

From: [Mike Murray](#)
To: mike.stevens@sol.doi.gov; jason.waanders@sol.doi.gov
Cc: [Sandra Hamilton](#); [Paul Stevens](#)
Subject: Please review draft message
Date: 02/15/2010 10:16 AM

Mike and Jason,

Question came up at the Anglers Club meeting Saturday night as to why street vehicles are considered "off-road vehicles" and why the beach is not simply considered a "road" since it has historically been used as one. See draft response below, in which I simply quote relevant sources. If my response is correct, then Section 2C of the EO raises the obvious question: Why doesn't the agency head simply expressly NPS authorize vehicle use on CAHA beaches by permit, which would thus exclude CAHA from the Executive Orders on ORV use? (I can think of policy and resource protection reasons for not doing that; but does the EO allow that to occur or would it preclude that? In other words, is there technically a legal reason we could not do that?)

Note: There are other implications with the question of what constitutes a "road." In the Bonner Bridge issue, NCDOT claims that there have been "roads" or "public thoroughfares" through Pea Island since before the Refuge was established, which somehow gives the State a right to move the road now (even though the current road was established under a specific right-of-way permit authorized by Congress in the 1950's). FWS and DOI dispute the State's interpretation that the "road" predates the Refuge for obvious reasons, but some aspects of the disagreement seem to revolve around what constitutes a "road" (e.g., is a sand trail or a beach a "road"), which is why I want to be confident in my response below.

Thanks,

Mike Murray
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----- Forwarded by Mike Murray/CAHA/NPS on 02/15/2010 09:30 AM -----

**Mike
Murray/CAHA/NPS**

To "Larry Hardham" <hardhead@embarqmail.com>
cc

02/15/2010 08:09 AM

Subject Definitions

Draft

Larry,

Please pass this information along to the gentleman who asked about the definition of "ORV" and "road" at the meeting on Saturday night. The relevant sections of the Executive Order on use of off-road vehicles on public lands and Title 36 of the Code of Federal Regulations (CFR) are provided below and are not subject to park discretion.

Executive Order 11644 Section 2. Definitions

"Off-road vehicle" means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that such term excludes (A) any registered motorboat, (B) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, and any combat or combat support vehicle when used for national defense purposes, and (C) any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract (E.O. 11644)

36 CFR § 1.4 Definitions

"Park road" means the main-traveled surface of a roadway open to motor vehicles, owned, controlled or otherwise administered the National Park Service.

36 CFR § 4.10 Travel on park roads and designated routes.

(a) Operating a motor vehicle is prohibited except on park roads, in parking areas and on routes and areas designated for off-road motor vehicle use.

(b) Routes and areas designated for off-road motor vehicle use shall be promulgated as special regulations. The designation of routes and areas shall comply with §1.5 of this chapter and E.O. 11644 (37 FR 2887). Routes and areas may be designated only in national recreation areas, national seashores, national lakeshores and national preserves.

Thanks,

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