

0025701

From: [Ann Masse](mailto:Ann.Masse@reg-group.com)
Reply To: ann@reg-group.com
To: [Mike Murray@nps.gov](mailto:Mike.Murray@nps.gov); [Sandra Hamilton@nps.gov](mailto:Sandra.Hamilton@nps.gov); [Paul Stevens@nps.gov](mailto:Paul.Stevens@nps.gov); [Doug Wetmore@nps.gov](mailto:Doug.Wetmore@nps.gov)
Cc: arlene@reg-group.com; andrew@reg-group.com
Subject: Draft CAHA ORV NPRM
Date: 03/22/2010 09:36 AM
Attachments: [CAHA Draft Proposed ORV Rule March 22 2010.doc](#)

Dear Mike and Sandy,

Attached is the draft Cape Hatteras ORV NPRM. Throughout the document we cited the source of the information and any questions in brackets. We made minor revisions to the draft rule text (originally sent 2/17/2010) and used the track changes function to highlight these changes.

We would be happy to make any changes to this draft you need.

Ann Masse

The Regulatory Group, Inc.
1911 N. Fort Myer Drive, Suite 102
Arlington, VA 22209
(202) 466-3205

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AC__

Cape Hatteras National Seashore; Designated Off-Road Motor Vehicle Areas

AGENCY: National Park Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The National Park Service (NPS) is proposing to designate areas where off-road motor vehicles (ORVs) may be used in the Cape Hatteras National Seashore. Unless otherwise provided for by special regulation, the operation of off-road motor vehicles within areas of the National Park System is prohibited under existing regulations. The intended effect of the special regulations is to carefully manage ORV use in the Seashore to protect and preserve natural resources and natural processes, while providing a variety of visitor use experiences. All other portions of the existing regulation, governing use, safety, and operating requirements would remain in effect.

[Based on Apostle Island NPRM, 69 FR 49841, August 12, 2004]

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by the number RIN 1024-AC__,

by any of the following methods:

- Federal rulemaking portal: <http://www.regulations.gov> Follow the instructions for submitting comments.
- E-mail NPS at _____ Use RIN 1024-AC__ in the subject line.

- Mail or hand delivery to: Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, North Carolina 27954.
- For additional information see “**Public Participation**” under SUPPLEMENTARY INFORMATION below.

FOR FURTHER INFORMATION CONTACT: _____, Regulations Program Manager, National Park Service, 1849 C Street, NW, Room 7241, Washington, DC 20240. Phone: _____. E-mail:

SUPPLEMENTARY INFORMATION:

Background

Additional alternatives

The information contained in this proposed rule supports implementation of the preferred alternative for Cape Hatteras National Seashore (Seashore) in the Cape Hatteras National Seashore Off-Road Vehicle Management Plan/Environmental Impact Statement (plan/EIS) published [January], 2010. The public should be aware that five other alternatives were presented in the plan/EIS. Those alternatives should also be reviewed and considered when making comments on this proposed rule.

Off-Road Motor Vehicle Regulation

Executive Order 11644, Use of Off-Road Vehicles on the Public Lands, issued in 1972 and amended by Executive Order 11989 in 1977, requires federal agencies that allow ORV use to designate specific areas and routes on public lands where the use of ORVs may be permitted. Therefore, motorized travel off of established roads would not be permitted in any areas unless designated under a special regulation.

Section 3 of this Executive Order, as amended, authorizes the NPS to designate ORV use areas provided that the designation of such areas and trails will be based on protecting resources of public lands, promoting the safety of all users of those lands, and minimizing conflicts among the various uses on those lands. Executive Order 11644 was issued in response to the widespread and rapidly increasing use of ORVs on public lands “often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity.” Code of Federal Regulations (CFR) Title 36, Section 4.10(b) contains regulations regarding vehicles and traffic safety on NPS lands and requires that “routes and areas designated for ORV use shall be promulgated as special regulations” and that the designation of routes and areas “shall comply with section 1.5 of this chapter and Executive Order 11644 (Volume 37 Federal Register, page 2887).” In addition, such routes and areas may be designated only in national recreation areas, national seashores, national lakeshores, and national preserves.

As a result of these considerations, NPS is issuing this proposed rule to comply with Executive Orders 11644 and 11989 regarding ORV use, and with NPS laws, regulations (36 CFR 4.10), and policies to minimize impacts to Seashore resources and values. **[EIS pgs 1-2]**

Description of Cape Hatteras National Seashore

Officially authorized in 1937 along the Outer Banks of North Carolina, Cape Hatteras is the nation’s first national seashore. Consisting of more than 30,000 acres distributed along approximately 68 miles of shoreline, the Seashore is part of a dynamic barrier island system.

The Seashore serves as a popular recreation destination. Seashore visitors participate in a variety of recreational activities, including sunbathing, swimming, shell collecting, fishing, hiking, hunting, motorized boating, non-motorized boating (sailing, kayaking, canoeing), nature study, photography, ORV use (beach driving), shellfishing, sightseeing, watersports (surfing, windsurfing, kiteboarding, etc.), and wildlife viewing.

[EIS pg i]

In addition to these recreation opportunities, the Seashore is home to important habitats created by the Seashore's dynamic environmental processes, including habitats for several federally listed species including the piping plover and three species of sea turtles. These habitats are also home to numerous other protected species, as well as other wildlife. **[EIS pg ii]**

Purpose and Significance of Cape Hatteras Seashore

All units of the national park system were formed for a specific purpose (the reason they are significant) and to conserve significant resources or values for the enjoyment of future generations. The purpose and significance of the park provides the basis for identifying uses and values that individual NPS plans will support. The following provides background on the purpose and significance of Cape Hatteras National Seashore.

As stated in the Seashore's enabling legislation (the Act), Congress established the Seashore in 1937 as a national seashore for the enjoyment and benefit of the people, and to preserve the area. The Act states:

Except for certain portions of the area, deemed to be especially adaptable for recreational uses, particularly swimming, boating, sailing, fishing, and other recreational activities of similar nature, which shall be developed for such uses as needed, the said areas shall be permanently reserved as a primitive wilderness and

no development of the project or plan for the convenience of visitors shall be undertaken which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing in this area.

The Act also states:

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

A 1940 amendment to the enabling legislation authorized hunting and re-designated the area as the Cape Hatteras National Seashore Recreational Area.

Park significance statements capture the essence of the park's importance to the nation's natural and cultural heritage. Understanding park significance helps managers make decisions that preserve the resources and values necessary to the park's purpose. As stated in the 2006–2011 Strategic Plan, the Seashore has the following significance:

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

[EIS pgs 3 – 4]

Authority and Jurisdiction

By enacting the National Park Service's Organic Act of 1916 (Organic Act) (16 U.S.C. 1 et seq.), Congress granted the NPS broad authority to regulate the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) allows the NPS, through the Secretary of the Interior, to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks..."

16 U.S.C. 1a-1 states, "The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established..." **[From Cure PWC NPRM]**

ORV Use at Cape Hatteras National Seashore

Cape Hatteras National Seashore is a popular recreation destination with more than 2.1 million visitors in 2008. Seashore visitors participate in a variety of recreational activities, including swimming, sunbathing, shell collecting, fishing, hiking, hunting, boating, nature study, photography, ORV use, surfing, and wildlife viewing. Seashore visitors use ORVs for traveling to and from swimming, fishing and surfing areas, and for pleasure driving.

Current management practices at the Seashore allow ORV users to drive on the beach seaward of the primary dune line, with a 10-meter backshore area seaward of the primary dune line protected seasonally. Drivers must use designated ramps to cross between the beach and NC-12 which runs behind the primary dune line. In addition to a multitude of visitor opportunities, the Seashore provides a variety of important

habitats created by its dynamic environmental processes, including habitats for a number of federally-listed species and species of special concern listed by the North Carolina Wildlife Resources Commission (NCRWC).

Historically, beach driving at the Seashore was for the purpose of transportation, and not recreation. The paving of NC-12, the completion of the Bonner Bridge connecting Bodie and Hatteras islands in 1963, and the introduction of the State of North Carolina ferry system to Ocracoke Island facilitated visitor access to the sound and ocean beaches. Improved access, increased population, and the popularity of the sport utility vehicle have resulted in a dramatic increase in vehicle use on Seashore beaches. There has also been a decline in most beach nesting bird populations on the Seashore since the 1990s.

ORV use at the Seashore has historically been managed since the 1970s through various draft or proposed plans, though none were ever finalized or published as a special regulation as required by Executive Orders 11644 and 11989 and 36 Code of Federal Regulations (CFR) 4.10. The National Park Service (NPS) issued the Interim Protected Species Management Strategy (Interim Strategy) in 2006 to provide resource protection guidance until the long-term ORV management plan and regulation could be completed. The Finding of No Significant Impact (FONSI) was issued for the Interim Strategy in July 2007. In October 2007, a lawsuit was filed on the Interim Strategy which resulted in a consent decree in April 2008. As a part of the consent decree, the court ordered deadlines for completion of an ORV management plan/EIS and special regulation. **[EIS pgs i – ii]**

Cape Hatteras National Seashore Off-Road Vehicle Management Plan Draft Environmental Impact Statement

As a companion document to this NPRM, NPS has issued the Cape Hatteras National Seashore Off-Road Vehicle Management Plan Draft Environmental Impact Statement. The Off-Road Vehicle Management Plan/Draft Environmental Impact Statement (plan/DEIS) was open for public review and comment from [insert date] until [insert date]. The plan/DEIS is available at <http://parkplanning.nps.gov/caha>.

The purpose of the plan/DEIS was to evaluate a range of alternatives and strategies for managing ORV use/access in the Seashore to protect and preserve natural and cultural resources and natural processes, to provide a variety of visitor use experiences while minimizing conflicts among users, and to promote the safety of all visitors. The plan/DEIS is intended to guide the management and control of ORV use at Cape Hatteras National Seashore Area for the next 10 to 15 years. **[EIS pg 1]** In addition, the plan/DEIS defines such terms as “negligible,” “minor adverse” and “major adverse.” In this document, these terms are used to describe environmental impact. Refer to the plan/DEIS for complete definitions.

The environmental impact statement evaluates six alternatives for managing off-road motorized vehicle access and use at the Seashore, including two no-action alternatives:

Alternative A: No Action - Continuation of Management under the Interim Protected Species Management Strategy — Under this no-action alternative, management of ORV use and access at the Seashore would be a continuation of management based on the selected alternative identified in the July 2007 FONSI for the 2006 Interim Strategy

and the 2007 Superintendent's Compendium, as well as elements from the 1978 draft interim ORV management plan that were incorporated in Superintendent's Order 07, as amended in 2006. These actions would include providing ORV access throughout the Seashore, except in areas of temporary resource, safety, or administrative closures. Under the no-action alternative, the entire Seashore would be designated as a route or area and would be open 24 hours a day year-round, but subject to temporary resource closures, seasonal ORV closures in front of the villages, and temporary ORV safety closures. Vehicles would be allowed on the beach overnight only if someone associated with the vehicle is actively fishing. The ORV corridor would be marked by posts placed approximately 150 feet landward from the average, normal high tide line, or if less than 150 feet of space is available, at the vegetation or the toe of the remnant dune line, except during breeding season in protected species areas. Existing ORV safety closures would be maintained and new closures established as needed to address safety conditions such as debris on the beach or narrow beaches. Narrow beaches would be reopened as the beach widens. The beach in front of Cape Hatteras Lighthouse and Buxton Woods Road would remain closed to ORV access for administrative purposes. Suitable interior habitats for piping plovers at spits and at Cape Point would be closed year-round to all recreational users to provide for resting and foraging for all species.

This no-action alternative would not require vehicles to have permits and would not involve any carrying capacity restrictions. The speed limit would be 25 mph (unless otherwise posted) on park beaches for public and private vehicles, although the speed limit in front of villages from September 16 to May 14 would be 10 mph. There would be

no increase in parking facilities associated with this alternative. Under this no-action alternative, the entire Seashore would, for purposes of the rulemaking process, be a designated route or area, subject to temporary closures. [EIS pg 60]

Alternative B: No Action – Continuation of Terms of the Consent Decree Signed April 30, 2008, and Amended June 4, 2009. A consent decree was signed on April 30, 2008, in U.S. District Court, whereby the parties involved in the lawsuit challenging NPS's management of beach driving under the Interim Strategy along Cape Hatteras National Seashore agreed to a settlement of the case. Terms of the consent decree required the NPS to complete an ORV Management Plan for the Seashore by December 31, 2010, complete and promulgate the final Special Regulation by April 11, 2011, and provide details of specific species protection measures to take place until the plan was completed. Under alternative B, management of ORV use and access at the Seashore would be based on the management under alternative A, but modified by specific species-protection measures from the consent decree, which provide for large prenesting closures and other access restriction. These modifications are required until the ORV plan and final Special Regulation are completed. These management modifications included increasing the size of the buffers provided to various species at the Seashore, as well as added restrictions related to night driving. On June 4, 2009, the following changes were made to the consent decree, as approved by the courts and agreed to by the parties involved in the lawsuit and settlement:

- Commercial fishermen would be granted access to beaches at 5:00 a.m. instead of 6:00 a.m.

- After September 15, all unhatched turtle nests would only require full beach closures from sunset until 6:00 a.m. instead of 24 hours a day.

- The NPS would not be required to expand a buffer for vandalism if the violator is apprehended. If the buffer has been expanded and then the violator is caught, the NPS can retract the expansion.

All other provisions in the consent decree remain the same. Under alternative B, beaches would be closed to all ORV use between the hours of 10:00 p.m. and 6:00 a.m. from May 1 to September 15, and open to ORV use from 10:00 p.m. to 6:00 a.m. with a permit from September 16 to November 15. This permit could be obtained online or at NPS offices or local tackle shops. From March 15 to November 30, an ORV-free zone at least 10 meters wide would be located in the ocean backshore wherever there is sufficient beach width to allow an ORV corridor at least 20 meters wide above the mean high tide line. Under alternative B, buffers for protected species would be larger than those identified in alternative A, and would include a required 1,000-meter buffer for unfledged piping plover chicks. In addition to ORV use, this 1,000-meter buffer would also apply to pets, as well as to kite flying, Frisbee throwing, and similar activities. Under this alternative, beach fires would be prohibited within 100 yards of turtle nest protection areas, as specified in the Superintendent's compendium. As in alternative A, suitable interior habitats for piping plovers at spits and at Cape Point would be closed year-round to all recreational users to provide for resting and foraging for all species. In case of a conflict between the Interim Strategy and the measures described in the consent decree, the consent decree would prevail. **[EIS pg 61]**

Alternative C: Seasonal Management. Alternative C would provide visitors to the Seashore with a degree of predictability regarding areas available for ORV use, as well as vehicle-free areas, based largely on the seasonal resource and visitor use characteristics of various areas in the Seashore. Both seasonal and year-round ORV routes would be established, although most areas would have a seasonal focus. Species management areas (SMAs), which include areas at the spits, points and other sensitive resource areas, and village beaches would be closed to ORV use from March 14 through October 14. Pedestrians would be able to access some SMAs depending upon specific shorebird breeding activity. Most of the seasonal ORV areas would be open to ORVs from October 15 through March 14. Seasonal night-driving restrictions would be established between the hours of 7:00 p.m. and 7:00 a.m. from May 1 to November 15. An ORV carrying capacity would be established using a maximum number of vehicles per mile of beach area. [EIS pg x-xi]

Alternative D: Increased Predictability and Simplified Management. Under alternative D, visitors to the Seashore would have the maximum amount of predictability regarding areas available for ORV use and vehicle-free areas for pedestrian use. Restrictions would be applied to larger areas over longer periods of time to minimize changes in designated ORV and non-ORV areas over the course of the year. To provide predictability under this alternative, only year-round ORV routes would be designated. Year-round non-ORV areas would include all of the SMAs and village beaches. SMAs would be closed to pedestrian use under Management Level 1 (ML1) measures during the breeding season. ML1 is an approach to shorebird protection during the breeding season that would use larger, longer-lasting buffers with less monitoring to reduce the need for

more frequent monitoring and fencing changes. [EIS pg 65] Seasonal night-driving restrictions would be established between the hours of 7:00 p.m. and 7:00 a.m. from May 1 to November 15. An ORV carrying capacity would be addressed solely by the use of vehicle stacking limits (one vehicle deep). [EIS pg xi]

Alternative E: Variable Access and Maximum Management. Alternative E would provide use areas for all types of visitors to the Seashore with a wide variety of access for both ORV and pedestrian users, but often with controls or restrictions in place to limit impacts on sensitive resources. Interdunal road and ramp access would be improved, and more pedestrian access would be provided through substantial additions to parking capacity at various key locations that lend themselves to walking on the beach. This alternative would close the SMAs to ORV use from March 15 through August 31, except that two spits and Cape Point would have initial ORV access corridors during the breeding season, with increased species monitoring in those areas. These ORV access corridors would close when breeding activity is observed. North Ocracoke Spit would be designated as a non-ORV area year-round under alternative E, and village beaches would be closed to ORV use between April 1 and October 31. A seasonal night driving restriction would be established from 10:00 p.m. to 6:00 a.m. during turtle nesting season although areas with low densities of turtle nests could open to night driving from September 16 through November 15. This alternative would offer a park-and-stay overnight option for ORVs at some spits and Cape Point during the turtle nesting season. Self-contained vehicle camping would be allowed during the off-season at designated Seashore campgrounds under the terms of a permit. Alternative E would provide enhanced options for pedestrian access to Bodie Island Spit and South Point Ocracoke by

promoting water taxi service when those areas are closed to ORVs. **[EIS pg xi]**

Alternative F: Management Based on Advisory Committee Input. In December 2007, the Department of the Interior established a negotiated rulemaking advisory committee (Committee) to assist NPS in developing an ORV regulation for the Seashore. The NPS used the Negotiated Rulemaking Committee's input to create this action alternative, which is designed to provide visitors to the Seashore with a wide variety of access opportunities for both ORV and pedestrian users. After shorebird breeding activity is concluded, alternative F would re-open some SMAs to ORV use earlier and for a longer time than the other action alternatives. This alternative would involve the construction of two pedestrian access trails and improvements and additions to the interdunal road system. Under alternative F, Hatteras Inlet Spit and North Ocracoke Spit would be non-ORV areas year-round, with interdunal roads that allow access to the general area, but not the shoreline. SMAs would be closed to ORV use from March 15 through July 31, except South Point and Cape Point would have initial ORV access corridors and Bodie Island Spit would have an initial pedestrian access corridor at the start of the breeding season, with increased species monitoring in these areas. These access corridor(s) would close when breeding activity is observed. Village beach closures would vary under alternative F with the northern beaches closed to ORV use from May 15 through September 15 and southern beaches closed from March 1 through November 30. Seasonal night-driving restrictions would be established from one hour after sunset until after turtle patrol has checked the beaches in the morning, which is usually approximately one-half hour after sunrise. **[EIS pgs xi – xii]**

As with the other action alternatives, alternative F would include an ORV permit system, with no limit on the number of permits issued. Both annual and short-term permits would be available under this alternative. To obtain a permit, ORV owners would be required to complete a short education program in person or online and pass a basic knowledge test demonstrating their understanding of the rules and regulations governing ORV use at the Seashore, beach-driving safety, and resource-closure requirements. A violation of the rules and regulations by the owner or driver of the ORV could result in revocation of the vehicle permit, and the owner/permittee would not be allowed to obtain another permit for any vehicle for a specified period of time. **[EIS pg 83]**

Alternative F is the National Park Service preferred alternative. This alternative fully meets all objectives of the off-road vehicle management plan, provides the necessary buffers, as well as the proactive establishment of SMAs, for the management of threatened and endangered species, and would provide the Seashore with more flexibility in management. Furthermore, this alternative incorporates input from the negotiated rulemaking process, thereby providing more public input. **[EIS pgs 95-96]**

This document proposes regulations to implement alternative F at Cape Hatteras National Seashore.

AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES

The following summarizes the affected environment and environmental consequences associated with the proposed rule which implements alternative F at Cape Hatteras National Seashore. Each of these issues is analyzed in the Cape Hatteras National Seashore Off-Road Vehicle Management Plan Draft Environmental Impact Statement.

Wetlands

The majority of the undeveloped acreage within the Seashore can be classified as a wetland. The predominant wetland types at the Seashore are marine and estuarine.

Marine wetlands occur along the beaches on the oceanside of the Seashore, and estuarine wetlands generally occur along the soundside, adjacent to the many tidal creeks that are prevalent along the islands. Non-wetland or “upland” areas of the Seashore include areas landward of the dune line, areas around NC-12, and other developed areas such as those in and around villages and park facilities. **[EIS pg 183]**

ORV use in wetland areas may have various results. For example, vegetated wetlands along the soundside and interior of the islands are susceptible to direct damage from ORV use. Estuarine wetlands can be denuded of vegetation when ORVs are driven and parked along the soundside shoreline. Many of the interior or interdunal roads are located near wetland areas that are often not noticeable to visitors. When standing water is present along these ORV routes, visitors may drive over adjacent vegetated areas in an attempt to avoid the standing water. This results in wider roads, new vehicle routes, and crushed or dead vegetation. **[EIS pg v]** The proposed rule aims to minimize impacts to wetlands from ORV use. **[EIS pg 2]**

Associated with implementing the proposed rule, NPS would construct (or replace) nine ORV access ramps, 12 new or expanded parking lots, three new interdunal roads, and pedestrian trails on Bodie and Ocracoke islands. All new access ramps and parking lots would be located exclusively in upland areas, thereby avoiding impacts to wetlands. Ramps and parking areas would be constructed using environmentally-sensitive standards to minimize stormwater runoff. As part of this effort, new interdunal roads are

proposed from ramp 45 to ramp 49, off of the Pole Road near Hatteras Inlet, and extending off of ramp 59 near North Ocracoke Spit. Wetland maps indicate that there is a sufficient upland area in which to develop these interdunal roads. Therefore, direct wetland impacts from the interdunal road extensions would be avoided, although heavy use of the roads could result in inadvertent wetland damage if vehicles were to leave the road surface for any reason. The proposed pedestrian trail and interdunal road extensions would not require any formal surfacing or removal of vegetation and would avoid all wetland features. To protect soundside wetlands and vegetation, protective signage would be installed at all soundside access points to reduce the potential for resource damage from ORV use, thereby resulting in a beneficial impact. Although the proposed rule includes additional measures for wetland protection on the soundside, long-term negligible adverse impacts to wetlands would occur due to the potential for ORVs driving over wetland vegetation along and adjacent to interior routes (including the expanded interdunal road network) and access roads that lead to soundside destinations. **[EIS pg 305]**

There would be short-term negligible adverse impacts to marine intertidal wetlands due to continued ORV use in these areas and long-term negligible adverse impacts to wetlands due to direct damage from ORV use in and around vegetated wetlands on the soundside and along interior ORV routes. Impacts to soundside wetlands would remain at a long-term negligible adverse level due to the protection provided by the installation of signage. Construction activities would avoid wetland areas resulting in indirect long-term negligible adverse impacts to wetlands. Cumulative impacts under the proposed rule would be long-term minor to moderate adverse.

Implementation of the proposed rule would not impair wetlands because of the low magnitude of impacts to wetlands. Species management activities would not typically occur in wetland areas; and effects on the size, integrity, or connectivity of marine intertidal wetlands from ORVs crossing these areas would not be measurable or perceptible. ORV damage to soundside vegetation would continue to be confined to small areas, and would not affect the overall viability of the Seashore's wetlands. Where driving on limited portions of the soundside is allowed, generally on sandy beach areas, incidental driving on vegetation at the fringes of these sandy areas may occur when vehicles are passing each other, turning around, or during periods of high water because the soundside sandy beach areas tend to be narrow and bordered by vegetation. Incidental driving on vegetation along the margins of interior ORV routes may occur at times to avoid standing water. Signage would help protect soundside vegetation. The effects of the small amount of damage to soundside wetland vegetation were deemed to be negligible in the DEIS analysis. Parking area and ramp construction would avoid wetland areas and would use materials and management practices that would reduce surface runoff. The effects of this construction on the size, integrity, or connectivity of wetlands would not be measurable or perceptible and were deemed to be negligible in the DEIS analysis. Cumulative impacts from combining the effects of the proposed rule with effects of other past, present, and future planned actions in and around the Seashore would likely result in a small permanent loss of wetlands, mostly from the construction of the Bonner Bridge, which would affect 3.1 acres. Large areas would not be affected and wetland functions would not be affected over the long-term. Therefore the wetland effects would not result in impairment. **[EIS pgs 306 – 307]**

Floodplains

North Carolina's barrier islands have historically been and continue to be affected by coastal forces and flooding events. The barrier islands that comprise the Seashore are flat and narrow and lie adjacent to the shallow and wide Pamlico Sound. The widest part of the Seashore islands is near Cape Point, between Buxton and Frisco. According to Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps, most of the Seashore is within the 100-year floodplain, with the exception of some areas within the 500-year floodplain (Shaded X Zone) located at the Navy tower site on Bodie Island and a larger area near Buxton. **[EIS pg 184]**

The floodplains in the areas of concern do not serve the same function (i.e., as a natural moderator of floods) as floodplains in non-coastal areas because water levels in the project area are not dependent on floodplain storage capacity. Rather the area is subject to coastal flooding caused by both hurricanes and other storm systems that can raise water levels substantially via storm surge. The use of ORVs for recreation would not have a measurable effect on floodplains because driving on beaches, interior ORV routes, or along soundside ORV access routes would not impact the natural function of the floodplain. The only impacts to floodplains from the implementation of the proposed rule would be those impacts associated with proposed construction activities. **[EIS pg 308]** The proposed rule aims to minimize impacts to floodplains from ORV use. **[EIS pg 2]**

Under the proposed rule, NPS would construct or relocate nine ORV access ramps, construct or expand 12 public parking areas, and establish three new interdunal roads and three new pedestrian trails. Ramps would be surfaced with a natural

semipermeable clay/shell base, reducing stormwater runoff during heavy rain events and limiting the potential for impacts to floodplain function. New or expanded parking areas would be located landward of the primary dune. Ten of the areas would be designed and constructed with a semi-permeable clay/shell base, turf block or other porous material, using environmentally sensitive standards to minimize stormwater runoff, and would have a limited effect on the ability of the floodplain to convey floodwaters from storm surge. The two new parking areas accessible by 4-wheel drive vehicles at the end of two of the new interdunal roads would have no floodplain impact because they would not require a hardened surface since vehicles would travel over sand to reach them. The interdunal roads would be constructed at grade and would not alter topography or require a finished surface. The pedestrian trails would not result in floodplain impacts because they would be primitive in nature and would not be paved or surfaced. The DEIS impact analysis deemed the impacts from construction to be minor because they would result in a change in floodplain functions and values that would be detectable but small, of little consequence, and localized. Cumulative impacts from combining the effects of the proposed rule with effects of other past, present, and future planned actions in and around the Seashore, such as the location of structures and impervious surfaces in the floodplain, development of NC-12, the Bonner Bridge and its replacement, and local development, would result in a change to floodplain functions and values. The cumulative impacts were deemed minor to moderate in the DEIS impact analysis because they would be readily detectable and could increase risk to life or property, but would be relatively localized and could be successfully mitigated. Therefore the floodplain impacts would not result in impairment. [EIS pgs 315-316]

Federally Listed Threatened or Endangered Species

Cape Hatteras National Seashore is home to federally threatened and endangered species year-round. Increased year-round visitation results in a greater potential for conflicts between visitor use and listed species. Conflicts between listed species and recreational use, including ORV use, could create direct or indirect losses to a listed species. **[EIS pg v]** The proposed rule intends to provide protection for threatened and endangered species and their habitats, and minimize impacts related to ORV and other uses as required by laws, such as the Endangered Species Act, the Migratory Bird Treaty Act (MBTA), and NPS laws and management policies. **[EIS pgs 2 – 3]**

The Seashore is used by both the threatened Atlantic Coast population of piping plover for breeding and wintering and by the endangered Great Lakes population (considered threatened on its wintering grounds) for wintering. Seabeach amaranth, a federally listed threatened plant species, has been found in limited numbers at the Seashore in the recent past. Three species of federally listed sea turtles (loggerhead, green, and leatherback) nest on Seashore beaches, with loggerhead being the most common. **[EIS pg v]**

Piping Plover

The piping plover is a small (6 to 7 inches long, weighing 1.5 to 2.2 ounces), highly camouflaged, sand-colored shorebird endemic to North America. North Carolina is currently the only state on the Atlantic Coast that hosts piping plovers during all phases of their annual cycle, including the establishment and holding of territories, courtship and copulation, nest scraping and nest building, egg laying and incubation, chick rearing and fledging, and migration and wintering **[EIS pgs 184 - 185]**

Implementation of the proposed rule would not impair piping plover because sufficient population numbers and functional habitat would remain to maintain a sustainable population of piping plover in the Seashore. Under the proposed rule, the Seashore would establish SMAs, which proactively reduce or preclude recreational use early in the breeding season. SMAs are areas of suitable habitat that have had concentrated and recurring use by multiple individuals and/or multiple species of protected shorebirds during the breeding or nonbreeding season. Under the proposed rule, ORVs would be prohibited in SMAs from March 15 through July 31, or two weeks after all chicks in the area have fledged (whichever comes later), for all seasonal areas except for 0.5 mile southwest of ramp 68 to 1.2 miles northeast of ramp 70, which would be closed to ORVs through October 31, and except at Cape Point and South Point where an ORV corridor would be established (subject to standard resource protection buffers and subject to resource closures) from March 15 through July 31. Four SMAs, including Hatteras Inlet Spit and North Ocracoke Spit would be closed to ORVs year-round. SMAs would be posted as prenesting closures by March 15 to protect birds establishing territories early in the breeding season. The remaining SMAs and prenesting closures outside of SMAs would not allow ORV or pedestrian access while prenesting closures are in effect. The Seashore would prohibit pets in all designated breeding shorebird SMAs from March 15 to July 31, or two weeks after all shorebird breeding activities have ceased or all chicks in the area have fledged, whichever comes later. In addition to nonbreeding shorebird SMAs, under the proposed rule an additional four miles of ocean shoreline would be considered “floating” closures and would be closed to ORVs during the nonbreeding season. From March 15 through July 15 Seashore staff would survey

prenesting closures three times per week and suitable habitat outside of prenesting closures two times per week, increasing to three times per week once birds are present.

The DEIS impact analysis deemed the management measures for breeding and nonbreeding piping plover (such as 75-meter buffers for nests, nest scrapes, and breeding behavior; 1,000-meter ORV buffers and 300-meter pedestrian buffers for chicks; nonbreeding SMAs and floating closures; establishment of non-ORV areas; prohibition of night driving between an hour after sunset to approximately one-half hour after sunrise from May 1 to November 15; and increased monitoring) to be moderate beneficial. Beneficial impacts would be detectable and could be beyond the level of disturbance or harm that would occur naturally. Protection to key life history stages would minimize or prevent harassment or injury to individuals and improve the sustainability of the piping plover in the Seashore.

Effects from commercial fishing would not be observable or measurable and would be well within natural fluctuations because the special use permit under which commercial fishing is managed prohibits entering resource closures and because a relatively small number of commercial fishermen operate inside the Seashore.

Although most visitors respect closures, closure intrusions by vehicles, pedestrians and pets may result in harassment, injury, or mortality to one or more individuals. However, the proposed rule would require a permit for ORV use which includes an educational component. Because ORV users would be more aware of the regulations in place to protect piping plover, the permit requirement would likely increase compliance with buffers, closures, and other restrictions. Violations may result in permit revocation, which is expected to increase compliance. The Seashore would also establish

a new voluntary resource education program targeted toward non-ORV beach users. Under the proposed rule, ORVs would bring people into the vicinity of plover areas where trash associated with recreation use would continue to attract mammalian and avian predators. Predation is known to affect the reproductive success of piping plovers; the indirect impacts of attracting predators would be detectable and beyond the level of disturbance and harm that would occur naturally, but is not expected to result in large declines in population because the Seashore takes management action to protect piping plover from predation. The DEIS impact analysis of the proposed rule deemed adverse impacts to piping plover from ORV and other recreational use to be minor to moderate because impacts would be detectable, and could be beyond the level of disturbance or harm that would occur naturally. Although some impacts might occur during critical reproductive periods or in key habitats in the Seashore and could result in injury or mortality, sufficient population numbers and functional habitat would remain to maintain a sustainable population in the Seashore.

The DEIS analysis of cumulative impacts from combining the effects of the proposed rule with effects of other past, present, and future planned actions in and around the Seashore (such as major dredging and maintenance dredging of Oregon Inlet, storms and other weather events, local development, predator management by the seashore, and increased interpretative programs as part of the Seashore's long range interpretive plan) indicate that NPS management actions within the Seashore would act as a driver for overall cumulative impacts. The cumulative impacts were deemed to be minor to moderate adverse in the DEIS impact analysis because large declines in population numbers would not result and sufficient population numbers and functional habitat would

remain to maintain a sustainable population in the Seashore. Some negative impacts to feeding, reproduction, resting or other factors affecting local population levels may occur and may result in harassment, injury, or mortality to one or more individuals. However, sufficient population numbers and functional habitat would remain to maintain a sustainable population in the Seashore. Therefore the piping plover impacts would not result in impairment. **[EIS pgs 354 – 356]**

Sea Turtles

Sea turtles are large marine reptiles found in subtropical, tropical and temperate oceans, as well as subarctic areas. They spend the majority of their time in ocean waters, with females coming ashore only to nest on sandy beaches. Three of the seven sea turtle species existing in the world today are known to nest at the Seashore: the loggerhead, green, and leatherback sea turtles. **[EIS pg 210]**

Implementation of the proposed rule would not result in impairment to sea turtles because sufficient population numbers and functional habitat would remain to maintain a sustainable population in the Seashore. The Seashore would implement a Nest Watch Program. A cadre of trained volunteers would be established to watch nests that have reached their hatch windows to monitor hatchling emergence success and success reaching the water, and to minimize negative impacts from artificial lighting, predation, and human disturbance. Depending on the number of nests that may be ready to hatch and the availability of volunteers, it may be necessary for NPS turtle staff to prioritize which nests are watched on any particular night. Priority would be given to watching the nests that are most likely to be negatively impacted by manageable factors.

During part of the nesting season approximately 39 miles of ocean beach would be closed to ORV use, although where resource conditions permit an ORV corridor would be provided at Cape Point and South Point and a pass-through corridor would be provided at Bodie Island Spit through closed areas. Between May 1 and November 15 night driving on designated ORV routes would be prohibited between one hour after sunset until turtle patrols have surveyed the beaches in the morning, approximately one-half hour after sunrise. However, from September 16 through November 15, selected ORV routes with no or a low density of turtle nests would allow night driving, subject to terms and conditions of a permit. Night driving on selected routes from September 16 through November 16; erosion and sand compaction; and other adverse effects related to ORV and other recreational use would be expected to occasionally result in aborted nesting attempts, hatchling disorientation or misorientation, running over hatchlings or nests, complete or partial nest loss due to human activities, and obscuring turtle crawl tracks that Seashore staff use to locate newly laid nests so that the undetected nests are not managed. These adverse effects on sea turtles were deemed to be minor to moderate in the DEIS analysis because, although there would be occasional disturbance and harm to sea turtles or their habitat (beyond the level of disturbance and harm that occur naturally), the Seashore would be expected to maintain a sustainable sea turtle population.

Cumulative impacts from combining the effects of the proposed rule with effects of other past, present, and future planned actions in and around the Seashore would likely result in infrequent or occasional occurrences of disturbance to some nesting females

with negative effects to reproduction affecting local population levels, infrequent or occasional complete or partial nest loss due to human activities and occasional disorientation or disruption of hatchling movement or direct hatchling mortality from human activities. Even with these adverse effects, large declines in population numbers would not result and sufficient population numbers and functional habitat would remain to maintain a sustainable population in the Seashore. Therefore the sea turtle impacts would not result in impairment. [EIS pgs 388 – 389]

Seabeach Amaranth

Seabeach amaranth is an annual plant native to barrier-island beaches along the U.S. Atlantic Coast, including those within the Seashore. Historically, seabeach amaranth was found in nine states, from Massachusetts to South Carolina. It was federally listed as threatened by the USFWS in 1993 because of its vulnerability to human and natural impacts and the fact that it had been eliminated from two-thirds of its historic range. Since its listing, seabeach amaranth has reappeared in several states and is currently found in New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, and South Carolina. Despite its reappearance in several states, the plant remains highly vulnerable to the threats that caused its listing, and in some states, populations continue to decline.

This species is listed as threatened by the State of North Carolina. Within North Carolina, from 2002 to 2003, the number of plants increased from 5,700 to 9,300 along 112 miles of beach, only a fraction of the approximately 40,000 plants reported in the late 1980s and 1995. Within the Seashore, seabeach amaranth numbers ranged from 550 to nearly 16,000 plants between 1985 and 1990. However, in the last 10 years a maximum

of only 93 plants was observed in 2002. More recently, only one plant was found in 2004 and two plants in 2005. Since 2005 no plants have been found within the Seashore. [EIS pg 219] It is thought that the species may possibly be extirpated from the Seashore. However, populations of seabeach amaranth may still be present, existing in the seed bank, even though plants are not visible for several years. NPS Management Policy 1.4.7 provides that if there is, or will be, an impairment, the decision-maker must take appropriate action, to the extent possible within NPS authorities and available resources, to eliminate the impairment.

Implementation of the proposed rule would not impair seabeach amaranth because the adverse impacts to seabeach amaranth habitat are low enough that sufficient functional habitat would remain to maintain a sustainable population in the Seashore, if the species reappears or is reintroduced to the Seashore. The effects on seabeach amaranth of constructing nine new ORV access ramps were deemed negligible to minor because the amount of potential habitat affected would be small compared to the total amount of habitat in the park. Historically, most areas where seabeach amaranth has been found at the Seashore were either in established bird closures or other areas closed to vehicular traffic. Under the proposed rule, in addition to areas closed seasonally for shorebird nesting, suitable habitat at the points and spits used by seabeach amaranth for two or more of the preceding 5 years would be seasonally closed as well, which would protect additional seabeach amaranth habitat, if the species is rediscovered or reintroduced. Some other areas would not be designated as ORV routes to provide areas for visitors to enjoy without the presence of vehicles. The 10-meter-wide backshore zone, which would be closed year-round to ORVs wherever there is sufficient beach width to

allow an ORV corridor of at least 30 meters above the mean high tide line, would protect some additional habitat year-round. The proposed rule would provide about 39 miles of habitat protected, at least seasonally, from vehicles, which have more adverse impacts than pedestrians to seabeach amaranth. If plants are found outside an existing closure, the Seashore would install 30-foot by 300-foot closures around them for protection from vehicle or foot traffic. Before bird or turtle closures are reopened to ORV traffic, the areas would be surveyed for seabeach amaranth plants. If found, the plants would be protected by a 30-foot by 30-foot closure. The potential for undetected plants outside closures, to be crushed and seeds pulverized or buried to a depth where they cannot germinate was deemed to constitute a minor to moderate adverse impact in the DEIS analysis because sufficient habitat inside closures is protected to maintain a sustainable population of seabeach amaranth, if rediscovered or reintroduced.

Cumulative impacts from combining the effects of the proposed rule with effects of other past, present, and future planned actions in the State of North Carolina would likely result in measurable or perceptible adverse effects (beyond the level of disturbance or harm that would occur naturally) and result in a change in the abundance and distribution of plants or quantity and quality of available habitat over the long-term, but the magnitude would be low enough to allow sufficient population numbers and functional habitat to remain to maintain a sustainable population in the Seashore, if plants reappear or are reintroduced. Therefore the seabeach amaranth impacts would not result in impairment. [EIS pg 411 – 412]

State-Listed and Special-Status Species

Several species of shorebirds that breed on Cape Hatteras are listed or recognized as special-status species by the State of North Carolina, but are not federally listed as endangered or threatened. As of May 2008, the American oystercatcher, Wilson's plover, least tern, common tern, and black skimmer were listed by the North Carolina Wildlife Resources Commission (NCWRC) as species of special concern. The NCWRC also lists the gull-billed tern as a state-threatened species. The American oystercatcher is listed as a species of concern by the Southeastern Shorebird Conservation Plan, and both the American oystercatcher and the Wilson's plover are identified in the U.S. Shorebird Conservation Plan as "Species of High Concern." All these state-listed or special status species have had historically low reproductive rates. The lack of large undisturbed areas for successful breeding contributes to these low rates at the Seashore. Frequent human disturbance can cause the abandonment of nest sites as well as direct loss of eggs and chicks. Therefore, habitat for these state-listed and special status species may be vulnerable to disturbances caused by recreational uses, including ORV use. **[EIS pg 29 – 30]** The proposed rule aims to provide protection to state-listed and special status species and their habitats, and minimize impacts related to ORV and other uses as required by laws and policies. **[EIS pgs 2-3]**

Implementation of the proposed rule would not impair state-listed and special status species because although frequent responses by some individuals to disturbance would be expected, with negative impacts to feeding or reproduction, and impacts would occur during critical periods of reproduction or in key habitats in the park and could result in harassment, injury, or mortality to one or more individuals, sufficient population

numbers and functional habitat would remain to maintain a sustainable population in the Seashore.

Under the proposed rule, the Seashore would establish SMAs, as described above in the discussion about piping plover under Federally Listed, Threatened or Endangered Species. Furthermore, all breeding shorebird SMAs would be posted as prenesting closures using symbolic fencing by March 15 at sites involving American oystercatchers and Wilson's plover and by April 15 at sites involving colonial waterbirds. If multiple species exist on each site, closures would begin on the earliest date. Surveys for American oystercatchers and Wilson's plover would begin on March 15, and surveys for colonial waterbirds would begin on May 1.

Each SMA would be under Management Level 1 (ML1) or Management Level 2 (ML2) management procedures. Under the proposed rule, ML1 procedures would require less monitoring of nests; however, there would be no ORV or pedestrian access allowed. Under ML2 procedures, birds would be monitored more frequently due to the presence of an ORV and/or pedestrian corridor.

Under the proposed rule, a total of seven SMAs would be managed under ML1 procedures and would be closed to both ORVs and pedestrians during the breeding season. Of these, four SMAs would be designated as non-ORV year-round; one SMA would be designated as non-ORV from March 15 through October 31; and two SMAs would be designated as non-ORV from March 15 through July 31, or two weeks after all chicks have fledged. Three SMAs would be managed under ML2 procedures during the breeding season. Of these, during the breeding season, Bodie Island Spit would have a

pedestrian access corridor, subject to resource closures, and Cape Point and South Point would have ORV access corridors, subject to resource closures. [EIS pg 470]

American oystercatchers at the Seashore can begin courting and nesting as early as mid-February or early March and be particularly sensitive to disturbance at that time. Hence, a March 15 start to management could mean that early nesting oystercatchers, especially those that establish territories outside of historic areas, would not be fully protected under the proposed rule.

Buffers would be applied both within and outside of designated SMAs. All SMAs would maintain a 300-meter (900-foot) buffer during all breeding activities for all state-listed/special status bird species. ML2 buffer areas would vary by species and activity. ML2 procedures for American oystercatchers would establish 150-meter (450-foot) buffers for breeding and nesting activities and 200 meters (600 feet) for unfledged chick activity. Under ML2, buffers for least terns would be 100 meters (300 feet) for breeding and nesting activities and 200 meters (600 feet) for unfledged chick activity. All other colonial waterbird buffers under ML2 procedures would be 200 meters (600 feet) for breeding, nesting, and unfledged chick activities. For areas where breeding activity is observed outside of prenesting areas, ML1 procedures would determine the buffers. For the proposed rule, buffers would be removed outside of prenesting areas if no breeding activity is observed for a two week period or when associated breeding activity has concluded, whichever is later. If breeding activity or scraping is observed outside of an existing closure, buffers would be expanded to accommodate the designated buffer for the particular management level (ML1 or ML2).

Under the proposed rule, nonbreeding shorebird SMAs would be established for migrating/wintering shorebirds at various locations throughout the Seashore.

Nonbreeding resource closures would be established at the points and spits based on habitat used by wintering piping plovers more than one of the past five years, the presence of birds at the beginning of the migratory season, and suitable habitat types based on the results of the annual habitat assessment. In addition to nonbreeding resource closures, NPS would establish non-ORV areas along the ocean shoreline. This would ensure that adequate foraging, resting, and roosting areas would be provided for all migratory and nonbreeding state-listed/special status species.

Under the proposed rule, all nonessential ORV traffic would be prohibited from all areas (other than the sound side), from one hour after sunset until approximately one-half hour after sunrise from May 1 to November 15. From November 16 to April 30, ORV use would be allowed 24 hours per day in designated ORV routes for vehicles with a valid ORV permit. Effects from commercial fishing would not be observable or measurable and would be well within natural fluctuations because the special use permit under which commercial fishing is managed prohibits entering resource closures and because a relatively small number of commercial fishermen operate inside the Seashore.

Although most visitors respect closures, closure intrusions by vehicles, pedestrians, and pets may result in harassment, injury, or mortality to one or more individuals. To minimize such intrusions, the proposed rule would require a permit for ORV use and the Seashore would establish a new voluntary resource education program targeted toward non-ORV beach users, as described above.

Under the proposed rule, ORVs would bring people into the vicinity of state-listed/special status species where trash associated with recreation use would continue to attract mammalian and avian predators. Predation is known to affect the reproductive success of shorebirds; the indirect impacts of attracting predators would be detectable and beyond the level of disturbance or harm that would occur naturally, but would not be expected to result in large declines in population because the Seashore takes management action to protect state-listed species from predation. **[EIS pg 471]**

The impact analysis of the proposed rule deemed adverse impacts to state-listed/special status species from ORV and other recreational use to be minor to moderate because impacts would be detectable, and could be beyond the level of disturbance or harm that would occur naturally. Although some impacts might occur during critical reproductive periods or in key habitats in the Seashore and could result in injury or mortality, sufficient population numbers and functional habitat would exist to maintain a sustainable population in the Seashore.

The analysis in the DEIS of cumulative impacts combined the effects of the proposed rule with effects of other past, present, and future planned actions in and around the Seashore, such as major dredging and maintenance dredging of Oregon Inlet, storms and other weather events, local development, predator management by the seashore, and increased interpretative programs as part of the Seashore's long-range interpretive plan. The cumulative impacts were deemed to be minor to moderate adverse in the DEIS impact analysis because impacts on state-listed/special status species and their habitats would be detectable and could be beyond the level of disturbance or harm that would occur naturally. Some negative impacts to feeding, reproduction, resting or other factors

affecting local population levels may occur and may result in harassment, injury, or mortality to one or more individuals. However, sufficient population numbers and functional habitat would exist to maintain a sustainable population in the Seashore. Therefore, the state-listed/special status impacts would not result in impairment. [EIS pg 472]

Wildlife and Wildlife Habitat

In addition to the federally-listed, threatened and endangered species and other protected species discussed above, other wildlife species depend on the habitats within the Seashore, including other bird species and invertebrate species. The use of ORVs has the potential to cause impacts to these wildlife species. The proposed rule seeks to minimize impacts to wildlife species and their habitats related to ORV use.

The Outer Banks of North Carolina provide a critical link in the migratory path of several shorebird species. The barrier island ecosystems at the Seashore provide habitat for large numbers of migratory and nesting bird species, and coastal marshes are critical to wintering populations of many waterbirds. Nearly 400 species of birds have been sighted within the Seashore and its surrounding waters. Migration routes for many raptor species include southeastern barrier islands. Thousands of migrating shorebirds use the barrier islands as a stopover point to rest, forage, or spend the winter.

The Seashore beach ecosystem also is home to a vast quantity of invertebrates, which form a valuable link in the coastal food chain. Many of the protected bird species found within the Seashore, including the piping plover, Wilson's plover, red knot, American oystercatcher, and gull-billed tern, feed on invertebrates in areas that are open to ORV use, such as the intertidal zone and the wrack line. High-energy, intertidal

beaches in the southeastern United States generally support approximately 20 to 30 types of invertebrate species, with the most identifiable being mole crabs, ghost crabs, and coquina clams (*Donax variabilis*). Both mole crabs and coquina clams are a primary prey base for fish, crabs, and shorebirds, and the population density of some predators may actually be dependent on the availability these invertebrate species. Other invertebrates within the Seashore beach ecosystem include clamworms (*Nereis succinea*), limpets (*Patella vulgata*), which can be found in the intertidal zone, and varieties of jellyfish sea urchins and sea stars (class Asteroidea), all of which spend their entire lives in the water.

[EIS pgs 247 – 248]

Implementation of the proposed rule would not result in impairment to wildlife as sufficient population numbers and functional habitat would remain to maintain sustainable populations of invertebrates and other bird species in the Seashore. The proposed rule would provide an increased level of recreational beach access but would implement species protection through the use of SMAs and night-driving restrictions. This proposal would require an ORV permit with an educational component, and all species at the Seashore would benefit from the increased level of resource stewardship that is associated with increased public awareness.

The proposed rule would involve closing the northern village beaches to ORVs for three months, southern village beaches for nine months, and closing some SMAs for approximately 4.5 months out of the year. Closing these areas seasonally to ORV use would reduce the potential for disturbances to species that use these seasonally closed areas. However, this alternative would allow access to some of these areas through a pedestrian corridor and trail or an ORV access corridor, subject to resource closures,

along the shoreline to Cape Point. The larger protected species buffers provide additional protection to other wildlife. Under the proposed rule, “floating” nonbreeding closures would provide four miles of protection, during the shorebird nonbreeding season, in addition to that provided by the nonbreeding shorebird SMAs. Limiting vehicles to daytime use (approximately one-half hour after sunrise to one hour after sunset) for 6.5 months of the year would reduce the potential for impacts to nocturnal invertebrates and night foraging birds throughout the Seashore. Vehicle use would result in the loss of individual invertebrates, but would not be measurable and would be well within natural fluctuations.

The DEIS impact analysis deemed the adverse effects on other wildlife from the implementation of the proposed rule to be minor because, although occasional disturbance and harm to other wildlife or their habitat would occur from ORV and other recreational use, it would not be outside the level of disturbance or harm that would occur naturally and the Seashore would maintain sustainable populations of invertebrates and other bird species.

Cumulative impacts from combining the effects of the proposed rule with effects of other past, present, and future planned actions in and around the Seashore would likely result in harassment of other bird species and injury or mortality to invertebrates at the Seashore. Even with these adverse effects, population numbers and functional habitat would remain to maintain sustainable populations in the Seashore. Therefore, impacts to other wildlife would not result in impairment to these species. **[EIS pg 498-499]**

Soundscapes

According to the NPS, the acoustical environment is comprised of a combination of acoustic resources, including natural, cultural, and historic sounds. A soundscape is defined as the way in which humans perceive this acoustic environment. Specifically, the natural soundscape encompass all of the natural sounds that occur in parks, including the physical capacity for transmitting those natural sounds and the interrelationships among park natural sounds of different frequencies and volumes. Natural sounds may range from bird calls, insect chirps, and bats to sounds produced by physical processes like wind rushing through leaves on trees, thunder, and rushing and falling water through rivers, creeks and streams within a park. **[EIS pg 250]**

Impacts related to soundscapes could occur wherever ORVs are allowed on the oceanside or the soundside. Vehicular noise has the potential to impact other recreational uses, such as bird watching or enjoying the solitude and natural soundscape of the Seashore. In addition to impacting soundscapes in relation to visitor enjoyment, vehicular noise could create unsuitable habitat for Seashore wildlife. **[EIS pg 30]** The NPS works to preserve, to the greatest extent possible, the natural soundscapes of parks. **[EIS pg 250]**

Implementation of the proposed rule would not result in impairment to soundscapes because the noise from ORV passages (i.e., from an ORV as it passes a set point) would still leave areas of the Seashore where natural sounds would predominate, including areas of visitor use, and increase the opportunity to experience natural sounds when compared to the current condition. In general, ORV use would continue intermittently over the life of the plan throughout the Seashore, but would be limited as a result of the establishment of seasonal and year-round SMAs. The impact analysis in the

DEIS deemed vehicle noise to be a minor adverse impact in all areas of the Seashore beaches open to ORV driving. In these areas, noise from vehicles traveling 15 mph would only exceed sound energy generated by the surf (and inhibit the ability to hear natural sounds) to a distance of approximately 20 meters inland from an ORV track and to a distance of approximately 10 meters from the ORV track towards the surf. Vehicle noise would also exceed the natural ambient environment by 3 dBA or more to a distance of approximately 12 meters inland and 8 meters seaward of a vehicle traveling at 15 mph, leaving many areas of the Seashore where natural sounds would predominate for visitor enjoyment. Under these conditions during an ORV passage, opportunities to hear the sounds of nature would be degraded to a certain degree, which would be less than the existing condition. Due to the size of the affected area and the differences between the vehicle noise and the sounds of the surf, impairment of park resources would not occur.

Prohibiting ORV access in all areas of the Seashore, except where an ORV route is specifically designated, would result in less area of the Seashore being open to ORV use year-round than is currently occurring, and provide more areas where visitors and wildlife can experience natural sounds. Areas of high resource sensitivity and high visitor use would generally be designated as seasonal ORV routes, with the seasonality of those restrictions based on the resource, or as year-round non-ORV areas. Generally, most areas where there is a designated seasonal ORV route would be open to ORVs from either August 1 to March 14 or September 16 to May 14. Two areas on Ocracoke Island would only be open from November 1 to March 31 and November 1 to March 14. During the periods when these areas would not be open to ORV use, both visitors and

wildlife would experience benefits from a reduction in vehicle-related noise and the ability to experience natural sounds.

Most areas of historically lower visitor use and resource sensitivity would be designated as year-round ORV routes, subject to temporary resource closures and limited access through ORV pass-through zones during shorebird breeding season. These seasonal closures would be approximately 7.5 to 8 months longer than existing conditions (depending on whether the route is within an SMA), providing longer periods of time for natural sounds to prevail in seasonally closed areas and for visitors and wildlife to experience the benefits of reduced vehicle noise.

Throughout the Seashore, where ORV use is permitted, the speed limit would be reduced from 25 mph to 15 mph (unless otherwise posted), which would also contribute to long-term beneficial impacts because slower moving vehicles produce less sound. A reduction of sound as a result of a reduced speed limit throughout the Seashore would also provide additional opportunities for visitors to have an experience free of vehicle noise.

Additional beneficial impacts would result from seasonal night-driving restrictions, which would create vehicle-free beaches at night from May 1 to November 15, from one hour after sunset until turtle patrol has checked the beach (approximately one-half hour after sunrise) and provide visitors with a nighttime experience that is free of vehicle noise.

Improving, reconfiguring, and adding new ramps and parking areas would result in noise from construction. The impact analysis in the DEIS deemed these construction impacts to be minor because they would be expected to be localized and of short

duration, and would not inhibit the long-term ability to experience natural sounds at the Seashore.

Overall the impact analysis in the DEIS found that impacts would be long-term minor adverse, with short- and long-term beneficial impacts as ORV use and the resulting soundscape impacts would be limited in certain areas of the Seashore. Although sounds related to ORV use would be experienced at times throughout the Seashore, many opportunities to experience natural sound would exist due to the extent of seasonal and year-round non-ORV areas, seasonal night-driving restrictions, and lowered speed limits.

Cumulative impacts from combining the effects of the proposed rule with effects of other past, present, and future planned actions in and around the Seashore would likely contribute to a similar level of adverse impacts as the proposed rule, with noise being present for intervals of time, with beneficial impacts from intervals of natural sounds. Therefore, impacts to soundscapes would not result in impairment. **[EIS pgs 520-521]**

Visitor Use and Experience

More than 2 million people have visited the Seashore every year since 1990, with the highest use occurring during June, July and August. The Seashore provides a diverse range of recreational opportunities including auto touring, biking, bird-watching, boating, camping, fishing, hiking, stargazing, swimming, viewing wildlife and surfing. **[EIS pgs 256 – 257]** Although some visitors want to use an ORV to access the Seashore, other visitors wish to engage in recreational activities on foot and away from the presence of motorized vehicles. Restricting ORVs from areas of the Seashore could enhance the recreational experience for some and diminish the experience for others. Visitor

experience could be affected by conflicts between motorized and non-motorized recreation users.

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

Headlights and other artificial lights associated with nighttime ORV use may affect visitors' opportunities to enjoy night skies at the Seashore. Conversely, lack of artificial lights may make it more difficult to see, posing hazards to ORV users and pedestrians. Issues related to night skies include night driving and headlights. **[EIS pg 30]**

By implementing the proposed rule the NPS aims to manage ORV use to allow for a variety of visitor use experiences, and minimize conflicts between ORV use and other uses. In addition, the NPS seeks to ensure that ORV operators are informed about the rules and regulations regarding ORV use at the Seashore. **[EIS pg 3]**

The designated ORV use areas and closures under the proposed rule would result in long-term minor to moderate impacts, as ORV access would be permitted during the

summer months at some popular use SMAs (Cape Point and South Point), subject to resource closures. However, the designation of Bodie Island Spit as non-ORV during breeding season and Hatteras Inlet Spit and North Ocracoke Spit as non-ORV year-round may result in more significant impacts to ORV users. The DEIS found impacts to ORV users may be long-term moderate to major adverse because more than one of these areas could be closed at one time during the summer season due to resource closures. There would be long-term beneficial impacts from the additional accommodations made for pedestrian use, including more parking, a possible beach shuttle, special use permits to shuttle the mobility impaired, and the addition of two new pedestrian trails.

Seashore visitors not using or relying on ORVs generally would not experience adverse impacts from these closures or from other safety closures where pedestrian corridors are provided. Those non-ORV users desiring a vehicle-free experience with more natural views and no vehicle-related noise or visual disturbance could experience long-term benefits from the ORV-free areas, as well as from restrictions on nighttime driving and reduced speed limits throughout the Seashore. Because pedestrian use and most other recreational opportunities could occur outside seasonal and other closures, as well as in pedestrian corridors during other seasonal closures, short-term minor adverse impacts may occur to these users.

The implementation of an ORV permit system and carrying capacity may be viewed as a long-term benefit by those who would like to see a system in place with consequences for non-law abiding ORV users, as well as those who may perceive crowded conditions that impact their visitor use and experience. For other ORV users, these elements would have a short- and long-term minor to major adverse impact as the

permit system could be viewed as cumbersome and/or expensive, and short-term moderate to major impacts to those who may not be able to access a beach that has reached capacity. Elements that provide both weekly and 12-month permits would be beneficial as the user would have flexibility and choice in regard to permit cost.

Lights associated with ORV use would result in long-term negligible to minor adverse effects to those visitors wishing to experience the night sky during winter when night driving is permitted or not restricted, and there would be short-term benefits to night sky viewing during the summer season when night driving is prohibited.

Cumulative impacts to ORV users would be long-term moderate to major adverse, while cumulative impacts to non-ORV users would be long-term beneficial. [EIS pg 555]

Socioeconomic Impacts

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

Commercial fishermen currently have ORV access to areas that are closed to other ORV users because of safety reasons (i.e., narrow beach conditions), but they do not have access to areas closed for resource protection. On Ocracoke Island, two soundside access points have been identified for commercial use. Limits placed on ORV

use at the Seashore may limit the activities of local commercial fishermen. Disrupting the ability of commercial fishermen to conduct business at the Seashore could negatively impact them. [EIS pg 31]

If the proposed rule is implemented, businesses linked to ORV use at the Seashore may experience uncertain adverse impacts based on protected animal nesting behavior changes from year to year. The impact on these businesses may ripple through the economy on the Outer Banks as a whole; however, the economy would likely adapt over time to the implementation of the proposed rule. This uncertainty may impact small businesses disproportionately.

Overall it is expected that the Region of Influence (ROI) could experience long-term negligible to minor adverse impacts and Seashore villages could experience larger short-term impacts, especially for businesses that cater directly to ORV users in the Seashore villages. The proposed rule is more structured and predictable than current practices. Furthermore, by establishing SMAs the proposed rule would be more protective of resources than current practices. Based on the visitation statistics from 2008, the probability of negligible impacts is greater than the probability of minor adverse impacts. Small businesses are expected to experience long-term negligible to moderate adverse impacts.

The long run impact of the proposed rule would depend in part on how current and new visitors adjust their trips and spending in response to the management changes and the adaptations made by the business community to these changes. To the extent that businesses adapt to changing visitation patterns, the long-term impacts on the overall

economy would be lessened. The impact on individual businesses would vary more than the impacts on the regional economy as a whole if the mix of visitors changes. Some businesses may experience a long-term decrease in customers, while others may experience no change or a long-term increase.

Adverse impacts to preservation values would be less under the proposed rule relative to current practices. Overall impacts to preservation values would be long-term minor to moderate adverse, with long-term beneficial impacts from the measures taken by the Seashore to protect threatened, endangered, and special status species.

Cumulative impacts in the ROI could be long-term negligible to minor adverse or beneficial depending on national economic conditions. **[EIS pgs 591-592]**

The Proposed Rule

The proposed rule would amend the special regulations for Cape Hatteras National Seashore set forth in 36 CFR 7.58. Under this proposal, a new paragraph (c) would be added to § 7.58 to designate areas where ORVs may be used at the Seashore and establish other requirements, including permit, vehicle and equipment requirements.

To operate an ORV on designated routes at the Seashore, the proposed rule requires operators of ORVs to obtain a permit issued by the Superintendent (§ 7.58(c)(2)). Weekly and annual ORV permits would be available and would be valid from the date of purchase. The fee for a weekly ORV permit would be less than the fee for the annual permit. Permits would include a night-driving component for the September 16 to November 15 timeframe. There would be no limit on the number of permits the Superintendent may issue. To obtain a permit, applicants would be required to complete a short education program in person or online and pass a basic knowledge

test. They also would sign for their permits to acknowledge understanding of the rules governing ORV use at the Seashore, and that an ORV permit may be revoked for violating applicable Seashore regulations or terms and conditions of the permit. Under the proposed rule, ORV permits would not be transferable and would be carried by the operator of the vehicle for which it had been issued while traveling at the Seashore. It would be displayed as directed by the Superintendent at the time of issuance.

In addition to ORV operator requirements, this proposal would establish vehicle requirements ORVs must meet before the Superintendent would issue an ORV permit (§ 7.58(c)(2)(v)). ORVs would be required to conform to the laws and regulations governing the use of motor vehicles in 36 CFR 4.10. The ORV would have to be registered, licensed, and insured for highway use and comply with state inspection regulations within the state, country, or province where the vehicle is registered. ORVs with more than three axles would not be permitted. However, this requirement would not include additional axles on towed trailers. Trailers could have up to two axles. The maximum ORV length would be 30 feet, not including the additional length of a towed trailer, and ORV tires would have to be U.S. Department of Transportation-listed or approved. Four-wheel drive vehicles would be recommended, although two-wheel drive vehicles would be allowed.

The ORV would be required to contain certain equipment, including a low-pressure tire gauge, shovel, jack and jack stand. Under this proposal, the Superintendent would reserve the right to check the vehicle to determine whether it complies with these vehicle requirements before issuing a permit. While not required under the proposed rule, the NPS recommends ORV operators have a full-sized spare tire, first aid kit, fire

extinguisher, trash bag or container, flashlight (if night driving), and a tow strap. **[EIS pg 109]**

Under the proposed rule, the Superintendent would be able to issue Special Use Permits instead of recreational ORV permits under certain conditions (§ 7.58(c)(2)(viii)). The Superintendent could issue such permits to authorize temporary emergency ORV use of non-ORV areas if needed to bypass sections of NC-12 that are closed for repairs. This measure could apply to all vehicles, including private vehicles, and would require a special use permit during the temporary emergency situation. The Superintendent could also authorize temporary non-emergency ORV use of non-ORV areas traditionally used for fishing tournaments that were established before January 1, 2009. A special use permit could be issued to authorize temporary non-emergency ORV use of non-ORV areas to transport mobility-impaired individuals to join their family or friends on an open beach that is otherwise closed to ORVs. In this case, ORV use would be limited to the shortest, most direct distance between the nearest designated ORV route and the location of the gathering. **[EIS pg 111]**

Commercial fishing vehicles would be authorized to enter non-ORV areas, except for full resource closures and lifeguarded beaches. In areas outside of existing resource closures, the Superintendent would be able to modify the hours of night-driving restrictions by up to two hours for commercial fishing vehicles, subject to the terms and conditions of the fishing permit. This modification would only apply to commercial fishermen who are actively engaged in authorized commercial fishing activity and can produce fish house receipts from the past 30 days. **[EIS pg 114]**

The proposed rule is designed to provide visitors to the Seashore with a wide variety of access opportunities. To support this goal, ORV use would be managed to limit impacts to sensitive resources. Areas that do not support sensitive resources and areas of lower visitor use would generally be designated as ORV routes year round. Areas of high resource sensitivity and high visitor use would generally be designated as seasonal ORV routes. [EIS pg 81] The proposed year-round and seasonally designated ORV routes and areas are set forth in § 7.58(c)(3) below. Maps that show these routes and areas would be available in the Office of the Superintendent and on the park website. [Add link to maps?]

Under the proposed rule, ORVs would be permitted to operate in designated routes and areas, subject to certain restrictions. The superintendent could 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 would be posted in the Office of the Superintendent and on the park website.

ORV safety closures would be established on designated ORV routes as needed to address ORV and pedestrian safety considerations. An ORV safety closure would be implemented in the event of a clear and imminent threat of significant bodily injury or death, and/or damage to personal property, including vehicles and their contents. Triggers that could justify a safety closure include, but are not limited to:

- Deep beach cuts that block the beach from dune to surf with no obvious way around.

- Obstacles, such as exposed stumps, shipwrecks, or debris, that cannot be safely bypassed or that block the entire width of the beach and cannot be easily removed.

- Severe beach slope that puts vehicles in an unsafe gradient position and increases the chances of the loss of vehicular control.

- A high concentration of pedestrian users coupled with a narrow beach.

Triggers do not include:

- A narrow beach by itself.

- High tides. High tides that block access through portions of beaches occur periodically and predictably, and are an obvious, easily avoidable hazard.

- Hazards blocking only a portion of the beach, where safe passage is available around the hazard.

ORV safety closures would preclude ORV access, while pedestrian and commercial fishing access would be maintained through most safety closures. NPS law enforcement staff will monitor ORV safety closures on a weekly basis. Sufficient reduction or elimination of the conditions prompting the closure, so there is no longer an imminent hazard, would constitute the trigger for reopening a closure. **[EIS pg 105]**

ORV operators would be required to comply with the vehicle and traffic safety regulations set forth in 36 CFR 4.20 and 4.22, as well as other rules of the road (§ 7.58(c)(4)). ORVs would be required to yield to pedestrians on all ORV routes. When approaching or passing a pedestrian on the beach, ORVs would be required to move to the landward side to yield the wider portion of the beach corridor to the pedestrian. ORVs would 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.

Parking within routes would be allowed in any configuration, as long as parked ORVs do not obstruct traffic. When driving on designated routes, the proposed rule would require tire pressure be lowered sufficiently to maintain adequate traction within the posted speed limit. Tire pressure of 20 psi is recommended for most vehicles. The softer the sand, the lower the pressure needed. The speed limit for ORVs at the Seashore is 15 mph, unless otherwise posted. However, emergency vehicles are exempt when responding to a call.

The hours ORVs would be allowed on designated routes and areas vary throughout the year. From November 16 to April 30, designated ORV routes would be 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) would be closed to nonessential ORV use from one hour after sunset until the turtle patrol has checked the beach in the morning, which generally occurs by approximately one-half hour after sunrise. From September 16 to November 15 ORV routes with no or low density of turtle nests remaining would reopen for night driving, subject to terms and conditions of an ORV permit. Hours of night driving prohibition would be listed in the Superintendent's Compendium and would be subject to periodic review.

Carrying capacity would be a "peak use limit" determined for all areas based on the linear feet of beachfront and specific physical space requirements (§ 7.58(c)(5)). Temporary exceptions to carrying-capacity limits may be approved for short-term events

operating under a special-use permit. Carrying capacity criteria would be subject to periodic review. [EIS pg 108]

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies or controls. This rule is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues. This rule is a special regulation being issued for managing ORV use in a National Park Unit.

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This certification is based on **[insert explanation]** Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas by allowing ORV use in specific areas of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83-I is not required. **[Would permit requirements trigger PRA?]**

National Environmental Policy Act

As a companion document to this NPRM, NPS has issued the Cape Hatteras National Seashore Off-Road Vehicle Management Plan Draft Environmental Impact Statement.. The Draft Environmental Impact Statement (EIS) was open for public review and comment from [insert date], until [insert date]. The EIS and any errata are available at <http://parkplanning.nps.gov/caha>. A limited number of hard copies are available at the Seashore headquarters, 1401 National Park Drive, Manteo, North Carolina, 27954..

Government-to-Government Relationship with Tribes

In accordance with the President’s memorandum of April 29, 1994, “Government to Government Relations with Native American Tribal Governments” (59 FR 22951) and

512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A “section” appears in bold type and is preceded by the symbol “§” and a numbered heading; for example [**§ 7.58 Cape Hatteras National Seashore**]) (5) Is the description of the rule in the “Supplementary Information” section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also email the comments to this address: Exsec@ios.doi.gov.

DRAFTING INFORMATION: The primary authors of this regulation are:

Public Participation

You may submit comments, identified by the number RIN 1024-AC_ __, by any of the following methods:

- Federal rulemaking portal: <http://www.regulations.gov> Follow the instructions for submitting comments.
- E-mail NPS at _____. Use RIN 1024-AC__ in the subject line.
- Mail or hand delivery to: Mike Murray, Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, North Carolina 27954.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as follows:

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 Seashorepark.

(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 ORV 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 ~~at~~ the Seashorepark. 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.

(B) Temporary non-emergency ORV use of non-ORV areas -

~~(12)~~ If the non-ORV area has been traditionally used for fishing tournaments that were established before January 1, 2009.

~~(23)~~ To transport mobility-impaired individuals to join others on an open beach that is otherwise closed to ORVs.

(CB) 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 ~~Seashore~~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

(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.* 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.