

"Gentlemen-type rules" and "back room deals" in public participation: natural resource management and a fractured state in North Carolina

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1. Introduction

Co-management of protected areas is a central concern in the political ecology of conservation (Vaccaro *et al.* 2013). Research on co-management, with its focus on public participation in environmental decision-making, draws on a variety of frameworks to understand how participatory arenas act as politically-charged nodes that bring together particular ecologies and particular social formations. These frameworks include community-based-conservation, deliberative environmental policy-making, and ecological democracy. In general, researchers in these areas argue for expanding public participation in policy-making on the basis that such input recognizes the knowledge and agency espoused by local land use practitioners (Beierle and Cayford 2002; Brosius *et al.* 2005; Mitchell 2006). Political ecologist Robert Fletcher regards participatory natural resource management, especially that associated with common property regimes, as a possible source of a "liberation environmentalism", a form of governance that premises environmental justice (Fletcher 2010: 172).

At the same time, evaluations of participatory processes describe a generalized disillusionment with the mechanisms. In particular, contributors to and observers of state-sponsored participatory processes doubt that participatory forums fulfill their aims of equity and democracy, and they fail to succeed in producing durable and practicable environmental policies (Reed 2008). Participatory forums may only serve to harden the positions of opposition factions (Jasanoff 2003). Given their popularity, ideas of 'participation' may have become meaningless buzzwords whose usage in international development shears them of their political weight (Cornwall and Brock 2005; Leal 2010). Researchers distinguish between "invited" and "autonomous" participatory spaces as one step toward specifying the political contexts in which participation takes place (Cornwall 2003).

In this paper, we explore a particular participatory environmental management setting to ask two questions regarding its political ecology. How might multiple state agencies be situated within a constellation of social groups? How do individuals in this multiform setting enact their differing ideas of rights, legitimacy, and nature itself (Vaccaro *et al.* 2013)? In answering these questions, we find the problems noted above may actually be *constitutive* of state processes. The problems result when a variegated state carries out its work inconsistently. These inconsistencies facilitate the kinds of conservation settings recently described in the political ecology literature as sites where multiple governing ideologies may be at play (Fletcher 2010). The idea of multiple governing institutions and ideologies resonates with research that emphasizes states as a collection of fractured and unstable institutions whose agents must negotiate with citizens in culturally relevant ways (Joseph and Nugent 1994; Roseberry 1994; Rubin 1997). As a consequence, we suggest that research on the political ecology of natural resource management might begin from the standpoint of doubting the ability of participatory mechanisms to fulfill their aims and then proceed to question what work they do in fact accomplish.

We apply this framework to the case of the Negotiated-Rulemaking at Cape Hatteras National Seashore (CAHA) in North Carolina, USA (see Figure 1). Signs of environmental conflict are obvious to any visitor to CAHA. Bumper stickers ridicule attempts to protect nesting habitat for shore birds by declaring "I Love Piping Plovers Extra Krispy with Potato Salad and Sweet Tea" and urge the Audubon Society to identify a "bird" in the shape of a human hand, middle digit extended (see Figures 2 and 3). Outside a shopping mall, tombstones line the roadside proclaiming: "We the People, Not the Plover." Lettering on shop

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windows neatly states the owners' opposition to the National Park Service (NPS) with signs of "No NPS Allowed."

Locally, the dispute is known as the 'Access Issue.' Should the NPS allow motorized, off-road vehicles (ORVs) on CAHA, as well as fishing and other recreational activities? Residents in and around CAHA argue for open access and lament that "the government" is "spend[ing] all their money keeping me off the beach" rather than addressing more pressing issues, like healthcare. Government interferes with the wrong issues, this line of argumentation goes, because "there are people with money" who influence the state. Environmental groups often count as this sort of outsider elite. The NPS had attempted to avoid the acrimony. In 2008, the NPS initiated an invited participatory management process, the "Negotiated Rulemaking," to develop a consensus around ORV use. The process, however, was truncated by a court action initiated by environmental groups, resulting in the animosity noted above.

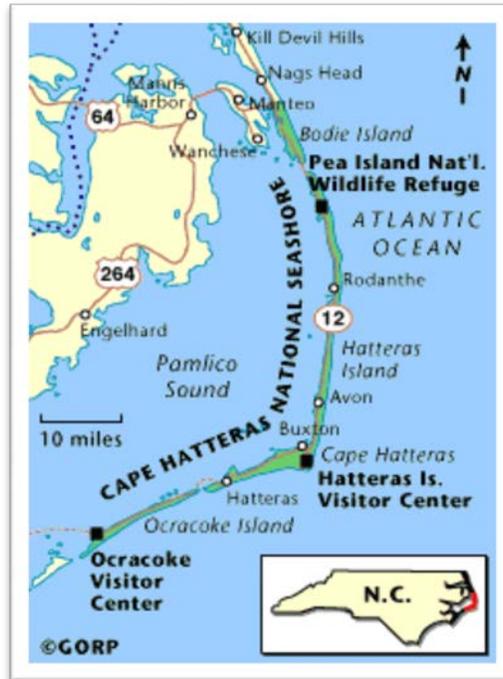


Figure 1. Map of CAHA. Source: <http://www.thetinyadventurer.com>

Understanding participatory projects such as the Negotiated Rulemaking requires documenting the spatially-specific (Kesby 2005), concrete, everyday ways state institutions operate (see Hull 2012). This exploration can help explain a contradiction between the apparent power of conservation organizations and ideologies and the failure of many conservation programs on the ground (Carrier and West 2009). In the case of CAHA, the federally-sponsored participatory process, court action, and virulent public protest collectively reveal the contours of state fractures and the precise forms of instabilities within and across state institutions. These instabilities pose challenges to research that asserts environmental management takes place in the context of enduring official discourses (Li 2005, 2007). In actuality, these discourses are part of a papering over of inconsistent, sometimes weak and unsteady actions (Mathews 2011). As we show, in places like CAHA, state actors and publics are well aware of these discrepancies and develop strategies to navigate them. The discrepancies, consequently, open the way for popular frustration, even outrage, over shifting management strategies.

In the following pages, we describe pro-Access advocates managing a multiform state by proffering a moral assessment that contrasted "gentlemen-type rules" with "backroom deals." "Gentlemen-type rules" were informal accords that pro-Access advocates found to be to their advantage. "Back room deals" were informal accords that left pro-Access advocates at a decided disadvantage. The distinction was clearly a convenient one, but it also emphasized the importance of informal, face-to-face negotiations with state agencies, a point that served multiple purposes. Access advocates' personal connections to various government offices were long rumored to be the force behind keeping CAHA beaches open to ORVs. The

North Carolina example might be unusual in that local residents participating in the co-management process were accustomed to having as much, if not more, political clout than conservation officials.



Figure 2: Pro-Access bumper stickers: **"I support free and open beaches on Hatteras & Ocracoke!"** **"Hey Audubon, Identify this Bird!"** Photo: R. McCoy.

Access advocates believe their reversal of fortune was rooted in a countervailing set of personal connections cultivated by environmental groups. At the same time, a discourse favoring face-to-face relations allowed pro-Access advocates to bring diverse forms of state-citizen engagement into a single discursive framework, one that premised local cultural ideals. Although pro-Access advocates encountered an array of state agencies with overlapping jurisdictions, ideas of gentlemen rules made this diversity manageable within the small town social atmosphere that continues to characterize CAHA. In our discussion, we consider how - precisely because of the growth in state bureaucracies - cultural ideas of state formation, such as those on display at CAHA, become more important than ever in natural resource management and must be reckoned with in order to achieve the democratic ideals that sit at the heart of all participatory forums.

2. Order and disorder in states and environments

The following paragraphs connect recent findings on participatory research (Arnstein 1969; Chambers 1997, 2002) to theories of the state that emphasize its multiform, culturally negotiated quality. Co-management institutions linked to protected areas constitute a particularly rich site for this sort of political ecology research (see Ho *et al.* 2012; Langton *et al.* 2005). Co-management institutions bring together various state and non-state social structures in a setting where people must negotiate the biophysical realities and the culturally constructed meanings of ecologies, simultaneously.

Some evaluations of participatory forums are, at this point, well known. Questions of who participates in such forums, for what reasons, and to what benefit, constitute a common area of inquiry (Cornwall 2008). Researchers have doubted the extent to which participatory forums are, really, voluntary efforts (Cooke and

Kothari 2001) as well as the extent to which they really allow publics to contribute to environmental outcomes (Brosius *et al.* 2005). Some forums aim to make top-down decisions palatable to a resistant public, a move that has inspired its own counter-narrative and counter-institutional structures (Fischer 2000). As in CAHA, some participatory forums have been vulnerable to derailment (Walker and Hurley 2004), in this case by individuals for whom "scientific visions (when viewed as espousing 'universal truths')" appear conspiratorial in their undermining of local practices (Hurley and Walker 2004: 1531). Anthropologists add to these discussions a concern for how governing bodies can act as places of identity formation, knowledge production, and disciplining. In the anthropological literature, these issues often overlap, for example, as claims to knowledge often underpin identities as well as the environmental prerogatives of state officials (Dove 2011).

In their overview of the literature, Cornwall and Coelho argue that points such as those noted above suggest participatory forums comprise part of a distinct form of governance, the "participatory sphere":

The institutions of this sphere have a semi-autonomous existence, outside and apart from the institutions of formal politics, bureaucracy and everyday associational life, although they are often threaded through with preoccupations and positions formed in them. As arenas in which the boundaries of the technical and the political come to be negotiated, they serve as an entirely different kind of interface with policy processes than other avenues through which citizens can articulate their demands – such as protest, petitioning, lobbying and direct action (Cornwall and Coelho 2006: 1-2).

Cornwall and Coelho follow the above statement by noting the ongoing challenges participatory forums face include incorporating socially marginalized citizens. The case of CAHA poses additional concerns. Given their hybrid quality (as part civil society-part state), participatory forums are vulnerable to a number of parallel social institutions. These include state institutions but also informal social organizations and the informal evaluations—such as rumors and moral assessments—that such organizations employ to construct and maintain social boundaries (Douglas 2002).

Also, given their hybrid quality, participatory forums highlight the tenuous network of connections that comprise any state apparatus. Thus, instead of asking the question that most seems to preoccupy writing on participatory forums—i.e. how to get them right—researchers might ask a series of other questions. What cleavages and inconsistencies in the state do participatory forums reveal? How do the various actors involved negotiate these cleavages and inconsistencies? In the case of environmental management, what ignorance and uncertainty about social and ecological processes do participatory forums display? What do such silences accomplish in the social and cultural realms?

Given the highly localized quality of many participatory forums, answering these questions often involves elucidating the ties between state formation and popular culture, connections that, as we show, are "predicated upon selective (and always contested) traditions of historical memory" (Joseph and Nugent 1994: 11). Both state and citizenry communicate to one another through symbolically weighted language and activities. For modern states and citizens alike, this communication is complicated by the diverse and sprawling quality of state institutions. State authorities must engage audiences that range from the national level to the highly localized. Citizens must negotiate a wide assortment of state institutions with distinct mandates, jurisdictions, and geographical ties. This social and geographical range underpins state power, but it also points to additional loci of fissures where ambiguity and contradiction in state actions are made possible (Mathews 2011).

Filling these gaps are various sorts of micro-politics (Wilshusen 2009). Because participatory forums place the boundary between the technical and the political at the center of discussion, the micro-politics might focus on the scientific findings that underpin policy proposals, the kinship and social networks that facilitate or obstruct particular policy paths, or the state institutions that would implement such proposals. The possibilities within micro-politics are quite numerous and, at CAHA, included a focus on cultural identities, a local economy narrowly built around tourism, and the demands of career advancement in a state institution. At CAHA, the underlying differences within the state have proved hard to paper over. With the state's instability in clear evidence, and with actors willing to exploit these differences, environmental conflict became entrenched.



Figure 3: Intimidation campaign or protest movement? Photo: R. McCoy.

3. Methods

Arguments surrounding beach driving on CAHA have gained ample attention in the North Carolina press.² "Frankly, for many years, Cape Hatteras has been viewed as the poster child of bad ORV management" throughout the National Park System, affirms CAHA Superintendent Mike Murray (Interview, July 13, 2011.) In order to get past the surface rhetoric of the debate, this research drew on McCoy's long-time contacts in the region to interview participants in the Negotiated Rulemaking process and document the debate's history in NPS archives and the local press.

The research was carried out over a four month period during 2011. At that time, McCoy first contacted Allen Burrus, the owner of a popular grocery store on Hatteras who also served as Dare County Commissioner. CAHA sits partly within Dare County and partly within Hyde County. Burrus provided an introduction to Dare County public relations officer, Gary Gross who, in turn, suggested interviews with a number of people familiar with the Negotiated Rulemaking. This sort of snowball sampling is especially helpful in reaching interviewees who are difficult to contact or not highly visible, such as employees of state and private environmental agencies (Bernard 2002: 205). Given the highly charged atmosphere surrounding beach driving, one drawback of this sampling approach is that it tended to steer the research to like-minded individuals, in this case pro-Access advocates who reside year-round on Hatteras.

In order to garner additional perspectives, the research included interviews with Susan West, co-author of *Fish house opera* (2003) which documents relations between Hatteras fishermen and federal regulating agencies. West co-wrote the book with anthropologist and current North Carolina State Senator Barbara Garrity-Blake, who also conducted ethnographic research for the NPS on local recreational and fishing spots. West provided an introduction to Doug Stover, the cultural resources specialist at CAHA. As part of his job, Stover maintains all official documentation on the matter of beach access, from the 1970s to the present.

² See ongoing coverage in the *News and Observer* published in the North Carolina state capital of Raleigh. For example, <http://www.newsobserver.com/2012/07/15/2199613/walking-driving-heavily-restricted.html>. Accessed 27 December 2012. The issue has also received national attention. See <http://www.forbes.com/sites/deborahjacobs/2012/09/04/outer-banks-of-north-carolina-become-a-bloody-beachhead/>. Accessed 27 December 2012.

One of these documents includes a list of Negotiated Rulemaking participants, twenty-seven people in all. Of these, fifteen individuals agreed to a semi-structured interview. Combining this group of Negotiated Rulemaking participants and the above-mentioned interviewees who followed the process closely, the research included a total of twenty-two interviews.

Given the intricate ways the Access Issue played out in the Negotiated Rulemaking and the courts, the interviews were supplemented with two sets of historical archives. The first entailed the NPS's own administrative record. NPS staff provided access to 3,000 documents which allowed for the creation of a detailed timeline and other points of information later used in the semi-structured interviews. Also, in past years, the Park Service contracted several researchers to document the Park's history. These reports showed how the seeds of today's conflict were sewn at the park's inception in the 1930s.

In addition to official Park Service documents and histories, the *Island Free Press* offered key points of information. The *Island Free Press* is a local, internet-based newspaper whose editor has maintained detailed reporting on the Access Issue since 2007 (<http://islandfreepress.org> accessed 27 December 2012). The articles on the newspaper's website not only provide context, they help identify what information was available to the public and what aspects of the process were perceived as "back room deals."

4. Hatteras Island and the establishment of the National Seashore: an overview

The Cape Hatteras Seashore spans two islands that include eight distinct villages within the seventy-three miles that make up the park: Rodanthe, Waves, Salvo, Avon, Buxton, Frisco, Hatteras, and Ocracoke. The two-lane, NC Highway 12, offers the only thoroughfare through the park and the villages. Highway 12 is dotted with family-owned businesses that cater to summer residents and tourists. The year-round population of the eight villages is just 5,270 residents. Visitors to CAHA, however, can reach two million people per year (Nolan 2011). The region's main attraction includes the beaches and outdoor activities like kiteboarding, surfing, birding and fishing.

At the same time, CAHA is home to a dynamic and unpredictable ecosystem, one that repeatedly evokes state action and makes the state's flaws in environmental management visible. The park and nearby villages all sit atop coastal barrier islands. Hatteras Island is essentially a moving sandbar, one that shifts with the currents of the Atlantic Ocean and Pamlico Sound. Strong storms and hurricanes regularly buffet the region. Highway 12 often washes out in severe weather and is under regular maintenance (see Figure 4). For months following a major storm, Hatteras islanders can be cut off from the mainland. Damaged infrastructure and roads also create a drop in tourism revenue. Concerns about beach closures—which may increase to aid shorebird and turtle habitat also affected by severe weather—often build on this environmental unpredictability. Local residents and business owners who support unrestricted beach access do so partly to counter the losses habitually incurred from storms.

These same residents are quick to correct anyone who calls CAHA a "park." The protected area's official name is the Cape Hatteras National Seashore *Recreational Area* (emphasis added), which for Access advocates is an important reminder of the intentions behind the Seashore's creation. Access advocates believe their position has wrongly been characterized by environmental groups as "rednecks with SUVs versus baby birds" (Interview, June 2, 2011). Instead, pro-Access advocates cite a letter from the NPS to Dare County residents written on the eve of CAHA's legal establishment in 1953. The letter notes that "when the lands for the Recreational Area are acquired and become public property there will always be access to the beach for all people, whether they are local residents or visitors" (Nolan 2009). Like the Organic Act that founded the US National Park System, CAHA was established to conserve scenery, wildlife, and natural and historic objects *and* to provide for the enjoyment of the same.

Originally, the idea of preserving Cape Hatteras beaches was not an easy sell either to the villagers within the proposed Seashore boundaries or to the North Carolinians in charge of the state's budget. In 1933, Frank Stick, who spear-headed CAHA's creation, published an article in a local newspaper detailing his dream (Binkley 2007: 6). An illustrator, outdoorsmen, and, perhaps most significantly, a real estate developer who moved from New Jersey to the Outer Banks in 1929, Stick had purchased large tracts of land north of Hatteras Island and additional properties on the Island itself (ibid.: 7). In the throes of the Great Depression, Stick argued the Seashore would provide jobs for locals and create a tourism economy. Stick viewed the Seashore as an asset that would add value to his other real estate holdings.

Stick's financial interests created an uneasy feeling among NPS staff even as they collaborated with him on the venture (ibid.: 24). Negotiations to establish CAHA began in 1936 and included local, state, and federal planners. At the time, Hatteras Island had no paved road and, until the building of one in 1954, residents and visitors alike had little choice other than driving on the beach. Stick successfully advocated for a program to build dunes that would forestall the constant shifting of sands and allow for the construction of roads and other infrastructure.



Figure 4: Damage to Highway 12 following Hurricane Irene in 2011. Photo: Steve Earley | The Virginian-Pilot.

These artificial dunes lie at the center of the Access Issue today (See Figure 5). The dunes inhibit the natural over-wash where shorebirds nest, leaving only the spits (the areas where the ocean over-wash creates an expanse of open beach) around inlets for bird habitat. To complicate matters, the spits created by the dunes also proved to be the best surf fishing areas and are easily accessed in a vehicle. On a summer weekend, a CAHA spit might be lined with cars and trucks.

The dunes' ecological impacts were not understood until long after the fact, in part because the Seashore's establishment experienced various delays. Enabling legislation for the Seashore passed the US Congress in 1937. Dune construction took place about the same time. American involvement in World War II tabled further action until 1953, when the Seashore was finalized in law. The lack of a paved road meant relatively few people could gain entry to CAHA. And, in 1954, the NPS reluctantly acquiesced to the North Carolina Department of Transportation's road-building plans. Park Service staff hoped the road would redirect motorized vehicles, lessen beach driving, and decrease vehicle-related erosion to the dunes. In reality, the opposite occurred, and in the 1960s, the completion of a bridge connecting Hatteras to the US mainland caused a boom in tourism and further increased the number of vehicles at CAHA (National Park Service 2010: 17).

Soon after the bridge construction, NPS administrators began receiving complaints about buggies on the beach (ibid.:21). In 2011, CAHA Superintendent Mike Murray described one such complaint as prescient:

It's kind of ironic. There was one of them who wrote a letter...saying 'there's so many beach buggies out there I can't take a picture without having four other people in it. You might as well call it the Hatteras Parking Lot'...At the time there were fifty vehicles out there, whereas a few years ago, 2007, on a holiday weekend in the summer there would easily be 800 to 1000 vehicles out there. You know, there was controversy even then. Park Service never addressed it (Interview, July 13, 2011).

As described below, the Park Service actually did attempt to address the issue in the 1970s and again in the 1980s. Both attempts failed, for reasons that continue to mystify Hatteras residents and CAHA staff

alike. Since then, the Access Issue has come to condense a series of tensions surrounding natural resource management on Hatteras. NPS personnel find themselves managing a constantly-changing seashore via bureaucratic procedures that take years to put in place and may or may not be permanent. These officials admit to ecological uncertainty in official reports by noting a range of locations for shifting sand spits and acknowledging the variable effects hurricanes and nor'easters have on nesting bird and turtle populations.



Figure 5: Along Highway 12 lie the artificial dunes that make possible both the recreational area and its associated conflicts. (Photo: R. McCoy)

For pro-Access advocates this uncertainty, combined with what they see as flawed bureaucratic procedures, constitutes a sort of ignorance, one exacerbated by a failure to take into account residents' in-depth, experiential knowledge. Pro-Access advocates bolster their claims to knowledge by noting that park personnel rotate on a regular basis (one NPS staffer confided that the Service deals with personnel who "screw up" at one park by sending them to another). They commonly argue that NPS staff are only interested in their personal career advancement and are willing to act contrary to local interests to achieve their career goals. In contrast, pro-Access advocates see themselves as people with a long-term commitment to Hatteras. They draw on their history on the island to recall how specific storms brought drastic changes to the landscape. They employ this experience to doubt the science justifying beach closures, furthermore complaining that the state's scientific reports are not put through a peer review process and are, thus, "junk science."

It is worth noting that this dispute between NPS and pro-Access advocates occurs in a place where state regulation of natural resource use is a regular presence in people's everyday lives. On a given day in Hatteras Village, Park Rangers patrol the beaches. Workers with the North Carolina Division of Marine Fisheries measure catches on the docks. Marine Fisheries Marine Patrol vehicles cruise the beaches looking for fishing violations. Dare County police cover the highways, and US Coast Guard helicopters and boats monitor the waterways. Because natural resource use takes place within the jurisdiction of several, sometimes overlapping agencies, enforcement often requires informal collaborations that are, necessarily, less than transparent. When pro-Access advocates point to obscure processes that produce NPS policies, they do so against this larger backdrop of uncertainty.

5. "How we got here": historical attempts at regulating beach driving

By the 1970s, the popular use of vehicles in National Parks across the country had become widespread enough to garner the attention of the Nixon administration. In both 1972 and 1977, the administration issued executive orders requiring any park that allowed off-road vehicles to establish driving plans and designated routes. At CAHA, Park Service administrators conducted a series of public meetings to draft the ORV Management Plan. In response, people who supported beach driving founded the Outer Banks Preservation Association (OBPA), a group that continues to be active today. By all accounts, the NPS successfully developed an ORV plan in the 1970s, though it remained controversial. Bill Harris, superintendent of the seashore from 1975-1981, arrived to the park after the controversial plan had already been created. He went on to lead seven additional public hearings that aimed at quelling any controversy by incorporating greater public input into the draft (Nolan 2012a). Harris sent the final document to NPS headquarters in Washington, DC in 1978, but it was never published in the Federal Register, adopted, or implemented. Although Hatteras residents rumor the influential US Senator from North Carolina, Jesse Helms, intervened to squash the plan, Harris recalled in a 2005 interview, "I honestly cannot tell you why" the NPS failed to follow up on the draft (Nolan 2012a). The Seashore did begin to operate under this plan to some extent, for example, by establishing ramps over dunes. The NPS built ORV corridors that utilized graders to establish driving routes. Meanwhile, the ghost of an ORV Management Plan continued to be a point of tension in the relationship between the Park Service and the interested parties.

The Superintendent who followed Harris tweaked the first draft plan and sent a changed version to Washington in the 1980s. Again, the NPS took no action. Current Park Service Superintendent Mike Murray describes the second draft as falling into a "black hole" and attributes the incident to the dealings of North Carolina politicians based in Washington, DC. While Murray is careful to admit he cannot prove his case, the rumor goes that a North Carolina Congressman personally objected to the plan or had other reasons for blocking its authorization. For Murray, the bottom line is that the "Park Service didn't follow through" on its own regulations. Still, he distinguishes between the work of local and federal NPS staff: "the park attempted to do it, they have the plan, it went through public meetings and a couple of comments, but it didn't get signed off on... that's where the perception of political interference comes in." (Interview July 13, 2011)

Meanwhile, at the turn of the new century, conservation and environmental groups became increasingly focused on ORVs in National Parks. Sports-utility vehicles (SUVs) had grown in popularity among US car owners, and environmental groups feared the new vehicles emboldened tourists to attempt more off-road driving. In 1999, the Bluewater Network, a national organization championing the fight against "damage caused by motorized recreation, oil and shipping industry practices, and other types of marine pollution" (EnviroLink 2012), petitioned the NPS to establish vehicle-use rules in all parks that allowed ORVs. As of 2007, three more groups had requested similar rulemaking (Nolan 2012a) (Ironically, NPS policy now recommends SUVs to visitors who feel they must drive off-road³) Bluewater and other environmental groups turned to two key pieces of legislation to argue for action on the matter.

The first is the Endangered Species Act (ESA) which requires the Fish and Wildlife Service develop specific plans for the protection of endangered individuals, as well as the recovery of a species' larger population. To comply with ESA, CAHA staff use data and management suggestions provided by the US Fish and Wildlife Service to determine which beach closures would protect the endangered Piping Plover, Seabeach Amaranth, and nesting sea turtles. Crucially, the ESA does not stipulate when a plan must be in place. Thus, as long as CAHA had no plan they were not actually in violation of the law. However, once an interim plan was approved by the NPS, environmental groups could charge the organization had failed to meet ESA standards.

The second piece of legislation is the National Environmental Policy Act (NEPA) which requires all federal agencies establish the environmental impacts of a proposed regulation. NEPA allows for three kinds of intervention. In the case of a "Categorical Exclusion," an agency determines a policy has no prospective environmental impact and, thus, does not require additional research. The relatively brief "Environmental Assessment" allows an agency to determine whether a policy presents "No Significant Impact" or merits more in-depth analysis. This latter step entails an Environmental Impact Statement, which can include the participation of various federal agencies and the use of public hearings to garner community input. Again, in the case of CAHA, the NPS was able to skirt NEPA requirements because there was no proposed ORV regulation to speak of. However, once an interim plan was approved, environmental groups could argue the agency had failed to appropriately examine the policy's environmental impacts as required by law.

³ See the NPS hand out on ORV use available at <http://www.nps.gov/caha/planyourvisit/upload/02-10-12-FAQ-Site-Bulletin-for-CAHA-ORV-regulation.pdf>. Accessed December, 27 2012.

6. Gentlemen-type rules?

In 2004, the NPS at Hatteras devised what they called a "three-phased approach" to create a permanent ORV plan. The first of the three steps entailed drafting and approving an Interim Plan. Because it would only be in place for several years while the comprehensive plan was in development, the Interim Plan underwent an Environmental Assessment and not a more extensive Environmental Impact Statement. The second and third phases of this process were to be undertaken simultaneously. The NPS would proceed with the development of the long-term plan while a "Negotiated Rulemaking" committee got underway with its work.

The Negotiated Rulemaking process, with the equally cumbersome nickname "Reg-Neg," was designed to maximize stakeholder input into the final regulation. As noted above, its participants included various local and federal government officials, as well as representatives of homeowner associations, commercial fishermen, recreational groups, and environmental organizations. NPS staff hoped the Interim Plan would suffice until the Reg-Neg and the comprehensive final plan could be completed. They had good cause to be modestly optimistic. In 2005, the NPS had contracted the US Institute for Environmental Conflict Resolution to assess whether, in light of existing tensions, a Reg-Neg would be practicable for Hatteras. The Institute concluded in the affirmative and drew up a list of participants. That same year, CAHA received a new Superintendent, Mike Murray. Murray had successfully used a Reg-Neg to create an ORV plan at his former post, and there was some hope he could repeat this achievement.

Still, given pressure from environmental groups, Reg-Neg participants were bracing for a lawsuit. In 2005, with the Interim Plan pending completion, Defenders of Wildlife issued their notice of intent to file suit against the National Park Service for violations to the Endangered Species Act. One year later, the group issued a second notice, this time to sue the Park Service *and* the US Fish and Wildlife Service claiming the interim plan's biological opinion did not meet the standards laid out in ESA. The second notice reiterated the previous charges: the lack of a management plan, the failure to consult with the US Fish and Wildlife Service over management of the piping plover and other protected shorebirds, and a failure to conduct an environmental review as required by NEPA (National Park Service 2010: 26; Nolan 2012a).

Environmental groups also drew on recommendations made by the US Geological Survey (USGS). Like the NPS and the Fish and Wildlife Service, the USGS is a division of the Department of the Interior. The USGS provides data to the NPS to help formulate park policies. In 2005, NPS contacted the USGS to provide a literature review for species management at CAHA. USGS researchers also visited the park to look at population dynamics and habitat. Because USGS staff knew this was a "political hot potato" (Interview Mike Murray, July 13, 2011), their report suggested three distinct levels of protection that would allow for ongoing negotiations: low, moderate, and high. Not too long after these recommendations were issued, the Park Service issued an Interim Plan. The actions posed under the plan fell short of meeting "moderate" USGS recommendations, a point which garnered the attention of environmental groups. The scientific data used to make these recommendations came under additional criticism by Access advocates. Citing the variable findings that underpinned the recommendations, Access advocates took up the call; "Show me the science."

During 2005 and 2006, various legal and bureaucratic moves associated with the ORV ruling came in quick succession, as previous paragraphs describe. Different interest groups were anticipating one another's actions and attempting to steer the overall outcome in their preferred direction. In this atmosphere, Reg-Neg participants met informally in early 2007 while awaiting approval of their membership by the Department of Interior. With the Defenders of Wildlife's notice of intent to sue yet to be activated, during these preliminary meetings, committee members hammered out what some interviewees characterized as "gentlemen-type rules" that operated on the "good faith" espoused by the participants (Interview Thayer Broili, July 20, 2011).

"Ground rules for participation" are a common feature of public participatory processes, and in this case included "admonishment against threats and intimidation" (Merritt 2009:180). In his research at CAHA, Merritt describes these threats as originating in "the local community" and aimed at those who advocated "controlled access." Merritt recounts intimidation by pro-Access advocates inspiring fear among environmental groups, "causing them to behave with trepidation to vocally participating in deliberations" (ibid). In response, NPS facilitators moved the location of the Reg-Neg meetings to a site somewhat removed from the Hatteras villages.

Unsurprisingly, pro-Access advocates offer a different story. They re-framed the notion of ground rules to "gentlemen-type rules" in a way that emphasized the informal, unspoken dimension of interpersonal relations. Perhaps not by accident, the re-framing resonates with local ideas of politeness, and norms of relating to one another that North Carolinians regularly use to distinguish themselves from outsiders. Pro-Access advocates assert participants agreed to refrain from filing suit against the NPS during the Reg-Neg process, and any lawsuit would entail a removal of the group in question from the committee. According to County Commissioner Warren Judge:

One of the ground rules was that nobody's going to get mad, and nobody's going to leave the table, and nobody's going to file a lawsuit...Derb Carter [a lawyer with the Southern Environmental Law Center] will say, 'Warren Judge is a lunatic. We never agreed to that.' But we had these gentlemen-type ground rules. Certainly nothing you can litigate over, but I mean, the whole idea was to be in good faith (Interview Warren Judge, June, 28 2011).

The notion that Reg-Neg participants could choose to negotiate in good faith or in bad faith became a common refrain for all Reg-Neg participants (see also Merritt 2009: 151, 163), each of whom asserted that they held a flexible stance in the face an intransigent opposition.

Interviewees always referred to "ground rules" in the plural, but the most important one for pro-Access advocates was clearly the agreement to refrain from litigation. By keeping the debate within the arena of the Reg-Neg, advocates retained some measure of control over the process. Again, the association here with good and bad faith is a close one. In the Reg-Neg, individual participants' personal integrity and strength of character, as well as their social networks, might influence the outcome. In contrast, "bad faith" resulted when a lawsuit did, indeed, take place and transform a personalized process into an impersonal one, at the expense of pro-Access interests.

While CAHA staff set up the Reg-Neg process, there was one more bureaucratic step to take before the Interim Plan could be adopted formally as park policy. In July 2007, the Park Service issued a 'Finding of No Significant Impact' on the Interim Plan, in which regional directors concurred there would be no substantial environmental damage from the proposed temporary measure (Interview Mike Murray, July 13, 2011; National Park Service 2010: 26). Environmental groups disagreed and, with the Interim Plan now a formal policy, they moved to make good on their intent to sue.

The existence of "gentlemen-type ground rules" might be in dispute, but the outcome of any possible litigation became clear to Reg-Neg participants just as their work got underway. A seemingly minor event led to this revelation. A vacationer was issued a citation for reckless driving on a CAHA beach. The driver pled not guilty to the charge in the court of Judge Terrence W. Boyle, a federal judge in whose jurisdiction CAHA is located. Boyle used the citation to pose a series of unexpected questions to the Seashore's Chief Ranger about CAHA's ORV plan. In his testimony, the Ranger noted that the park, though in the process of creating an ORV plan, was "in violation of the two Presidential Executive Orders as well as our own regulation requiring the plan" (Court Transcript 2007). Judge Boyle found the driver guilty and, surprisingly for a Republican appointee and former legislative aide to conservative US Senator Jess Helms, concluded the court session by stating that "it's a violation of the law to operate a motor vehicle off road...on the National Seashore" (Court Transcript 2007).

Boyle did not order CAHA to take any action on ORV management, but Reg-Neg participants saw that any lawsuit proposing beach closures would receive a sympathetic hearing in his court. Pro-Access parties viewed the judge's statement as all but inviting a third party to sue the NPS and demand an injunction against beach driving (Nolan 2012a). Pro-Access advocates also commonly believed that Boyle was a golfing partner to Derb Carter, a lawyer for the Southern Environmental Law Center (SELC). The latter organization filed suit on behalf of the Defenders of Wildlife and the Audubon Society in October of 2007.

7. Or, back room deals?

At this point in late 2007, the NPS was three years into its three-phase approach. The Service had completed only the first phase which was targeted twice with litigation. Participants in the Reg-Neg recall the opportunity to meet in the midst of these disputes as a sort of "good faith" effort on the part of the Park Service to serve a public they had let down in the past. By most accounts, including those of CAHA staff, the public comment period for the interim plan fulfilled the guidelines established by NEPA, but, given heightened feelings about beach access, the more permanent plan would need a different public input mechanism (Interview Thayer Broili, July 20, 2011). The Park Service could have developed its own plan that they then submitted for public comment, but they chose to initiate a Reg-Neg process to garner more community support.

The gentlemen's rules purportedly called for the removal of any Reg-Neg participant who filed a lawsuit. Nonetheless, Defenders of Wildlife, Audubon Society, and SELC all continued to occupy their Reg-Neg seats. The Reg-Neg met about 11 times before the process terminated without an agreement (National Park Service 2010: 26). One observer called it "a disastrous and contentious year of meetings" (Nolan, 2012a). The "good faith" espoused by all parties soon waned. Reg-Neg required an intensive time commitment by committee members, and the effort grew increasingly frustrating as the law suit worked its way through the courts.

In addition to the environmental groups, many additional Reg-Neg participants were active in the lawsuit. Dare County and Hyde County and the Cape Hatteras Access Preservation Alliance (a coalition of Access advocates) were allowed Intervenor-Defendant status so they could participate in the proceedings on behalf of the NPS (National Park Service 2010: 26). The NPS extended the invitation, partly, to maintain good relations with local communities and, partly, to mount an opposition to demands in the lawsuit that would strain the park's budget and personnel. Pro-Access advocates agreed to Intervenor-Defendant status hoping to have some influence over the case's outcome. Given Judge Boyle's earlier statements, however, the Department of Interior lawyers decided to settle the case via a Consent Decree.

A Consent Decree is a legally binding judgment to which all parties in a suit agree in exchange for the withdrawal of a charge. This particular Consent Decree was signed in April 2008 and would manage the seashore until a final ORV management plan was put in place. The Decree closed some areas to ORVs and pedestrians, introduced larger-than ever buffers for nesting birds, and banned night driving for the entire breeding season of shorebirds and turtles (Nolan 2012a). The Decree further mandated that the final ORV plan be finished by April 2011 (it was completed in July of that year).

Pro-Access advocates felt they had been duped. Again, Warren Judge, a Dare County Commissioner at the time, emphasizes that he and the county intervened in the case because they were asked to do so: "The NPS asked the county to be a Defendant-Intervenor. They asked Dare County to come in, and we did. And it was expensive for us to get in." Then, the NPS "...just threw in the towel. So the green side won" (Interview Warren Judge, June 28, 2011).

The Consent Decree was formulated by lawyers, behind closed doors and replaced an Interim Plan, which had undergone public comment. As a consequence, it quickly gained the reputation of a "back room deal" and its reception in the Hatteras villages was distinctly acrimonious. The public officials who signed off on the decree denounced it almost immediately, issuing a public press release and privately asserting Judge Boyle had threatened them with total beach closures if they failed to accept the Decree's partial proposition. In later interviews, Warren Judge characterized the dilemma this way: "I had a gun to my head and it was either be shot in the foot [and accept the Decree] or shot in the head [and face total closures], and I chose being shot in the foot" (Interview Warren Judge, June 28, 2011).

8. Discussion

At the start of 2012, the Access Issue continued to shape social relations at CAHA. After the Consent Decree and the termination of the Reg-Neg, the Park went ahead with a comprehensive Environmental Impact Statement (EIS) that culminated in an 800-page document and included six alternatives for future management. The EIS states a preference for "Alternative F" which purportedly includes ideas that originally arose in the Reg-Neg meetings. Alternative F was presented at public meetings for comment. Access advocates voiced opposition to the plan, complaining the Park Service went above and beyond conditions laid out in the Consent Decree to avoid a future lawsuit. Environmental groups argued the Alternative did not go far enough, that it failed to meet regulations proposed by the USGS's plan for "moderate" protection (Repanshek 2010). One week prior to the publication of Alternative F in the US Federal Register, pro-Access advocates filed a lawsuit to stop the rule's implementation. The suit was filed in a US District Court in Washington, DC. As of writing, the presiding judge is considering transferring the case to North Carolina, where the dispute would land, again, in the court of Judge Boyle (Nolan 2012b).

Analyses of participatory processes in environmental management typically assess the strengths and failures of such processes and conclude with a list of best practices (for just a few examples, see McShane and Wells 2004; Ostrom 2005). The suggestions often include reconfiguring who sits at the table during these processes, altering the group's structures of communication, or re-situating their location within a broader array of social institutions. While well-intentioned, this approach to participatory processes stands in contrast to the material from CAHA. Rather than point to a bureaucratic process that is both knowable and amenable to treatment, the evidence from CAHA directs attention to participatory processes as located within multiform states, where agents differ over their understanding of what participation entails as well as the performances employed to enact such beliefs (Abram and Lien 2011; Cornwall 2008). One group's pursuit of justice through the court system may prove to be another's truncation of the possibility of justice. One group's protest movement may be another's intimidation campaign.

Reg-Neg participants were savvy political operators, including trained lawyers, seasoned politicians, and NPS staff with considerable experience in public participatory processes. They were well aware that theirs constituted a unique participatory sphere, one that allowed them to assert their will onto a heterogeneous and unpredictable state (although not without considerable complications). Reg-Neg participants were also aware that any one of the group might pit one state institution against another. We suggest pro-Access allusions to "gentlemen-type rules" served as a hedge against this possibility and against the fractured state more generally. Through this rhetoric, pro-Access advocates attempted to keep the argument within a localized Reg-Neg and away from the broader state apparatus. Although they failed to do so, this assertion of

localized norms as a central forum for conducting natural resource management continues to resonate today (not least because of ongoing litigation). NPS staff still need viable counterparts in CAHA communities with whom to coordinate management efforts. The NPS continues to work with and alongside a series of overlapping, powerful, but also flawed and contradictory state institutions. In this setting, localized notions of state formation can hold sway for both state and non-state actors. They can be a means to navigate the state's diversity, and offer a coherent counter-narrative to state inconsistencies. The creation of larger and more complicated states may encourage a turn to localized norms, as people rely on "'scripts' and 'schemata'...in effect, chunked networks of loose procedures and understandings which enable us to deal with standard and recurring situations" (Bloch 2006: 289). Scripts and schemata, like the face-to-face personalized relations that pro-Access advocates also favored, make an elaborate state manageable.

The opaque quality of the "gentlemen" agreement was a key component of this counter-narrative. It gave momentary voice to the ignorance and silence that form part of the social and cultural building blocks of bureaucratic institutions (Mathews 2011). "Gentlemen" agreements, however, might easily be interpreted as "back room deals." That is to say, bringing to light the unspoken may be viewed as a transgressive act. Making points of ignorance and silencing the center of dispute may, as in the case of CAHA, signal that social relations have broken down almost entirely. If this is the case, then future research might take a more nuanced approach to the notion that participatory processes might be improved by identifying and amending processual flaws. "Spelling out what exactly people are being enjoined to participate in, for what purpose, who is involved and who is absent" is a sound general principle (Cornwall 2008: 281). Adhered to strictly, however, this advice risks highlighting the very cleavages that underpin natural resource disputes. Exposure will likely be followed up with a new micro-politics that fills the now-visible gap. Research and action surrounding participatory processes that hope to subvert the tyrannical aspects of participation (cf. Rodgers 2005) and achieve participation's emancipatory promises (see Fletcher 2012; Kesby 2005; Leal 2010) must acknowledge and confront this dilemma.

9. Conclusion

A growing awareness of state instabilities, among both researchers and participants in policy processes, is taking place at a time when concerns about ecological crises have reinforced the state's central role in natural resource management. The new century has seen an explosion in research examining "environmentality" (Agrawal 2005; Fletcher 2010; Luke 1995;). This research is occurring alongside on-going surveys that show environmental issues remain a high priority for publics across the world (Leiserowitz *et al.* 2005), although the same publics are skeptical about the abilities of states to effectively respond to environmental problems (Globescan 2012). State and non-state actors continue to view the environment as a central arena of mutual engagement. Consequently, public, participatory forums for managing natural resources are likely to continue to be both widespread and contested.

In this paper, we outlined a political ecology of co-management associated with the Cape Hatteras National Seashore Recreational Area in North Carolina by drawing on findings from participatory research (Arnstein 1969; Chambers 1997, 2002) and theories of the state that emphasize its multiform, culturally negotiated quality (Joseph and Nugent 1994; Roseberry 1994; Rubin 1997). Theorists of participatory research argue that these forums constitute a unique form of governance (Cornwall and Coelho 2006). Participatory processes are part-civil society and part-state, sites where the boundary between political solutions to environmental problems and technical solutions to the same is negotiated explicitly and also vulnerable to political machinations, including derailment (cf. Walker and Hurley 2004). The material from CAHA adds to this the observation that participatory forums are also sites where the state's multiform quality comes into sharp relief. Participatory mechanisms bring together representatives from a range of state and civil institutions. In this way, the forums reiterate both the multiple avenues of state action open to these actors, as well as the limits to these possibilities. At places like CAHA, participatory mechanisms may fail in their democratic and environmental aims precisely because they forefront a fractured and inconsistent state. In such settings, default positions on environmental management—such as the economic rationales associated with CAHA's ecotourism—may acquire a firmer footing in management strategies.

At CAHA, we observe one additional consequence to participation. Through the Reg-Neg, state phenomena and ecological phenomena took on curiously parallel constructions both discursively and in practice. That is, the political ecology of CAHA emphasized a certain symmetry between politics and ecology. The state proposed to be a rational, logical actor but often behaved in ways that appeared nonsensical and inconsistent (cf. Scott 1999). Part of the state's rationality entailed assertions that its actions were based on scientific knowledge of ecosystems. Coastal ecologies, while knowable through scientific methods, also displayed elements that are highly changeable and erratic. The simultaneous presence of order and disorder, and the predictable and the unknowable were visible in state activities and environmental processes. These came to underpin CAHA's persistent environmental conflict.

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Abstract

This paper examines the political ecology of a participatory environmental management setting. It argues the failure of participatory forums to meet their goals reveals more generalized features of the state, namely its fractured quality and inconsistent actions. Thus, rather than premise questions of how participatory forums might be more effective, researchers should first consider what cleavages and inconsistencies in the state that participatory forums reveal. How do the various actors involved negotiate these cleavages and inconsistencies? The paper explores disputes surrounding the Cape Hatteras National Seashore, North Carolina, USA. The argument centers on whether or not off-road vehicles might access the Seashore. Parties to the dispute have lobbied elected representatives, participated in a public forum, enacted litigation, and carried out campaigns of public admonishment. While using one part of the state to counteract the actions of another, supporters of off-road vehicles proffer a moral assessment which contrasts "gentlemen-type rules" with "backroom deals". The paper argues this rhetoric acts as a kind of cultural script that people use to corral heterogeneous state institutions into a single discursive framework that premises the kind of face-to-face relations where they are more likely to achieve their goals.

Keywords: conservation; state formation; environmentality; environmental governance

Résumé

Cet article examine l'écologie politique d'un cadre de gestion participative de l'environnement. Il soutient l'échec d'un tel forum participative à atteint ses objectifs révèle quelques caractéristiques plus générales de l'Etat, c'est-à-sa qualité fracturé et des actions incompatibles. Ainsi, plutôt que de se concentrer sur la façon dont des forums participatifs pourraient être plus efficaces, les chercheurs doivent d'abord examiner ce que les clivages et les incohérences dans l'état et révélés par des forums participatifs. Comment les différents acteurs concernés négocient ces clivages et des incohérences? Le document explore les conflits autour de la National Seashore Cape Hatteras, en Caroline du Nord, États-Unis. Le conflit est centrée sur si les véhicules 4x4 peuvent accéder au bord de la mer et longer la plage dans une écologie fragile. Les participants ont fait pression sur les élus, ont participé à un forum public, allé au tribunal, et mené des campagnes de réprimande publique. Tout en utilisant une partie de l'Etat pour contrer les actions d'une autre, les partisans de l'accès des véhicules 4x4 donnent une évaluation morale qui contraste «'gentlemen' règles» par «offres de coulisses». L'article fait valoir que cette rhétorique agit comme une sorte de scénario culturelle que les gens utilisent pour encercler institutions hétérogènes de l'Etat dans un cadre discursif unique. Cela empêche le genre de relations en face-à-face où ils sont plus susceptibles d'atteindre leurs objectifs.

Mots-clés: conservation, la formation de l'Etat; environnementalité; la gouvernance environnementale

Resumen

El presente trabajo examina la ecología política de un modelo particular de manejo medioambiental participativo, y argumenta que el fracaso de este foro pone en evidencia rasgos más generalizados de los gobiernos estatales, tales como: lo fragmentado de su carácter y lo inconsistente de sus acciones. Así, en vez de proponer preguntas sobre cómo los foros participativos pudieran ser más efectivos, los investigadores deben considerar en primera instancia el significado de las divisiones e inconsistencias encontradas en estos. ¿Cómo negocian estas divisiones e inconsistencias los múltiples actores involucrados? Este estudio desarrolla su afirmación explorando las querellas en torno al área protegida de Cape Hatteras en Carolina de Norte, EEUU. Las mencionadas disputas se centran en si tienen derecho, o no lo tienen, los vehículos automotores para transitar en la playa. Los grupos en disputa han ejercido presión sobre sus representantes estatales, han participado en foros públicos, han entablado demandas y han adelantado campañas públicas de escarmiento. Al enfrentar sectores estatales unos contra otros, quienes apoyan la causa para que los vehículos operen en la playa esgrimen un argumento moralista, en el que se contrastan las "reglas de caballerosidad" con los "acuerdos a puerta cerrada". El estudio argumenta que esta retórica hace las veces de un guion cultural que le permite a la gente agrupar diferentes instituciones estatales bajo un mismo marco discursivo, en el que presuponen el tipo de relaciones cara a cara donde ellos pudiesen tener una mayor oportunidad para lograr sus objetivos.

Palabras claves: conservación, formación de estados, políticas ambientales, conflictos ambientales