

## **MEMORANDUM CONCERNING THE SPEED LIMIT**

Park management for the Padre Island National Seashore (Park) proposes to reduce the 25 mph statutory speed limit at the Park's beach to 15 mph during the period April 1 through July 31 (such period). Citizens for Access and Conservation (CAC) are opposed to such speed limit reduction for the entire beach during such period, and submit this Memorandum in support of their position for a modified speed limit plan for the Park's beach, as discussed below. CAC is of the opinion that the Park in imposing any restriction on users' access to the Park's beach should do so based upon empirical data supporting a speed limit reduction and in a manner which causes the minimum visitor impact on access to the Park's beach while accomplishing the Park's objectives.

### **Park's Position**

It is CAC's understanding that the Park's primary reasons for reducing the speed limit during such period are to better protect Kemp's Ridley Turtles which may be nesting on the beach and to better protect beach visitors.

The Park has argued that reducing the speed limit on the beach to the beach speed limit established by the State of Texas evidences prudence on its part. Such Texas speed limit is for the protection of the beach public. A 15 mph speed limit is often necessary around parked cars on the beach since people often walking or running around parked cars are obscured from drivers or do not notice them. On the other hand, nesting turtles walking up on the beach are not obscured by parked cars, but are normally in open view. As discussed below, reducing the speed limit at all times during such period may not be the safest alternative for turtles. Although reducing the speed limit may be safer for beach visitors, the CAC proposal set forth below offers more protection for beach visitors without hindering or interfering with beach access.

To further justify CAC's position that the speed limit set by the State of Texas should not have any bearing, it offers the following scenario. In the unlikely event that the Texas legislature passed a law providing that the speed limit on any Texas beach with access entrances more than 20 miles apart is 30 mph (except that it is 15 mph within 100 feet of any person not in a motor vehicle), certainly the Park would not continue to argue that the speed limit set by the State of Texas is evidence of a prudent speed for nesting turtles. The Park's beach is different in visitor density and accessibility from any other beach in the State of Texas and needs to be analyzed differently.

Unlike the Park's beach, most public Texas beaches outside of the Park have access points from non-beach roads so that visitors can drive down the non-beach road until they reach the area where they want to access the beach. They can then access the beach and drive only a short distance to their destination at 15 mph. That is not possible on the Park's beach. Also, the people density of other Texas beaches is much higher than on the portion of the Park's beach past the 5 mile marker. From the 10 mile marker to the Mansfield jetties, the people density is often very sparse, sometimes less than one visitor per 5 mile stretch of beach on weekdays.

Congress in establishing the 25 mph speed limit on the beach (instead of the Texas beach speed limit) recognized that the Park's beach is different from other public Texas beaches, and thus needed a higher speed limit. Speed limit laws set by the State of Texas should have no bearing on the speed limit set by the Park for its beach.

### **CAC's Position**

Since no turtle has ever been damaged by a vehicle on the Park's beach, CAC believes that the safest approach would be to maintain the current speed limit until it is shown to be unsafe for turtles. However, since the Park appears to be determined to reduce the speed limit to 15 mph, CAC offers its proposed compromise plan for modification of the speed limit on the beach since it better protects nesting turtles and visitors than does the Park's plan and impedes visitor's access to the beach less. CAC is of the opinion that imposing a continuous 15 mph speed limit along the entire beach during turtle nesting season is significantly more dangerous for nesting turtles because of the high likelihood that drivers will become bored, inattentive and distracted.

CAC further points out that a significant portion of nesting turtles access the beach when conditions exist which are unfavorable for fishing. As a result, normally fewer visitors are on the beach when most turtles are nesting, and thus less likelihood exists for vehicles to injure turtles. CAC's proposals permit the Park to impose greater restrictions on user access to the beach when a greater likelihood of nesting turtles exists.

### **Discussion of Issues**

1. Discussion of Statute Authorizing Reduction of Speed Limit along the Beach. Title 36, Chapter I, of the Code of Federal Regulations (CFR) governs the National Park Service (NPS) in managing national parks. 36 CFR §7.75 contains special regulations for the Park. The speed limit for the park is established at 25 mph in 36 CFR §7.75(g), which provides as follows:

(g) Except where different speed limits are indicated by posted signs or markers, speed of automobiles and other vehicles shall not exceed 25 miles per hour where driving is permitted on the beach.

Since the provisions of §7.75(g) which authorizes the Park superintendent to implement a reduced speed limit do not set forth the reasons to be considered in doing so, the reasons set forth in 36 CFR §4.21(b), which authorizes the superintendent to reduce the speed limit on non-beach Park roads, should be followed. §4.21(b) states,

(b) The superintendent may designate a different speed limit upon any park road when a speed limit set forth in paragraph (a) of this section is determined to be unreasonable, unsafe or inconsistent with the purposes for which the park area was established.

CAC is uncertain of the extent of due diligence and public scoping that must be undertaken and empirical data which must be produced to satisfy the provisions of §7.75(g) and §4.21(b) and to justify reduction of the statutorily established speed limit, especially since reducing the speed limit may negatively impact nesting turtles. In the spirit of compromise, CAC is willing to rely upon the solicitor for the National Park Service (NPS) to advise the Park and CAC on the proper procedures to be followed and data which the Park should secure to justify changing the speed limit.

It is CAC's position that the current speed limit of 25 mph south past the current sign marking the end of the 15 mph area and the beginning of the 25 mph area (2.4 miles down) (the 15/25 mph sign) is not unreasonable, unsafe or inconsistent with the purposes for which the Park was established. CAC believes that the burden is on the Park to produce empirical data that the current speed limit is unreasonable, unsafe or inconsistent with the purposes for which the Park was established. Thus far, the Park has not done so. Conjecture that slower must or might be better should not suffice, especially since it is believed that driver boredom, inattention and distraction is a greater risk to nesting turtles than is speed.

2. The 15 mph Speed Limit Effectively Denies Visitors Access to the Entire Beach. The reduction of the speed limit from 25 mph to 15 mph during such period results in a portion of the Park being effectively rendered inaccessible and effectively denies access to the entire Park to the Park's visitors desiring to travel to the southern end of the beach by adding 3 hours to a round trip, unless they violate such speed limit.

Concern exists that many out of town visitors will alter their destination to other beaches in the event of the speed limit reduction, which will result in a loss of revenue to the Park and local businesses.

3. The Current Speed Limit is Safe for Turtles. No turtles have been injured on the beach under the current 25 mph speed limit during the existence of the Park. Although the U.S. Fish and Wildlife Service (FWS) is in favor of the reduced speed limit based upon the assumption that it is safer, no studies exist that the reduced speed limit is in fact safer for turtles, only conjecture that slower must be better.

The FWS has indicated at the Park/CAC meeting on September 16, 2009, that it would be possible to lose all of the turtles on Padre Island and that the species would still not be in jeopardy. Thus, the Park cannot justify reduction of the speed limit based upon the argument that not doing so could potentially jeopardize the survival of an endangered species.

4. The Reduced Speed Limit is More Unsafe for Turtles. Although the collision damage to vehicles and people is less when vehicles are driven at a slower speed, when a turtle is run over by the wheel of a vehicle, the damage is the same whether the driver is traveling at 25 mph or 15 mph. The question is - at which speed is the driver more likely to see a nesting turtle? Studies indicate that more accidents are caused by inattention and boredom than by speed. The following quotes from the article in *Your Future, Today* on

“Lower Urban Speed Limit Will Increase Accidents”

(<http://www.futurizon.net/2008/05/lower-urban-speed-limit-will-increase.html>) is interesting and on point.

I've argued before that lower speed limits cost lives based only on the increased proportion of lives spent in the car to get from A to B when you have to drive slower, and that they also increase accidents. See

<http://www.btinternet.com/~ian.pearson/web/future/roaddeaths.htm> and

<http://www.btinternet.com/~ian.pearson/web/future/driving.doc>

This 'latest research' suggests that the effect will be even larger, with people's brains going into autopilot and reacting much slower to visual clues than normally, and consequently making far more mistakes. I for one almost fall asleep if I have to drive as slow as 30 mph on an uncluttered road with few obstacles or dangers or pedestrians to track. Being forced by speed cameras to drive at only 20 will mean that my brain will almost switch off completely, or at least wander onto thinking about totally different things. Certainly, I will find it impossible to concentrate on driving at that speed unless the road is very challenging indeed, and very few urban roads are that difficult.

If people respond much more slowly to visual clues and make more mistakes, this will directly translate into more accidents. Although a smaller proportion of those accidents will result in deaths if they occur at slower speed, it is hard to see that implementing a policy that will increase the number of traffic accidents will be sensible. We will have more injuries, even if the number of deaths is lower.

Because the 15 mph speed limit is deemed so slow by beach users, after driving down the beach a few miles under average driving conditions, drivers will become bored, less attentive and easily distracted. CAC believes that this is a significant concern since many fishermen will be driving several hours to get to the Park and then to and from fishing areas. It is believed that fishermen will cease to focus on the road ahead, but will start focusing on beach structure and waves looking for suitable fishing spots and will only glance at the road. Essentially, they will drive on autopilot while looking at the water and wildlife. That is not best for nesting turtles.

CAC believes that if a turtle is eventually injured on the beach that driver boredom, inattention and distraction will be determined to be the major cause of the accident, rather than speed of the vehicle.

CAC believes that the 25 mph speed limit is sufficiently fast for most of the beach that drivers will need to be attentive to avoid driving over boards with nails and other debris which might damage their vehicle. As a result of drivers being more attentive and less bored and distracted, it is more likely that nesting turtles will be detected at 25 mph than at 15 mph.

5. The Reduced Speed Limit May Result in Fewer Turtle Nests Being Found. Every year visitors to the Park's beach find nesting turtles and report them to the Park. Since (as discussed above) the 15 mph speed limit will result in fewer fishermen visiting the Park and will result in fewer fishermen travelling a long way down the beach, the reduced speed limit will ultimately result in less turtle nests being found than if more visitors were on the beach who travelled further down the beach.
6. Portions of the Beach may be Unsafe at 15 mph. Some portions of the beach with deep sand and/or shell, particularly the area known as the "high banks" may be unsafe at 15 mph. A vehicle must maintain enough momentum at an adequate speed to get through deep sand or shell otherwise it might get stuck. 15 mph is often too slow for a vehicle to get through in some areas which are deeply rutted.
7. The Park by Reducing the Speed Limit is Establishing a Rule Which Will Likely be Ignored. Studies indicate that a speed limit which the public believes is unrealistically low does not invite voluntary compliance. In absence of special circumstances, the general rule is that speed limits should be set in the vicinity of the 85<sup>th</sup> percentile speed. Setting a speed which the public deems unreasonably slow, will invite the public to disobey rules set by the Park. It has been well established that the 15 mph speed limit is extremely unpopular with beach users. It would be better to establish speed limit rules which most of the public believes are fair and justified.

### **CAC's Proposals.**

CAC is concerned about vehicles being driven too fast past people not in a motor vehicle and suggests that the Park adopt the following rule on a year around basis:

Any vehicle driving within 100 feet of any person not in a motor vehicle must reduce their speed to 15 mph. (This rule is established by federal statute in Gulf Islands National Seashore and Assateague Island National Seashore, both of which have 25 mph speed limits on the beach.)

CAC is of the opinion that the 25 mph speed limit is better for turtles than is the proposed 15 mph speed limit because drivers are more likely to remain alert and less likely to be bored and distracted and because more turtle nests will be found. Nevertheless, it recognizes that the Park is set on reducing the speed limit to 15 mph and realizes that any proposal that it makes must include a 15 mph speed limit on the beach. Notwithstanding that the Park has produced no empirical data showing that the 25 mph speed limit is unsafe to turtles or justifying a change of the statutorily established speed limit, in the spirit of compromise and in settlement of the pending controversy over the speed limit, CAC offers the following proposals for the Park's consideration:

1. The speed limit south of the 15/25 mph sign would remain 25 mph in the wet sand area below the normal high tide line and 30 feet above the normal high tide line. (Turtles should normally be more visible in this area and, it is believed, that compressing traffic near the high tide line is safer for nesting turtles.)

2. The speed limit on the remainder of the beach would be 25 mph during April 1<sup>st</sup> to July 31<sup>st</sup>, except when reduced, as follows:

A. If at any time the Park determines that conditions are especially favorable for nesting turtles to access the beach, then, except for the area described in paragraph 1 above, the speed limit would be reduced to 15 mph south of the 15/25 mph mile sign whenever yellow flags are posted at the entrance and on turtle patrol vehicles. (Since a nesting turtle can be easily seen for hundreds of yards when the sand is wet from rain or tidal action, CAC hopes that the Park will take the condition of the beach into account in deciding whether to reduce the speed limit.)

B. If at any time the Park determines that an area is a high potential nesting area, then, except for the area described in paragraph 1 above, the speed limit would be reduced to 15 mph in any area which the Park marks the beginning and end with yellow flags and signs. (It is not necessary for yellow flags to be displayed at the entrance of the Park for special areas to be designated as special 15 mph speed limit zones. It is contemplated that these special areas will not be large and will be scientifically justified based on historical data.)

C. If at any time yellow flags are flying pursuant to Paragraph A. or B. above, the Park shall mention on its recorded telephone message on surf conditions that the speed limit has been reduced or that the Park anticipates that it will soon be reduced on the beach or in a specific area, as the case may be, and for how long its is expected that the speed limit reduction will exist.

**Disclaimer by CAC.**

Notwithstanding that CAC has proposed that the Park may reduce the speed limit to 15 mph under the above proposals, it feels that is must again reiterate its opinion that any reduction of the speed limit below 25 mph greatly enhances the probability of vehicle injury to a nesting turtle because of the greater likelihood that a driver will become bored, inattentive and distracted at such slower speed and will not be as alert and observant as he or she would be at 25 mph. Therefore, CAC hereby clarifies that by making the above proposals it is not intending to suggest or imply that imposition of a 15 mph speed limit, even under its proposals, is safer for nesting turtles than is the 25 mph speed limit.