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From: [Sandra Hamilton](#)
To: [Mike Murray](#); [Paul Stevens](#); jason.waanders@sol.doi.gov; mike.stevens@sol.doi.gov; [Mike Anderson](#)
Subject: draft proposed rule text CAHA ORV
Date: 02/22/2010 05:04 PM
Attachments: [CAHA ORV Draft Rule Text.021910.mbm 022210eqd.doc](#)

Hello All,

Here's the draft proposed rule text from TRG, with comments in track changes from the Seashore (red) and EQD (blue), for your review. Please forward any comments you have, if possible by the end of this week. Thanks.

Sandy

Sandy Hamilton
Environmental Protection Specialist
National Park Service - Environmental Quality Division
Academy Place
P.O. Box 25287
Denver CO 80225
PH: (303) 969-2068
FAX: (303) 987-6782



CAHA ORV Draft Rule Text.021910.mbm 022210eqd.doc

Draft rule text 02/17/10 with Park comments 2/19/10 and EQD comments 2/22/10

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 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.

(ii) 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.

(iii) 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). Where the ocean beach is at least 30 meters wide above the high tide line, the corridor would be posted 10 meters seaward

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Comment [seh1]: GLOBAL question: Should we use "Seashore" rather than "park" in these regs? E.g. see 36 CFR 7.58(a) where "Seashore" is used.

of the toe of the dune to provide an ocean backshore closure. ORV routes corridors through vegetated areas, such as interdunal roads and ramps, are posted on both sides of the corridor.

Comment [seh2]: This sentence is per the alts elements table for alt F on corridors

Comment [seh3]: Should we say "not on the ocean beach" rather than "through vegetated areas?" Through vegetated areas (which comes from the DEIS) sounds like we're allowing driving on vegetation, which we're not.

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(iv) Essential vehicle means vehicles used by the National Park Service, or its agents, to conduct authorized administrative activities, such as resources management, law enforcement, or other park operations, related to implementation of the Cape Hatteras National Seashore ORV Management Plan or other applicable management plan(s) or permit(s), or as needed to respond to emergency operations involving threats to life, property, or park resources, within areas that are otherwise closed to recreational ORV or visitor use.

Comment [seh4]: This definition comes from the glossary of the DEIS

Comment [seh5]: This would allow the resource protection staff access for species monitoring and management without having to have a permit

(2) *Permit requirements.* No ORV, other than an authorized emergency essential 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 ~~P~~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) ~~The following requirements must be met before a permit will be issued. No permit will be issued for an ORV that does not meet the following requirements:~~

Comment [seh6]:

(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 ORV~~M~~ 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:

Comment [mbm7]: This is the only place we use the term "recreational ORV" permits. Do we need to use it earlier in the initial sections on ORV permits? Or, can we do without using it here?

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

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

Comment [seh8]: Fishing tournaments etc. are not emergencies

(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 are subject to terms and conditions of the commercial fishing permit issued in accordance with § 7.58 (b) of this chapter. Said vehicles are authorized to drive on the beach in designated ORV routes and entering non-ORV areas, except for full resource closures and lifeguarded beaches. The Superintendent may modify the hours of night-driving by +/- two hours for commercial fishing vehicles, subject to terms and conditions of the commercial fishing permit. ~~subject to terms and conditions of the fishing permit.~~

Comment [seh9]: Per the alternatives elements for Alt F under Commercial Fishing Vehicles. Do we need to include in the regulations the condition from Alt F that the modification of hours is for "commercial fishermen who are actively engaged in authorized commercial fishing activity and can produce fish house receipts from the past 30 days."

(ix) An ORV permit or Special Use 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 designated 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.]~~

Comment [mbm10]: We still need to develop alternative location identifiers to use along with (or in lieu of) "ramp" number.

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

(B) Hatteras Island (north to south):

(1) Ramp 23 to Rramp 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, located either here or between Ramps 30 and 34, or in one of the segments below.

(2) Ramp 30 to ~~(new)~~ Rramp 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, located either here, in the above segment, or between Ramps 32.5 and 34, in the next segment.

(3) Ramp 38 to approximately 1.7 miles south.

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

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

(6) From 0.2 mile south of Rramp 44 to Cape Point to approximately 0.2 mile west of the hook, ~~(Species Management Area)with,~~

~~{6. ORV route YR. With expected limited access 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, resource protection measures standard buffers would apply, which, depending upon the circumstances, could close the access corridor.

~~(ML2)}~~

(7) Interdunal route from Ramp 45 to Ramp 49.

~~(8) R~~Rramp 47 to Rramp 49, including beach in front of Frisco Campground.

Comment [mbm11]: Should not include “new.” Need to come up alternative location identifier. What if we don’t getting funding to build “new” ramps?

Comment [seh12]: Numbers (4) and (5) could be combined into one route “From 0.4 mile north of Ramp 43 to 0.2 mile south of Ramp 44. They were two separate segments with different treatment in some of the other alts in the DEIS, but are both routes under alt F. If combined, then renumber the rest.

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~~[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 ~~between Ramps 45 and 49, either here or in the segment above.~~

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(98) Ramp 49 to East Frisco boundary.

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

Comment [mbm13]: May need to clarify the term "Bone Road". It is not on Map 5 for alternative F.

(110) 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.]~~

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

~~[ORV route YR when shoreline width allows, subject to resource closure(s) to protect vegetation or wildlife.]~~

(132) Spur Road along sound shoreline to Hatteras Inlet, when shoreline width allows, subject to resources closure(s) to protect vegetation or wildlife.

~~[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) Interdunal route from Ramp 59 to 0.3 mile north of Ramp 59.

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

Comment [seh14]: These are proposed new ramps.

(43) From 0.75 mile northeast of Ramp 67 to 0.5 mile northeast of Ramp 68.

(54) From 0.5 mile northeast of Ramp 70 to 0.5 mile southwest of Ramp 72.

(65) From 0.5 mile southwest of Ramp 72 to inlet, ~~(Species Management Area)w.~~

~~[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, resource protection measures 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)~~

Comment [mbm15]: Deleted section seems out of place or unnecessary. Haven't we already covered the last item under 3(i) Superintendent's Closures?

~~* 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 Rramp 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.~~

Comment [seh16]: This has been deleted elsewhere, should it be deleted here also? Also, should the Bait Pond be defined somewhere since it's not an official name?

Comment [seh17]: Needs clarity. Does the two week wait apply both to cessation of breeding activity and to chick fledging?

~~(B) Hatteras Island (north to south):~~

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

Comment [seh18]: Is this from northern boundary of Rodanthe to Southern Boundary of Salvo? Do we need to be specific?

(2) Ramp 32.5 to ~~R~~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, located either between Ramps 23 and 27 or between Ramps 30 and 34, here or in one of the two previous segments. (ML1)}~~

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

(4) Cape Point 0.2 mile west of the hook to ~~R~~ramp 45 (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. -

(5) Ramp 45 to ~~(new)~~~~R~~ramp 47 ~~(Species Mgmt 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. -An

~~Interdunal ORV route is established between Ramps 45 and 49, road extended and new ramp 47 established.~~ - There would be 1.5 miles of “floating” nonbreeding shorebird area, located between Ramps 45 and 49, 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 28/29.

(7) Hatteras Village Beach (east boundary to ~~R~~ramp 55) open to ORVs from December 1 to February 28/29.

(C) Ocracoke Island (north to south):

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

Comment [seh19]: The text description of alt F in the DEIS says February 28/29, the DEIS routes and areas table says Feb 28. We will fix one and should be consistent here, unless there's a reason not to be.

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

(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.

(iv) Soundside ORV Access ??? List soundside access points here ???

~~[* 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):~~

Comment [mbm20]: Do we need to itemize the soundside access points some place, similar to what we've done with the oceanside routes?

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Comment [mbm21]: Highlighted section seems out of place. Haven't we already covered the last item under 3(i) Superintendent's Closures?

Comment [mbm22]: Should there be a separate section on Soundside Access? Should the highlighted section be deleted, or moved to the end?

Comment [mbm23]: Don't think the PINK highlighted section needs to be in the Reg. Do we need to include Species Management Area definition in section C(1)?

~~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.]~~

(4) *Rules of the road for ORV Operation.* 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 two-way 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 allowable ORV 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.

Comment [mbm24]: Do we need to define "nonessential ORV" in definiton section?

Comment [seh25]: Suggest saying ... "are closed to all ORV use except essential vehicles from one hour after sunset until..." That would eliminate the need to use or define "nonessential" because we've defined "essential vehicle" earlier. Also do we need to refer to the authorization to modify the hours for commercial fishermen?

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Comment [seh26]: We just defined them above as 1 hour after sunset until the turtle patrol has checked the beach in the morning, so why would we then list them in the compendium. Seems like it should be one or the other.

(5) *Vehicle carrying capacity.* The Superintendent is authorized to establish vehicle carrying capacity use limits in accordance with § 1.5 of this chapter. Use limits will be re-evaluated, at a minimum, every five years. 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.~~

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