

Wetmore, Doug

From: Mike_Murray@nps.gov
Sent: Wednesday, February 04, 2009 2:33 PM
To: Sandra_Hamilton@nps.gov
Cc: Darrell_Echols@nps.gov; Otto, Dana; Wetmore, Doug; Fox, Lori; Van Dyke, Nancy; Thayer_Broili@nps.gov
Subject: DEIS comments - Alts Considered but Dismissed
Attachments: CAHA CH2.MBM cmts on Alts Dismissed.doc; CAHA ORV Alt E.Cape Point.11-05-08.doc

Sandy,

Here are some additional edits of the portion of Chapter 2 about Alternative Elements Considered But Dismissed From Further Consideration (pp. 17-24). Most of the edits in the attached file are consistent with what I already sent you in hard copy, but I have also attempted to reword the section on creating new habitat. In the hard copy comments, I just said it needed to be reworded. Somehow we need to finesse the wording on these sections a little better than was done in the draft (which I suspect was taken from the Interim Strategy which outright dismissed a number of things) to leave open the possibility of doing some of the things we have identified in Alternative E. In any case, please consider the attached file to be the most current and complete edits from me on this section of Chapter 2.

Background: The Committee has talked quite a bit about and there is universal support for NPS doing some habitat management, which could include vegetation removal or use of material to overlay vegetation in areas where suitable shorebird nesting habitat has been lost due, primarily, to human manipulation of the environment (man-made dune stabilization, dredging of fill to make dunes, etc.). We have tried to avoid approaching such actions as a blanket policy, instead have looked at it as a potential research project with an adaptive management component.

For example, we have mentioned PIPL and CWB habitat management measures in the Alternative E Site Specific Management for Cape Point (attached), so we do not want to have a blanket dismissal in Chapter 2 that may be in conflict with what we have said in Alternative E. In my edits, I have attempted to make a stronger contrast between the implied widespread use of ORVs to create new habitat (dismissed) vs. selective location of ORV routes to manage vegetation encroachment on nesting habitat (don't want to dismiss) vs. an appropriately designed and implemented habitat restoration project or study (don't want to dismiss). I am not totally satisfied with the wording, so feel free to edit my edits if you can make it more clear!

(See attached file: CAHA CH2.MBM cmts on Alts Dismissed.doc) (See attached file: CAHA ORV Alt E.Cape Point.11-05-08.doc)

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~~Cape Point Alternative.DRAFT.100208~~
~~**DRAFT DELIBERATIVE DOCUMENT**~~

Cape Point - Alternative E 11/05/08

~~NPS is not seeking or considering public comment on these materials at this time. NPS is sharing this information with the negotiated rulemaking advisory committee now solely for members' use in negotiating a consensus alternative for recommendation to the NPS. NPS highly values public input in the planning process and will actively seek public comment on the draft environmental impact statement (DEIS), which will include these alternatives and an analysis of their impacts. NPS plans to have the DEIS ready for public review in the early fall of 2009.~~

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~~DRAFT ORV Management Alternative E~~
~~Site Specific Plan ORV Management Alternative for Cape Point~~

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GOAL

- Protect natural resources and maintain some sort of access to Cape Point, to the greatest extent possible, year-round.

DEFINITION OF AREA

- Cape Point is defined as from Ramp 44 to Ramp 45 (where access route meets the beach).

MEASURES

- Designate Cape Point as a "restricted access" ORV area from March 15 to August 31. Entire area is closed to ORV use during this period, except for east side access corridor along ocean shoreline to the Point then west to just east of the Salt Pond drainage area (currently approximately 0.2 mile west of the hook). (Exact terminus and configuration of access corridor TBD by NPS Resources Management staff based on an annual habitat assessment). Designate as a non-ORV area March 15—August 31, except for east side access corridor along ocean shoreline to 0.2 mile west of the hook or east of the Salt pond drainage area. No pets allowed at Cape Point during this period.

~~—Width of access corridor along eastern shoreline to the Point would be up to 100 m at start of the breeding season to allow room for incremental buffer expansions, as needed, as the season progresses.~~

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- As soon as scrapes of any protected bird species occur at less than the prescribed SM2 pedestrian/ORV buffer, restrict access to Cape Point to only ORVs in a "pass through" corridor, with no stopping or disembarking of passengers and no pedestrians in the "pass through" zone. Reduce pass-through zone width as needed for buffer expansions. If/when width is reduced to less than the prescribed SM2 pass-through buffer for nesting/incubation, close the pass-through zone.

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~~—No pets allowed at Cape Point from March 15 to August 31.~~

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- Once scrapes occur and the pass-through zone is implemented, all access is restricted to the hours of 7:00 a.m. to 7 p.m. until the access corridor fully reopens to ORV and pedestrian access once all chicks have fledged (and, if applicable, two weeks after AMOY chicks have fledged).
- No pets allowed within the Resource Area from March 15 to August 31.
- Stopping, parking, or disembarking passengers, as well as pedestrians and pets would be prohibited in the pass-through zone.
- Once the access corridor, including pass-through zone, is established, it will not be significantly enlarged or relocated to accommodate access, except for minor adjustments that

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do not affect park resources. The width of the access corridor will be reduced as incremental buffer expansions occur.

- Beginning March 15, follow SM2 monitoring procedures.
- Breeding Behavior/Nesting/Incubation:

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- PIPL: Provide SM2 buffers and daily monitoring for all phases of PIPL breeding eyele. If breeding adult PIPLs forage outside of the established resource closure(s), adjust buffers as needed to protect foraging sites.
- AMOY and and-CWB: Within or along the access corridor, Pprovide SM2a-50 m buffers for pedestrians/ORVs or, if applicable, for an ORV pass-through for observed breeding and nesting behavior for non-listed species. Expand buffers as described in SM2 and daily monitoring of observed pre-nesting and nesting/incubation behavior for non-listed species near or within the access corridor. Expand buffers if needed to minimize disturbance. As soon as serapes occur at less than the prescribed pedestrian buffer. During pre-nesting and incubation period, if due to buffer expansions the corridor width is reduced to 30 m (50 m?) or less, restrict access to Cape Point to only ORVs in a "pass through" corridor, with no stopping or disembarking of passengers and no pedestrians in the "pass through" area; and restrict ORV. Once the pass through corridor goes into effect, ORV access is restricted access to 7 a.m. to 7 p.m. Reduce pass-through corridor as needed for buffer expansions. If/when width is reduced to less than the prescribed SM2 pass through buffer for nesting/incubation 10 m above the high tide line., close the pass through corridor.

- Unfledged chicks:

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- All Species: Follow prescribed SM2 buffers for unfledged PIPL, AMOY, and CWB chicks. Close access corridor, including pass-through zone, if needed to implement or maintain prescribed SM2 buffers or to protect park resources
- Once chicks have hatched, allow pedestrian access along ocean shoreline access corridor if possible to maintain SM2 buffers for unfledged chicks of the respective species present.
- Reopen ORV access corridor when SM2 buffers for unfledged chicks can be maintained for all species present; or reopen ORV use when all chicks have fledged (and 2 weeks after AMOY chicks have fledged).
- Reopen access corridor for pedestrian only access below the high tide line (or, below the existing tide line; i.e., must keep feet wet) along eastern ocean shoreline from 7 a.m. to 7 p.m. when SM2 pedestrian buffers can be maintained for all species present.
- Reopen ORV access corridor from 7 a.m. to 7 p.m. when SM2 ORV buffers can be maintained for all species present, or reopen to allowable hours of ORV use when all chicks have fledged (and 2 weeks after AMOY chicks have fledged).
- CWB chicks: Along the access corridor, provide 100 m buffer for CWB chicks and

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monitor daily. Consider chick fencing (a single line of small mesh plastic poultry fencing) between the colony and the corridor at least 50 m above the high tide line if no PIPL or AMOY chicks are in the area. If fencing used, monitor daily. Fencing would be removed if PIPL or AMOY chicks are in the area, if predation or sea turtle problems occur related to the fencing, or once the colony has fledged.

—Pedestrian access to Cape Point: If/when ORV access is closed due to buffer expansion or chicks in the area, allow pedestrian-only access below the high tide line (or, below the existing tide line; i.e., must keep feet wet) from 7 a.m. to 7 p.m., unless PIPL or AMOY chicks are foraging in the eastern inter tidal zone. Monitor daily. Re-open to pedestrian access when no foraging has occurred within 1-week period.

- NPS retains the right to impose further restrictions than described above if necessary for resource protection.

PIPL HABITAT MANAGEMENT

- In general, rely on natural processes to create and maintain nesting and foraging habitat, except for the following:
 - Contract with researcher(s) to develop a plan to improve habitat and wildlife access to available habitat in the dredge pond area. The objective would be to develop a self-sustaining system to the extent possible that would not be dependent upon heavy duty annual manipulation by the NPS. The most desirable approach would be to create a "system" that connects the dredge pond to the beach environment south of the dredge pond and allows for natural processes such as overwash and fluctuations in water level to set back or slow plant succession and maintain early successional nesting habitat as well as MOSH for foraging. Options could include: modifying the landscape to allow inter-connectivity of the westerly end of the dredge pond with the upper beach south of it; and shaping the landscape to create ephemeral pools on the upper beach that are directly connected to the dredge pond water supply. Part of plan would include adaptive management component to measure and evaluate results of the action.

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CWB HABITAT MANAGEMENT

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HABITAT ASSESSMENT

- Conduct annual habitat assessment of Cape Point interior (i.e., west of the access corridor) to determine best available site for targeted CWB nesting habitat enhancement prior to the breeding season, which may include:
 - Improvement of CWB nesting substrate (shell, cobble, etc.) by introducing or relocating shell/cobble and disbursing it across the site.
 - Use CWB decoys and audio-attraction to help establish colony at the targeted site.
- ~~Develop adaptive management objectives and conduct monitoring/research to determine effects of management actions described above (access corridor, chick fencing and habitat enhancement). After analysis, modify measures if needed, to meet objectives and improve results.~~

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HABITAT MANAGEMENT

- ~~In general, rely on natural processes to create and maintain nesting and foraging habitat, except for the following:

 - ~~Develop a plan to improve habitat and wildlife access to available habitat in the dredge pond area. The objective would be to develop a self-sustaining system to the extent possible that would not be dependent upon heavy duty annual manipulation by the NPS. The most desirable approach would be to create a "system" that connects the dredge pond to the beach environment south of the dredge pond and allows for natural processes such as overwash and fluctuations in water level to set back or slow plant succession and maintain early successional nesting habitat as well as MOSH for foraging. Options could include: modifying the landscape to allow inter-connectivity of the westerly end of the dredge pond with the upper beach south of it; and shaping the landscape to create ephemeral pools on the upper beach that are directly connected to the dredge pond water supply.~~~~

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ADAPTIVE MANAGEMENT

- ~~Develop adaptive management objectives and conduct monitoring/research to determine effects of management actions described above (access corridor and habitat enhancement). After analysis, modify measures if needed, to meet objectives and improve results.~~
- ~~Consider research project, with adaptive management component, on the applicability and effectiveness of chick fencing for LETE chicks.~~

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INTERDUNAL ROAD(S)

- The interdunal road system to Salt Pond Road and Ramp 45, and the "by-pass" route by the small Salt Pond should be maintained to provide access to ORV areas. Pull-outs or road

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~~widening would be provided where appropriate to provide safe passage and open for two-way traffic.~~

ADDITIONAL OPTIONS FOR ACCESS

~~Open Ramp 45 from campground during off-season? As needed? Not at all?~~

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~~Open parking area at Ramp 45 during the off season.~~

- Develop a pedestrian access route to the ~~dredge dredge~~ pond with suitable nearby parking to facilitate access for bird watching enthusiasts.
- Expand parking ~~nearat~~ Ramp 43 and provide toilets ~~at~~ an appropriate site nearby. *(The Ramp 43 parking area is subject to overwash and flooding and may not be an appropriate site for toilets.)*
- Increase the width of pavement in the approach to Ramp 44 for airing down.
- Improve the design/construction of Ramp 44 (west of the dune crossing) to increase usability and reliability of the access route during wet or flooded conditions.

~~Relocate fish cleaning table and dumpster further away from Resource Area (will address in predator management plan).~~

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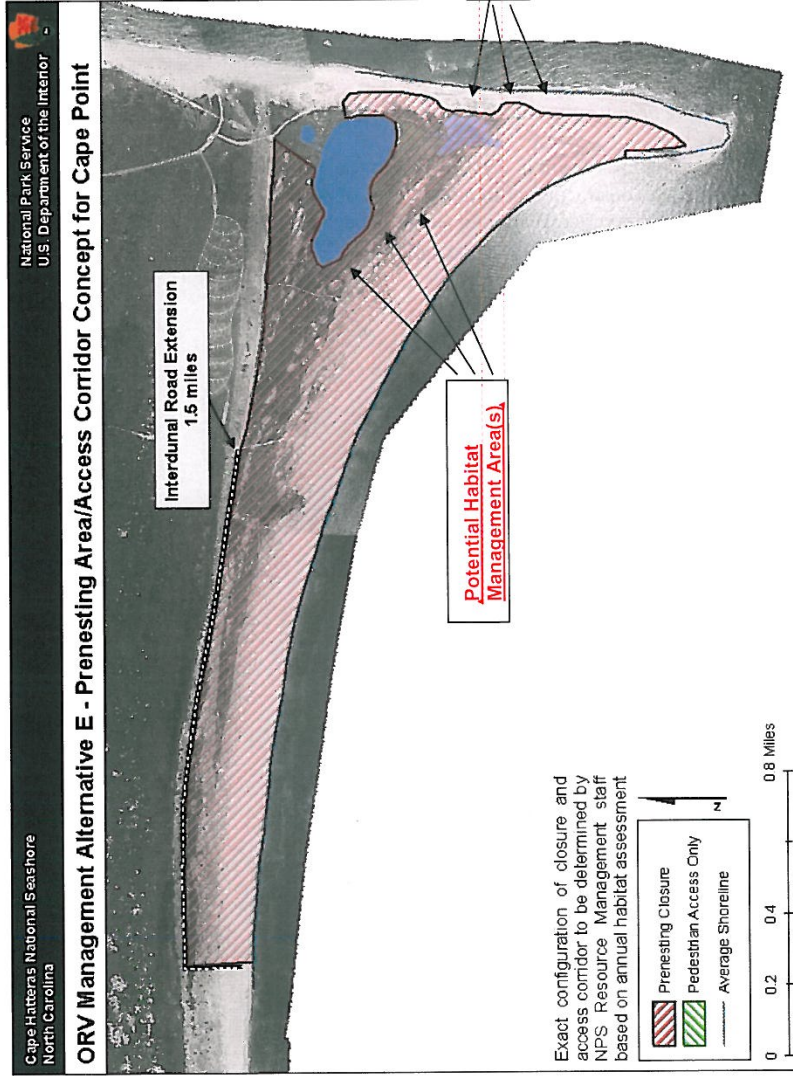
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1 **ALTERNATIVE ELEMENTS CONSIDERED BUT DISMISSED FROM FURTHER**
 2 **CONSIDERATION**

3 **USE AREAS, ORV MANAGEMENT, AND VISITOR USE**

4 **Consider Pea Island National Wildlife Refuge When Considering Use Areas**

5 Many commenters suggested that Pea Island National Wildlife Refuge should be considered when
 6 developing this plan/EIS. Suggestions included considering Pea Island as a vehicle-free area, and
 7 conversely, as a potential area where ORVs could be used where there is not a resource conflict.
 8 Commenters felt that Pea Island National Wildlife Refuge should be considered as part of the baseline for
 9 analysis, and should be considered when providing appropriate visitor use. Although the 5,880-acre Pea
 10 Island National Wildlife Refuge is located at the northern end of Hatteras Island, and is within the
 11 boundary part of the Seashore, the refuge is administered by the USFWS. Because it is not administered
 12 by the NPS Seashore, the Seashore cannot direct the visitor uses at Pea Island National Wildlife Refuge.
 13 USFWS is responsible for making decisions about ORV and pedestrian access. Currently, the USFWS
 14 has determined that ORV use would not be appropriate or compatible with the mission of the refuge.

15 **Require Other Jurisdictions Change Their Infrastructures and Regulations**

16 Commenters suggested elements that would involve jurisdictions outside the NPS, including:

- 17 • Provide NPS parking and beach access points throughout Dare County villages.
- 18 • Lower the speed limit on NC-12 between villages to 45 miles per hour during peak use times to
 19 reduce the danger from vehicles with “aired-down” tires.
- 20 • Limit the use of bright lighting in oceanfront houses.
- 21 • Create a sound ordinance.
- 22 • Create guidelines for oceanfront structures, such as setbacks from the high tide mark and
 23 rebuilding guidelines, to address damage to existing oceanfront structures.

24 These suggestions would require action by the county, ~~villages,~~ or state. Lowering the speed limit and
 25 ~~removing the helmet law~~ would require a change in current state regulations. The county would be
 26 responsible for changing building codes or adding more parking and access points. Creating a sound
 27 ordinance or occupancy restrictions for rental homes would require action of the ~~individual villages or the~~
 28 respective counties. The NPS does not have the authority to require these jurisdictions to undertake such

1 action. However, the NPS has worked with the communities within the Seashore on many issues,
 2 including those related to ORV management, and under all alternatives would continue to work
 3 cooperatively towards actions such as turtle friendly lighting and education. Although the NPS cannot
 4 require Dare County to provide more parking or beach access, some of the alternatives evaluated in this
 5 plan/EIS address additional parking areas—~~Creating a sound ordinance within the Seashore may be~~

6 ~~feasible~~

7 **Provide All-Terrain Vehicle Access and Remove the Helmet Requirement**

8 Commenters suggested that all-terrain vehicles (ATVs) should be allowed on the beach and that ATV
 9 users should not be required to use helmets. The NPS only allows “street-legal” vehicles on the beach
 10 under the North Carolina Motor Vehicle Code, which does not include ATVs. Alternatives in this
 11 plan/EIS do not include changing the requirement for “street legal” vehicles. The Seashore considers
 12 ATV use at the Seashore to be incompatible with visitor use and resource protection goals and objectives
 13 due to the damage they could cause. Further, “street-legal” vehicles are used for transportation, but the
 14 majority of ATVs are used primarily for purely-recreational purposes, but may secondarily ~~and do not~~
 15 serve a transportation function. Since ATVs would not be permitted, the issue of requiring helmets is not
 16 applicable.

17 Assign Issue-Permits to Users Instead of Vehicles

18 For the alternatives that include a permit system, permits would be assigned to the registered owner of
 19 issued to the vehicle and affixed to the ~~not the person. A vehicle permit can be displayed on the~~
 20 vehicle, where it would be easily visible by law enforcement. Verifying that people have permits that are
 21 movable between multiple vehicles would require substantially more effort by law enforcement staff, who
 22 would have to stop each visitor and ask to see the permit. Therefore, to assist in enforcing the permit
 23 system, permits are assigned to the registered owner and affixed to ~~issued to the~~ vehicles under all
 24 alternatives.

25 **Use a Different Term for “Requirement” in Law Enforcement Text**

26 Commenters suggested using the words “courtesy,” “guidelines,” or “rule” instead of “requirements.”
 27 Where the word “requirements” is used in an alternative, it implies a level of regulatory enforcement
 28 authority. In these areas, changing the word to “guidelines” or “courtesy” would not imply enforcement
 29 capability; therefore, this suggestion was not carried forward in the alternatives.

1 **Provide Round-the-Clock Enforcement**

2 Commenters suggested that round-the-clock enforcement would ensure resource protection. The Seashore
3 has no source of funding for round-the-clock enforcement in all areas at all times. This suggested level of
4 enforcement is not the norm for any national seashore. The action alternatives provide for increased
5 outreach and education to help improve voluntary compliance, but round-the-clock enforcement would
6 not be feasible and was therefore not included in any alternatives.

7 **Give Preferred Status to Human Visitors**

8 Commenters suggested that the NPS should give preferred status to human visitors, and not include
9 restrictions on human use to benefit various natural resources. The NPS has a dual mission to protect park
10 natural and cultural resources and to provide for visitor enjoyment. The courts have held that, in the case
11 of conflict, resource conservation must be predominant (refer to "Guiding Laws, Regulations, and
12 Policies" in chapter 1). The Seashore believes that it can manage ORV use in a way that both conserves
13 Seashore resources and provides for visitor enjoyment.

14 **Species Protection**

15 ***Implement an Escort Program***

16 During development of the *Interim Protected Species Management Strategy/EA*, some alternative
17 elements were considered but not carried forward because they would be reevaluated in this plan/EIS.
18 One of these elements was the implementation of an escort program, whereby vehicles would be escorted
19 around resource closures by Seashore staff.

20 This program would be similar to the situation in 2005, where at Hatteras Spit, ORV traffic was permitted
21 only in the ORV corridor once per hour in convoys escorted by bird monitors, to reduce the risk of
22 mortality to an American oystercatcher brood and to reduce disturbance to an incubating plover nest.
23 ORVs were permitted to park at the tip of the spit, west of the escort corridor. The spit was closed to
24 recreation at night. Once the piping plover eggs hatched, Hatteras Spit was closed to ORV traffic until the
25 chicks fledged.

26 This type of escort system was considered for the this plan/EIS, but, as stated in the *Interim Protected*
27 *Species Management Strategy/EA*, the escort system would be extremely labor intensive to initiate and
28 providing the staffing levels necessary to adequately implement and escort program would likely not be
29 feasible. This was demonstrated during the 2005 season when the Seashore had to transfer personnel from
30 other NPS units to implement the escort system. Due to the intensive staffing required for this effort, it

1 was determined that this element would not meet the plan/EIS objectives related to Seashore operations
2 objectives.

3 ***Move Hatched Chicks to Pea Island National Wildlife Refuge or Other Area***

4 Commenters suggested moving hatched bird chicks from the beach to other areas where they would be
5 protected. This conflicts with NPS responsibilities under the *Endangered Species Act*, *Migratory Bird*
6 *Treaty Act*, *NPS Organic Act* (as described in the "Turtle Hatcheries" section below), and the NPS
7 *Management Policies 2006*. Further, moving chicks is not feasible because chicks until they fledge must
8 remain with their parents ~~until they fledge~~ for foraging and protection. ~~Relocating~~Removing chicks would
9 not meet the plan/EIS objective of minimizing adverse impacts to threatened, endangered, and other
10 protected species.

11 ***Provide Captive Rearing of Piping Plovers and Turtles***

12 Commenters suggested rearing endangered species in captivity. Wildlife managers use captive
13 breeding/rearing of threatened or endangered species to: (1) provide an opportunity to restore populations
14 where direct translocation may risk the persistence of the donor population; or (2) as a last resort in cases
15 where most or all of the entire remaining wild population are brought to a captive breeding facility with
16 the goal of avoiding extinction and breeding enough individuals for eventual reintroduction into the wild
17 (e.g., California condor) (Gilpin and Soule 1986). The Kemp's ridley sea turtle hatchery at Padre Island
18 National Seashore is an example of a last-resort captive rearing facility used to restore a population. None
19 of these situations applies to piping plover or nesting loggerhead, leatherback, or green sea turtles at Cape
20 Hatteras National Seashore, so this suggestion was not included in any of the alternatives.

21 ***Relocate Bird and Turtle Nests***

22 Commenters suggested that the Seashore relocate bird or turtle nests to areas of the beach already closed
23 to ORV use or relocate nests to smaller, more compact areas to facilitate management. These alternatives
24 have been considered but are not carried forward as discussed below.

25 **Birds**

26 Some species of birds, such as the burrowing owl, adapt well to nest relocation, but others do not. Birds
27 that do not relocate well typically are those that demonstrate higher levels of nest abandonment. Nest
28 abandonment by piping plovers and American oystercatchers are documented sources of nest failure on
29 Cape Hatteras. Therefore, relocating nests would likely result in increased nest abandonment and failure.
30 In addition, moving nests into one area would not be feasible. Plovers and oystercatchers are solitary
31 rather than colonial nesters (i.e., they nest away from others of their species.) Plovers sometimes nest near

1 tern colonies to benefit from the aggressive behavior of terns protecting their colonies; however, they
 2 typically do not nest with other plovers. Since the purpose of the strategy is species protection, and
 3 moving nests would reduce these species' ability to reproduce, moving nests was eliminated from further
 4 analysis.

5 **Turtles**

6 Routinely Relocate Turtle Nests~~Individual Nest Relocation~~. Turtles do not face the same nest
 7 abandonment issues as those described for birds. Parental investment in the young ends with the laying
 8 and burying of eggs. However, the eggs, subsequent hatchlings, and overall species may face additional
 9 problems related to nest relocation. Studies indicate that the determination of the hatchling sex ratio
 10 depends on the temperature at which the eggs incubate. Changes in these temperatures due to moving
 11 eggs may result in changes to the sex ratio, having implications for the species as a whole. In addition,
 12 handling eggs can result in increased hatch failure. When relocating nests, there is always a risk of
 13 disrupting the membranes inside the egg, which can kill the embryo. Typically, a blanket policy of
 14 routinely relocating all or most turtle nests~~nest relocation~~ is seen as part of an intensive management
 15 effort ~~attempt~~ to keep the species from going extinct, whereas allowing for natural breeding and nesting
 16 is the preferred ~~ideal~~ option whenever available. Currently in North Carolina, the state permits sea turtle
 17 nest relocations for research or when there is an imminent threat and potential loss of the nest due to
 18 erosion or frequent flooding, but not to accommodate recreational uses. Nests in some states may be
 19 moved to avoid damage from beach nourishment or in highly developed urban areas (e.g., along some
 20 urban areas of Florida's Atlantic coast). Consequently, routine relocation of all nests to allow for
 21 recreational access is not considered in this plan/EIS. However, the NPS would continue its current
 22 practice of coordinating with the State of North Carolina to consider relocating an individual facing
 23 inundation or other adverse factors.

24 **Turtle Hatcheries**. Moving all nests or all relocated nests into one hatchery area is not fully analyzed as
 25 part of any alternative. Sea turtle nests may be moved to a guarded hatchery to provide needed protection
 26 from poaching in developing countries where participation in hatchery operations may be used as an eco-
 27 tourism opportunity. Some county or privately owned beaches in Florida or Georgia may use hatcheries
 28 for sea turtle eggs in some circumstances, such as to allow beach nourishment. However, county
 29 responsibilities for endangered or threatened species differ from federal and particularly from NPS
 30 responsibilities for these protected species. As a federal agency, the NPS has responsibilities under the
 31 *Endangered Species Act* to protect the ecosystem as well as the species that depend on it. The purpose of
 32 the *Endangered Species Act* is to "provide a means whereby the ecosystems upon which endangered
 33 species and threatened species depend may be conserved..." (Sec. 2(b)). Protecting the ecosystem is also

1 necessary to meet the requirements of the *NPS Organic Act*, which mandates the NPS to conserve
2 Seashore wildlife (refer to “Guiding Laws, Regulations, and Policies” in chapter 1).

3 Loggerhead, leatherback, and green sea turtles are all currently listed pursuant to the *Endangered Species*
4 *Act*. Any actions that would likely reduce ~~increase the likelihood of reduced~~ productivity and cause
5 species decline would not be consistent with the purpose of the Act. Therefore, use of hatcheries was not
6 considered in this plan/EIS.

7 **Open All Closed Areas After Breeding Season Is Over**

8 Commenters suggested that all ~~any~~ closed areas should be reopened after the breeding season ends. Closed
9 areas would likely be reopened after the breeding season if the areas do not provide important migrating
10 and wintering habitat for Seashore populations of protected species. Therefore, some areas may be
11 reopened, but automatically opening all closed areas after the breeding season would be inconsistent with
12 the Seashore’s responsibility under various statutes, including its enabling legislation, the *NPS Organic*
13 *Act*, and the *NPS Management Policies 2006*, section 4.4.2.3. The alternatives in the plan/EIS do
14 consider various ways to address resource-based closures, but the alternatives do not allow for automatic
15 opening after the breeding season is over if species are still present.

16 **Create New Habitat**

17 Commenters suggested various ways that habitat could be created to provide alternative areas for bird
18 species at the Seashore. Some of these suggestions included letting ORVs drive on the vegetation to
19 create habitat or physically creating habitat using dredge material in the sound or by other means. These
20 suggestions were considered by the Seashore but are not carried forward in this plan/EIS for the following
21 reasons:

- 22 • **Allowing visitors in ORVs to create new habitat by driving over vegetated areas.** The
23 Seashore recognizes that ORV use at certain locations could be an effective way to manage the
24 encroachment of vegetation into existing shorebird nesting habitat. Studies on habitat creation
25 have been considered by the NPS, and the Seashore recognizes that this could be a feasible
26 management measure for species. ~~However, use of ORVs to create new~~ such creation of habitat
27 implies a larger scale use of vehicles to remove vegetation that is typically protected under
28 various NPS regulations and under the Executive Orders on ORV use. While removable of
29 vegetation by any means to create new habitat may be appropriate and beneficial in certain
30 circumstances, such a project would need to be planned, implemented and
31 studied in a controlled manner and would only be carried out by scientists or resource managers

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1 ~~with the appropriate expertise~~ professionals trained in such projects. Therefore, allowing visitors
2 in ORVs to create habitat was not considered in this plan/EIS.

3 • **Creation of habitat through physical alteration or the creation of dredge islands.** The NPS
4 considered creating habitat through various methods. Based on the experience of staff at the
5 North Carolina Wildlife Resources Commission, habitat creation projects tend to be short-lived
6 and labor intensive. Based on experience with hand pulling, herbicides, fires, and bulldozing, it
7 was found that most of these techniques are effective for only one season before the vegetation
8 returns. Covering areas with new dredge material has been shown to last longer, with vegetation
9 returning after four to seven years (Cameron 2007). Although the NPS recognizes that creation
10 of habitat may be viable under certain circumstances, it is not an appropriate substitute for
11 providing adequate protection of existing habitat, at this time more research needed to determine
12 the most effective method for this process. If this method is employed, it would occur outside
13 the scope of the plan/EIS and therefore was not included in the alternatives.

14 **Fence Chicks Away from the ORV Corridor**

15 Commenters suggested using barrier fencing, rather than symbolic fencing, to keep chicks away from the
16 ORV corridors. Unfledged chicks of any species need access to the intertidal zone and moist substrate
17 habitat for foraging. Fencing chicks away from these areas would essentially prevent them from eating;
18 therefore, this was not considered a reasonable alternative.

19 **Do Not Provide Protection to the Seabeach Amaranth**

20 Commenters suggested not providing protection to the seabeach amaranth because it is a farmed plant.
21 However, the seabeach amaranth is protected as a federally listed threatened plant species. Under the
22 *Endangered Species Act*, federal agencies are required to use their authorities in furtherance of the
23 purposes of the *Endangered Species Act* by carrying out programs for the conservation of endangered and
24 threatened species and to ensure that any agency action authorized, funded, or carried out by the agency is
25 not likely to jeopardize the continued existence of any endangered species or threatened species or result
26 in the destruction or adverse modification of designated critical habitat. Further, *NPS Management*
27 *Policies 2006* state that, "The Service will survey for, protect, and strive to recover all species native to
28 national park system units that are listed under the *Endangered Species Act*" (NPS 2006: 45). Not
29 providing protection to a federally listed threatened species would be out of compliance with the
30 *Endangered Species Act* and contrary to the *NPS Management Policies 2006*, and was therefore not
31 included in the alternatives of this plan/EIS.

1 **Give Special Consideration Only to Flora and Fauna Listed as Threatened and Endangered**

2 Commenters suggested that only those species listed as threatened or endangered under the federal
 3 *Endangered Species Act* should be considered in this plan. As stated above, the NPS has legal
 4 responsibilities under the *Endangered Species Act* and its own policies to protect threatened and
 5 endangered species. Further, a number of laws, regulations, and policies, in addition to the *Endangered*
 6 *Species Act*, guide species management at the Seashore, including the *NPS Organic Act*, the *Migratory*
 7 *Bird Treaty Act*, NPS regulations and policies, Executive Order 13186: *Responsibilities of Federal*
 8 *Agencies to Protect Migratory Birds*, and others (see chapter 1). NPS Management Policies 2006 Section
 9 4.4.2.3 states, in part, that NPS will inventory, monitor, and manage state and locally listed species
 10 in a manner similar to its treatment of federally listed species to the greatest extent possible. In
 11 addition, NPS will inventory other native species that are of special management concern to
 12 parks (such as rare, declining, sensitive, or unique species and their habitats) and will manage
 13 them to maintain their natural distribution and abundance. The combination of laws, regulations,
 14 and policies included in this section of the plan/EIS create the framework in which the alternatives are
 15 developed, which includes the need to manage species that are considered to be of special concern, such
 16 as state-listed species, or those addressed by the *Migratory Bird Treaty Act*. Because of these
 17 responsibilities, only considering flora and fauna listed as federally threatened or endangered was not
 18 included in the plan/EIS alternatives.

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19 **Other Issues**

20 ***Rebuild the Dunes***

21 One commenter suggested the NPS rebuild the dunes in front of NC-12. While the NPS had engaged in
 22 addressing dune rebuilding in the past, such as around Ramp 1 and 2 to protect NPS structures on Bodie
 23 Island, this activity is beyond the scope of this plan/EIS and could be addressed later in the *General*
 24 *Management Plan* process that the Seashore will undertake in the future.

25 ***Prohibit Gill Net Fishing***

26 Some commenters asked that the Seashore prohibit gill net fishing. Fishing activities, both commercial
 27 and recreational, at the Seashore are regulated by the State of North Carolina through the issuance of a
 28 Recreational Commercial Gear License. This license specifies the type of gear that commercial fishermen
 29 are allowed to use, which includes the use of gill nets that conform to requirements for mesh size,
 30 yardage, and marking (NCMF 2007). The Seashore has the authority to manage where access to
 31 commercial fishing occurs on park lands, but the manner in which it occurs is regulated by the State of

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1 North Carolina. Since the use of gill nets for commercial fishing is outside the jurisdiction of the NPS, it
2 was not included as an element of the ORV plan/EIS.

3 ***Provide an Area for Off-leash Dogs***

4 Commenters suggested that dogs be allowed off-leash at the Seashore, either seasonally, in certain areas
5 of the Seashore under voice control, or through the creation of a dog training area. Currently, pets at the
6 Seashore are regulated under 36 CFR 2.13, which applies to all units of the National Park System and
7 prohibits pet owners from "failing to crate, cage, restrain on a leash which shall not exceed six feet in
8 length, or otherwise physically confine a pet at all times..." Creation of off-leash areas would not be
9 consistent with 36 CFR 2.13 and would require promulgation of a special regulation allowing off-leash
10 dog use, which is outside the scope of the ORV plan/EIS. Therefore, this element was not carried forward
11 in any alternative.

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