stewardship of the state's marine and estuarine resources.
State Government	North Carolina Wildlife Resources Commission http://www.ncwildlife.org/	Since its inception in 1947, the North Carolina Wildlife Resources Commission (WRC) has been dedicated to the wise-use, conservation, and management of the state's fish and wildlife resources. Their policies and programs are based on scientifically sound resource management, assessment and monitoring, applied research, and public input.
County Government	Dare County http://www.co.dare.nc.us/	Dare County is one of the counties Cape Hatteras boundaries lies within. Their interest is to protect the economic viability of their communities as well as protecting the natural resources to the extent that they support the profitability of the residents. They support use of ORV's along the shoreline of CAHA.
County	Hyde county (Orkacoke	Hyde County is one of the counties Cape Hatteras

Government	Business and Civic Association) http://www.hydecountry.org/default.htm	boundaries lie within. Their interest is to protect the economic viability of their communities as well as protecting the natural resources to the extent that they support the profitability of the residents. They support use of ORV along the shoreline of CAHA.
Civic and Homeowner Association	Rodanthe-Waves Salvo Civic Association http://www.rwscivic.org/	The association fosters community spirit by organizing events and sponsoring programs that benefit their communities. They work to improve the quality of life for their people and assist in preserving their rich coastal heritage.
Civic and Homeowner Association	Avon Property Owners Association	They promote cooperation in all matters of interest to the property owners and the community; and aid and protect its members and all things as are properly within the scope of such an association for the welfare of its members and the community.
Civic and Homeowner Association	Hatteras Village Civic Association	Preserves the heritage of the people of Hatteras Village. The fishing culture of the area is of specific interest to this organization. Protection of the heritage includes beach access to commercial and recreational fisherman through ORV access.
Open Access	Outer Banks Preservation Association http://www.obpa.net/	The goal of the Outer Banks Preservation Association Inc. is to work with the National Park Service to develop a comprehensive ORV use and management plan that will meet the concerns of the environmentalists without compromising Hatteras Island's distinctive lifestyle and economic growth.
Off-Road Vehicle Users	United Four Wheel Drive Association http://www.ufwda.org/index .	The United Four Wheel Drive Associations acts as a voice to keep 4x4 roads and trails open for the continued enjoyment of four wheeling in the great outdoors. Through their united efforts, the

	htm	opinions and beliefs of four wheel enthusiasts are heard by land management agencies and by elected officials.
Off-Road Vehicle Users	North Carolina Beach Buggy Association http://www.ncbba.org/	The North Carolina Beach Buggy Association is a non-profit organization established in 1964, dedicated to the preservation of and vehicular access to the natural beach resources of the Outer Banks through conservation, a code of ethics for beach behavior and support of local, state, federal officials and other organizations dedicated to these same goals.
Recreational Fishing	Cape Hatteras Anglers Club http://www.capehatterasanglersclub.org/	Their purpose is to promote and support the conservation and preservation of fish and all types of marine life and wildlife. To cooperate with all federal, state and local authorities, department and officials in carrying out the laws, rules and regulations promulgated and adopted by such agencies for the protection, conservation and propagation of all fish, marine life and wildlife. The organization is dedicated to retaining full access to the beach by members of the organization for fishing.
Recreational Fishing	Recreational Fishing Alliance http://www.joinrfa.org/	Dedicated to maintaining access to fishing experiences throughout the country.
Recreational Fishing	American Sport Fishing Alliance http://www.asafishing.org/asa/index.html	The American Sport fishing Association (ASA) is the sport fishing industry's trade association, committed to looking out for the interests of the entire sport fishing community.
Other Users	Cape Hatteras Bird Club	The club was founded in 1988 it serves the Outer Banks. They participate in bird counts, volunteering on seashore and educating the public about birds.

Other Users	Cape Hatteras Recreational Alliance	Supports the use and access of ORV use along the shoreline of CAHA.
Other Users	Watersports Industry Association, Inc http://www.watersportsindustry.com/20002_45.asp	The mission of the Water Sports Industry Association is to provide visionary leadership to increase participation in water sports and to supply members with education and legislative action.
Commercial Fishermen	North Carolina Fisheries Association http://www.ncfish.org/aboutncfa.htm	NCFA is committed to presenting an accurate portrait of the industry and the hardworking people comprising it, however controversial; and it stands behind the certainty that the commercial fishing industry begins and ends with families – from seafood-harvesting families to seafood-consuming families.
Tourism, Visitation and Businesses	The Outer Banks Chamber of Commerce http://www.outerbanks.com/chamber/	The Outer Banks Chamber of Commerce is a nonprofit membership organization representing <u>1100 businesses</u> on North Carolina's Outer Banks. Their service area includes Currituck County, Dare County (including Hatteras Island) and Ocracoke Island in Hyde County.
Tourism, Visitation and Businesses	The Outer Banks Visitors Bureau	The Outer Banks Visitors Bureau is the lead marketing and promotional agency for The Outer Banks of North Carolina and is funded by one percent of the occupancy tax and one percent of the prepared meals tax, collected in Dare County.
Tourism, Visitation and Businesses	Hatteras Island Business Alliance	The organization protects the business interests of several business located in the Cape Hatteras Area
Environmental & Natural Resource Conservation Advocates	Defenders of Wildlife http://www.defenders.org/about/	Defenders of Wildlife is dedicated to the protection of all native <u>wild animals</u> and plants in their natural communities. They focus their programs on what scientists consider two of the most serious environmental threats to the planet: the accelerating rate of extinction of species and the associated loss of biological diversity, and

		habitat alteration and destruction.
Environmental & Natural Resource Conservation Advocates	Natural Resources Defense Council http://www.nrdc.org/about/	NRDC is the nation's most effective environmental action organization. They use law, science and the support of 1.2 million members and online activists to protect the planet's wildlife and wild places and to ensure a safe and healthy environment for all living things.
Environmental & Natural Resource Conservation Advocates	Coalition of NPS Retirees http://www.npsretirees.org/	They are all former employees of the National Park Service (NPS), numbering over 580 with more joining each day. Many were senior leaders and many received awards for stewardship of the country's natural and cultural resources. In their personal lives, they come from the broad spectrum of political affiliations. As park managers, rangers and employees in other disciplines, they were devoted in their professional lives to maintaining and protecting the National Parks for the benefit of all Americans - both living and those yet to be born. They know that many more of their former National Park Service colleagues, have served under several different Administrations, both Republican and Democratic. They believe they have served this country well, and their credibility and integrity in speaking out on these issues should not go ignored.
Environmental & Natural Resource Conservation Advocates	Southern Environmental Law Center http://www.southernenvironment.org/about/	For the past 20 years, the Southern Environmental Law Center has used the full power of the law to conserve clean water, healthy air, wild lands, and livable communities throughout the Southeast.
Environmental & Natural Resource Conservation Advocates	North Carolina Audubon http://ncaudubon.org/	Established in 1997, the state office of Audubon North Carolina grew out of decades of volunteerism through chapters. Audubon North Carolina's mission is to conserve and restore NC's ecosystems, focusing on the needs of birds.

APPENDIX C

TEXAS A&M UNIVERSITY INSTITUTE REVIEW BOARD RESEARCH STUDY INFORMATION SHEET

INFORMATION SHEET

Research study of the Cape Hatteras National Seashore Regulated Negotiation

Introduction

The purpose of this form is to provide you information that may affect your decision as to whether or not to participate in this research.

You have been asked to participate in a study on public involvement. This study will examine the regulated negotiation process. The focus is on perceptions formed during participation in the decision making process at Cape Hatteras National Seashore. You were selected to be a possible participant because of your knowledge and experience in the decision making process at Cape Hatteras National Seashore

What will I be asked to do?

If you agree to participate in this study, you will be asked to participate in two interviews. The first interview will be scheduled for mid June of 2008 around the negotiated rulemaking meeting. The interview will take approximately an hour. You will be asked about your perceptions of the public involvement process at Cape Hatteras National Seashore. There will be a second interview the Fall of 2008. This second interview will also be approximately one hour. The focus will remain on your participation in the decision making process at Cape Hatteras National Seashore.

What are the risks involved in this study?

The risks associated with this study are minimal, and are not greater than risks ordinarily encountered in daily life.

What are the possible benefits of this study?

You will receive no direct benefit from participating in this study.

Do I have to participate?

No. Your participation is voluntary. You may decide not to participate or to withdraw at any time without your current or future relations with Texas A&M University being affected.

Will I be compensated?

You will not receive compensation for participating in this research

Who will know about my participation in this research study? This study is confidential and your name will not be shared with anyone. The records of this study will be kept private. No identifiers linking you to this study will be included in any sort of report that might be published. Research records will be stored securely and only Mr. Lavell Merritt, Jr. and Dr. Scott Shafer will have access to the records.

Whom do I contact with questions about the research?

If you have questions regarding this study, you may contact Lavell Merritt, Jr., 979-224-1639, lavellmerritt@neo.tamu.edu.

Whom do I contact about my rights as a research participant?

This research study has been reviewed by the Human Subjects' Protection Program and/or the Institutional Review Board at Texas A&M University. For research-related problems or questions regarding your rights as a research participant, you can contact these offices at (979)458-4067 or irb@tamu.edu.

Participation

Please be sure you have read the above information, asked questions and received answers to your satisfaction. If you would like to be in the study sign and return this copy of the information sheet or email lavellmerritt@neo.tamu.edu indicating your participation.

Signature _____ Date _____

APPENDIX D**TEXAS A&M INSTITUTE REVIEW BOARD RESEARCH PERMIT EXEMPTION**

U Page 1 of 1

TEXAS A&M UNIVERSITY DIVISION OF RESEARCH AND GRADUATE STUDIES - OFFICE OF RESEARCH COMPLIANCE

1186 TAMU, General Services Complex 979.458.1467 College Station, TX 77843-1186 FAX 979.862.3176 750 Agronomy Road, #3500 <http://researchcompliance.tamu.edu>

Institutional Biosafety Committee Institutional Animal Care and Use Committee Institutional Review Board

DATE: 03-Jun-2008 **MEMORANDUM****TO:** MERRITT, Jr., LAVELL 77843-3578**FROM:** Office of Research
Compliance Institutional
Review Board**SUBJECT:** Initial Review**Protocol Number:** 2008-0271**Title:** Sun, Sea, and Sand: Piping Plover and People in One Place A Case Study of the Cape Hatteras National Seashore Regulated Negotiation**Review Category:** Exempt from IRB Review

It has been determined that the referenced protocol application meets the criteria for exemption and no further review is required. However, any amendment or modification to the protocol must be reported to the IRB and reviewed before being implemented to ensure the protocol still meets the criteria for exemption.

This determination was based on the following Code of Federal Regulations:

(<http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.htm>)

45 CFR 46.101(b)(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

Provisions:

This electronic document provides notification of the review results by the Institutional Review Board.

<http://rf-infoed1.tamu.edu/administration/ShowPDF.asp?UCommID=E59E65F4-9579-488...> 1/14/2009

VITA

Lavell Merritt received his Bachelor of Arts degree from the University of Pittsburgh in Pittsburgh, Pennsylvania in December of 1994 in rhetorical communications. He later earned his Masters of Arts degree in sociology from the American University in Washington, DC specializing in international training and education in May of 2005. He entered Texas A&M University in College Station, Texas in August, 2005 in the Department of Recreation, Park and Tourism Sciences. His research interest included sustainable development, political science, conflict management, park management, planning, and public involvement in public decision making.

Mr. Lavell Merritt may be reached at Department of Recreation, Park and Tourism Sciences, Texas A&M University, 2261 TAMU, College Station, TX 77843-2261. His email address is lavell_merritt@nps.gov.