

From: [Sandra Hamilton](#)
To: dgwetmore@gmail.com
Subject: Fw: draft reg table
Date: 02/19/2010 10:34 AM
Attachments: [CAHA ORV Draft Rule Text.doc](#)
[draft table for Proposed Rule 2.12.10.mbm with TRG notes.doc](#)

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----- Forwarded by Sandra Hamilton/DENVER/NPS on 02/19/2010 10:33 AM -----

"Arlene Rodenbeck"
<arlene@reg-group.com>

To <Mike_Murray@nps.gov>, <Sandra_Hamilton@nps.gov>
cc <ann@reg-group.com>, <Paul_Stevens@nps.gov>

02/17/2010 09:07 AM Subject RE: draft reg table

Please respond to
<arlene@reg-group.com>

Dear Mike and Sandy,
Attached is a first draft of rule text for the Cape Hatteras ORV NPRM. The format is loosely based on the ORV rules for Assateague and Cape Cod. Paragraphs (c)(3)(ii) and (iii) may be a little confusing because we've included in brackets some additional detail that may or may not be needed in the reg text. We've annotated your table to include the reg text citation for each proposed rule item.

Let us know if you have any questions or want us to make any changes.

Arlene Rodenbeck
The Regulatory Group, Inc.
Arlene@reg-group.com
202-466-3205

-----Original Message-----

From: Mike_Murray@nps.gov [mailto:Mike_Murray@nps.gov]
Sent: Friday, February 12, 2010 5:45 PM
To: Sandra_Hamilton@nps.gov
Cc: ann@reg-group.com; arlene@reg-group.com; Paul_Stevens@nps.gov
Subject: draft reg table

Sandy,

Attached is a revised draft table for the regulation that Paul Stevens, Jon Anglin and I reviewed and revised today. We added a new "topic" column to your earlier version of the table and have re-organized the order of the topics so they are listed in the same order that they are presented in Table 8 in the DEI. Hopefully, this will make it easier to follow and compare where the information comes from in Table 8. I think it may be better (easier to follow, etc.) if the regulation is organized in similar order (i.e., similar to order of Table 8), though am open to other points of view about that. In any case, please let me know if there are any questions.

(See attached file: draft table for Proposed Rule 2.12.10.mbm.docx)

Mike Murray
Superintendent

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CAHA ORV Draft Rule Text.doc draft table for Proposed Rule 2 12 10 mbm with TRG notes.doc

DRAFT 2/12/10 mbm, with TRG notes 2/17/10. What Would/Wouldn't be in the Proposed Rule / Compendium / Plan

NOTE: This is a summary and may not be complete. Use in conjunction with Tables 7 and 8 and the text description of Alt F in Chapter 2.

| Table 8 Topic | Goes in Proposed Rule | Goes in Compendium | In Plan or ROD Only | Proposed Rule Topics: Where Found (alt F) | Notes |
|--|-----------------------|--------------------|-------------------------------|---|--|
| Definitions and Designation of ORV routes Draft § 7.58(c)(1) | ✓ | | | Table 7; and Table 8, page 102 | Include: definitions of <i>ORV route</i> and <i>ORV corridor</i> ; description of width can drive on; linear description of designated routes, include oceanside and soundside ramps as <i>routes</i> (see below for <i>interdunal roads</i>); and prohibition on driving outside posted corridor |
| Maps of ORV routes (c)(3) Intro | ✓ | | Would ROD include these maps? | Alt F maps 1 – 7 at end of DEIS Chapter 2 | Incorporate by reference dated and numbered maps that show the linear routes. See Appalachian Trail example. |
| Seasonally restricted routes (general location and date-to date) (c)(3)(iii) | ✓ | | | Table 8, page 102 | AKA “village beaches” |
| Closure of designated ORV routes (c)(3)(i) | ✓ | | | | Authority of Superintendent to close designated routes (refer to 36 CFR 1.5 early in the rule) |
| Oceanside Access (c)(3)(ii) and (iii)?? | ✓ | | | Table 8, page 103 | “Routes” need to be designated and listed in Reg |
| Soundside Access (c)(3)(ii) and (iii)?? | ✓ | | | Table 8, page 103 | “Routes” need to be designated and listed in Reg |
| Interdunal Roads (c)(3)(ii) and (iii)?? | ✓ | | | Table 8, page 103 | “Routes” need to be designated and listed in |

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| (c)(3)(ii) and (iii)?? | | | | | Reg |
| Hours of Allowable ORV operation (c)(4)(v) | ✓ | ✓ | | Table 8, page 104 | In REG: Date-to-date for night driving restrictions and language that says Hours of allowable night driving will meet turtle protection goals. In COMPENDIUM: Hours of allowable night driving. See Glacier Bay cruise ship rule / whales for example. |
| ORV Safety Closures (c)(3)(i) | ✓ | ✓ | | Table 8, page 105 | Mention "safety closures" in Reg; however, details would be in compendium under 36 CFR 1.5 |
| Pedestrian safety (c)(4)(i) | ✓ "shall" and "must" items | | ✓ "should" items | Table 8, page 106 | Include "musts" and "shalls" for ORV operators in the reg; "shoulds" for pedestrians in plan |
| Administrative closures | | | ✓ | Table 8, page 106 | |
| Temporary Emergency ORV Closures (c)(3)(i) | ✓ | | | Table 8, page 106 | Specifics should be in Reg, though can relate "authority" for such restrictions to 36 CFR 1.5 |
| Ramp Characteristics | | | ✓ | Table 8, page 107 | |
| ORV Permit Requirement (c)(2) | ✓ | | | Table 8, page 107 | Include: Prohibition on driving off road without a permit; must satisfy the educational requirements for the permit as established by Supt; |

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|--|-----------------------|--------------------|---------------------|---|---|
| | | | | | statement (and signature line) that the permit holder has read and understands conditions of the permit would be on the permit itself. For example, see 1998 Cape Cod National Seashore regulation. |
| ORV Permit education requirement <i>(c)(2)(ii)</i> | ✓ | | | Table 8, page 107 | Plan says under alt F that there would be a mandatory test. Also see "Resource Education" section on page 110 |
| ORV Permit Distribution, Types and Form | | | ✓ | Table 8, pp. 107-108 | |
| ORV Permit Number Limits and Fees <i>(c)(2)(i)</i> | ✓ | | | Table 8, page 107 | Need to mention "no limit" on the number of permits; and that there will be a fee, but no specifics about the fee amount |
| ORV Permit Issuance Requirements and Revocation <i>(c)(2), (c)(2)(ix)</i> | ✓ | | | Table 8, pp.107- 108 | Permits are issued in accordance with 36 CFR 1.6. Use standard permit revocation language |
| Beach parking <i>(c)(4)(ii)</i> | ✓ | | | Table 8, page 108 | Need language that states "parking in a manner that obstructs two-way traffic is prohibited" (similar to language for Temporary Emergency ORV closures |

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| Table 8 Topic | Goes in Proposed Rule | Goes in Compendium | In Plan or ROD Only | Proposed Rule Topics: Where Found (alt F) | Notes |
|--|-----------------------|--------------------|---------------------|---|--|
| | | | | | on p. 106) |
| Vehicle Carrying Capacity (c)(5) | ✓ | ✓ | | Table 8, page 108 | Need general (authority) language in Reg; put specific use limits (#'s) in compendium |
| Vehicle Characteristics (c)(2)(v) | ✓ | | | Table 8, page 109 | |
| Equipment Requirements (c)(2)(v) | ✓ | | | Table 8, page 109 | |
| Tire pressure (c)(4)(iii) | ✓ | | ✓ | Table 8, page 109 | "tire pressure must be lowered sufficiently to maintain adequate tractions" in Reg; recommended <i>psi</i> in plan |
| Speed Limit (c)(4)(iv) | ✓ | | | Table 8, page 110 | |
| Essential Vehicles | | | ✓ | Table 8, page 110 | Covered by 36 CFR 1.2(d) |
| Non-ORV Areas | | | ✓ | | |
| Resource Education | | | ✓ | | Education <i>requirement</i> for ORV operators would be included in Reg |
| Temporary ORV Use of Non-ORV Area (c)(2)(viii) | ✓ | | | Table 8, page 111 | |
| Parking for Non-ORV Access | | | ✓ | Table 8, page 111 | |
| Alternative Transportation | | | ✓ | Table 8, page 111 | |
| Camping and Nighttime Beach Use | | ✓ | | Table 8, page 112 | Addressed under 36 CFR 2.10; overnight ORV use is already addressed under Hours of Allowable ORV Use |
| Beach Fires | | ✓ | | Table 8, page 112 | Addressed under 36 CFR 2.13 |

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|---|-----------------------|--------------------|---------------------|---|---|
| Pets | | ✓ | | Table 8, page 113 | Addressed under 36 CFR 2.15 |
| Horses | | ✓ | | Table 8, page 113 | Addressed under 36 CFR 2.16 |
| Commercial Fishing Vehicles <i>(c)(2)(viii)</i> | ✓ | ✓ | | Table 8, page 114 | In REG: Commercial fishing vehicles are <i>nonessential vehicles</i> and prohibited from entering resource closures. Authorized commercial fishermen are exempt from the ORV <u>permit</u> requirement, as their use of vehicles is managed under their commercial fishing special use permit issued under 36 CFR 7.58(b). Supt is authorized to modify hours of allowable night driving for commercial fishermen by up to two hours in evening and/or morning. COMPENDIUM: Hours of allowable night driving established, as well as any modification of those hours of up to 2 hours, etc. |
| Periodic Review | | | ✓ | Table 8, page 114 | |
| Resource Protection Measures (Breeding and Nonbreeding) | | | ✓ | Table 8, page 115 and Table 10 | Violation of resource protection closures is |

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| Table 8 Topic | Goes in Proposed Rule | Goes in Compendium | In Plan or ROD Only | Proposed Rule Topics: Where Found (alt F) | Notes |
|----------------------|------------------------------|---------------------------|----------------------------|--|---------------------------------------|
| | | | | | prohibited under 36 CFR 1.5 |
| Vegetation | | | ✓ | | Covered adequately 36 CFR 1.5 and 2.1 |

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under D.C. Code 10-137(2001) and D.C. Code 50-2201 (2001).

2. Amend § 7.58 by adding paragraph (c) to read as follows:

§ 7.58 Cape Hatteras National Seashore.

* * * * *

(c) Off-Road Motorized Vehicle (ORV). ORVs may operate on designated routes and areas within the boundaries of Cape Hatteras National Seashore provided that all of the following requirements are met:

(1) *Definitions*. In addition to the definitions found in § 1.4 of this chapter, the following terms or phrases, when used in this section, have the following meanings:

(i) *ORV route* means a designated location, typically linear in nature (e.g., from point A to point B), where ORV travel may be authorized by the Superintendent, but which may be temporarily closed to ORV use to protect park resources, provide for visitor safety, or prevent user conflicts.

(ii) *ORV corridor* means the actual physical demarcation of the ORV route in the field. ORV corridors on the ocean beach are marked by posts seaward of the toe of dune or vegetation line to the high tide line (the seaward side of the corridor is not posted). ORV routes through vegetated areas, such as interdunal roads and ramps, are posted on both sides of the corridor.

(2) *Permit requirements.* No ORV, other than an authorized emergency vehicle, may be operated on a beach or designated route in the park area except under a permit issued by the Superintendent.

(i) The Superintendent is authorized to establish a system of permits for the operation of ORVs and to establish fees for these permits, consistent with the conditions and criteria of 36 CFR part 71. There is no limit on the number of permits that the Superintendent may issue.

(ii) ORV permit applicants must complete an education program, pass a knowledge test, and sign for their permits to acknowledge understanding of the rules governing ORV use at the park.

(iii) Weekly (7-day) and annual (12-month) ORV permits are valid from the date of issuance. Permits valid between September 16 and November 15 include a night driving component.

(iv) The ORV permit must be affixed to the vehicle in a manner approved by the Superintendent.

(v) No permit will be issued for an ORV that does not meet the following requirements:

(A) The ORV must comply with provisions of § 4.10 of this chapter.

(B) The ORV must be registered, licensed, and insured for highway use and must comply with state inspection regulations within the state, country, or province where the vehicle is registered.

(C) Motorcycles and ATVs are prohibited.

(D) The ORM may have no more than three-axles, not including the additional number of axles on towed trailers. Trailers are limited to no more than two axles.

(E) The maximum vehicle length for the ORV is 30 feet, not including the additional length of a towed trailer.

(F) ORV tires must be U.S. Dept. of Transportation-listed or approved.

(G) The ORV must contain a low-pressure tire gauge, shovel, jack, and jack stand.

(vi) Before issuing a permit, the Superintendent may check the vehicle to determine whether it complies with the requirements of paragraphs (c)(2)(v)(A) through (G) of this section.

(vii) ORV permits are not transferable and must be carried by the operator of the vehicle for which it has been issued while traveling in the park. It must be displayed as directed by the Superintendent at the time of issuance.

(viii) The Superintendent may issue Special Use Permits instead of recreational ORV permits to authorize the following:

(A) Temporary emergency ORV use of non-ORV areas –

(1) If needed to bypass sections of NC State Highway 12 that are closed for repairs.

(2) If the non-ORV area has been traditionally used for fishing tournaments that were established before January 1, 2009.

(3) To transport mobility-impaired individuals to join others on an open beach that is otherwise closed to ORVs.

(B) Commercial fishing vehicles entering non-ORV areas, except for full resource closures and lifeguarded beaches. The Superintendent may modify the hours of night-driving, subject to terms and conditions of the fishing permit.

(ix) An ORV permit may be revoked for violation of applicable park regulations or terms and conditions of the permit.

(3) *Routes and areas.* ORVs may be operated in the following routes and areas only in accordance with the following restrictions. Maps that show the routes and areas for ORV use within the park may be obtained from the park superintendent.

(i) *Superintendent's closures.* Notwithstanding the designation of ORV routes and areas in this section, in accordance with § 1.5 of this chapter, the Superintendent may temporarily limit, restrict or terminate access to the areas designated for ORV use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives. Closures are posted in the Office of the Superintendent and on the park website.

(ii) *ORV permitted areas year-round.* **[Note that the material in brackets below is additional detail that may or may not be needed in the reg text. Please review.]**

(A) Bodie Island (north to south) from 0.5 mile south of Coquina to 0.2 mile south of ramp 4, including beach in front of Oregon Inlet Campground.

(B) Hatteras Island (north to south):

(1) Ramp 23 to ramp 27

[1. ORV route YR. New ramps with parking established at 24 and 26. +There would be 1.5 miles of “floating” non- ORV area for nonbreeding shorebirds, either here or in one of the segments below.]

(2) Ramp 30 to (new) ramp 32.5.

[2. ORV route YR+ New ramp with parking established at 32.5. +There would be 1.5 miles of “floating” non- ORV area for nonbreeding shorebirds, either here, in the above segment, or in the next segment.]

(3) Ramp 38 to approximately 1.7 miles south.

(4) From 0.4 mile north of ramp 43 to ramp 43.

(5) Ramp 43 to 0.2 mile south of ramp 44.

(6) From 0.2 mile south of ramp 44 to Cape Point to approximately 0.2 mile west of the hook (Species Management Area).

[6. ORV route YR With expected limited access Mar 15 to Jul 31 When pre-nesting area is established, ORV access corridor would be allowed along ocean shoreline to the point. When shorebird breeding activity is observed, standard buffers would apply, which depending upon the circumstances could close the access corridor. (ML2)]

(7) Ramp 47 to ramp 49, including beach in front of Frisco Campground.

[7. ORV route YR+ Interdunal road extended west of new ramp 47 to ramp 49 and new ramp 48 established. +There would be 1.5 miles of “floating” nonbreeding shorebird area, either here or in the segment above.

(8) Ramp 49 to East Frisco boundary.

(9) Ramp 55 along ocean beach to 0.2 mile southwest of Bone Road.

(10) Pole Road from NC-12 past Cable Crossing access to Spur Road.

[10. ORV route YR West of the overwash fan, Pole Road rerouted toward the sound to provide natural barrier to bird nesting area south of road.]

(11) Cable Crossing along sound shoreline to Spur Road.

[– ORV route YR when width allows, subject to resource closure(s) to protect vegetation.]

(12) Spur Road along sound shoreline to Hatteras Inlet.

[12. ORV route YR Pedestrian access to the “rip” permitted from soundside during breeding season, subject to resource closures.]

(C) Ocracoke Island (north to south):

(1) From 0.25 mile northeast of ramp 59 to 0.25 mile southwest of ramp 59.

(2) Ramp 62 to ramp 64 at 1.0 mile northeast of Pony Pen.

(3) From 0.75 mile northeast of ramp 67 to 0.5 mile northeast of ramp 68.

(4) From 0.5 mile northeast of ramp 70 to 0.5 mile southwest of ramp 72.

(5) From 0.5 mile southwest of ramp 72 to inlet (Species Management Area).

[5. ORV route YR+ With expected limited access Mar 15 to Jul 31 When pre-nesting area is established, ORV access corridor would be allowed along ocean shoreline to the inlet. When shorebird breeding activity is observed, standard buffers would apply, which depending upon the circumstances could close the access corridor. +There would be 1.0 mile of “floating” ocean shoreline area for nonbreeding shorebirds. Area would be bypassed via the ORV corridor on the upper beach during nonbreeding season. (ML2)

* Details on soundside access provided in table 8.

**All mileages are approximate.

***Area(s) open to ORV use, except when resource, seasonal, or safety closures are in effect.

Designated ORV routes and areas (X = No ORV use permitted, YR = ORV use permitted year-round).

All ORV routes and areas subject to temporary resource closures.]

(iii) *Seasonally permitted ORV routes.* ORVs are permitted in the following areas during the following dates:

(A) Bodie Island (north to south) from 0.2 mile south of ramp 4 to inlet to SW edge of Bait Pond (Species Management Area) open to ORVs August 1 to March 14, except that this

area is closed to ORVs until 2 weeks after shorebird breeding ceases or all chicks have fledged, whichever is later.

(B) Hatteras Island (north to south):

(1) Rodanthe–Waves–Salvo to ramp 23, including Tri-Village beaches open to ORVs from September 16 to May 14.

(2) Ramp 32.5 to ramp 34 (Species Management Area) open to ORVs from August 1 to March 14, except that this area is closed to ORVs until 2 weeks after shorebird breeding ceases or all chicks have fledged, whichever is later.

[+There would be 1.5 miles of “floating” non- ORV area for nonbreeding shorebirds, either here or in one of the two previous segments. (ML1)]

(3) Ramp 34 to ramp 38 open to ORVs from September 16 to May 14.

(4) Cape Point 0.2 mile west of the hook to ramp 45 (Species Management Area) open to ORVs from August 1 to March 14.

(5) Ramp 45 to (new) ramp 47 (Species Mgmt Area) open to ORVs from August 1 to March 14.

[Interdunal road extended and new ramp 47 established. +There would be 1.5 miles of “floating” nonbreeding shorebird area, either here or in the segment below. (ML1)]

(6) Frisco Village Beach (east village boundary to west boundary) open to ORVs from December 1 to February 28.

(7) Hatteras Village Beach (east boundary to ramp 55) open to ORVs from December 1 to February 28.

(C) Ocracoke Island (north to south):

(1) From 0.5 mile northeast of ramp 68 to 0.5 mile southwest of ramp 68 (Ocracoke Campground Area) open to ORVs from November 1 to March 31.

(2) From 0.5 mile southwest of ramp 68 to 1.2 miles northeast of ramp 70 (Species Management Area) open to ORVs from November 1 to March 14.

(3) From 1.2 miles northeast of ramp 70 to 0.5 mile northeast of ramp 70 (includes Ocracoke Day-Use Area) open to ORVs from November 1 to March 31.

[* Details on soundside access provided in table 8.

**All mileages are approximate.

***Area(s) open to ORV use, except when resource, seasonal, or safety closures are in effect.

Designated ORV routes and areas (X = No ORV use permitted, YR = ORV use permitted year-round).

All ORV routes and areas subject to temporary resource closures.

Species Management Areas (SMAs): ML1 and ML2 are the two proposed strategies for species management. See table 10 for a detailed description of these strategies. All areas outside of designated SMAs would be managed under ML1 protocols

(ML1) Once pre-nesting closures are established, ORV and pedestrian access would be prohibited until breeding activity is completed.

(ML2) Once pre-nesting closures are established, ORV or pedestrian access corridor(s) and/or boat landing areas (as indicated in the respective alternatives) would be permitted. Upon the first observation of breeding activity, standard ML2 buffers would apply, which depending upon the circumstances may close the access corridor.]

[Species Management Areas (SMAs):

ML1 and ML2 are the two proposed strategies for species management. See table 10 for a detailed description of these strategies. All areas outside of designated SMAs would be managed under ML1 protocols

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(4) *Rules of the road.* ORV operators must comply with §§ 4.20 and 4.22 of this chapter and with the following requirements:

(i) *Pedestrian safety.* ORVs must yield to pedestrians on all ORV routes. When approaching or passing a pedestrian on the beach, ORVs shall move to the landward side to yield the wider portion of the beach corridor to the pedestrian. ORVs must slow to 5 mph (or the slowest possible speed to maintain traction without exceeding the overall speed limit) when traveling within 100 feet or less of pedestrians at any location on the beach at any time of year.

(ii) *Beach parking.* Parking within routes is allowed in any configuration, as long as parked ORVs do not obstruct traffic.

(iii) *Tire pressure.* When driving on designated routes, tire pressure must be lowered sufficiently to maintain adequate traction within the posted speed limit.

(iv) *Speed limit.* The speed limit for ORVs is 15 mph (unless otherwise posted), except that emergency vehicles are exempt when responding to a call.

(v) *Hours of operation on beach.* From November 16 to April 30 designated ORV routes are open to ORV use 24 hours a day. From May 1 to November 15 designated ORV routes in potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) are closed to nonessential ORV use from 1 hour after sunset until the turtle patrol has checked the beach in the morning (by approximately one-half hour after sunrise). From September 16 to November 15 ORV routes with no or low density of turtle nests remaining reopen for night driving, subject to terms and conditions of an ORV permit. Hours of night driving prohibition are listed in the Superintendent's Compendium and subject to periodic review.

(5) *Vehicle carrying capacity.* No more than 260 ORVs per mile of beach may occupy the following areas at any one time:

(i) Bodie Island District.

(ii) Hatteras Island District, except that up to 400 vehicles are allowed within a 1 mile area centered on Cape Point.

(iii) Ocracoke Island District.