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CH 1 + 5 for review CAHA # 2899



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08/24/2009 11:14 AM

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Subject CAHA Draft ORV Sections for Review

Hi Sandy and Mike,

As requested, attached are Chapters 1 and 5 of the ORV Plan/EIS for your review and comment. Please distribute as needed to reviewers.

Sandy – please let us know if we should expect comments on these sections before the submission of the first internal draft EIS, or if these sections are to give us a head start on that review and that comments on the attached will be submitted with the first internal draft EIS (which is planned for distribution to EQD and the Seashore on September 24, 2009).

Thank you and please let me know if you have any questions.

Take care,  
Lori

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## 1                   **CHAPTER 1: PURPOSE OF AND NEED FOR ACTION**

2     This “Purpose of and Need for Action” chapter explains what this plan intends to accomplish and why the  
 3     National Park Service (NPS) is taking action at this time. This *Off Road Vehicle (ORV) Management Plan*  
 4     *and Environmental Impact Statement* (plan/EIS) presents four action alternatives for managing ORV use  
 5     and assesses the impacts that could result from continuing current management (the two no-action  
 6     alternatives) or implementation of any of the action alternatives. Upon conclusion of this plan and  
 7     decision-making process, the alternative selected for implementation will become the ORV management  
 8     plan, which will guide the management and control of ORVs at the Seashore for the next 10 to 15 years. It  
 9     will also form the basis for a special regulation to manage ORV use at the Seashore. Brief summaries of  
 10    both the purpose and need are presented here; more information is available in the “Park Background”  
 11    section of this chapter.

### 12                   **PURPOSE OF THE PLAN / ENVIRONMENTAL IMPACT STATEMENT**

13    The purpose of this action is to develop regulations and procedures that manage ORV use/access in the  
 14    Seashore to protect and preserve natural and cultural resources and natural processes, provide a variety of  
 15    appropriate visitor use experiences while minimizing conflicts among various users, and promote the  
 16    safety of all visitors. [for DEIS, include sidebar definition of ORV]

### 17                   **NEED FOR ACTION**

18    Cape Hatteras National Seashore provides a variety of visitor experiences, including the use of ORVs. In  
 19    addition to recreation opportunities, the Seashore is home to important habitats created by the Seashore’s  
 20    dynamic environmental processes, including habitats for several federally listed species such as the piping  
 21    plover (*Charadrius melodus*); three species of sea turtles (loggerhead [*Caretta caretta*], green [*Chelonia*  
 22    *mydas*], and leatherback [*Dermochelys coriacea*]); and one plant species, the seabeach amaranth  
 23    (*Amaranthus pumilus*). Two other federally listed sea turtle species, the hawksbill (*Eretmochelys*  
 24    *imbricata*) and Kemp’s ridley (*Lepidochelys kempii*), occupy the surrounding waters. In addition, the  
 25    Seashore provides nesting habitat for several state-listed and special status species of colonial waterbirds,  
 26    including the common tern (*Sterna hirundo*), least tern (*Sterna antillarum*), gull-billed tern (*Sterna*  
 27    *nilotica*), and black skimmer (*Rynchops niger*). Solitary nesters, such as the American oystercatcher  
 28    (*Haematopus palliatus*) and Wilson’s plover (*Charadrius wilsonia*), also use Cape Hatteras National  
 29    Seashore as a breeding ground, and the red knot (*Calidris canutus rufa*) is a migrant and occasional  
 30    winter resident at the Seashore. This ORV management planning effort is based on recognition by the  
 31    NPS that ORVs must be regulated in a manner that is consistent with applicable law, and appropriately

1 addresses resource protection (including protected, threatened, and endangered species), potential  
2 conflicts among the various Seashore users, and visitor safety.

3 Executive Order 11644, *Use of Off-Road Vehicles on the Public Lands*, was issued in 1972 in response to  
4 the widespread and rapidly increasing use of ORVs on public lands “often for legitimate purposes but also  
5 in frequent conflict with wise land and resource management practices, environmental values, and other  
6 types of recreational activity.” This Executive Order, amended by Executive Order 11989 in 1977, states  
7 that federal agencies allowing ORV use must designate specific areas and trails on public lands on which  
8 the use of ORVs may be permitted and areas in which use may not be permitted. Section 3 of Executive  
9 Order 11644 requires that agency regulations on ORV use provide that designation of such areas and  
10 trails will be based on protecting resources of public lands, promoting the safety of all users of those  
11 lands, and minimizing conflicts among the various uses on those lands. Code of Federal Regulations  
12 (CFR) Title 36, Section 4.10(b) contains regulations regarding vehicles and traffic safety on National Park  
13 Service lands and requires that “routes and areas designated for ORV use shall be promulgated as special  
14 regulations” and that the designation of routes and areas “shall comply with §1.5 of this chapter and E.O.  
15 11644 (37 FR 2887).”

16 Therefore, an ORV management plan for Cape Hatteras National Seashore is needed at this time to

- 17 • Bring the Seashore in compliance with Executive Orders 11644 and 11989 respecting ORV  
18 use, and with NPS laws, regulations (36 CFR 4.10), and policies to minimize impacts to  
19 Seashore resources and values.
- 20 • Address the lack of an approved plan, which has led over time to inconsistent management of  
21 ORV use, user conflicts, and safety concerns.
- 22 • Provide for protected species management in relation to ORV use upon expiration of the *Cape*  
23 *Hatteras National Seashore Interim Protected Species Management Strategy/Environmental*  
24 *Assessment* (interim strategy/EA) (NPS 2006a) and associated Biological Opinion and  
25 Amendment (USFWS 2006a and 2007a).

## 26 **OBJECTIVES IN TAKING ACTION**

27 Objectives are what must be achieved to a large degree for the action to be considered a success (NPS  
28 2001a, 16). All alternatives selected for detailed analysis must meet project objectives to a large degree  
29 and resolve the purpose of and need for action. Objectives must be grounded in the Seashore’s enabling  
30 legislation, purpose, significance, and mission goals, and must be compatible with direction and guidance

- 1 provided by the Seashore's general management plan, strategic plan, and/or other management guidance.  
2 The following are objectives identified by Seashore staff for developing this plan/EIS.

3 **MANAGEMENT METHODOLOGY**

- 4 • Identify criteria to designate ORV use areas and routes.  
5 • Establish ORV management practices and procedures that have the ability to adapt in response to  
6 changes in the Seashore's dynamic physical and biological environment.  
7 • Establish a civic engagement component for ORV management.  
8 • Establish procedures for prompt and efficient public notification of beach access status including  
9 any temporary ORV use restrictions for such things as ramp maintenance, resource and public  
10 safety closures, storm events, etc.  
11 • Build stewardship through public awareness and understanding of NPS resource management and  
12 visitor use policies and responsibilities as they pertain to the Seashore and ORV management.

13 **NATURAL PHYSICAL RESOURCES**

- 14 • Minimize impacts from ORV use to soils and topographic features, for example, dunes, ocean  
15 beach, wetlands, tidal flats, and other features.

16 **THREATENED, ENDANGERED, AND OTHER PROTECTED SPECIES**

- 17 • Provide protection for threatened, endangered, and other protected species (e.g., state-listed  
18 species) and their habitats, and minimize impacts related to ORV and other uses as required by  
19 laws and policies, such as the *Endangered Species Act*, the *Migratory Bird Treaty Act* (MBTA),  
20 and NPS laws and management policies.

21 **VEGETATION**

- 22 • Minimize impacts to native plant species related to ORV use.

23 **OTHER WILDLIFE AND WILDLIFE HABITAT**

- 24 • Minimize impacts to wildlife species and their habitats related to ORV use.

1 **CULTURAL RESOURCES**

- 2 • Protect cultural resources, such as shipwrecks, archeological sites, and cultural landscapes, from  
3 impacts related to ORV use.

4 **VISITOR USE AND EXPERIENCE**

- 5 • Ensure that ORV operators are informed about the rules and regulations regarding ORV use at the  
6 Seashore.  
7 • Manage ORV use to allow for a variety of visitor use experiences.  
8 • Minimize conflicts between ORV use and other uses.

9 **VISITOR SAFETY**

- 10 • Ensure that ORV management promotes the safety of all visitors.

11 **PARK OPERATIONS**

- 12 • Identify operational needs and costs to fully implement an ORV management plan.  
13 • Identify potential sources of funding necessary to implement an ORV management plan.  
14 • Provide consistent guidelines, according to site conditions, for ORV routes, ramps, and signage.

15 **PROJECT STUDY AREA**

16 The geographic study area for this plan/EIS is Cape Hatteras National Seashore in North Carolina  
17 (figure 1), unless otherwise noted under each resource topic.

18 **PURPOSE AND SIGNIFICANCE OF CAPE HATTERAS NATIONAL SEASHORE**

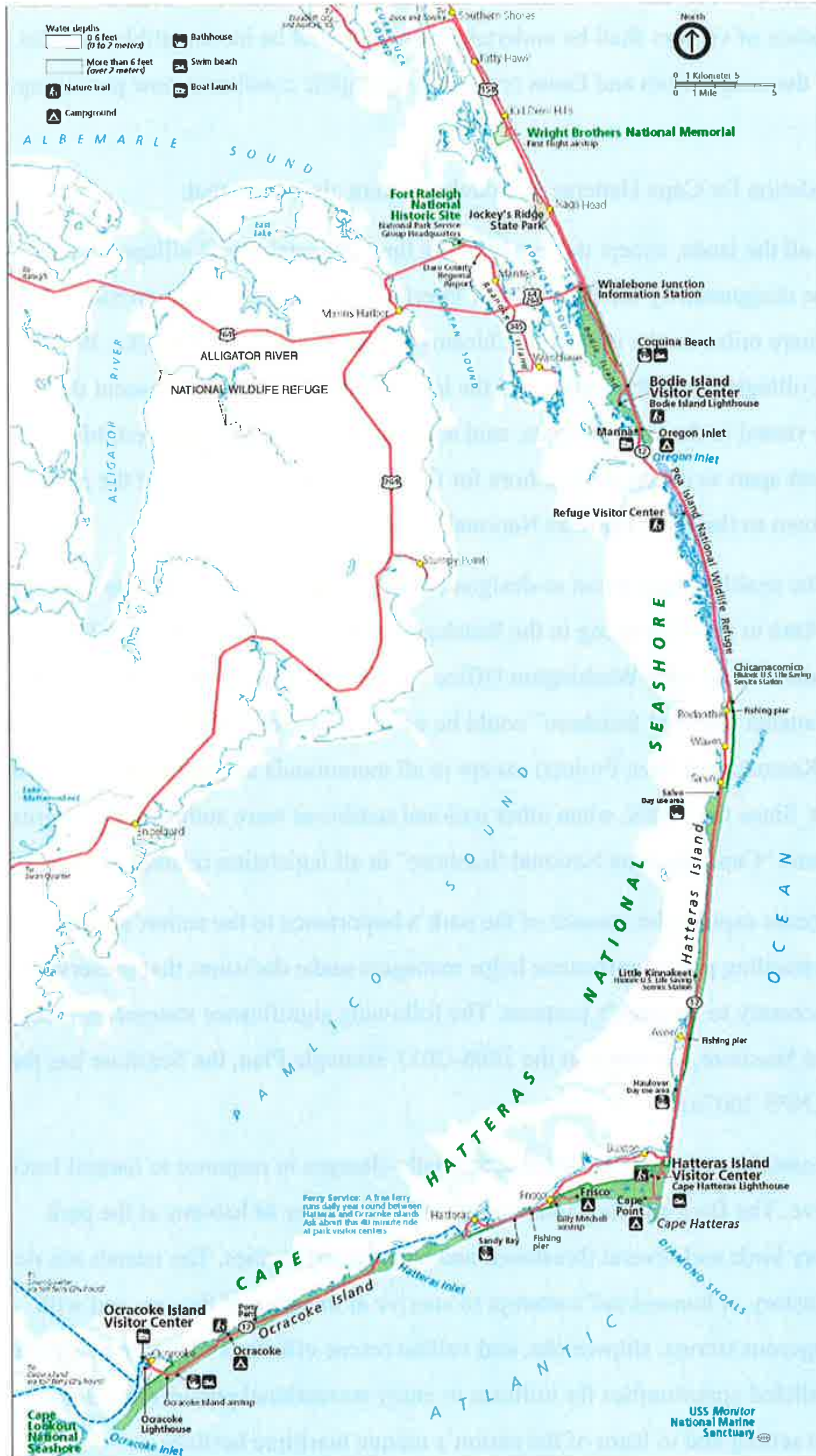
19 All units of the national park system were formed for a specific purpose (their reason for being) and to  
20 preserve significant resources or values for the enjoyment of future generations. The purpose and  
21 significance identify uses and values that individual NPS plans should support. The following provides  
22 background on the purpose and significance of Cape Hatteras National Seashore.

23 As stated in the Seashore’s enabling legislation, Congress established the Seashore in 1937 as a national  
24 seashore for the enjoyment and benefit of the people, and to preserve the area. Its enabling legislation  
25 states:

26 Except for certain portions of the area, deemed to be especially adaptable for recreational  
27 uses, particularly swimming, boating, sailing, fishing, and other recreational activities of

1

Figure 1: Cape Hatteras National Seashore Map (will be 11x17 foldout)



1 similar nature, which shall be developed for such uses as needed, the said areas shall be  
2 permanently reserved as a primitive wilderness and no development of the project or plan  
3 for the convenience of visitors shall be undertaken which would be incompatible with the  
4 preservation of the unique flora and fauna or the physiographic conditions now prevailing in  
5 this area.

6 The 1937 enabling legislation for Cape Hatteras National Seashore also states that:

7 ...when title to all the lands, except those within the limits of established villages, within  
8 boundaries to be designated by the Secretary of Interior within the area of approximately  
9 one hundred square miles on the islands of Chicamacomico [Hatteras], Ocracoke, Bodie,  
10 Roanoke, and Collington, and the waters and the lands beneath the waters adjacent there to  
11 shall have been vested in the United States, said areas shall be, and is hereby, established,  
12 dedicated, and set apart as a national seashore for the benefit and enjoyment of the people  
13 and shall be known as the Cape Hatteras National Seashore.

14 A 1940 amendment to the enabling legislation re-designated the area as the Cape Hatteras National  
15 Seashore Recreational Area to permit hunting in the Seashore. In 1954, Assistant Director Hillory A.  
16 Tolson sent a memorandum to the NPS Washington Office which administratively determined that the  
17 shorter title of “Cape Hatteras National Seashore” could be used in place of the full title (Cape Hatteras  
18 National Seashore and Recreational Area Project) except in all memoranda and documents requiring the  
19 full title of the park unit. Since the 1960s, when other national seashores were authorized, Congress has  
20 consistently used the name “Cape Hatteras National Seashore” in all legislation related to the Seashore.

21 Park significance statements capture the essence of the park’s importance to the nation’s natural and  
22 cultural heritage. Understanding park significance helps managers make decisions that preserve the  
23 resources and values necessary to the park’s purpose. The following significance statements recognize the  
24 important features of the Seashore. As stated in the 2006–2011 Strategic Plan, the Seashore has the  
25 following significance (NPS 2007b):

26 This dynamic coastal barrier island system continually changes in response to natural forces  
27 of wind and wave. The flora and fauna that are found in a variety of habitats at the park  
28 include migratory birds and several threatened and endangered species. The islands are rich  
29 with maritime history of humankind’s attempt to survive at the edge of the sea, and with  
30 accounts of dangerous storms, shipwrecks, and valiant rescue efforts. Today, the Seashore  
31 provides unparalleled opportunities for millions to enjoy recreational pursuits in a unique  
32 natural seashore setting and to learn of the nation’s unique maritime heritage.

## 1 ADMINISTRATIVE BACKGROUND

### 2 HISTORY OF CAPE HATTERAS NATIONAL SEASHORE

3 Officially authorized in 1937 along the Outer Banks of North Carolina, Cape Hatteras is the nation's first  
4 national seashore. Consisting of more than 30,000 acres distributed along approximately 64 miles of  
5 shoreline, the Seashore is part of a dynamic barrier island system. The Outer Banks of North Carolina  
6 formed as a result of changes in sea level, wave and wind action, and ocean currents. These factors  
7 continue to influence the islands today through the processes of erosion and accretion of the shoreline;  
8 overwash across the islands; and the formation, migration, and closure of the inlets (NPS 1979, 7). Since  
9 the 1930s, these natural processes have been influenced by human actions such as building sand berms<sup>1</sup> to  
10 protect roads and homes, dredging inlets, and filling inlets newly created by storms.

11 The Seashore serves as a popular recreation destination, with more than 2.2 million visitors in 2008  
12 showing a 12-fold increase in visitation over the past 50 years (NPS 2009a, 1). Federal ownership extends  
13 from ocean to sound across three barrier islands—Ocracoke, Hatteras, and Bodie (figure 1). Eight villages  
14 are excluded from the Seashore boundaries. On the oceanside of the villages, federal ownership was  
15 established as a 500-foot strip measured landward from the mean low water at the time of acquisition. A  
16 larger area seaward of Buxton and Frisco includes portions of Buxton Woods. The 5,880-acre Pea Island  
17 National Wildlife Refuge, located at the northern end of Hatteras Island, is part of the Seashore, but  
18 administered for refuge purposes by the U.S. Fish and Wildlife Service under the National Wildlife  
19 Refuge System Administration Act (NPS 1997, 1). Therefore, this plan/EIS does not address management  
20 of the area within the refuge.

21 The Seashore's enabling legislation (passed in 1937) provides for both visitor use and resource protection.  
22 Visitors to the Seashore participate in a variety of recreational activities, including beach recreation  
23 (swimming, windsurfing, waterskiing, kiteboarding, etc.), fishing (surf and boat), beach driving,  
24 motorized boating, camping, shell collecting, historical tourism, nature study, harvesting of shellfish, non-  
25 motorized boating (sailing, kayaking, canoeing), hunting, hiking, and photography.

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<sup>1</sup> The word 'berm' as used in this document refers to remnants of the man-made dune or dune ridge originally constructed in the 1930s by the Civilian Conservation Corps and the Works Progress Administration. The National Park Service actively maintained this dune ridge until the 1970s when dune stabilization was abandoned by the Seashore. The word 'berm' as used in the document also refers to a man-made dune or dune ridge constructed to protect state highway NC-12 and interior sections of the island from ocean flooding and overwash during storms.



1 Seashore visitors use ORVs for traveling to and from swimming, fishing, and surfing areas, and for  
2 pleasure driving. The number of visitors to the Seashore has grown from 1,510,237 in 1980 to 2,237,378  
3 in 2007, a growth of approximately 48%. Over the last several years, visitation to the Seashore has  
4 stabilized at approximately 2.2 million visitors per year (NPS 2009a, 1).

5 Current management allows ORV users to drive on the beach in front of the primary dune line. Drivers  
6 must use designated ramps to cross between the beach and NC-12 that runs behind the primary dune line.  
7 In some areas, NC-12 provides a way around full beach closures or areas where the high tide line limits  
8 beachfront access.

9 In addition to a multitude of visitor opportunities, the Seashore provides a variety of important habitats  
10 created by its dynamic environmental processes, including habitats for the federally listed piping plover,  
11 sea turtles, and seabeach amaranth, the latter a plant species. The Seashore also hosts colonial waterbirds,  
12 the American oystercatcher, and other species of concern such as the Wilson's plover and red knot. The  
13 Seashore also contains ecologically important habitats such as marshes, tidal flats, and riparian areas.

#### 14 **SUMMARY OF OFF-ROAD VEHICLE USE AND MANAGEMENT AT CAPE HATTERAS NATIONAL** 15 **SEASHORE**

16 Before 1954, local residents and visitors drove on the beaches at the Seashore, in part, because there were  
17 few formal roads in this remote area. Since the main purpose of beach driving was transportation, and not  
18 recreation, the number of ORVs on the beach was much smaller than it is today. In 1954, NC-12 was  
19 paved, providing a formal transportation route. The paving of NC-12, the completion of the Bonner  
20 Bridge connecting Bodie and Hatteras Islands in 1963, and the introduction of the State of North Carolina  
21 ferry system to Ocracoke Island facilitated visitor access to the sound and ocean beaches and resulted in  
22 increased vehicle use on beaches for recreational purposes (NPS 2004a, 1). Residents adopted the use of  
23 ORVs for commercial netting of fish, while sport fishermen used ORVs to pursue migrating schools of  
24 game fish and reach more productive areas, such as Cape Point or the inlets, often a mile or more from the  
25 nearest paved surface. Presently, ORVs are used for activities such as commercial and recreational  
26 fishing, sightseeing, travel to and from swimming and surfing areas, and pleasure driving (NPS 2004b, 1).

27 ORVs access the sounds and beaches via a system of ramps located off NC-12. The ramps began as an  
28 informal system of unimproved access points connecting the roadway to the sounds and beaches. Over  
29 time, this system was formalized and the oceanside ramps are now numbered, maintained, and identified  
30 on the Seashore's ORV route maps as official vehicle access routes for beach access. In 1978 there were  
31 28 identified ramps, 22 of which were located on NPS lands. Although the NPS opened a new ramp to the  
32 public in 1998, the number of ramps has decreased since 1978 as some were lost to erosion and others

1 were closed to the public and are now used for administrative vehicle access only (NPS 2004a, 2). The  
2 NPS currently has 17 oceanside access ramps available for public ORV use (NPS 2008a, 1). ORV use at  
3 the Seashore has been managed through various proposed draft plans. In 1973, in response to Executive  
4 Order 11644, *Use of Off-Road Vehicles on the Public Lands* (February 8, 1972), the Seashore developed a  
5 plan for ORV management (NPS 2004b, 1) that included:

- 6 • Designation of 27 beach access routes or ramps;
- 7 • Identification of a permitted area for travel from the toe of the dune to the ocean;
- 8 • License requirements for vehicles and operators;
- 9 • Closure of one heavily eroded section of the beach near the Cape Hatteras lighthouse year round;  
10 and
- 11 • Designation of seasonal closures in five areas heavily used by pedestrians between May 26 and  
12 September 10 (NPS 1978a, 3)

13 This management plan was not finalized or published as a special regulation, as required by Executive  
14 Order 11644 and 36 CFR 4.10.

15 A few years later, in response to Executive Order 11989, *Off-Road Vehicles on Public Lands* (May 24,  
16 1977), the Seashore began developing an ORV management plan for the Seashore. In response to this  
17 plan, which was released in January 1978, the North Carolina Beach Buggy Association and the Outer  
18 Banks Preservation Association each issued proposed alternative plans for ORV management at the  
19 Seashore. These proposed plans were considered by the Seashore, along with public comment, and in  
20 November 1978 the *Draft Interim Management Plan: Off-Road Vehicle Use, Cape Hatteras National*  
21 *Seashore* was issued (NPS 1978a, 2). It established guidelines and management of ORV use in the  
22 Seashore while the general management plan was under development. Management through the draft  
23 interim management plan was achieved by establishing zones of use for ORVs, as well as describing  
24 conditions where vehicles would be allowed or prohibited. The draft interim management plan identified  
25 the following use zones:

- 26 • Zone 1 – Ocean Beach: In this zone ORVs will be permitted landward from 150 feet of the  
27 existing tideline, but no closer than 20 feet to the toe of the dune or vegetation line. Portions of  
28 Zone 1 may be closed seasonally (May 15 through September 15), or closed temporarily to  
29 protect nesting birds or sea turtles, or when the distance between the existing tide and the toe of  
30 the dune or the vegetation line is reduced to less than 100 feet. Permits must be issued for

1 vehicles that have less than four weight-bearing wheels and do not meet all vehicular licensing  
2 and inspection requirements of their state of origin.

3       ▪       Zone 1(a) – Seasonally closed areas include:

4               Those Zone 1 areas, which due to seasonal heavy pedestrian, swimming, wildlife or other  
5 use, are deemed seasonally unsuitable for ORV use;

6               Seasonally closed areas shall be identified by signs at both ends of the area, and shall be  
7 indicated on maps available for viewing at the offices of the Superintendent and of each  
8 District Ranger;

9               Dates of seasonal closures shall be May 15 through September 15 of each year, except on  
10 Pea Island National Wildlife Refuge, where the Refuge Manager shall post such closures  
11 as he may find necessary to implement the regulations of the USFWS; and

12              Seasonally closed areas shall consist of, but not be limited to, the following areas: Bodie  
13 Island, milepost 0 to milepost 3; beach areas fronting villages of Rodanthe, Waves,  
14 Salvo, and Avon; northern boundary of Buxton to one mile south of the Cape Hatteras  
15 Lighthouse; beach fronting the villages of Frisco and Hatteras; milepost 49 to milepost  
16 54; and Ocracoke Island milepost 65 to 70.

17       ▪       Zone 1(b) – Temporarily closed sections include:

18              Those narrow beach sections of Zone 1 that have decreased in width to the point where  
19 the average distance from the existing tide to the toe of the dune or vegetation line is less  
20 than 100 feet (30 meters). These sections shall be marked at each end by signs reading  
21 “Beach Temporarily Closed to Vehicle Traffic” and shall be indicated on maps available  
22 for viewing at the offices of the Superintendent and each District Ranger.

23              Bird Nesting Areas – Portions of high beach and inlet flats where significant bird nesting  
24 is occurring. These areas shall be temporarily closed to all visitor use and shall be marked  
25 by posts and “Bird Nesting Area” signs.

26              Sea Turtle Nests – Locations on the beach where a sea turtle nest is discovered. A  
27 rectangular section of beach that includes the nest with 300 feet (92 meters) of tideline  
28 seaward of the nest shall be temporarily closed to ORV use from dune to existing  
29 tideline. Closures shall be marked at both ends by posting with signs indicating “no  
30 ORVs –temporary turtle nest.” The period of closure shall begin on posting, 50 days after  
31 the turtle lays, and shall end 25 days later on official removal of the signs. The purpose of

1 the closure is to protect hatchling loggerhead turtles, listed as “threatened” under the  
2 *Endangered Species Act*.

- 3 • Zone 2 – Soundside: Marsh and flat land west and northwest of NC-12. Vehicular traffic shall be  
4 confined to marked trails, posted as open. No permit shall be required.
- 5 • Zone 3 – Buxton Woods, Open Ponds: That area of grassed dunes and forest lands lying between  
6 Headquarters, Cape Hatteras Group Coast Guard, and Frisco Campground. The area is roughly  
7 bounded on the south by the ocean dunes; on the east by a northeast-southwest trending line lying  
8 west of the Cape Point Campground, Coast Guard Group Headquarters, and NPS residence-  
9 maintenance area complex; on the north by the NPS boundary through Buxton Woods; and on the  
10 west by a south-north trending line lying east of the Frisco Campground. In this zone, limited  
11 vehicular access on ORV routes posted as open shall be permitted only upon application in  
12 person to the Hatteras District Ranger (or designee) and there shall be no more than 30 total  
13 ORVs in this zone at any one time. Limited access permits for vehicular entry shall not exceed 24  
14 hours in duration and shall not be issued more than 7 days in advance. Permits are renewable  
15 upon request except when vehicular capacity has been reached.
- 16 • Zone 4 – Dunes and Sand Plains: All land and dune areas seaward of the right of way of NC-12,  
17 except Zone 1 and Zone 3 lands. ORV operation is permitted only on trails posted for ORV use.  
18 Permits must be issued for vehicles that have less than four weight-bearing wheels and do not  
19 meet all vehicular licensing and inspection requirements of their state of origin (NPS 1978a, 1).

20 The 1978 draft interim management plan called for a posted speed limit of 25 miles per hour and for ORV  
21 operators to possess a current driver’s license from their state of origin. Except for Zone 1, the 1978 plan  
22 stated that no vehicle would enter any unpaved dirt or sand trail or path, or follow any vehicular tracks not  
23 posted as an ORV trail. The Seashore implemented the following plan components:

- 24 • Consolidating and clearly marking entrance and exit points to soundside areas;
- 25 • Establishing sea turtle and bird nesting protection zones;
- 26 • Increasing efforts to provide signage and other information concerning beach conditions and open  
27 and closed areas; and
- 28 • Providing better maintenance of access routes and ramps.

29 The 1978 plan was approved by the NPS Southeast Regional Office and forwarded to the NPS  
30 Washington Office, but was never approved.

1 In 1980, the North District Ranger prepared the *ORV Plan North District Cape Hatteras National*  
2 *Seashore* (NPS 1980). During development of the plan, the North District Ranger asked concerned  
3 individuals for comments and suggestions regarding ORV use at the Seashore. Based on these comments  
4 and suggestions, the plan included recommendations for improvements and a general description and  
5 project status of each soundside and oceanside access point from Bodie Island to Hatteras Inlet. The plan  
6 recommended that the general management plan consider additional parking needs on the soundside and  
7 oceanside and at comfort station locations. It also recommended that the general management plan  
8 consider impacts of traffic flow changes as a result of corridor and road closures (NPS 1980, 17). The  
9 general management plan addressed these concerns by incorporating additional parking lots and parking  
10 turnouts along NC-12 (NPS 1984, 23).

11 The 1984 *General Management Plan/Development Concept Plan/Environmental Assessment: Cape*  
12 *Hatteras National Seashore* (NPS 1984) addressed direct and indirect threats to the Seashore, with ORV  
13 use cited as one such threat. The general management plan calls for additional planning and research on  
14 ORV use and for monitoring impacts of ORVs, but does not set forth an ORV management plan.  
15 Therefore, management of ORVs continued under the draft 1978 plan.

16 The general management plan specified five visitor experience zones. ORV use was listed as an  
17 appropriate activity in three of these five zones: ocean/beach, interior dunes/maritime forests, and  
18 marsh/sound. The general management plan also called for ORV use to be regulated by the 1978 draft  
19 interim management plan (NPS 1978a). The plan was drafted after consideration of public comment to  
20 the earlier 1978 proposed ORV management plan (NPS 1978b). The permitting portion of the 1978  
21 proposed plan was controversial and was removed before release of the 1978 *Draft Interim Management*  
22 *Plan: Off-Road Vehicle Use, Cape Hatteras National Seashore* (NPS 1978a).

23 This management continued until 2004. After reviewing the 1984 general management plan, the  
24 Superintendent decided that parts of the 1978 draft interim management plan (permitting sections  
25 excluded) would be used as Seashore guidance pending development of a long-term ORV management  
26 plan and special regulation. Some of the closed areas, including south of the groins and south of Ramp 49,  
27 were opened back up to ORV use. Ramp 1 was closed around 1990 or 1991 due to erosion. Ramp 20 was  
28 closed in the mid to late 1990s due to erosion. It was decided that Ramp 1 would remain closed since it  
29 bordered the Town of Nags Head and their beaches were closed to ORVs in the summer months. The  
30 Seashore closed Ramp 20 because all of the NPS lands had eroded at that site and the ramp was then on  
31 private lands next to the Rodanthe fishing pier.

1 In 2004 the Seashore issued Superintendent's Order #07, *ORV Management* to resolve ORV issues  
2 created by Hurricane Isabel, which flattened sand berms and exposed areas of the Seashore to ORV use  
3 that the berms once protected from such use (NPS 2004c).

4 The interim protected species management strategy/EA (strategy/EA), published in 2006, was prepared to  
5 ensure the proper management of protected species and to comply with the *Endangered Species Act*,  
6 while providing for use of the Seashore's recreational resources until an ORV plan/EIS for the Seashore  
7 could be completed. The species addressed in the strategy/EA are those specifically affected by  
8 recreational use within the Seashore that are listed either federally or by the state as threatened,  
9 endangered, or species of special concern and/or are of special concern to the Seashore.

10 To implement the interim strategy, the NPS completed an EA in accordance with NEPA, and evaluated  
11 several alternatives in the interim strategy/EA. Alternative D, as modified in the *Finding of No Significant*  
12 *Impact* (NPS 2007a) of the strategy/EA was identified as the selected alternative. Alternative D outlines a  
13 multifaceted strategy (including an increased program of monitoring, recreational and ORV closures,  
14 education and enforcement) for minimizing impacts to wildlife, specifically threatened and endangered  
15 species, and other protected species, from visitor uses, including ORV use.

16 The USFWS Raleigh Field Office prepared a Biological Opinion associated with the interim strategy/EA  
17 in response to their review of the Cape Hatteras National Seashore's biological assessment (NPS 2006b,  
18 January 6, 2006), the *Cape Hatteras National Seashore Interim Protected Species Management*  
19 *Strategy/EA* (NPS 2006a, January 18, 2006), and other sources of published and unpublished biological  
20 information. The Biological Opinion issued in August 2006 evaluated the proposed action of the interim  
21 strategy/EA and its potential impact to protected species at the Seashore. The USFWS concluded that  
22 incidental take of protected species would occur from management actions under the interim strategy/EA,  
23 but that this level of anticipated take during the limited period the interim strategy/EA would be in effect  
24 would not likely result in jeopardy to the species or destruction or adverse modification of designated or  
25 proposed critical habitat (USFWS 2006a, 75).

26 In October 2007, a lawsuit was filed against the NPS alleging inadequacies in management of protected  
27 species at the Seashore and failure of the Seashore to comply with NPS regulations regarding ORV use  
28 (see Litigation, below). On April 30, 2008, a consent decree was issued to settle the lawsuit. The consent  
29 decree modifies the actions analyzed in the Biological Opinion and requires the NPS to follow the interim  
30 strategy/EA, except as modified by the provisions of the consent decree. The modifications include  
31 changes to the buffers provided for various species at the Seashore, as well as added restrictions related to  
32 night driving.

## 1 LITIGATION

2 This plan/EIS was developed partially as the result of two petitions for rulemaking submitted to the NPS.  
3 The first, submitted on December 9, 1999, requested a ban on the use of all-terrain vehicles, dune  
4 buggies, sand buggies, and other four-wheel drive vehicles on all off-road areas in the national park  
5 system. The second petition, specific to Cape Hatteras National Seashore, submitted on June 7, 2004,  
6 requested Rulemaking Governing Off-Road Vehicle Use in the Cape Hatteras National Seashore.  
7 Petitioners claimed the Seashore's informal authorization of ORV use violated the Endangered Species  
8 Act, executive orders and federal regulations regarding ORV use in the National Parks, the NPS Organic  
9 Act of 1916, the General Authorities Act of 1970, the Cape Hatteras National Seashore enabling  
10 legislation, and various NPS management policies.

11 In May 2005 Defenders of Wildlife issued a notice of intent to sue the NPS for alleged violations of the  
12 Endangered Species Act. Partly as a result of this, the Seashore prepared the previously described interim  
13 strategy/EA for use while developing a long-term ORV management plan. A lawsuit was filed in October  
14 2007 claiming the interim strategy/EA violated the Endangered Species Act, failed to protect species at  
15 Cape Hatteras National Seashore, and failed to comply with the requirements of the ORV executive  
16 orders and NPS regulations on ORV use. In April 2008, the U.S. District Court Judge signed a consent  
17 decree to settle the lawsuit. The consent decree, which is enforceable by the court, provides for specific  
18 species protection measures and requires the NPS to complete the ORV management plan/EIS and  
19 required special regulation by December 31, 2010 and April 11, 2011 respectively. (See Appendix X for a  
20 more detailed Seashore ORV-related chronology.)

## 21 SUMMARY OF SCIENTIFIC LITERATURE ON OFF-ROAD VEHICLE USE

22 A literature review was prepared to support the development of an ORV management plan at Cape  
23 Hatteras National Seashore. The literature review (appendix X) provides a summary of available scientific  
24 information related to the potential effects of ORV use on natural and cultural resources similar to those  
25 found at the Seashore or in geographic locations with similar environmental conditions.

## 26 SCOPING PROCESS AND PUBLIC PARTICIPATION

27 A notice of intent was published in the Federal Register on December 11, 2006, to announce the  
28 beginning of the ORV planning process. To determine the scope of issues to be analyzed in depth in this  
29 plan/EIS, meetings were conducted in February and March of 2007 with Seashore staff, other parties  
30 associated with preparing this document, and members of the public. Additional public meetings were

1 held in January 2008 to examine the range of alternatives and provide input on alternative elements. In  
2 response to public input and issues raised during the scoping process, the interdisciplinary planning team  
3 reworked the preliminary alternatives to those analyzed in this plan. Chapter 5 of this plan/EIS contains  
4 more details about agency and public scoping activities that were an integral part of the planning process  
5 for this plan/EIS.

#### 6 **REGULATORY NEGOTIATION PROCESS**

7 The Negotiated Rulemaking Act of 1990 (5 USC 561-570) establishes a statutory framework for agency  
8 use of negotiated rulemaking to reach a consensus with stakeholders on a proposed regulation. Concurrent  
9 with the NEPA process, the Seashore is using a negotiated rulemaking process to develop a proposed rule  
10 for long-term ORV management at the Seashore. Because negotiated rulemaking allows interested,  
11 affected parties more direct input into the development of the proposed regulation, NPS expects the  
12 negotiated rulemaking process to result in a rule that is sensitive to the needs and limitations of both the  
13 parties and the agency. In December 2007, the regulatory negotiation committee was formally established  
14 and its first meeting was held in January 2008, when committee members began to work toward a  
15 consensus recommendation. Although the committee did not reach a consensus on a complete alternative,  
16 management elements suggested by the committee members were reviewed and incorporated into the  
17 range of alternatives in this plan/EIS, primarily in alternative F.

#### 18 **ISSUES AND IMPACT TOPICS**

19 Issues associated with implementing an ORV management plan at Cape Hatteras National Seashore were  
20 initially identified by Seashore staff during internal scoping and were further refined through the public  
21 scoping and regulatory negotiation processes. The following text discusses the issues that formed the  
22 basis for the impact topics discussed in chapters 3 and 4 of this plan/EIS.

#### 23 **FLOODPLAINS AND WETLANDS**

24 Although the entire shoreline of the Seashore is classified as a wetland (Cowardin et al. 1979, 1),  
25 wetlands are of particular concern where ORV use can damage vegetation and impact wildlife habitats or  
26 in areas where wetland habitat is decreasing, such as Bodie Island spit at Oregon Inlet. Habitat at Bodie  
27 Island spit is being lost as a result of natural processes (accretion) moving Bodie Island south. . The  
28 terminal groin constructed at Pea Island has stopped the natural accretion process from moving south.  
29 Although Pea Island stopped moving south, Bodie Island continues to do so, filling Oregon Inlet.  
30 Therefore, the U.S. Army Corps of Engineers (Corps) conducts ongoing maintenance dredging of Oregon  
31 Inlet. The Corps agreed to mitigate impacts resulting from this dredging activity and proposed reducing



1 the elevation of the spit to create low spots and foraging habitat for piping plover. As these wetland  
2 habitats become more limited, damage from ORV use is of increasing concern at the Seashore. [define  
3 terminal groin and accretion in sidebar]

4 Estuarine wetlands are often denuded of vegetation when ORVs are driven and parked along the  
5 soundside shoreline. Many of the interior roads (upper beach/ beach access ramps or soundside trails)  
6 cross wetlands that do not have standing water all year. When standing water is present along an ORV  
7 route, drivers often attempt to drive around the water and over adjacent vegetation. This results in wider  
8 roads, new vehicle routes, and crushed or dead vegetation. Construction of parking areas is also of  
9 concern for small wetlands that may be located nearby.

10 All of the Seashore is located within the 100-year floodplain. In this plan/EIS, the issue of floodplains is  
11 considered under any alternative that includes development, such as expanding or changing existing  
12 parking lots, because these actions have the potential to impact the function and value of the floodplain.

### 13 **WILDLIFE AND WILDLIFE HABITAT**

14 Cape Hatteras National Seashore provides important habitats and plays a vital role in the survival of many  
15 wildlife species. Whether for nesting, resting, foraging, or feeding, the Seashore provides for a diverse  
16 assemblage of birds. Rich, varied habitats and the Seashore's location along the Atlantic Flyway attract  
17 birds. In 1999, the American Bird Conservancy designated Cape Hatteras National Seashore as a Globally  
18 Important Bird Area in recognition of the Seashore's value in bird migration, breeding, and wintering  
19 (NPS 2004d, 1). This diverse ecosystem includes both prey species that sensitive species rely on for  
20 survival, and predators of sensitive species. ORV use along the Seashore can disrupt habitat or cause a  
21 loss of habitat in high use areas. Habitat loss due to ORV use could also occur indirectly as a result of the  
22 noise and disturbance from this activity.

23 Invertebrates are impacted by ORV use. A recent study at the Seashore researched the ghost crab  
24 (*Ocypode quadrata*) as an indicator of ecosystem health, since it may show the impacts of ORVs and  
25 other recreational uses. The study considered the impacts of ORVs on ghost crab population densities and  
26 recovery rates in relation to ORV use and usage regulations. Data to determine the impacts of off-road  
27 vehicles on crab populations was collected in several areas in the Seashore. Closures of the beaches to  
28 vehicles were initiated to study short-term effects and recovery rates. It was found that ORVs had a  
29 detrimental impact on ghost crab populations at the Seashore and that areas subject to vehicle use had  
30 significantly fewer ghost crab burrows than those areas without vehicles. As shown by Steiner and  
31 Leatherman (1981, 111), ghost crabs can be killed or mortally injured by ORVs driving over them, or by  
32 altering their environment. This study concluded that high-energy weather events change the dynamics of

1 the population, allowing more ghost crabs to inhabit the area, but ORVs reduce the ability for ghost crabs  
2 to inhabit the area (Hobbs et al. 2008, 1456–1457).

### 3 **RARE, UNIQUE, THREATENED, AND ENDANGERED SPECIES**

#### 4 **Federally Listed Threatened and Endangered Species**

5 ORV use at the Seashore could impact federally threatened or endangered species and their habitats on  
6 the Seashore's soundside and ocean beaches. Conflicts between listed species and recreational use  
7 (including ORV use) could create direct or indirect losses to a listed species. The Seashore is home to  
8 federally threatened and endangered species year round. Increased year-round visitation results in a  
9 greater potential for conflicts between visitor use and listed species. The Seashore is used by both the  
10 endangered Great Lakes population of piping plover (for wintering) and the threatened Atlantic Coast  
11 population (for breeding and wintering). Seabeach amaranth, a federally listed threatened plant species,  
12 has been found in limited numbers at the Seashore in the recent past. However, no plants have been  
13 documented since 2005. According to the USFWS, seabeach amaranth has been eliminated from two-  
14 thirds of its historic range and one of the most serious threats to its continued existence is disturbance by  
15 ORVs.

16 Nesting sea turtles at the Seashore include the loggerhead, green, and leatherback turtles. Kemp's ridley  
17 and hawksbill turtles are known to occur only on the beaches of the Seashore through strandings. Threats  
18 to listed sea turtles, their nesting sites, and young include storm events, predation, pedestrian disturbance,  
19 ORV use, artificial lighting, pets, and recreational beach equipment.

20 In May 2008, the red knot was identified by the USFWS as a candidate for the endangered or threatened  
21 species list. This species is a migrant and occasional winter resident at the Seashore.

22 Current and possible future management alternatives for ORV and other recreational uses would take into  
23 consideration the needs of federally listed threatened and endangered species in determining management  
24 measures.

#### 25 **State-Listed and Special Status Species**

26 Habitat for state-listed and special status species, such as the American oystercatcher and several species  
27 of colonial waterbirds, may be vulnerable to disturbances caused by recreational uses, including ORV  
28 use. As of May 2008, the American oystercatcher, Wilson's plover, least tern, common tern, and black  
29 skimmer were listed by the North Carolina Wildlife Resources Commission (NCWRC) as species of  
30 special concern. The NCWRC also lists the gull-billed tern as a state-threatened species. The American

1 oystercatcher is listed as a species of concern by the Southeastern Shorebird Conservation Plan, and both  
2 the American oystercatcher and the Wilson's plover are identified in the U.S. Shorebird Conservation  
3 Plan as "Species of High Concern." All these state-listed or special status species have had historically  
4 low reproductive rates. The lack of large undisturbed areas for successful breeding contributes to these  
5 low rates at the Seashore. Frequent human disturbance can cause the abandonment of nest sites as well as  
6 direct loss of eggs and chicks.

#### 7 **SOUNDSCAPES**

8 Impacts related to soundscapes could occur wherever ORVs are allowed on the oceanside or the  
9 soundside. Vehicular noise has the potential to impact other recreational uses, such as bird watching or  
10 enjoying the solitude and natural soundscape of the Seashore. In addition to impacting soundscapes in  
11 relation to visitor enjoyment, vehicular noise could create unsuitable habitat for Seashore wildlife.

#### 12 **VISITOR USE AND EXPERIENCE**

13 ORV use at the Seashore is an integral component of the experience for some visitors and may be  
14 impacted by ORV management activities. Other Seashore visitors who are not using ORVs may be  
15 impacted by ORV use. Currently, the mix of recreational users at the Seashore includes a variety of users  
16 such as ORV users, day-users without ORVs, swimmers, anglers, bird watchers, water sports enthusiasts,  
17 and other users. Although some visitors want to use an ORV to access the Seashore, other visitors wish to  
18 engage in recreational activities on foot and away from the presence of motorized vehicles. Restricting  
19 ORVs from areas of the Seashore could enhance the recreational experience for some and diminish the  
20 experience for others. Visitor experience could be affected by conflicts between motorized and non-  
21 motorized recreation users. A further component of visitor experience is providing for the safety of all  
22 visitors at the Seashore.

23 Other issues related to visitor use and experience include viewsheds, aesthetics, and night skies. While the  
24 sight of ORVs can destroy the viewshed and aesthetics for some visitors, they also change the viewshed  
25 by altering the natural landscape. Some visual signs of ORVs include tire ruts and markings and trash left  
26 behind. ORV use impedes or destroys coastal features like wave or wind ripples in the sand, tide wrack  
27 lines, overwash deposits, wind sorted sediments, dune formation, etc. As an example, the burrows of  
28 ghost crabs, the most common beach inhabitants, are nearly absent from beaches where ORVs are  
29 allowed. Installing posts around closure areas for protected species from ORVs could also impact the  
30 views and aesthetics of the area for those who want a natural view without evidence of man-made  
31 materials.

1 Headlights and other artificial lights associated with nighttime ORV use may affect visitors' opportunities  
2 to enjoy night skies at the Seashore. Conversely, lack of artificial lights may make it more difficult to see,  
3 posing hazards to ORV users and pedestrians. Issues related to night skies include night driving,  
4 headlights, campfires, and all other light uses associated with human activity after dusk. The Seashore is  
5 one of the few places on the Atlantic Coast where visitors can experience the magnificence of a dark night  
6 sky. The Seashore has been ranked, along with Cape Lookout National Seashore, as the 9<sup>th</sup> best place to  
7 view the night sky by the NPS Night Sky Program. ORV use at night has the potential to affect visitor  
8 experience of the brilliance of the night sky. In addition to visitors, animals are also impacted by lights at  
9 night. The stars, planets, and moon are visible during clear nights and influence many species of animals,  
10 such as birds that navigate by the stars or prey animals that reduce their activities during moonlit nights.  
11 Additionally, the phosphorescence of waves on dark nights helps sea turtle hatchlings orient to the ocean.  
12 Excessive artificial light has the potential to disorient turtle hatchlings and disrupt their crawl to the  
13 ocean. Pursuant to NPS Management Policy 4.10 (NPS 2006c, 54), to prevent the loss of natural night  
14 skies, the NPS should minimize light that emanates from park facilities, and also seek the cooperation of  
15 park visitors, neighbors, and local government agencies to prevent or minimize the intrusion of artificial  
16 light into the night scene of the ecosystems of parks. Furthermore, the NPS will not use artificial lighting  
17 in areas such as sea turtle nesting locations where the presence of the artificial lighting could disrupt a  
18 park's dark-dependent natural resource components (NPS 2006c, 54). Impacts of artificial light sources  
19 on animals will be discussed in Chapters 3 and 4 under the wildlife and wildlife habitat impact topics.

## 20 SOCIOECONOMICS

21 Management or regulation of ORV use at the Seashore could impact the local economy by changing the  
22 demand for goods and services from ORV users in these communities. The eight villages located within  
23 the Seashore boundaries serve as access points to the Seashore for visitors, including ORV users. These  
24 villages receive economic benefit from the ORV users who take advantage of the goods and services  
25 these communities offer. The communities are concerned that if a permit system or other ORV  
26 restrictions are implemented that make it harder for ORV users to use the area, fewer tourists may come  
27 to the villages, resulting in impacts to the local economy.

28 **Commercial fishermen currently have ORV access to areas that are closed to other ORV users**  
29 **because of safety reasons (i.e., narrow beach conditions), but they do not have access to areas closed**  
30 **for resource protection. On Ocracoke Island, two soundside access points have been identified for**  
31 **commercial use. Limits placed on ORV use at the Seashore may limit the activities of local**  
32 **commercial fishermen. Disrupting the ability of commercial fishermen to conduct business at the**

1 **Seashore could negatively impact them.**

## 2 **SEASHORE MANAGEMENT AND OPERATIONS**

3 Accommodating recreational uses while protecting sensitive species requires a sufficient number of  
4 personnel and an adequate level of funding. Anecdotal evidence suggests that the Seashore currently does  
5 not have enough personnel to properly enforce existing ORV management decisions. If operational  
6 requirements increase under the new ORV management plan, it would require an increased commitment  
7 of limited NPS resources (staff, money, time, and equipment).

## 8 **ISSUES CONSIDERED BUT DISMISSED FROM FURTHER ANALYSIS**

9 The following issues were dismissed from further analysis, as explained below:

- 10 • **Geologic resources:** ORV use may also impact the ocean beach at Cape Hatteras National  
11 Seashore by disturbing sand, compacting sand, creating ruts, and changing local topography.  
12 Studies have also shown that heavy ORV use could result in increased beach erosion (see  
13 literature review located in Appendix X). However, the Seashore is part of a dynamic coastal  
14 barrier ecosystem, and visual effects of ORVs on ocean beaches can no longer be visible in a  
15 matter of hours by daily tidal action, winds, rain, hurricanes, and other storm events. Although  
16 ORV use could impact geologic resources if ORVs are driven through dunes where there is no  
17 marked trail or designated ramp, ramp use is provided and enforced, and ORVs illegally cutting  
18 through dunes are rare occurrences at the Seashore. ORV use can cause the collapse of beach  
19 escarpments and potentially affect sea turtle habitat. Ruts from ORV tires can also impact the  
20 behavior of piping plovers. However, these secondary impacts are addressed under the impact  
21 topic of threatened and endangered species. Therefore, geologic resources was not retained as an  
22 impact topic.
- 23 • **Geohazards:** There are no known geohazards in the Seashore that would be affected by the  
24 implementation of an ORV management plan.
- 25 • **Vegetation:** Numerous scientific studies have documented the impacts of ORV use on  
26 vegetation. However, because vegetation that exists near ORV use areas at the Seashore is almost  
27 exclusively wetland vegetation, impacts to vegetation were analyzed under the wetlands section  
28 in this plan/EIS.
- 29 • **Unique Ecosystems, Biosphere Reserves, World Heritage Sites:** There are no known biosphere  
30 reserves, World Heritage sites, or unique ecosystems listed in the Seashore; therefore,  
31 implementation of an ORV management plan would have no effect. The Seashore is classified as

1 a Globally Important Bird Area and potential impacts to bird species are included for discussion  
2 in this document.

3 • **Water Quality / Marine and Estuarine Resources:** ORV use has the potential to impact water  
4 quality at the Seashore due to fluids leaking from submerged vehicles or tire ruts altering natural  
5 drainage patterns. However, water quality impacts from submerged vehicles would not rise above  
6 the level of negligible impacts to water quality as long as the vehicle was removed from the water  
7 in a timely fashion. Also, due to the ephemeral nature of tire ruts in beach sand, they would not  
8 result in impacts to water quality. Therefore, this impact topic was dismissed from further  
9 analysis.

10 • **Wildlife and Wildlife Habitat – Fish, Marine Mammals, and Mammals:** Essential fish habitat  
11 at the Seashore is located on the soundside in areas of submerged vegetation. As previously  
12 discussed, water quality impacts from ORV use would be negligible at most and would be  
13 associated primarily with vehicle use on the ocean side. Therefore, there would be no impacts to  
14 essential fish habitat and it is not addressed as an impact topic in this plan/EIS. Mammalian  
15 species at the Seashore include raccoons (*Procyon lotor*), Virginia opossums (*Didelphis*  
16 *virginiana*), eastern cottontail (*Sylvilagus floridanus*), mice (*Peromyscus* spp.), white-tailed deer  
17 (*Odocoileus virginianus*), muskrat (*Ondatra zibethica*), nutria (*Myocastor coypus*), and otter  
18 (*Lutra* spp.). Impacts to mammals from ORV use and management would be expected to be  
19 negligible as most of these species do not use ORV routes and areas as habitat. The alternatives  
20 discussed in this ORV management plan do not involve the removal of mammalian predators.  
21 Any impacts to mammals associated with predator control will be discussed in the Seashore's  
22 forthcoming Predator Control Program for Protected Species Management/Environmental  
23 Assessment. Although harassment of marine mammals could occur from various park users,  
24 including those using ORVs, this would be infrequent, and the plan will include measures to  
25 educate all visitors about resting marine mammals, resulting in negligible to minor impacts to  
26 these species. For the reasons mentioned above, impacts to mammals were dismissed from  
27 further analysis in this document.

28 • **Air Quality:** Cape Hatteras National Seashore is located in an area classified by the U.S.  
29 Environmental Protection Agency as being in attainment for all six criteria pollutants. Despite  
30 being in attainment, activities associated with ORVs (driving, idling engines, and running  
31 generators) could create localized increases in air pollution, potentially degrading the visitor  
32 experience and contributing to greenhouse gas emissions that have been linked to global  
33 warming. Driving on sand may be less fuel-efficient and, therefore, more polluting than driving

1 on a hard surface. However, NPS modeling efforts have concluded that impacts to air quality  
2 from the implementation of this ORV management plan would not exceed negligible levels, so  
3 this topic has been dismissed from further consideration in this plan/EIS. [Discussion of air  
4 quality to be completed once models are completed by the NPS – Expected early September  
5 2009.]

- 6 • **Prime Farmlands:** There are no designated prime farmland soils in the Seashore.
- 7 • **Streamflow Characteristics:** Actions related to ORV management would not have an effect on  
8 streamflow characteristics. The proposed action would not occur in any area that would impact  
9 streamflow.
- 10 • **Introduce or Promote Non-Native Species:** While the potential for vehicles to bring non-native  
11 species to the Seashore occurs, only a small number of non-native species can live in the salt and  
12 wind of the seashore environment. Phragmites (*Phragmites australis* .), a non-native plant  
13 species, is present at the Seashore, but is not likely to be transported by ORVs because its primary  
14 method of colonization is by rhizomes (underground root extensions) and not by seeds, which are  
15 prone to spreading by vehicle tires (Wisconsin DNR 2007, 1). Therefore, because of the low  
16 potential for ORVs to promote non-native species in such a dynamic, salty environment, this  
17 topic was not carried forward for analysis in this EIS.
- 18 • **Cultural Landscapes:** The NPS defines cultural landscapes as settings that humans have created  
19 in the natural world. They reveal fundamental ties between people and the land. They are special  
20 places: expressions of human manipulation and adaptation of the land. Although only one  
21 Cultural Landscape Report has been prepared for the Cape Hatteras Light Station (NPS 2003a),  
22 there are five cultural landscapes within the Seashore’s official database: Bodie Island Light  
23 Station, Little Kinnakeet Life Saving Station, Cape Hatteras Light Station, Hatteras Weather  
24 Bureau Station, and Ocracoke Light Station (NPS 1997; D. Stover, NPS, Cape Hatteras National  
25 Seashore Cultural Resource Specialist, pers. comm. 2008). None of these cultural landscapes is in  
26 the areas of routine ORV use under any of the proposed action alternatives, and none should be  
27 impacted by the implementation of an ORV management plan. In addition, because the oceanside  
28 ORV use areas under all alternatives are close to one mile from the Cape Hatteras Light Station,  
29 there should be no cultural landscape viewshed impacts from the base or the top of the lighthouse  
30 resulting from ORV use (D. Stover, NPS, Cape Hatteras National Seashore Cultural Resource  
31 Specialist, pers. comm. 2008).

- 1       • **Historic Structures and Districts:** Structures are material assemblies that extend the limits of  
2 human capability. Structure types range from buildings to bridges; locomotives to monuments;  
3 temple mounds to factories and bronze statues. The Seashore contains 36 historic structures, 20 of  
4 which are in good condition (NPS 2007b). Structures at the Seashore range from cemeteries to  
5 entire complexes. For example, three historic U.S. Life Saving Service stations still stand at  
6 Chicamacomico, Little Kinnakeet, and Bodie Island. The Hatteras Weather Bureau Station and  
7 Ocracoke Light Station are listed in the National Register. The Bodie Island Light Station, Bodie  
8 Island Lifesaving/Coast Guard Station, and Cape Hatteras Light Station are listed in the National  
9 Register as historic districts. In general, ORV use does not occur in the areas surrounding  
10 standing structures, because structures are located off the beach in the dunes or on the soundside  
11 of the Seashore. There are two tower concrete pad foundations (not standing structures), one of  
12 which is at Cape Point, that is in an area of ORV use. These foundations are not in danger of  
13 impact from ORVs.
- 14       • **Ethnographic Resources:** An ethnographic study for Cape Hatteras National Seashore was  
15 completed in 2005 (Impact Assessment, Inc. 2005). The study looked at the eight villages in the  
16 Seashore that reflect the nearly 300-year history and culture of the Outer Banks to support the  
17 Seashore in interpretation of its cultural resources, stewardship of ethnographic resources, and  
18 community relations with the villages. Archival/documentary research and ethnographic  
19 fieldwork was completed as part of the study to further socio-cultural understanding of the  
20 villages adjoining the Seashore. The villages contain a mix of populations that have evolved from  
21 the original British settlers, European seafarers, farmers, and other more recent migrants to the  
22 Outer Banks. No discrete, continuous ethnic groups or ethnographic populations are documented  
23 at the Seashore; therefore, no ethnographic populations would be impacted by the implementation  
24 of an ORV management plan.
- 25       • **Museum Collections:** Museum objects are manifestations and records of behavior and ideas that  
26 span the breadth of human experience and depth of natural history. The Seashore has collections  
27 of artifacts on display at the Cape Hatteras lighthouse and at each visitor center. The official  
28 Seashore archives and artifact collections are housed at Fort Raleigh National Historic Site at  
29 Manteo. These various collections are not located on the ocean or soundside beaches and would  
30 not be impacted by implementation of an ORV management plan.
- 31       • **Environmental Justice:** On February 11, 1994, the President of the United States issued  
32 Executive Order 12898: Federal Actions to Address Environmental Justice in Minority and Low-  
33 Income Populations. The executive order is designed to focus the attention of federal agencies on



1 the human health and environmental conditions in minority communities and low-income  
2 communities. Environmental justice analyses are performed to identify the disproportionate  
3 placement of high and adverse environmental or health impacts from proposed federal actions on  
4 minority or low-income populations, and to identify alternatives that could mitigate these  
5 impacts.

6 Data from the U.S. Department of Commerce 2000 Census of Population and Housing (U.S.  
7 Census Bureau 2008) identify minority populations as Black or African American; American  
8 Indian and Alaska Native; Asian; Native Hawaiian and other Pacific Islander; other race; of two  
9 or more races; and Hispanic or Latino. Poverty status, used in this EIS to define low-income  
10 status, is reported as the number of persons with income below poverty level. The 2000 Census  
11 defines the poverty level as an annual income of \$8,794, or less, for an individual and an annual  
12 income of \$17,603, or less, for a family of four.

13 Dare and Hyde counties in North Carolina had a population of 35,793 in the year 2000, of whom  
14 4,185 people (12%) were minorities and 3,271 (9%) were living below poverty level. People of  
15 Hispanic or Latino origin comprised 787 (2%) of the total population; 2,854 (8%) were Black or  
16 African American; 107 (0.3%) were American Indian or Alaskan Native; 143 (0.4%) were Asian;  
17 0 were Native Hawaiian or other Pacific Islander; 317 (0.8%) were of some other race; and 347  
18 (0.9%) were of two or more races. It should be noted that persons of Hispanic or Latino origin  
19 may be of any race. The only village at the Seashore that is a Census Designated Place (CDP) is  
20 Ocracoke Village. Ocracoke had a population of 769 in the year 2000, of whom 30 (3.9%) were  
21 minorities and 68 (9.3%) were living below poverty level.

22 The census block group containing the villages of Rodanthe, Waves, Salvo, and Avon had a  
23 population of 1,600 in the year 2000, of whom 55 people (3%) were minorities and  
24 approximately 11% were living below the poverty level. The census block group containing  
25 Hatteras Village had a population of 709 in the year 2000, of whom four people were minorities  
26 and approximately 3% were living below the poverty level. The census block group containing  
27 the villages of Buxton and Frisco had a population of 1,692 in the year 2000, of whom 24 were  
28 minorities and approximately 5% were living below the poverty level.

29 The data for the counties and the areas containing the villages indicates poverty rates that are  
30 lower than the national and state average of 12% in the year 2000. None of the minority  
31 populations in the area of the Seashore were above the state or national averages for those  
32 populations (Census, 2008). Therefore, based on the definitions provided in the executive order

- 1 for minority or low-income populations there are no such populations that would be  
2 disproportionately impacted by the implementation of this plan/EIS.
- 3 • **Energy Resources:** This topic involves assessing energy requirements and the potential for  
4 energy conservation associated with the various alternatives, but is most relevant to facility  
5 construction projects. The majority of ORV use at the Seashore involves gaining access to fishing  
6 areas, where vehicles are then turned off once the desired fishing spot is reached. Because  
7 vehicular access to the beach would be maintained under this plan/EIS at current or reduced  
8 levels, there would only be negligible impacts on energy resources, as public fuel consumption  
9 would not change to a large degree as a result of the implementation of this plan. However, due to  
10 differences in management intensity among the alternatives, there would be differences in energy  
11 (fuel) consumption from implementation of the ORV management plan. The Seashore would  
12 continue to operate under the wise energy use guidelines and requirements stated in the NPS 2006  
13 Management Policies, Executive Order 13123 (Greening the Government Through Effective  
14 Energy Management), Executive Order 13031 (Federal Alternative Fueled Vehicle Leadership),  
15 Executive Order 13149 (Greening the Government Through Federal Fleet and Transportation  
16 Efficiency), and the 1993 NPS Guiding Principles of Sustainable Design.
  - 17 • **Urban Quality, Gateway Communities:** A gateway community is defined by the NPS  
18 *Management Policies 2006* as a community that exists in close proximity to a unit of the national  
19 park system whose residents and elected officials are often affected by the decisions made in the  
20 course of managing the park. Because of this, there are shared interests and concerns regarding  
21 decisions. Gateway communities usually offer food, lodging, and other services to park visitors.  
22 They also provide opportunities for employee housing and a convenient location to purchase  
23 goods and services essential to park administration. The communities within and adjacent to the  
24 Seashore would fall under this definition, and the issues and interests that would be impacted by  
25 this plan are addressed under the Socioeconomics impact topic.
  - 26 • **Paleontological Resources:** No paleontological resources are located within the Seashore that  
27 would be impacted by ORV use; therefore, paleontological resources would not be impacted by  
28 implementation of an ORV management plan.
  - 29 • **Health and Safety:** Large numbers of vehicles and pedestrians use many of the same Seashore  
30 beaches at the same time, increasing the potential for visitor use conflicts and safety issues.  
31 Health and safety issues related to ORV use are discussed under the visitor use topic.

- 1       • **Topography and Soils (Physiographic, except for Geology):** Issues related to topography and  
 2       soils include impacts to the sand and beach environment, which are discussed under geologic  
 3       resources. Since no other impacts would occur to soils or topographic conditions, these were not  
 4       included as separate impact topics.

5       **FEDERAL LAWS, POLICIES, REGULATIONS AND PLANS DIRECTLY RELATED**  
 6       **TO OFF-ROAD VEHICLE MANAGEMENT**

7       **Executive Order 11644: Use of Off-Road Vehicles on the Public Lands**

8       On February 8, 1972, President Richard Nixon issued Executive Order 11644 to “establish policies and  
 9       provide for procedures that will ensure the use of off-road vehicles on public lands will be controlled and  
 10       directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and  
 11       to minimize conflicts among the various uses of those lands.”

12       The executive order directs agencies to develop and issue regulations and administrative instructions to  
 13       designate the specific areas and trails on public lands on which ORV use may be permitted, and areas in  
 14       which ORV use may not be permitted. The location of areas and trails shall:

- 15       • minimize damage to soil, watershed, vegetation, or other resources of the public lands;  
 16       • minimize harassment of wildlife or significant disruption of wildlife habitats;  
 17       • minimize conflicts between ORV use and other existing or proposed recreational uses of the same  
 18       on neighboring public lands, and ensure the compatibility of such uses with existing conditions in  
 19       populated areas, taking into account noise and other factors; and  
 20       • areas and trails shall not be located in officially designated wilderness areas or primitive areas  
 21       and shall be located in areas of the national park system, natural areas, or national wildlife refuges  
 22       and game ranges only if the respective agency head determines that ORV use in such locations  
 23       will not adversely affect their natural, aesthetic, or scenic values.

24       **Executive Order 11989: Off-Road Vehicles on Public Lands**

25       This executive order, issued on May 24, 1977, by President Jimmy Carter, directs agencies to  
 26       immediately close off-road areas or trails when it is determined that the use of ORVs is causing or will  
 27       cause considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic  
 28       resources to the type of ORV causing such effects, until such time as determined that such adverse effects  
 29       have been eliminated and measures have been implemented to prevent future recurrence. Also included in

1 the executive order is the authority to adopt the policy that portions of the public lands under an agency's  
2 jurisdiction shall be closed to use by ORVs except those areas or trails that are suitable and specifically  
3 designated as open to such use.

#### 4 **Code of Federal Regulations 36 Section 4.10 Travel on Park Roads and Designated Routes**

5 This CFR section states that "operating a motor vehicle is prohibited except on park roads, in parking  
6 areas and on routes and areas designated for off-road motor vehicle use." Additionally, routes and areas  
7 designated for ORV use shall be promulgated as special regulations, with designations complying with  
8 Executive Order 11644. As a result of the plan/EIS and special regulation, the Seashore will be in  
9 compliance with this regulation.

#### 10 **OTHER APPLICABLE FEDERAL LAWS, POLICIES, REGULATIONS AND PLANS**

11 This plan/EIS must conform to the following federal laws, policies, regulations and plans described in this  
12 section. Although some of the following documents may not be directly related to ORV management,  
13 they are relevant to issues at the Seashore that may be indirectly influenced by or associated with ORV  
14 use.

#### 15 **Code of Federal Regulations, Title 36 (1992)**

16 Title 36, Chapter 1, provides the regulations "for the proper use, management, government, and  
17 protection of persons, property, and natural and cultural resources within areas under the jurisdiction of  
18 the National Park Service." These regulations are utilized to fulfill the statutory purposes of the units of  
19 the National Park System: to conserve scenery, natural and historical objects, and wildlife, and to provide  
20 for the enjoyment of those resources in a manner that will leave them unimpaired for the enjoyment of  
21 future generations. Section 1.5 of these regulations details the NPS authority to enact closures or public  
22 use limits given that the closures are "consistent with applicable legislation and Federal administrative  
23 policies, and based upon a determination that such action is necessary for the maintenance of public  
24 health and safety, protection of environmental or scenic values, protection of natural or cultural resources,  
25 aid to scientific research, implementation of management responsibilities, equitable allocation and use of  
26 facilities, or the avoidance of conflict among visitor use activities." Section 1.6 details the NPS authority  
27 to issue permits and Section 1.7 details the public notification requirements for enacting closures under  
28 Section 1.5.

1 **Code of Federal Regulation, Title 36, Section 2.15, Pets**

2 Title 36, Section 2.15, provides regulations for visitors wishing to bring pets into national park units.

3 Under this regulation, the following activities are prohibited in regards to pets:

- 4 1. Possessing a pet in a public building, public transportation vehicle, or location designated as a  
5 swimming beach, or any structure or area closed to the possession of pets by the superintendent.  
6 This does not apply to guide dogs accompanying visually impaired persons or hearing ear dogs  
7 accompanying hearing-impaired persons.
- 8 2. Failing to crate, cage, restrain on a leash which shall not exceed six feet in length, or otherwise  
9 physically confine a pet at all times.
- 10 3. Leaving a pet unattended and tied to an object, except in designated areas or under conditions  
11 which may be established by the superintendent.
- 12 4. Allowing a pet to make noise that is unreasonable considering location, time of day or night,  
13 impact on park users, and other relevant factors, or that frightens wildlife by barking, howling, or  
14 making other noise.
- 15 5. Failing to comply with pet excrement disposal conditions which may be established by the  
16 superintendent.

17 Where pets are allowed at the Seashore, this regulation applies. Pet issues are addressed in this plan/EIS  
18 because they are transported in ORVs and are indirectly related to this use.

19 **Code of Federal Regulations, Title 36, Section 3.6 Prohibited Operations**

20 Section 3.6 prohibits the launching of a vessel “propelled by machinery” from any location within the  
21 park other than a designated launch site. According to 3.6(i) of the Superintendent’s Compendium,  
22 designated launch sites for non-commercial, recreational boats/vessels propelled by machinery are located  
23 at Oregon Inlet Fishing Center, Ramp 23, Milepost 46 soundside access, Cable Crossing, Ocracoke  
24 Marina parking area, Prong Road, Ramp 72, South Point Road, and Quork Hammock.

25 **Coastal Zone Management Act, 1966**

26 The *Coastal Zone Management Act* (CZMA) (16 USC 1451 et. seq.) seeks to preserve and protect coastal  
27 resources. Through the CZMA, states are encouraged to develop coastal zone management programs  
28 (CZMPs) to allow economic growth that is compatible with the protection of natural resources, the  
29 reduction of coastal hazards, the improvement of water quality, and sensible coastal development. The  
30 CZMA provides financial and technical incentives for coastal states to manage their coastal zones in a

1 manner consistent with CZMA standards and goals. CZMA Section 307 states that “Each Federal agency  
2 activity within our outside the coastal zone that affects any land or water use or natural resource of the  
3 coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with  
4 the enforceable policies of approved State management programs.”

5 The *North Carolina Coastal Area Management Act (CAMA)* establishes a cooperative program of coastal  
6 area management between local and state governments through comprehensive planning for the  
7 protection, preservation, orderly development, and management of the coastal area of North Carolina. The  
8 CAMA program was federally approved in 1978 and is the state’s CZMP under the CZMA. Localities are  
9 responsible for planning while the state establishes areas of environmental concern. A project must obtain  
10 a CAMA permit if it:

- 11 • is in one of the 20 counties covered by the Act (including Dare and Hyde counties),
- 12 • is considered “development” under the act,
- 13 • is in or affects an area of environmental concern, and
- 14 • does not qualify for an exemption.

15 As a part of this program, the Coastal Resources Commission designated “areas of environmental  
16 concern” in the 20 coastal counties and set rules for managing development in these areas. An area of  
17 environmental concern is an area of natural importance that may be easily destroyed by erosion or  
18 flooding or that may have environmental, social, economic, or aesthetic values that make it valuable to  
19 North Carolina. At least 90 days prior to taking action, NPS would provide a consistency determination  
20 stating how the plan/EIS is, to the maximum extent practicable, consistent with the enforceable policies of  
21 the North Carolina CAMA.

## 22 **Endangered Species Act of 1973, as Amended**

23 The 1973 Endangered Species Act provides for the conservation of ecosystems upon which threatened  
24 and endangered species of fish, wildlife, and plants depend. Section 7 of this act requires all federal  
25 agencies to consult with the Secretary of the Interior on all projects and proposals with the potential to  
26 impact federally endangered or threatened plants and animals. It also requires federal agencies to use their  
27 authorities in furtherance of the purposes of the *Endangered Species Act* by carrying out programs for the  
28 conservation of endangered and threatened species. Federal agencies are also responsible for ensuring that  
29 any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued  
30 existence of any endangered species or threatened species or result in the destruction or adverse  
31 modification of designated critical habitat. The act makes it unlawful for a person to “take” a listed animal

1 without a permit. The term “take” is defined in the act as “to harass, harm, pursue, hunt, shoot, wound,  
2 kill, trap, capture, or collect or attempt to engage in any such conduct.” Through regulations, the term  
3 “harm” is defined as “an act which actually kills or injures wildlife. Such an act may include significant  
4 habitat modification or degradation where it actually kills or injures wildlife by significantly impairing  
5 essential behavioral patterns, including breeding, feeding, or sheltering.” Listed plants are not protected  
6 from take, although it is illegal to collect or maliciously harm them on Federal land. The act also imposes  
7 civil and criminal penalties for violations of any provisions of the act.

### 8 **Critical Habitat Designation for Piping Plovers**

9 Under the authority of the Endangered Species Act, the U.S. Fish and Wildlife Service can designate  
10 critical habitat for a protected species. Critical habitat refers to specific geographic areas that contain  
11 features essential for the conservation of a threatened or endangered species and that may require special  
12 management or protection. On October 21, 2008, the USFWS designated the following four areas as  
13 critical habitat: (1) Unit NC-1, Oregon Inlet; (2) Unit NC-2, Cape Hatteras Point; (3) Unit NC-4,  
14 Hatteras Inlet; and (4) Unit NC-5, Ocracoke Island. Unit NC-1 is approximately 5 miles long, and  
15 consists of about 485 acres of sandy beach and inlet spit habitat on Bodie Island and Pea Island. Unit NC-  
16 2 comprises 646 acres and extends south approximately 2.8 miles from the ocean groin near the old  
17 location of the Cape Hatteras Lighthouse to the point of Cape Hatteras, and then extends west 4.7 miles  
18 along South Beach to the edge of Ramp 49 near the Frisco Campground. Unit NC-4 is approximately 5  
19 miles long and consists of 410 acres of sandy beach and inlet spit habitat on the western end of Hatteras  
20 Island and the eastern end of Ocracoke Island. Unit NC-5 consists of 502 acres on the western portion of  
21 Ocracoke Island beginning at the beach access point at the edge of Ramp 72 (South Point Road),  
22 extending west approximately 2.1 miles to Ocracoke Inlet, and then back east on the Pamlico Sound side.  
23 Under section 7(a)(2) of the Endangered Species Act, if a federal action may affect a listed species or its  
24 critical habitat, the responsible federal agency must enter into consultation with the USFWS to ensure that  
25 the affected critical habitat would remain functional to serve its intended conservation role for the species.

### 26 **Antideficiency Act**

27 The *Antideficiency Act* is a series of statutes (originating from 16 Stat. 251 in 1870) that prohibit federal  
28 managers from making or authorizing expenditures in excess of the amount available to them from  
29 appropriations or other funds, unless authorized by law. Based on this, the plan/EIS created must be able  
30 to be implemented through expected funding sources.

1 **Marine Mammal Protection Act, 1972**

2 The *Marine Mammal Protection Act* prohibits, with certain exceptions, the taking of marine mammals in  
3 U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine  
4 mammal products into the United States. The act defines “take” as “to harass, hunt, capture, or kill, or  
5 attempt to harass, hunt, capture, or kill any marine mammal.” It defines harassment as “any act of pursuit,  
6 torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the  
7 wild; or has the potential to disturb a marine mammal or marine mammal stock in the wild by causing  
8 disruption of behavioral patterns, including but not limited to, migration, breathing, nursing, breeding,  
9 feeding, or sheltering.” This act recognizes that some marine mammal species or stocks may be in danger  
10 of extinction or depletion as a result of human activities, and that these species or stocks must not be  
11 permitted to be depleted. The act, as amended in 1994, provides for certain exceptions to the take  
12 prohibitions, such as Alaska Native subsistence and permits and authorizations for scientific research; a  
13 program to authorize and control the taking of marine mammals incidental to commercial fishing  
14 operations; preparation of stock assessments for all marine mammal stocks in waters under U.S.  
15 jurisdiction; and studies of pinniped-fishery interactions. This act is relevant to this plan because ORVs  
16 are used to assist marine mammals that have become stranded on the beach, and ORVs allow people to  
17 access areas where these mammals rest, allowing for the possibility of harassment.

18 **Migratory Bird Treaty Act of 1918 and Executive Order 13186: Responsibilities of Federal**  
19 **Agencies to Protect Migratory Birds**

20 Migratory birds are of great ecological and economic value to this country and to other countries. They  
21 contribute to biological diversity and bring tremendous enjoyment to millions of people who study,  
22 watch, feed, or hunt these birds throughout the United States and other countries. The United States has  
23 recognized the critical importance of this shared resource by ratifying international, bilateral conventions  
24 for the conservation of migratory birds. These migratory bird conventions impose substantive obligations  
25 on the United States for the conservation of migratory birds and their habitats, and through the Migratory  
26 Bird Treaty Act (MBTA), the United States has implemented these migratory bird conventions with  
27 respect to the United States. Executive Order 13186 directs executive departments and agencies to take  
28 certain actions to further implement the MBTA. The MBTA implements various treaties and conventions  
29 between the United States and Canada, Japan, Mexico, and the former Soviet Union for the protection of  
30 migratory birds. Under this act, it is prohibited, unless permitted by regulations, to “pursue, hunt, take,  
31 capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase,  
32 deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be  
33 transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or



1 carriage, or export, at any time, or in any manner, any migratory bird, included in the terms of this  
2 Convention...for the protection of migratory birds...or any part, nest, or egg of any such bird” (16 USC  
3 703). Subject to limitations in the Act, the Secretary of the Interior may adopt regulations determining the  
4 extent to which, if at all, hunting, taking, capturing, killing, possessing, selling, purchasing, shipping,  
5 transporting or exporting of any migratory bird, part, nest or egg will be allowed, having regard for  
6 temperature zones, distribution, abundance, economic value, breeding habits and migratory flight  
7 patterns.

#### 8 **National Environmental Policy Act, 1969, as Amended**

9 NEPA is implemented through regulations of the Council on Environmental Quality (CEQ) (40 CFR  
10 1500–1508). The NPS has in turn adopted procedures to comply with the act and the CEQ regulations, as  
11 found in *Director’s Order 12: Conservation Planning, Environmental Impact Analysis, and Decision*  
12 *Making*, and its accompanying handbook (NPS 2001a). Section 102(2) (c) of NEPA requires that an EIS  
13 be prepared for proposed major federal actions that may significantly affect the quality of the human  
14 environment.

#### 15 **National Historic Preservation Act of 1966, as Amended**

16 Section 106 of this act requires federal agencies to consider the effects of their undertakings on properties  
17 listed or potentially eligible for listing on the National Register of Historic Places. All actions affecting  
18 the Seashore’s cultural resources must comply with this legislation.

#### 19 **National Parks Omnibus Management Act of 1998**

20 Both the *National Parks Omnibus Management Act of 1998* (NPOMA) (16 USC 5901 et seq.) and NEPA  
21 are fundamental to NPS park management decisions. Both acts provide direction for articulating and  
22 connecting the ultimate resource management decision to the analysis of impacts, using appropriate  
23 technical and scientific information. Both also recognize that such data may not be readily available and  
24 provide options for resource impact analysis in this case.

#### 25 **NPS Organic Act, 1916**

26 By enacting the *NPS Organic Act of 1916*, Congress directed the U.S. Department of the Interior and NPS  
27 to manage units of the national park system “to conserve the scenery and the natural and historic objects  
28 and the wild life therein and to provide for the enjoyment of the same in such manner and by such means  
29 as will leave them unimpaired for the enjoyment of future generations” (16 USC 1). The *Redwood*  
30 *National Park Expansion Act of 1978* reiterates this mandate by stating that the NPS must conduct its

1 actions in a manner that will ensure no “derogation of the values and purposes for which these various  
2 areas have been established, except as may have been or shall be directly and specifically provided by  
3 Congress” (16 USC 1 a-1).

4 Despite these mandates, the *Organic Act* and its amendments afford the NPS latitude when making  
5 resource decisions that balance visitor recreation and resource preservation. By these acts Congress  
6 “empowered [the NPS] with the authority to determine what uses of park resources are proper and what  
7 proportion of the park’s resources are available for each use” (*Bicycle Trails Council of Marin v. Babbitt*,  
8 82 F.3d 1445, 1453 [9th Cir. 1996]).

9 Courts consistently interpret the *Organic Act* and its amendments to elevate resource conservation above  
10 visitor recreation. *Michigan United Conservation Clubs v. Lujan*, 949 F.2d 202, 206 (6<sup>th</sup> Cir. 1991) states:  
11 “Congress placed specific emphasis on conservation.” The court in *National Rifle Association of America*  
12 *v. Potter*, says “in the *Organic Act* Congress speaks of but a single purpose, namely, conservation.” The  
13 *NPS Management Policies 2006* also recognize that resource conservation takes precedence over visitor  
14 recreation. The policy dictates: “when there is a conflict between conserving resources and values and  
15 providing for enjoyment of them, conservation is to be predominant” (NPS 2006c, sec. 1.4.3, 10).

16 Because conservation remains predominant, the NPS seeks to avoid or to minimize adverse impacts on  
17 park resources and values. Yet, the NPS has discretion to allow negative impacts when necessary (NPS  
18 2006c, sec. 1.4.3, 10). While some actions and activities cause impacts, the NPS cannot allow an adverse  
19 impact that constitutes resource impairment (NPS 2006c, sec. 1.4.3, 10). Specifically, *NPS Management*  
20 *Policies 2006*, Section 1.4.3.1 states: “In the administration of authorized uses, park managers have the  
21 discretionary authority to allow and manage the use, provided that the use will not cause impairment or  
22 unacceptable impacts.” The *Organic Act* prohibits actions that permanently impair park resources unless a  
23 law directly and specifically allows for the action (16 USC 1a-1). An action constitutes “an impairment”  
24 when its impacts “harm the integrity of park resources or values, including the opportunities that  
25 otherwise would be present for the enjoyment of those resources or values” (NPS 2006c, sec. 1.4.5, 11).

26 To determine impairment, the NPS must evaluate “the particular resources and values that would be  
27 affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and  
28 the cumulative effects of the impact in question and other impacts” (NPS 2006c, sec. 1.4.5, 11).

29 Park managers must also not allow uses that would cause unacceptable impacts (NPS 2006c, sec. 1.4.7.,  
30 12) These are impacts that fall short of impairment, but are still not acceptable within a particular park’s  
31 environment. For the purposes of these policies, unacceptable impacts are impacts that, individually or  
32 cumulatively, would

- 1       • be inconsistent with a park’s purposes or values, or
- 2       • impede the attainment of a park’s desired future conditions for natural and cultural resources as
- 3       identified through the park’s planning process, or
- 4       • create an unsafe or unhealthful environment for visitors or employees, or
- 5       • diminish opportunities for current or future generations to enjoy, learn about, or be inspired by
- 6       park resources or values, or
- 7       • unreasonably interfere with
- 8           ○ park programs or activities, or
- 9           ○ an appropriate use, or
- 10          ○ the atmosphere of peace and tranquility, or the natural soundscape maintained in
- 11          wilderness and natural, historic, or commemorative locations within the park, or
- 12          ○ NPS concessioner or contractor operations or services.

13 Because park units vary based on their enabling legislation, natural resources, cultural resources, and  
 14 missions, management activities appropriate for each unit, and for areas in each unit, vary as well. An  
 15 action appropriate in one unit could impair or cause unacceptable impacts to resources in another unit.  
 16 Thus, the EIS analyzes the context, duration, and intensity of impacts related to the implementation of an  
 17 ORV management plan at Cape Hatteras National Seashore, as well as the potential for resource  
 18 impairment or unacceptable impacts, as required by *Director’s Order 12: Conservation Planning, Environmental Impact Analysis and Decision-making* (NPS 2001a, 45).

#### 20 **Redwood National Park Act of 1978, as Amended**

21 Reasserting the system-wide standard of protection established by Congress in the original *Organic Act*,  
 22 the Redwood Amendment stated:

23       The authorization of activities shall be construed and the protection, management, and  
 24       administration of these areas shall be conducted in light of the high public value and integrity of  
 25       the National Park System and shall not be exercised in derogation of the values and purposes for  
 26       which these various areas have been established, except as may have been or shall be directly and  
 27       specifically provided by Congress (P.L. 95-250, USC Sec 1a-1).

28 Congress intended the language of the *Redwood Amendment* to the *General Authorities Act* to reiterate  
 29 the provisions of the *Organic Act*, not to create a substantively different management standard. The

1 House committee report described the Redwood Amendment as a “declaration by Congress” that the  
 2 promotion and regulation of the national park system is to be consistent with the *Organic Act*. The Senate  
 3 committee report stated that under the *Redwood Amendment*, “The Secretary has an absolute duty, which  
 4 is not to be compromised, to fulfill the mandate of the 1916 Act to take whatever actions and seek  
 5 whatever relief as will safeguard the units of the national park system.” Although the *Organic Act* and the  
 6 *General Authorities Act*, as amended by the *Redwood Amendment*, use different wording (“unimpaired”  
 7 and “derogation”) to describe what the NPS must avoid, both acts define a single standard for the  
 8 management of the national park system—not two different standards. For simplicity, *NPS Management*  
 9 *Policies 2006* uses “impairment,” not both statutory phrases, to refer to that single standard.

#### 10 **Executive Order 11990: Protection of Wetlands**

11 This executive order directs federal agencies to avoid, to the extent possible, the long-term and short-term  
 12 adverse impacts associated with the destruction or modification of wetlands, and to avoid direct or  
 13 indirect support of new construction in wetlands wherever there is a practicable alternative.

#### 14 **Executive Order 11988: Floodplain Management**

15 This executive order directs federal agencies to avoid, to the extent possible, the long-term and short-term  
 16 adverse impacts associated with the occupancy and modification of floodplains, and to avoid direct or  
 17 indirect support of floodplain development wherever there is a practicable alternative.

#### 18 **NPS Management Policies 2006**

19 *NPS Management Policies 2006* address management of ORVs in Section 8.2.3.1, Off-Road Vehicle Use.  
 20 This section states (NPS 2006c, 104):

21 Off-road motor vehicle use in national park units is governed by Executive Order 11644 (*Use of*  
 22 *Off-Road Vehicles on the Public Lands*, as amended by Executive Order 11989), which defines  
 23 off-road vehicles as “any motorized vehicle designed for or capable of cross-country travel on or  
 24 immediately over, land, water, sand, snow, ice, marsh, swampland, or other natural terrain”  
 25 (except any registered motorboat or any vehicle used for emergency purposes). Unless otherwise  
 26 provided by statute, any time there is a proposal to allow a motor vehicle meeting this description  
 27 to be used in a park, the provisions of the executive order must be applied.

28 In accordance with 36 CFR 4.10(b), routes and areas may be designated only in national  
 29 recreation areas, national seashores, national lakeshores, and national preserves, and only by  
 30 special regulation. In accordance with the executive order, they may be allowed only in locations  
 31 where there will be no adverse impacts on the area’s natural, cultural, scenic, and esthetic values,

1 and in consideration of other existing or proposed recreational uses. The criteria for new uses,  
2 appropriate uses, and unacceptable impacts listed in sections 8.1 and 8.2 must also be applied to  
3 determine whether off-road vehicle use may be allowed. As required by the executive order and  
4 the *Organic Act*, superintendents must immediately close a designated off-road vehicle route  
5 whenever the use is causing, or will cause, unacceptable impacts on the soil, vegetation, wildlife,  
6 wildlife habitat, or cultural and historic resources.

7 NPS administrative off-road motor vehicle use will be limited to what is necessary to manage the  
8 public use of designated off-road vehicle routes and areas; to conduct emergency operations; and  
9 to accomplish essential maintenance, construction, and resource protection activities that cannot  
10 be accomplished reasonably by other means.

11 Management polices relating to resource protection also were considered in developing this plan/EIS. For  
12 example, NPS *Management Policies 2006* instructs park units to maintain, as parts of the natural  
13 ecosystems of parks, all plants and animals native to park ecosystems, in part by minimizing human  
14 impacts on native plants, animals, populations, communities, and ecosystems, and the processes that  
15 sustain them (NPS 2006c, sec. 4.4.1, 43).

16 NPS *Management Policies 2006* directs park units to determine all management actions for the protection  
17 and perpetuation of federally, state, or locally listed species through the park management planning  
18 process, and to include consultation with lead federal and state agencies as appropriate. Section 4.4.2.3,  
19 Management of Threatened or Endangered Plants and Animals, specifically states:

20 The NPS will survey for, protect, and strive to recover all species native to national park system units  
21 that are listed under the *Endangered Species Act*. The NPS will fully meet its obligations under the  
22 NPS *Organic Act* and the *Endangered Species Act* to both proactively conserve listed species and  
23 prevent detrimental effects on these species. To meet these obligations, the NPS will:

- 24 • Cooperate with both the USFWS and the National Marine Fisheries Service to ensure that  
25 NPS actions comply with both the written requirements and the spirit of the *Endangered*  
26 *Species Act*. This cooperation should include the full range of activities associated with the  
27 *Endangered Species Act*, including consultation, conferencing, informal discussions, and  
28 securing of all necessary scientific and/or recovery permits.
- 29 • Undertake active management programs to inventory, monitor, restore, and maintain listed  
30 species' habitats; control detrimental non-native species; control detrimental visitor access;  
31 and re-establish extirpated populations as necessary to maintain the species and the habitats  
32 upon which they depend.

- 1           • Manage designated critical habitat, essential habitat, and recovery areas to maintain and  
2           enhance their value for the recovery of threatened and endangered species.
- 3           • Cooperate with other agencies to ensure that the delineation of critical habitat, essential  
4           habitat, and/or recovery areas on park-managed lands provides needed conservation benefits  
5           to the total recovery efforts being conducted by all the participating agencies.
- 6           • Participate in the recovery planning process, including the provision of members on recovery  
7           teams and recovery implementation teams where appropriate.
- 8           • Cooperate with other agencies, states, and private entities to promote candidate conservation  
9           agreements aimed at precluding the need to list species.
- 10          • Conduct actions and allocate funding to address endangered, threatened, proposed, and  
11          candidate species.

12 Section 4.4.2.3 of the NPS *Management Policies 2006* also states that the “NPS will inventory, monitor,  
13 and manage state and locally listed species in a manner similar to its treatment of federally listed species,  
14 to the greatest extent possible. In addition, the Service will inventory other native species that are of  
15 special management concern to parks (such as rare, declining, sensitive, or unique species and their  
16 habitats) and will manage them to maintain their natural distribution and abundance” (NPS 2006c, sec.  
17 4.4.2.3, 45).

#### 18 **Cape Hatteras National Seashore Enabling Legislation, 1937**

19 This legislation was an act of Congress that provided for the authorization of the Cape Hatteras  
20 National Seashore. Section three of this act states “the administration, protection, and development  
21 of the aforesaid national seashore shall be exercised under the direction of the Secretary of the  
22 Interior by the National Park Service, subject to the provisions of the Act of August 25, 1916 (39  
23 Stat. 535)”, which is more commonly known as the Organic Act. Section three continues by stating  
24 “that the legal residents of villages”...”shall have a right to earn a livelihood by fishing within the  
25 boundaries to be designated by the Secretary of the Interior, subject to such rules and regulations as  
26 the said Secretary may deem necessary in order to protect the area for recreational use as provided  
27 for in this Act.” Section four of this legislation states that “Except for certain portions of the area,  
28 deemed to be especially adaptable for recreational uses, particularly swimming, boating, sailing,  
29 fishing, and other recreational activities of similar nature, which shall be developed for such uses as  
30 needed, the said areas shall be permanently reserved as a primitive wilderness and no development  
31 of the project or plan for the convenience of visitors shall be undertaken which would be

1 incompatible with the preservation of the unique flora and fauna or the physiographic conditions  
2 now prevailing in this area.”

### 3 **Code of Federal Regulations Title 36, Section 7.58, Commercial Fishing**

4 Section 7.58 contains the regulations governing commercial fishing at the Seashore. This section includes  
5 details on the requirements for commercial fishing permits, sport fishing zones, beach sanitation, and  
6 conservation of aquatic life.

### 7 **Superintendent’s Compendium: Closures, Permit Requirements, and Other Restrictions**

8 Under the provisions of 16 USC 3 and 36 CFR 1, Parts 1-7, the compendium details designated closures,  
9 permit requirements, and other restrictions imposed under the discretionary authority of the  
10 Superintendent. The general provisions of the compendium allow for closures and public use limits for  
11 posted bird areas and turtle nests as well as vehicle restrictions during May through September on beach  
12 areas in front of villages, on life guarded beaches, and on beaches adjacent to NPS campgrounds or other  
13 posted areas. The compendium also covers restrictions for resource protection, public use, and recreation;  
14 boating and water use activities; and vehicles and traffic safety. It prohibits vehicular access to beach or  
15 soundside areas other than those marked and maintained vehicle access routes and prohibits all off-road  
16 traffic on Pea Island National Wildlife Refuge, in accordance with USFWS management of the area.

### 17 **Superintendent’s Order 7: Identification and Marking of ORV Use Areas, 2004 as amended**

18 This order became effective on May 17, 2004 and provided for the identification of ORV Use Areas at  
19 certain sections of the Seashore, until such time as an ORV management plan could be prepared,  
20 approved, and implemented. This order was prompted by the damage caused by Hurricane Isabel in 2003,  
21 which resulted in the flattening of dunes and the movement or elimination of the dune line which  
22 previously established the boundary of the ORV driving areas. Superintendent’s Order 7 specifically  
23 provides for an “Ocean Beach Zone” in which ORVs would be permitted within 150 feet of the existing  
24 tideline. The ORV Use Areas provided for in Superintendent’s Order 7, commonly referred to as the ORV  
25 corridor, are marked at the spits and Cape Point by posts placed 150 feet landward from the average,  
26 normal high tide line or, if existing, and less than 150 feet, at the vegetation or the toe of the remnant dune  
27 line. This order was revised in 2006 based on the implementation of the Interim Protected Species  
28 Management Strategy, which provided for a 100-foot-wide corridor in protected species breeding areas.  
29 Also, due to the large number of miles of beach, the corridor would not be marked in areas where the  
30 dune line provided a physical barrier.

31

1 **Director's Order 12: Conservation Planning, Environmental Impact Analysis, and Decision**

2 **Making and Handbook**

3 NPS *Director's Order #12* and its accompanying handbook (NPS 2001a) lay the groundwork for how the  
4 NPS complies with NEPA. *Director's Order #12* and handbook set forth a planning process for  
5 incorporating scientific and technical information and establishing a solid administrative record for NPS  
6 projects.

7 *Director's Order #12* requires that impacts to park resources be analyzed in terms of their context,  
8 duration, and intensity. It is crucial for the public and decision makers to understand the implications of  
9 those impacts in the short and long term, cumulatively, and within context, based on an understanding and  
10 interpretation by resource professionals and specialists. *Director's Order #12* also requires that an  
11 analysis of impairment to park resources and values be made as part of the NEPA document.

12 **Director's Order 28: Cultural Resource Management**

13 This director's order sets forth the guidelines for management of cultural resources, including cultural  
14 landscapes, archeological resources, historic and prehistoric structures, museum objects, and ethnographic  
15 resources. This order calls for the NPS to protect and manage cultural resources in its custody through  
16 effective research, planning, and stewardship in accordance with the policies and principles contained in  
17 the *NPS Management Policies 2006*.

18 **Director's Order 77: Natural Resource Protection**

19 Director's Order 77 addresses natural resource protection, with specific guidance provided in *Reference*  
20 *Manual #77: Natural Resource Management*. The Natural Resource Management Reference Manual #77  
21 offers comprehensive guidance to National Park Service employees responsible for managing,  
22 conserving, and protecting the natural resources found in National Park System units. The Manual serves  
23 as the primary guidance on natural resource management in units of the National Park System. Reference  
24 Manual chapters that are particularly relevant to this plan/EIS include endangered, threatened, and rare  
25 species management; geologic resources management; native animal management; shoreline  
26 management; vegetation management; special use permitting; wetland protection (Director's Order 77-1);  
27 and floodplain management (Director's Order 77-2).



1 **RELATIONSHIP TO OTHER CAPE HATTERAS NATIONAL SEASHORE PLANNING DOCUMENTS,**  
2 **POLICIES AND ACTIONS**

3 The following plans, policies, and actions occurring at the Seashore were considered during the  
4 development of this plan/EIS:

5 **Past ORV Planning Efforts**

6 As described under “Summary of Off-Road Vehicle Use and Management at Cape Hatteras National  
7 Seashore’ earlier in this chapter, the Seashore has engaged in various ORV management activities since it  
8 was established. All of these past planning efforts were taken into consideration during the development  
9 of this plan/EIS.

10 **General Management Plan**

11 The 1984 *General Management Plan/Development Concept Plan/Environmental Assessment for Cape*  
12 *Hatteras National Seashore* was developed to guide the preservation, use, development, and operation of  
13 the Seashore for a 5- to 10-year period. The relationship of the General Management Plan to ORV use at  
14 the Seashore is described in greater detail under “Summary of Off-Road Vehicle Use and Management at  
15 Cape Hatteras National Seashore’ earlier in this chapter.

16 **Resource Management Plan**

17 The 1997 resource management plan states that the use of ORVs at the Seashore is a matter of growing  
18 controversy, and impacts from these vehicles on natural resources and pedestrian visitors are informally  
19 monitored on a continual basis. The plan noted, but did not cite, a study examining the effects of human-  
20 related disturbances, including vehicles, on migrating shore and water birds, and stated that more detailed  
21 studies would be required to establish effective ORV management.

22 **Government Performance Result Act Surveys**

23 From 1998 to 2008, Cape Hatteras National Seashore distributed a survey to visitors as part of  
24 compliance with the *Government Performance Results Act (GPRA) Surveys*. These surveys focus on  
25 measurable goals for visitor satisfaction, and visitor understanding and appreciation, which assist the  
26 Seashore in its planning efforts to achieve its goals.

27 **Visitor Services Project Report**

28 The visitor services project report, or the *Outer Banks Group Parks Visitor Study Cape Hatteras National*  
29 *Seashore Visitors* report, resulted from a visitor study conducted at the Seashore July 12 through 18,

1 2002. The study found that the most popular activities for current and past visitors were  
2 sunbathing/swimming and visiting historic sites. The three most important reasons for visiting the  
3 Seashore were the lighthouses, swimming, and uncrowded/solitude/low population. Also, when asked  
4 about crowding, 27% of visitors said they felt “crowded” to “extremely crowded” while 43% of visitors  
5 felt “somewhat crowded.” Many visitor groups (49%) felt that crowding “detracted from their park  
6 experience” (NPS 2002a, 2).

### 7 **Long-Range Interpretation Plan**

8 A long-range interpretation plan for the Seashore was completed in September 2007. This plan  
9 recommends actions to be taken over the next five to seven years to improve the Seashore’s personal  
10 services program and interpretive media, and provides an achievable implementation strategy (NPS  
11 2007c, 49). Because this plan addresses exhibits, interpretive information, outreach, and education, it was  
12 considered in the development of this plan/EIS.

### 13 **Predator Management Plan**

14 The Seashore is developing a Predator Control Program for Protected Species Management  
15 (Environmental Assessment) to address native and non-native predators that prey on protected species of  
16 shorebirds and on sea turtle eggs and hatchlings. The Environmental Assessment was distributed for  
17 public review in [insert month and year] and a Finding of No Significant Impact was signed [insert month  
18 and year].

### 19 **Special Use Permits and Permitted Activities**

20 A special use permit is required for activities at the Seashore that provide a benefit to an individual,  
21 group, or organization, rather than the public at large, and that require some degree of management from  
22 the NPS to protect park resources and the public interest. Examples include: religious ceremonies,  
23 weddings, fishing tournaments, surfing tournaments, commercial filming, bike tours, marathons, car  
24 rallies, and public speeches and assemblies. Permit fees vary and generally range between \$100 and \$350.  
25 However, an additional fee is charged for any activity that requires NPS personnel participation or  
26 monitoring, or that creates extraordinary administrative work. The full cost is charged for restoration of  
27 park resources including litter cleanup (NPS nd, 1).

### 28 **Commercial Use Authorizations**

29 The Seashore issues permits for authorized commercial operations such as a horseback ride operation;  
30 instruction for surfing, kite surfing, and surf fishing; or kayak tours. These permitted activities are subject

1 to the supervision of the Superintendent. In addition to the general guidelines of the permit, there are  
2 some additional provisions regarding liability, visitor use, and impacts to the Seashore.

### 3 **RELATIONSHIP TO OTHER FEDERAL PLANNING DOCUMENTS AND ACTIONS**

4 In addition to the laws and policies above, other federal planning documents exist that directly or  
5 indirectly relate to ORV use at the Seashore, and were taken into consideration during the development of  
6 this plan/EIS.

#### 7 **Piping Plover Atlantic Coast Population Recovery Plan**

8 ORV management activities described in this plan/EIS considered the 1996 USFWS *Piping Plover*  
9 *Atlantic Coast Population Recovery Plan*. This population of piping plovers was listed as threatened in  
10 1986 and has increased from approximately 800 pairs to almost 1,350 pairs in 1995. However, pressure  
11 on Atlantic Coast beach habitat from development and human disturbance is pervasive and unrelenting,  
12 and the species is sparsely distributed. Increased human activity in Atlantic coast parks, which includes  
13 increased ORV use, is cited as one of the many reasons the piping plover was listed.

#### 14 **Recovery Plan for the Great Lakes Piping Plover**

15 This plan/EIS considered the USFWS *Recovery Plan for the Great Lakes Piping Plover*. The Great Lakes  
16 population, which winters at the Seashore, was listed as endangered under provisions of the *Endangered*  
17 *Species Act* on January 10, 1986. The Great Lakes population had declined from a historic size of several  
18 hundred breeding pairs to 17 at the time of listing. From 1986 through 2002, the population fluctuated  
19 between 12 and 51 breeding pairs, with breeding areas remaining largely confined to Michigan. The  
20 restricted breeding range of this population creates a gap in the distribution of piping plovers across North  
21 America, with the Great Lakes population isolated from the two other breeding populations (Atlantic and  
22 Northern Great Plains) (USFWS 2003, ii).

#### 23 **Atlantic Green, Hawksbill, Leatherback, Kemp's Ridley, and Loggerhead Turtle Recovery Plans**

24 The USFWS and the National Marine Fisheries Service recovery plans for the U.S. population of Atlantic  
25 green, hawksbill, leatherback, Kemp's ridley, and loggerhead sea turtles were considered when  
26 developing this plan/EIS. Each of these species is federally listed and the Seashore considered the  
27 individual recovery plans (NMFS and USFWS 1991a, 1991b, 1992a, 1992b, 1993, 2008).

1 **Marine Mammal Recovery Efforts by the National Marine Fisheries Service**

2 This plan/EIS considered the *Marine Mammal Recovery Efforts of the National Marine Fisheries Service*.  
3 The National Marine Fisheries Service Office of Protected Resources is charged with implementing the  
4 *Marine Mammal Protection Act* and the *Endangered Species Act* with respect to marine mammal species  
5 under the National Oceanic and Atmospheric Administration (NOAA) Fisheries jurisdiction: whales,  
6 dolphins, porpoises, seals, and sea lions. These efforts are relevant to this plan because administrative  
7 ORVs are used to assist marine mammals that have become stranded on the beach, and because ORVs  
8 enhance visitors' access to marine mammals that are resting on the beach, which could potentially lead to  
9 harassment.

10 **RELATIONSHIP TO OTHER STATE AND LOCAL PLANNING DOCUMENTS, POLICIES, ACTIONS,**  
11 **LAWS, AND REGULATIONS**

12 The following state and local documents, policies, actions, laws, and regulations are directly or indirectly  
13 related to ORV use, and were therefore considered during the development of this plan/EIS:

14 **North Carolina Division of Marine Fisheries Regulations**

15 Recreational fishing at the Seashore is guided by the North Carolina Division of Marine Fisheries  
16 regulations. The North Carolina Division of Marine Fisheries manages all marine and estuarine resources  
17 in the state. As part of this function, the division publishes an annual recreational fishing guide that sets  
18 minimum lengths and bag limits for various species. As of January 1, 2007, the State of North Carolina  
19 required recreational anglers to have a license for saltwater fishing.

20 **North Carolina Wildlife Resources Commission Nongame and Endangered Wildlife Program**

21 The Nongame and Endangered Wildlife Program, established in North Carolina in 1983, aims to prevent  
22 species from becoming endangered through maintaining viable, self-sustaining populations of all native  
23 wildlife, with an emphasis on species in decline. The North Carolina Wildlife Resources Commission has  
24 a Comprehensive Wildlife Strategy to protect state listed species. This strategy includes securing funding  
25 for state fish and wildlife agencies to take preventative actions that help keep rare species from becoming  
26 endangered, and keep common species common (NCWRC 2005, ii). Species listed through this program  
27 as state threatened, endangered, or of special concern were taken into consideration during the  
28 development of this plan/EIS. Endangered and threatened wildlife, and wildlife species of special concern  
29 are protected under Article 25 of Chapter 113 of the *North Carolina General Statutes*.

30

1 **North Carolina Wildlife Resource Commission Handbook for Sea Turtle Volunteers in**  
2 **North Carolina**

3 The North Carolina Wildlife Resources Commission published the *Handbook for Sea Turtle Volunteers in*  
4 *North Carolina* (NCWRC 2006). The handbook provides guidance to volunteers in conducting  
5 biologically sound management projects to benefit sea turtles and to help ensure compliance with laws  
6 pertaining to rare and endangered species at all levels of government. An annual permit is issued to the  
7 Seashore by the North Carolina Wildlife Resources Commission under the authority of the USFWS. This  
8 handbook was considered in the development of this plan/EIS because turtle management and resulting  
9 closures to ORV are guided by this document.

10 **North Carolina Department of Transportation**

11 The North Carolina Department of Transportation (NCDOT) has various projects related to NC-12 and  
12 other Outer Banks access issues. The NCDOT is considering some long-term projects in response to the  
13 changing physical landscape of the area such as a bridge from Avon to Buxton, which is a possible area  
14 for a future inlet. The Outer Banks Task Force has developed a long-term management plan for NC-12  
15 that was considered during the development of this plan/EIS. NC-12 connects the communities located  
16 within Cape Hatteras National Seashore to the mainland of North Carolina. Island residents depend on the  
17 roadway for off-island community services, such as hospitals, emergency response, and waste collection.  
18 NC-12 is also the primary evacuation route for all permanent and temporary residents on the island when  
19 severe weather is approaching. Storms frequently cause the ocean to overwash NC-12 and deposit large  
20 quantities of sand over portions of the roadway. The storms sometimes damage NC-12, which interrupts  
21 access and services to the island and causes hardships for island residents. NC-12 must be continually  
22 repaired and maintained to prevent permanent loss of access on Hatteras Island. To address these issues a  
23 task force was formed comprising the NCDOT, NPS, Corps, USFWS, National Marine Fisheries Service,  
24 Federal Highway Administration, Dare and Hyde counties, and the North Carolina Department of  
25 Environment and Natural Resources. The mission of this task force is to develop a long-range protection  
26 and maintenance plan for the transportation system on the Outer Banks. As part of this task force, hot  
27 spots for erosion have been identified and include Northern Pea Island, Sandbag area, Rodanthe 'S'  
28 curves, Buxton/Canadian Hole, Hatteras Village, and Ocracoke (OBTF 2009, 1).

29 The NCDOT is proposing to build a new bridge to replace the existing Herbert C. Bonner Bridge,  
30 originally built in the 1960s, over Oregon Inlet before the end of the bridge's reasonable service life. The  
31 NCDOT and the Federal Highway Administration released a supplemental draft EIS regarding this  
32 replacement, and a supplement to the EIS was released in 2007 (OBTF 2007, 1, FHWA 2007, 1). In

1 September 2008, NCDOT announced its preferred alternative, known as the Parallel Bridge with Phased  
2 Approach/Rodanthe Bridge Alternative. This alternative includes constructing a new Oregon Inlet bridge  
3 (Phase I) west of the existing structure, and later elevating NC-12 onto a series of bridges during Phases  
4 II-IV. Replacement of the Oregon Inlet bridge is expected to be complete in 2014 (NCDOT, 2008, 1).

#### 5 **The North Carolina Coastal Area Management Act (CAMA)**

6 Details regarding CAMA are presented previously in this document under the Coastal Zone Management  
7 Act description on page XX.

#### 8 **Dare and Hyde County Planning Documents**

9 The development and implementation of this plan/EIS considered the planning efforts of Dare and Hyde  
10 counties, primarily with respect to the cumulative impacts analysis and consistency determination. In  
11 Dare County, the County Planning Board serves as an advisory board to the Dare County Board of  
12 Commissioners. In compliance with the North Carolina CAMA, Dare County prepared guidance and  
13 policies for land use development, known as the *Land Use Plan* (Dare County 2003, 15), which provides  
14 local elected officials with a set of guidelines for development patterns and other land use issues that are  
15 important to the community. The *Land Use Plan* includes policies on various topics and implementation  
16 activities such as policies on water quality, residential and commercial development patterns, beach  
17 access, oceanfront and estuarine development, stormwater management, wastewater, and transportation.  
18 The latest version of the Dare County *Land Use Plan* was certified by the North Carolina Coastal  
19 Resources Commission in July 2003, and must be updated every five years. The 2008 plan update was  
20 submitted to the state for review in mid-January 2009 and should be completed in the summer or fall of  
21 2009 (D. Creef, Dare County Planning Department, pers. comm., 2009). The *Land Use Plan* applies to  
22 the unincorporated portions of Dare County, while each of the municipalities in Dare County adopts its  
23 own plans for its respective planning jurisdiction. The Dare County *Land Use Plan* works in conjunction  
24 with the zoning ordinance, as well as the CAMA. Except for the mainland villages and Wanchese, the  
25 remainder of unincorporated Dare County is zoned. Detailed zoning maps have been adopted for the  
26 villages of Duck, Collington, Roanoke Island, Avon, Buxton, and Hatteras. The villages of Rodanthe,  
27 Waves, Salvo, and Frisco are zoned S-1, which is a minimal zoning district that allows all uses but does  
28 establish some building setbacks and height limitations. In addition, the county adopted a Special  
29 Environmental District (SED-1) for the Buxton Woods maritime forest. This zoning district establishes  
30 special standards for land clearing and vegetation removal that are intended to protect the vegetative  
31 canopy of the Buxton Woods forest (Dare County 2003, 93).

1 The *Hyde County Land Use Plan*, written in 1986, was updated in 1992, 1997, and 2006. *Hyde County*  
 2 *Land Use Plan* is required as part of the State of North Carolina’s Coastal Area Management Act and  
 3 analyzes land development in the area to plan for future uses. The plan sets forth the following vision for  
 4 the Island of Ocracoke (Hyde County 2006, 166):

5 The vision of Ocracoke Island in the 21st century is a community that ensures livability and  
 6 economic viability by offering the discerning vacationer a preferable alternative to the over  
 7 commercialized beach destinations while providing improved attention to Ocracoke residents. The  
 8 mission of county government should be to facilitate and support:

- 9 • Efforts to maintain the historic village assets.
- 10 • Efforts to preserve traditional native occupations and crafts including hunting and  
 11 commercial fishing.
- 12 • Efforts to enhance the Island shopping opportunities with small locally owned shops and  
 13 businesses.
- 14 • Efforts to provide affordable housing.
- 15 • Cooperative efforts with the community, NPS, and DOT to maintain access to the Island and  
 16 provide necessary amenities. Ocracoke and Mainland should emphasis access.
- 17 • Support village craftsmen.

#### 18 **Outer Banks Scenic Byway**

19 In the early 1990s, the North Carolina Department of Transportation (NCDOT) declared the Outer Banks  
 20 corridor a state scenic byway. In September 2003, NCDOT completed an Outer Banks Scenic Byway  
 21 Corridor Management Plan in preparation for seeking National Scenic Byway status. The Corridor  
 22 Management Plan, updated in 2008, explores the “six intrinsic qualities” of the byway – scenic, natural,  
 23 cultural, historic, archaeological and recreational. The corridor management plan recognizes the Seashore  
 24 as one of the important natural components of the byway. The 2008 plan includes recommendations for  
 25 stewardship of the natural and cultural resources at the Seashore.

#### 26 **Off-Road Vehicle Regulations for Duck, Kill Devil Hills, Nags Head, Kitty Hawk, and Southern** 27 **Shores**

28 Each municipality on the Outer Banks has its own individual rules for ORV use. Generally all  
 29 municipalities that allow beach driving share the following rules:

- 1       • ORV users are requested to observe a suggested speed limit of 15 miles per hour;
- 2       • ORVs users must enter and leave the beach only at designated ramps (never between ramps or on
- 3       the dunes);
- 4       • ORVs should be driven only on the portion of beach that lies between the foot of the dunes and
- 5       the ocean;
- 6       • ORV users are requested to proceed with caution and consideration of other beach visitors;
- 7       • ORVs must have a state road registration and valid license plate; and
- 8       • ORV operators must have a current driver's license.

9

10      In addition to these general guidelines, the surrounding municipalities have individual ORV regulations,

11      as shown in table 1.

12                                      **Table 1. ORV Regulations for Outer Banks Municipalities**

Regulation/Guideline	Duck	Kill Devil Hills	Nags Head	Kitty Hawk and Southern Shores*
Observe 15 mph speed limit	X	X	X	
Use designated ramps to enter/exit the beach	X	X	X	
Drive only between foot of dunes and ocean	X	X	X	
Be cautious / considerate of other visitors	X	X	X	
Vehicle must be registered with valid license plate	X	X	X	
Operator must have current license	X	X	X	
No permit required between October 1 and April 30	X	X	X	
Vehicle must have 4-wheel drive		X		
Night driving is permitted		X		
Government, law enforcement, emergency, rescue services exempt	X	X	X	X
Commercial fishermen exempt				X
ORV must be permitted by Regulations Governing Off-Road Vehicles			X	

\*No motorized vehicles are allowed at Kitty Hawk and Southern Shores except for commercial fishermen and government/emergency vehicles.



1

## 1           **CHAPTER 5: CONSULTATION AND COORDINATION**

2    Seashore staff place a high priority on meeting the intent of public involvement in the NEPA process and  
3    giving the public an opportunity to comment on proposed actions. As part of the NPS NEPA process,  
4    issues associated with the action were identified during scoping meetings with NPS staff, coordination  
5    with other affected agencies, public meetings, and public comment. This chapter describes the  
6    consultation that occurred during development of this plan/EIS, including consultation with stakeholders  
7    and other agencies. This chapter also includes a description of the public involvement process and a list of  
8    the recipients of the draft document.

### 9    **THE SCOPING PROCESS**

10   NPS divides the scoping process into two parts: internal scoping and external public scoping. Internal  
11   scoping involved discussions among NPS personnel regarding the purpose of and need for management  
12   actions, issues, management alternative, mitigation measures, the analysis boundary, appropriate level of  
13   documentation, available references and guidance, and other related topics. Public scoping is the early  
14   involvement of the interested and affected public in the environmental analysis process. The public  
15   scoping process helps ensure that people have been given an opportunity to comment and contribute early  
16   in the decision-making process. For this plan/EIS, project information was distributed to individuals,  
17   agencies, and organizations early in the scoping process, and people were given opportunities to express  
18   concerns or views and identify important issues or even other alternatives or alternative elements. Taken  
19   together, internal and public scoping are essential elements of the NEPA planning process. The following  
20   sections describe the various ways scoping was conducted for this project.

### 21   **INTERNAL SCOPING**

22   Internal scoping for this project began on November 15, 2004, with staff members from Seashore, NPS  
23   Environmental Quality Division, NPS Southeastern Region, and contractor personnel in attendance.  
24   During the three-day meeting, the NPS identified the purpose of and need for action, management  
25   objectives, issues, and impact topics. The planning team also discussed possible alternative elements,  
26   cumulative impacts, and strategies for public involvement throughout the process. Another set of internal  
27   scoping meetings was held November 7, 2006, after the completion of the Interim Protected Species  
28   Management Strategy/EA to revisit the discussions of the 2004 meeting and to update information..  
29   During the three-day meeting, NPS employees discussed the development of an ORV management plan  
30   for the Seashore, including a review of the purpose and need for action, management objectives, issues,

1 impact topics, and preliminary alternative concepts. The 2006 internal scoping meetings also included a  
2 discussion of the procedures and schedule of the negotiated rulemaking process, strategies for public  
3 involvement, the no-action alternative, and data management.

#### 4 **PUBLIC SCOPING**

5 Public scoping began with the December 11, 2006, *Federal Register* publication of the notice of intent  
6 (NOI) to prepare an environmental impact statement (Federal Register Vol. 71 (237), pp. 71552–71553).  
7 The NOI summarized the history of ORV management at the Seashore, discussed preliminary issues and  
8 impact topics, listed the project website, and announced the upcoming public scoping meetings. The  
9 Seashore posted a public scoping newsletter on the NPS Planning, Environment, and Public Comment  
10 (PEPC) website at <http://parkplanning.nps.gov/caha>, sent informational e-mails to individuals, businesses,  
11 agencies, and organizations on the Seashore's email distribution list, and issued a news release inviting  
12 the public to comment at the scoping meetings. All four meetings were open-house style sessions with  
13 short presentations, which allowed the public to ask Seashore staff questions and provide input to the  
14 Seashore in a more informal atmosphere. These sessions occurred February 26, 2007, from 2:00 PM to  
15 6:00 PM at the Fessenden Center in Buxton, North Carolina; February 27, 2007, from 6:00 PM to 9:00 PM  
16 at the Wright Brothers National Memorial First Flight Centennial Pavilion in Kill Devil Hills, North  
17 Carolina; February 28, 2007, from 6:00 PM to 9:00 PM at McKimmon Center (North Carolina State  
18 Campus), Raleigh, North Carolina; and on March 1 from 6:00 PM to 9:00 PM at the American  
19 Geophysical Union Building in Washington, D.C.

20 The meetings offered a variety of methods for the public to provide comments. NPS personnel and  
21 contractor staff were present at each display to answer questions from attendees and record attendees'  
22 comments. Comment sheets were provided to meeting attendees as an additional method for accepting  
23 public comment. Following the open house and presentation, attendees were also offered an opportunity  
24 to comment in a public hearing format. These comments were transcribed by a court reporter and were  
25 posted on the NPS PEPC website. Those attending the meetings were also given a newsletter that  
26 provided additional opportunities for comment, including directing comments to the PEPC website. To  
27 keep the public involved and informed throughout the planning process, individuals were given the option  
28 to receive notification of the availability of draft ORV management documents by either e-mail or regular  
29 mail and the option to either download a digital copy or receive a hardcopy through the mail. The public  
30 scoping period was open until March 16, 2007.

31 During the public comment period, 3,511 pieces of correspondence were received, containing a total of  
32 3,532 signatures and 14,397 individual comments. Generally, these comments focused on how the

1 alternatives presented could be improved or suggested new alternative elements that should be  
2 considered. Many comments expressed concern about potential impacts to the local economy associated  
3 with limiting ORV use at the Seashore. Comments provided suggests for reconfiguring the existing ORV  
4 access system, including opening or closing ramps and interdunal roads. Comments were also received  
5 that indicated the need to protect sensitive species and habitat along the beaches, provided that the  
6 protection measures implemented would be based on scientific studies. Public comments also  
7 recommended strengthening public education initiatives, increasing law enforcement presence, and  
8 implementing a fee or permit system for ORV use. Comments also indicated how ORVs either  
9 contributed to or detracted from the visitor experience at the Seashore.

#### 10 **PUBLIC ALTERNATIVE DEVELOPMENT WORKSHOPS**

11 After the internal and public scoping meetings, suggestions and ideas for alternatives for ORV  
12 management were gathered and compiled into an extensive list of preliminary alternative elements.  
13 These alternative elements were organized by topic areas and formatted into a workbook for presentation  
14 to the public to obtain further comments and suggestions. Although not required by the NEPA process,  
15 the development of these workbooks and the public workshops that followed was intended to generate  
16 more detailed public input during the alternatives development process. Members of the public were  
17 asked if they thought that the preliminary alternatives met the objectives of the plan/EIS and were also  
18 encouraged to identify possible new alternative options for ORV management at the Seashore. Each  
19 workbook contained the following sections for public comment: ORV management, education and  
20 outreach, law enforcement, ORV permits, other ORV management issues, species protection, site specific  
21 management at Bodie Island Ranger District, site specific management at Hatteras Island Ranger District,  
22 and site specific management at Ocracoke island Ranger District. The Alternatives Option Workbook  
23 was distributed to the public as follows:

- 24 • Copies were provided to participants at the January 3–4, 2008, meeting of the Negotiated  
25 Rulemaking Advisory Committee for ORV Management at Cape Hatteras National Seashore.
- 26 • A press release, with the workbook as an attachment, was sent electronically to all recipients on the  
27 Cape Hatteras National Seashore ORV e-mail list.
- 28 • Both Microsoft Word and PDF versions of the workbooks were made available online on the NPS-  
29 PEPC website.
- 30 • Hard copies of the workbook were distributed at public alternatives development meetings held on  
31 January 14, 15, 16, and 17, 2008, in Buxton, Kill Devil Hills, and Raleigh, North Carolina and in

1 Richmond, Virginia, respectively, and provided to members of the public by the Seashore when  
2 requested.

3 The public was asked to provide completed workbooks by February 15, 2008 (extended from the original  
4 January 30, 2008, date). A total of 386 workbooks were received during the public comment period in  
5 both electronic and hard copy formats. All workbooks were reviewed and considered during the  
6 alternatives development process. Extensive comments were received on the preliminary alternatives,  
7 many of which provided suggestions on how preliminary management options could be improved. Most  
8 comments offered options for protected species management, law enforcement, ORV permitting,  
9 closures, and ORV ramp and route configuration.

#### 10 **NEGOTIATED RULEMAKING PROCESS**

11 The *Negotiated Rulemaking Act of 1990* (5 USC 561-570) establishes a statutory framework for agency  
12 use of negotiated rulemaking to reach a consensus with stakeholders on a proposed regulation. Concurrent  
13 with the NEPA process, the Seashore is using a negotiated rulemaking process to develop a proposed rule  
14 for long-term ORV management at the Seashore. Because negotiated rulemaking allows interested,  
15 affected parties more direct input into the development of the proposed regulation, NPS expects the  
16 negotiated rulemaking process to result in a rule that is sensitive to the needs and limitations of both the  
17 parties and the agency.

18 The negotiated rulemaking process begins with neutral third parties conducting a feasibility assessment to  
19 determine if the stakeholders for the issue were willing to participate and if it was feasible to conduct the  
20 process. The feasibility report was released in April 2006 and concluded that “a consensus-based  
21 negotiation to develop a management plan and proposed implementing regulations can be convened, can  
22 yield important benefits even if agreement is not reached, and has a modest chance of success if the  
23 conditions described below are met” (CBI and FCS 2006, iii). This finding was contingent on the  
24 following recommendations:

- 25 • The NPS and resulting committee should establish a set of key milestones for assessing the  
26 committee’s progress and determining if the process is meeting the interests of the participants. If  
27 the committee is not meeting these interests, then the committee process can be ended, even if the  
28 committee has not completed its work.
- 29 • The NPS and Secretary of the Interior should establish a committee exceeding the 25 member  
30 limit in the *Federal Advisory Committee Act* to adequately represent all interests. The team  
31 recommended increasing the committee to 28 members. Following public comment on the notice

1 of intent to establish a negotiated rulemaking committee, the committee was increased to 30  
2 members.

3 The negotiated rulemaking process began informally in February 2007 when the Seashore held a  
4 workshop titled "Participating in the Negotiated Rulemaking Process." In June 2007, the Federal  
5 Register, published a Notice of Intent to Establish a Negotiated rulemaking Committee at Cape Hatteras  
6 National Seashore (Federal Register, Volume 72, Number 124). The workshop was followed by two  
7 more pre-convening meetings. In January 2008, the regulatory negotiation committee was formally  
8 established and committee members began to work toward a consensus recommendation. The  
9 Committee convened its first meeting on January 3 and 4, 2008 and held 10 additional meetings until  
10 concluding their work on February 26, 2009. During this time, the Committee established seven  
11 subcommittees that undertook aspects of the Committee's work. These subcommittees included: Agenda  
12 Planning; Natural Resources; Permits, Passes, and Fees; Routes and Areas; Socio-Economic Analysis;  
13 Vehicle Characteristics and Operations; and Village Closures. There also were a number of informal  
14 workgroups established. While the Committee did not reach agreement on a consensus recommendation  
15 to NPS on the components of an ORV management plan, the Committee's extensive work on a wide  
16 range of important topics was considered by the NPS during the development of this plan/EIS. Many of  
17 the alternative elements or strategies that the committee members discussed during these meetings have  
18 been included in alternative F of this plan/EIS.

#### 19 **OTHER CONSULTATION**

20 Coordination and consultation efforts for this planning process focused on the means or processes to be  
21 used to include the public, major interest groups, and local public entities. Coordination with local and  
22 federal agencies and various interest groups was conducted during the NEPA process to identify issues  
23 and/or concerns related to protected species management within the Cape Hatteras National Seashore.  
24 The USFWS prepared a Biological Opinion (BO) on August 14, 2006 in response to the Interim Protected  
25 Species Management Strategy and amended the BO on April 24, 2007. Additional consultation with  
26 USFWS during the ORV management plan and EIS process included ....[To be developed once  
27 consultation occurs]. Notice of the availability of this document will posted on PEPC and provided to a  
28 variety of federal, state, and local agencies and interest groups, including the following:

#### 29 **LIST OF RECIPIENTS**

30 This plan/EIS was sent to the agencies, organizations, and businesses listed below. This document was  
31 also mailed to other entities and individuals who requested a copy.

1 **CONGRESSIONAL DELEGATES**

- 2 • Kay R. Hagan, Senator
- 3 • Richard Burr, Senator
- 4 • Walter B. Jones, 3<sup>rd</sup> District Representative

5 **FEDERAL DEPARTMENTS AND AGENCIES**

- 6 • Advisory Council on Historic Preservation
- 7 • NOAA National Marine Fisheries Service
- 8 • U.S. Army Corps of Engineers, Wilmington District
- 9 • U.S. Coast Guard
- 10 • U.S. Fish and Wildlife Service, Ecological Services, Raleigh Field Office
- 11 • U.S. Fish and Wildlife Service, Pea Island National Wildlife Refuge
- 12 • U.S. Geological Survey, Biological Resources Division
- 13 • U.S. Department of Transportation – Federal Highways Administration
- 14 • U.S. Environmental Protection Agency
- 15 • Federal Emergency Management Agency – Natural Hazards Branch

16 **STATE OF NORTH CAROLINA GOVERNMENT**

- 17 • Bev Perdue, Governor of North Carolina
- 18 • Marc Basnight, 1<sup>st</sup> District Senator
- 19 • Timothy Spear, 2<sup>nd</sup> District Representative
- 20 • North Carolina Department of Environment and Natural Resources
  - 21 ○ Division of Coastal Management
  - 22 ○ Coastal Resources Commission
  - 23 ○ Division of Marine Fisheries
  - 24 ○ North Carolina Natural Heritage Program
- 25 • North Carolina Department of Transportation
- 26 • North Carolina State Highway Patrol

- 1 • North Carolina State Historic Preservation Officer
- 2 • North Carolina Wildlife Resources Commission

3 **LOCAL GOVERNMENTS**

- 4 • Dare County Board of Commissioners
  - 5 ○ Warren Judge, Chairman
  - 6 ○ Allen Burrus, Vice Chair
  - 7 ○ Max Dutton
  - 8 ○ Mike Johnson
  - 9 ○ Richard Johnson
  - 10 ○ Jack Shea
  - 11 ○ Virginia Tillett Dist 1
- 12 • Hyde County Board of Commissioners
  - 13 ○ Geo. Thomas Davis Jr., Chairman
  - 14 ○ Sharon P. Spencer
  - 15 ○ Eugene Ballance
  - 16 ○ H. Anson Byrd
  - 17 ○ Barry Swindell

18 **OTHER ORGANIZATIONS AND BUSINESSES**

- 19 • 4 Plus Four Wheel Drive Club
- 20 • American Sport Fishing Association
- 21 • Avon Property Owners Association
- 22 • Cape Hatteras Anglers Club
- 23 • Cape Hatteras Bird Club
- 24 • Cape Hatteras Business Allies
- 25 • Cape Hatteras Recreational Alliance
- 26 • Capital City Four Wheelers
- 27 • Defenders of Wildlife
- 28 • Eastern Surfing Association
- 29 • Environmental Defense
- 30 • Friends of the Earth
- 31 • Greater Kinnakeet Shores Homeowners, Inc.



- 1 • Graveyard of the Atlantic Museum
- 2 • Hatteras Island Homeowners Coalition
- 3 • Hatteras Village Civic Association
- 4 • Hyde County Chamber of Commerce
- 5 • League of Conservation Voters
- 6 • Nags Head Fishing Club
- 7 • Nags Head Woods Preserve
- 8 • National Parks Conservation Association
- 9 • Natural Resources Defense Council
- 10 • Network for Endangered Sea Turtles
- 11 • North Carolina Audubon
- 12 • North Carolina Coastal Federation
- 13 • North Carolina Beach Buggy Association
- 14 • North Carolina Fisheries Association
- 15 • Ocracoke Civic Association
- 16 • Outer Banks Preservation Association
- 17 • Outer Banks Association of Realtors
- 18 • Outer Banks Chamber of Commerce
- 19 • Outer Banks Surf Fishing School
- 20 • Outer Banks Visitor Bureau
- 21 • Recreational Fishing Alliance
- 22 • Rodanthe/Waves/Salvo Civic Association
- 23 • Sierra Club, North Carolina Chapter
- 24 • Southern Environmental Law Center
- 25 • Surf Riders Association
- 26 • Water Sports Industry Association
- 27 • The Wilderness Society
- 28 • United Mobile Sport Fishermen
- 29 • United Four Wheel Drive Association
- 30

# CHAPTER 1: PURPOSE OF AND NEED FOR ACTION

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