From:	Mike Murray
To:	atmmhgm@aol.com
Bcc:	Cyndy Holda; Darrell Echols
Subject:	Re: NEPA and proposed rule
Date:	12/01/2009 09:27 AM
Attachments:	NEPA_Planning_Schedule_08-10_Jan08[1].pdf

Hi Mary Helen,

Good question about the deadlines. You are generally correct that the final rule needs to reflect the final ORV management plan decision (i.e., the Record of Decision); however, there are several ways that the plan/EIS and rule could be sequenced and coordinated, and still end up with the final rule reflecting the ROD.

One way would be to do as you suggest and entirely complete the plan/EIS and issue the ROD, then start the rulemaking process. This approach could add a year or more to the process, as it typically takes at least 3-6 months (or more) to draft a proposed rule and go through the approval process to get it published. The it takes an additional 6-9 months between publication of the proposed rule and the final rule. The length of time can vary, depending on the complexity of the regulation and the number of public comments on the rule that must be read and analyzed. Some regulations, by their nature, must be referred to the Office of Management and Budget for review, which adds time to the review process.

In the case of the Cape Hatteras ORV management plan and special regulation, NPS has planned all along to issue the DEIS, followed by the proposed rule (which will reflect the Preferred Alternative in the DEIS since that would be what is "proposed" at that point). There will be public comment on the DEIS followed by public comment on the related proposed rule. Comments will be analyzed, then the FEIS and ROD will be issued, followed by a final rule that reflects the ROD. I'm told this approach is not unusual, since it is more time efficient.

My understanding is that the timeline in the consent decree (i.e., the three-month lag time between the ROD and the final rule) was more or less based on the target completion dates identified in the planning schedule that NPS issued at the January 2008 RegNeg meeting (attached), hence only three months was allowed between the ROD and the final rule. In other words, the Plaintiffs wanted NPS to meet its stated (approximate) target dates.

NEPA_Planning_Schedule_08-10_Jan08[1].pdf

Mike Murray
Superintendent
Cape Hatteras NS/ Wright Brothers NMem/ Ft. Raleigh NHS
(w) 252-473-2111, ext. 148
(c) 252-216-5520
fax 252-473-2595

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▼ atmmhgm@aol.com

atmmhgm@aol.com

11/26/2009 07:05 PM

To Mike_Murray@nps.gov
cc
Subject NEPA and proposed rule

Greetings Mike:

Along the long road to an Off-Road Vehicle Management Plan, we had in place a Negotiated Rulemaking Committee. The process was the committee negotiates a special regulation (rule) and at the same time the NEPA process was running. Had the negotiated rulemaking process been successful, the committee's agreement was to be incorporated into the EIS as the NPS preferred alternative.

Now we are proceeding only along the NEPA path.

In the draft and final EIS, NPS will identify a preferred alternative. In Consent Decree language, I am assuming that the preferred alternative is the Decree's required "ORV Management Plan."

In our recent conversation, you indicated that a proposed rule (Special Regulation) would be published a short while after the Draft EIS.

I would think that the proposed rule would flow from the final EIS (ORV Management Plan) and Record of Decision.

How can NPS propose a rule without taking into consideration public comment and finalizing the underlying EIS (ORV Management Plan)?

It seems to me that's why the Consent Decree gives three months for the Special Regulation to be promulgated. Thus, the EIS would be finalized and the Record of Decision made, and then a draft Special Regulation would be published for public comment.

Just wondering.

Mary Helen Goodloe-Murphy

NEPA Planning Schedule (2008 – 2010)

January 14 – 17, 2008 – public alternatives meetings, to be most useful workbooks should be received by January 31, 2008

February 2008 – analyze public input on alternatives options [completed to the point that a verbal summary can be presented at the Feb 26-27 reg-neg committee meeting]

March 12-13, 2008 – NPS interdisciplinary team meeting to review public input on alternatives options, start work on packaging alternatives [saving a place for the reg-neg committee consensus alternative], work on thresholds for impact analysis, work on developing the cumulative action scenario

Winter – Spring 2008 work continues on packaging and detailed description of alternatives [saving a place for the reg-neg committee consensus alternative], threshold development continues

Spring 2008 – first draft description of the affected environment, Chapter 3 of the draft environmental impact statement (DEIS), first draft impacts of the no-action alternative, economic/regulatory impact analyses study/survey design development including RTI (Resource Triangle Institute) trips to discuss with the reg-neg committee (Fall 2007 – Winter 2008)

Fall 2008 – Winter 2009 – preliminary impact analysis for all alternatives including reg-neg committee preliminary consensus alternative (may be several rounds of preliminary impact analysis on pieces of reg-neg committee consensus agreement as well as on a whole preliminary consensus alternative)

Winter 2009 – Reg-neg committee send to NPS the committee's recommended consensus alternative – (January)

Winter 2009 -- First internal review DEIS – (February)

Winter 2009 -- NPS interdisciplinary team roundtable on first internal review DEIS -- (March)

Spring 2009 -- Second internal review DEIS

Spring – Summer 2009 --Camera Ready DEIS prepared

Spring – Summer 2009 -- Notice of Availability (NOA) for DEIS prepared and NPS / Dept. of the Interior approval process begun

Spring 2009 -- Draft and final Biological Assessment prepared [no decision yet on whether BA will be a separate document or whether enough detail in the right format will

be included in the DEIS (Chapters 3 and 4) on threatened and endangered species so that the DEIS can serve as the BA.

Spring – Summer 2009 – Draft and final Coastal Zone Management Act consistency determination prepared

Summer 2009 – Draft proposed rule prepared

Summer – Fall 2009 – Print DEIS (must await approval of the NOA), takes 3-6 weeks at the Govt. Printing Office, and distribute, publish proposed rule in the Federal Register concurrently with distribution of the DEIS

Winter 2009 – 2010 – Public meetings on the DEIS and the proposed rule

Winter 2010 – Spring 2010 – Public comment analysis on the DEIS and the proposed rule

Spring – Summer 2010 – Prepare the final environmental impact statement (FEIS) and response to comments on the DEIS and on the proposed rule

NOA for the FEIS prepared and sent through NPS / Dept of the Interior for approval

Summer – Fall 2010 – Publish / Distribute the FEIS

Fall- Winter 2010 – Regional Director signs Record of Decision (ROD) and a summary of it is published in the Federal Register

Winter – 2010 Final rule is published in the Federal Register